
(2003) 05 AHC CK 0022
In the Allahabad High Court
Case No : C.M.W.P. No. 13764 of 1995

Dhanpati (D) through L.R.	Vs	APPELLANT
Board of Revenue and Others		RESPONDENT

Date of Decision : 06-05-2003

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 4, 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 333

Citation : (2003) 5 AWC 4296

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Faujdar Rai and Chandra Kumar Rai, for the Appellant; J.P. Yadav, A.K. Yadav, B.Yadav, S.K. Lakhtakia, D.R. Chaudhary and S.C., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Singh, J.—By means of this writ petition, prayer is for quashing of the order dated 23.2.1995 (Annexure-5 to the writ petition) passed by the Respondent No. 1/Board of Revenue, U. P., Allahabad.

2. Facts of the present case runs in a very narrow compass and thus, for the purpose of adjudication they can be summarised. A suit u/s 229B of the U.P.Z.A. and L.R. Act (hereinafter referred to as the Act), filed by the Respondent Nos. 3 and 4 was decreed on the basis of the compromise by judgment and decree passed by the trial court on 17.7.1980. An application for setting aside the decree referred above was filed by the Petitioner and her husband Brijlal on 5.12.1980, which was allowed by the trial court on 18.11.1992 and by setting aside the decree, the suit was restored. A recall application was filed by the Plaintiffs to the order dated 18.11.1992 which was rejected on 19.7.1993. Against the two orders of the trial court dated 19.7.1993 and 18.11.1992, a revision was filed by the Plaintiffs before the Additional Commissioner. On moving the stay application, the Additional Commissioner by order dated 12.8.1993 stayed the operation of the orders of the trial court and also further proceedings

of the suit. As the order dated 12.8.1993 was time bound, by order dated 23.12.1993, it was extended until further orders. The Additional Commissioner by its judgment dated 3.2.1994, made a reference to the Respondent No. 1 with a recommendation that the revision be allowed and the orders of the trial court be set aside and the restoration application be reheard. It appears that during the pendency of the reference before the Respondent No. 1 present Petitioners moved an application on 16.4.1994, informing the Court that consolidation proceedings have intervened and a notification has taken place u/s 4 of the U.P.C.H. Act. A question answer was also filed to that effect. Respondent No. 1 after hearing the parties by its judgment dated 23.2.1995 accepted the reference and allowed the revision. The orders of the trial court dated 18.11.1992 and 19.7.1993, were set aside and the trial court was directed to decide the restoration application afresh after giving opportunity of hearing to both parties. The aforesaid exercise of the Board of Revenue dated 23.2.1995 is under challenge in this petition.

3. Counsel for the parties have been heard at length and pleadings as has been placed before this Court have been examined.

4. Learned Counsel for the Petitioner submits that the order of the Respondent No. 1 is faulty on two counts, i.e., (i) on intervention of the consolidation proceedings, of which information was given to the Respondent No. 1 by moving an application, the matter pending before him was liable to be abated u/s 5 of the U.P.C.H. Act. It is submitted that Section 5 (2) (a) of the U.P.C.H. Act makes it mandatory that any proceeding pending before any Court i.e., at the first instance or of appeal, reference or revision to be abated and, therefore, Respondent No. 1 in deciding the revision on the merits have committed an error; (ii) otherwise also the trial court allowed the restoration application filed by the Petitioner which being a discretionary order, was not liable to be interfered in the revision, as it has a limited scope. In support of the submission that after setting aside the decree as the suit revives, irrespective of pendency of the appeal or revision, it is to be abated u/s 5 of the U.P.C.H. Act reliance has been placed on the case of *Manbirta and Ors. v. D.D.C., Ballia and Ors.* 1988 RD 167.

5. In response to the aforesaid submission learned Counsel for the Respondents submits that as against the judgment of the trial court setting aside the decree a revision was filed, which was recommended to be allowed, the scope of reference/ revision pending before the Board of Revenue happened to be only to see that whether the trial court has rightly set aside the decree, or not and thus, the same cannot be permitted to be abated. It is submitted that the restoration proceedings and the revision etc. arising therefrom not being an appeal against the judgment and decree in the suit need not to abate. In support of the aforesaid submission learned Counsel places reliance on a decision given by this Court in the case of *Sheo Pujan Singh and Anr. v. Bhagesara Kumar and Ors.* 1985 RD 163. It is then submitted that as the trial court has set aside the decree, without assigning any reason in an arbitrary manner, therefore, revisional

court has rightly set aside the orders of the trial court and has directed the parties to be reheard to the restoration application and thus, on both counts it is pointed out that the order of the Board of Revenue needs no interference.

6. On the pleading and the aforesaid arguments referred above question which needs attention of this Court appears to have not been noticed and dealt since long. The question is of importance which arises in good number of cases, which can be conveniently framed in the following manner:

(i) Whether a decree passed by the competent revenue court on filing the restoration application and on its rejection on filing the appeal/ revision is liable to be abated on the notification u/s 4 (2) of the U.P.C.H. Act.

(ii) Whether on setting aside the decree passed by the competent revenue court when suit revives, on filing the recall application, or an appeal/revision or reference, if is pending in the higher forum, on notification u/s 4 (2) of the U.P.C.H. Act pending proceedings are liable to be abated u/s 5 (2) of the U.P.C.H. Act.

7. Before interpreting the aforesaid situation the Court straightway refers two decisions of this Court as has been relied by the rival side. It is thereafter the relevant provisions under which the abatement of the suit/proceeding under U.P.C.H. Act as is being claimed will be noticed. Petitioner side appears to have been prompted to claim the abatement of the proceedings before the Board of Revenue as has been impressed before this Court on the observation as made in the judgment of this Court as has been made in the case of Smt. Manbirta (supra). The observation favouring the Petitioner can be quoted here:

In a case, I have indicated that when ex-parte decree is set aside and appeal or revision against that order is pending before the higher authority and the consolidation starts in the village the proceedings together with suit should be abated. The higher authority had no jurisdiction to go into the merits of the claim as to whether the ex-parte decree was rightly set aside or wrongly set aside.

8. In the same manner Respondent side also appears to have been prompted to submit that restoration proceedings need not abate in view of the observation as has been made in the judgment given by this Court in the case of Shiv Pujan Singh (supra). Relevant observation in this respect as made in the aforesaid judgment will also be useful to be quoted here:

It is true that the restoration application and the revisions etc. arising therefrom do not abate u/s 5 (2) of the Act and, therefore, the order of the Board of Revenue declaring the revision of Smt. Bhagesara as abated along with restoration application and suit was illegal....

9. The two observations referred above need no further analysis and deeper scrutiny as in none of the decisions as has been given in the case of Smt. Manbirta and in the case of Shiv Pujan Singh (supra) there is any reason or discussion and that too after referring the relevant provisions under the U.P.C.H.

Act dealing with the subject of abatement of the suit and straightway one or the other conclusion has been arrived. In view of the aforesaid, the Court proceeds to deal with the issue independently after referring the relevant provision of the U.P.C.H. Act and also certain other old cases which had touched the issue.

10. Before dealing the question, it will be useful to quote here provisions of Section 5 (2) of the U.P.C.H. Act which runs as follows :

5 (2) Upon the said publication of notification under Sub-section (2) of Section 4 the following further consequences shall ensue in the area to which the notification relates, namely:

(a) every proceeding for the correction of records and every suit and proceedings in respect of declaration of rights or interest in any land lying in the area, or for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the Court or authority before whom such suit or proceeding is pending stand abated.

11. A bare reading of the aforesaid provision makes it clear that abatement of any suit or proceedings pending before any Court or authority whether of first instance or of appeal, reference or revision is dependent on two situations i.e., (i) the proceedings should be for correction of records and any suit and proceedings should be in respect of declaration of the rights or interest in respect of any land lying in the area; (ii) for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under the U.P.C.H. Act. On a bare reading of the aforesaid provision it is crystal clear that it is only a suit or proceedings or the matter relating correction of records or if the proceedings are pending in respect to the declaration of right or in respect of the land that can be abated. In view of aforesaid if against the order of the trial court by which decree of the suit was set aside and revision/reference is pending in the higher forum, certainly scope of the proceedings of reference or revision cannot be said to be for declaration/adjudication of the rights of the parties as the Courts are only to examine the correctness of the order of the trial court by which recall has been granted. The higher forum in the appeal, revision/reference against the order of the trial court setting aside decree or rejecting the application for setting aside the decree cannot go into the merits in respect to the claim of the parties and cannot adjudicate their right and it can be made only after the finality to the restoration proceedings. As provisions of Section 5 (2) of the U.P.C.H. Act talks of the abatement of the suit and another proceedings pending before either of the Court, i.e., at the first instance or appeal, reference or revision which must be in relation to declaration and adjudication of the rights, as the restoration proceedings do not and cannot decide the rights and title of the parties no other conclusion can be arrived except that the restoration proceedings either pending before the trial court or in appeal or in revision/reference cannot be abated. At this stage, immediately other situation crops in i.e., take a case when the decree

has been set aside by the trial court against which the appeal, revision/reference is pending then what will be the situation where the stay order has been granted by the higher court/forum to the order of the trial court and where no stay order has been granted to the order of the trial court. No cases are to be referred for the proposition that mere filing of the appeal or revision do not amount to suspension of effect of the order appealed and thus, whatever effect will be of the order which has been appealed before the higher court will have to be accepted in the case there is no restraint by the higher court. To make it more clear we can say that if the trial court has set aside the decree then the suit stands revived then that position will continue irrespective of filing of appeal/revision unless there is a contrary order in that respect, meaning thereby unless Additional Commissioner or the Board of Revenue suspends the operation of the order of the trial court setting aside the decree the suit under law will remain revived but if the Additional Commissioner or the Board of Revenue stays operation of the order of the trial court setting aside the decree then it is to be taken that the effect of the order of the trial court setting aside the decree has been kept in abeyance and it is not in operation. Accordingly, the situation can be answered in the manner that even if against the order of the trial court setting aside the decree, appeal, revision/reference is pending before the higher court and there is no stay to the order of the trial court setting aside the decree then under law the suit is to be treated as alive and pending and thus if at this stage the notification u/s 4 (2) of the U.P.C.H. Act takes place and an application is moved for abating the suit then irrespective of the time which may be taken by the Court in passing the order, abatement of suit will be necessary consequence but if there is a restraint by the Additional Commissioner or the Board of Revenue or by any other competent forum to the order of the trial court setting aside the decree then under law the suit cannot be treated to be in a revived position and thus, the parties will have to wait for the finality of proceedings and it is only thereafter either of the situation may follow. On a consideration of aforesaid it appears that although the proceedings before the Additional Commissioner or before the Board of Revenue may be pending against the order of the trial court setting aside decree, which may be called as the restoration proceeding, not contemplated for the purpose of abatement u/s 5 (2) of the U.P.C.H. Act as it talks about the pending proceeding for declaration or adjudication of the rights but for giving full meaning, keeping in mind intention with which the provision of abatement has been made, the Court can safely say that although the pending proceedings before the Additional Commissioner or the Board of Revenue arising out of the restoration proceedings can be said to be restoration proceedings but at the same time if there is no stay against the order of the trial court setting aside the decree then as under law the suit is to be treated in a revived position, there appears to be no impediment with the power of Court in not accepting the application of the party when it is moved for abatement of the suit on a notification u/s 4 (2) of the U.P.C.H. Act. The abatement is to be made of the suit along with all the proceedings which clearly means that the proceedings along with suit are to be abated. Although the

Additional Commissioner and the Board of Revenue are not ceased of the suit itself but they being the higher forum to the trial court they can be fully empowered to pass an order of abatement of the suit upon which the proceedings pending before them will automatically become infructuous. The powers with the Additional Commissioner and the Board of Revenue, as conferred vide Section 333 of the U.P.Z.A. and L.R. Act is quite wide. For ready reference Section 333 of the U.P.Z.A. and L.R. Act is being quoted here:

333. Power of Board to call for cases.-The Board may call for the record of any suit or proceeding decided by any subordinate court in which no appeal lies, or where an appeal lies but has not been preferred, and if such subordinate court appears:

(a) to have exercised a jurisdiction not vested in it by law; or (b) to have failed to exercise a jurisdiction so vested; or (c) to have acted in the exercise of jurisdiction illegally or with material irregularity, the Board may pass such order in the case as it thinks fit.

12. A perusal of the powers as conferred u/s 333 of the U.P.Z.A. and L.R. Act makes it clear that they have power to call for the record and thus, when even in revision pending before the aforesaid authorities the matter may not be arising out of the judgment and the decree in the suit but even against the orders passed in restoration proceedings but as record of the suit or proceedings are to be screened, it cannot be said that if the suit, under law is to be treated to have been revived then why they cannot pass an order for abatement of the suit u/s 5 (2) of the U.P.C.H. Act which is the mandate of the aforesaid provision. Accordingly it is concluded that if the restoration application has been rejected by the trial court and its appeal or revision is pending then as the restoration has not been ordered there is no question of abatement of the suit but when the restoration has been allowed and the decree has been set aside, then even if the appeal, revision/reference is pending if there is no stay to the order of the trial court then the suit has to abate but when there is a stay to the order of the trial court, then the parties will have to wait up to the finality of those proceedings for getting any result in this respect either way.

13. At this stage it will be useful to notice certain other cases on the point. In all these cases, view has been taken that the restoration proceedings being not covered by Section 5 of the U.P.C.H. Act they cannot abate. The observation in this respect as has been made in the judgment of this Court as has been given in Civil Misc. Writ Petition No. 7480 of 1984, Paras Nath Singh v. Board of Revenue decided on 18.11.1979, is being quoted here:

It is well-settled that an application for restoration is not covered by Section 5 of the U.P. Consolidation of Holdings Act and, therefore, it cannot be abated u/s 5 of the U.P. Consolidation of Holdings Act and if that be the position, the revision arising out of the restoration proceedings cannot also be abated. To hold otherwise would create an anomalous position. It was open to the Petitioner to

file a revision against the order restoring the suit and if the Board of Revenue eventually allowed the revision application and set aside that order restoring the suit it would be of no avail in case the suit itself had already been abated u/s 5 of the U.P. Consolidation of Holdings Act on account of initiation of the proceedings under the U.P. Consolidation of Holdings Act.

14. In *Smt. Paran Devi v. Rajaswa Parishad*, 1986 RD (Hindi Section) page 1, this Court has held that "restoration proceedings or appeal or revision arising out of the order passed in such proceedings would not abate u/s 5 (2) of the U.P.C.H. Act."

15. In *Jagar Nath Shukla v. Sita Ram* 1969 RD 429, this Court has observed that:

From the language of the amended Section 5 it is clear that if a suit can be abated then the Consolidation Authorities must have jurisdiction to go into the question involved. Conversely if a matter can be gone into in consolidation proceedings then a suit in respect of that matter must be abated u/s 5.

16. In *Hasrat v. Haridwar* 1973 RD 204, this Court has observed that:

If under the provision of the Act no proceedings could be taken for the adjudication of a dispute or no relief could be obtained from the consolidation authorities, the suit or proceedings in respect thereof pending in a Court could not be abated.

17. After analysing the matter in the light of the discussion made above it is clear that the judgment relied upon by the learned Counsel for the Petitioner as has been given in the case of *Smt. Manbirta* having not referred to the relevant provisions of the Act and other decisions, on the point it can safely be said that it is just per incuriam and for the reasons stated in this judgment it is clearly distinguishable. The other cases also, in which it has been held that restoration proceeding will not abate, has not noticed and analysed the situation where there is stay to the order of trial court setting aside the decree and where there is no stay by the higher court.

18. Accordingly the answer to the question can be summarised in the following manner:

(i) Neither on filing of the restoration application nor on its rejection, nor on filing the appeal or revision, the suit is to be abated on the notification u/s 4 (2) of the U.P.C.H. Act.

(ii-a) If the decree has been set aside by the trial court and the suit has been revived, then irrespective of filing of restoration application by the Plaintiff or even on filing the appeal/revision, during the pendency of the reference on notification u/s 4 (2) of the U.P.C.H. Act, the suit is to be abated upon which the proceedings on restoration application will automatically become infructuous.

(ii-b) On setting aside the decree either during the pendency of recall application, appeal or reference, if there is any stay to the order of the trial court setting

aside the decree, then pending proceedings either before the trial court or before the appeal, revision/reference will not abate and the parties will have to wait for the finality of those proceedings.

19. So far the case in hand is concerned, record demonstrates that against the order of the trial court dated 18.11.1992, by which the decree was set aside and the suit was restored when the Plaintiff filed a revision on 19.7.1993, the Additional Commissioner by order dated 12.8.1993, stayed the operation of the order of the trial court and also further proceedings in the suit. The order dated 12.8.1993, was operative till the next date of listing but thereafter on 23.12.1983, it was extended till further orders and thereafter the Additional Commissioner has made recommendation to the Board of Revenue for allowing the revision. In view of the aforesaid, it is clear that during the pendency of the revision/reference, there happened to be stay to the order of the trial court dated 18.11.1992, by which the decree was set aside and, therefore, the claim of the learned Counsel for the Petitioner for abatement of suit will have to be rejected.

20. In respect to the other aspect as argued by the learned Counsel that as the trial court has set aside the decree, it was an equitable and discretionary order it was not liable to be interfered in the revision as the revisional court exercises a limited jurisdiction, suffice it to say that the argument of the learned Counsel can be accepted only in a situation where the trial court has set aside the decree or even has condoned the delay in filing any application by assigning any reason worth the name then the revisional court or the higher court should not be permitted to intervene, but if the order of the trial court demonstrates, that it is totally arbitrary, just like administrative order and the conclusion is arrived at even without noticing the facts, submission of the parties then it cannot be said that the Court has applied its mind to the facts and situation and, then that order has to be termed to be totally arbitrary rather in violation of principles of natural justice and that can always be interfered by the higher court. The reasons and the findings in respect to sufficiency of the cause, allowing the restoration may not be subject-matter of scrutiny by the higher court but at the same time the higher court must be satisfied that the trial court has applied his mind to the facts and situation and then has arrived at a particular conclusion. So far the case in hand is concerned the order of the trial court dated 18.11.1992 is only in four lines which only says that "File has been placed. Examined. In spite of the service of the notices on the Plaintiffs they have not appeared. In the interest of justice the order dated 17.7.1980 is recalled". The Board of Revenue has given a finding that the statement of the concerned process server indicates that the Plaintiff was not available for service and thus, it is clear that firstly the Plaintiffs were not duly served before passing of the order dated 18.11.1992 and otherwise also no reason whatsoever has been given by the trial court for setting aside the decree which was based on the compromise. There is no finding about manipulation and forgery in filing the compromise or any lack of service on the Defendants resulting in their non-appearance. The Court may not insist for a lengthy reason dealing all the arguments and the materials but at the same time

even the facts, arguments and also the reason must appear in a concise manner in an order so that the Court may infer that the mind has been applied to all the aspects. In view of the aforesaid decision second point as has been tried to be impressed by the counsel for the Petitioner, also deserves rejection.

21. For the reasons recorded above, there appears to be no ground to interfere in the order of the Board of Revenue, U. P., Allahabad, dated 23.2.1995 (Annexure-5 to the writ petition).

22. The writ petition accordingly fails and it is dismissed.