
(1973) 10 MP CK 0008
In the Madhya Pradesh High Court
Case No : M.P. No. 104 of 1970

Dhulibai	Vs	APPELLANT
Board of Revenue and others		RESPONDENT

Date of Decision : 12-10-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227
General Clauses Act, 1897 — Section 6
Madhya Pradesh General Clauses Act, 1957 — Section 19(c)
Madhya Pradesh Land Revenue Code, 1959 — Section 261, 262, 47, 47(a), 55

Citation : (1974) JLI 64

Hon'ble Judges : G.G.Sohani, J;A.P. Sen, J

Bench : Division Bench

Advocate : G.M. Chaphekar, for the Appellant; S.D. Sanghi and M.L. Agrawal for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

G.G. Sohani, J.—This petition, under Articles 226 and 227 of the Constitution of India, is directed against an order dated 7th January, 1970, passed by the Board of Revenue in Revision No. 170 2/68.

2. The brief facts giving rise to this petition are as follows :--

One Nandibai widow of Jala died on 9-9-1953. Respondents No. 2 and 3 made an application to the Tahsildar, Dhar, for mutation of their names in place of the deceased Nandibai. A similar application was also made by the petitioner. Both these applications were heard together as Mutation Case No. 56/1962 x 110. The tahsildar, by his order dated 31-12-1966 allowed the application of the petitioner. Against that order respondents No. 2 and 3 preferred an appeal to the Sub-Divisional Officer, Dhar, on 13-3-1967, being Appeal No. 70/ 1966-67. The Sub Divisional Officer, by his order dated 13-9-1967, dismissed the appeal on the short ground that it was barred by time as it was filed beyond the period of forty-five days prescribed by section 47 (a) of the Madhya Pradesh Land Revenue

Code, 1959 (hereinafter referred to as the "Code". This decision was affirmed by the Additional Commissioner, Ujjain, in Second Appeal No. 171/1967-68, Respondents No. 2 and 3 than filed a revision petition No. 170-11/ 1968-A before the Board of Revenue. By an order dated 7-1-1970, the Board held that the period of limitation applicable to the appeal preferred before the sub-Divisional Officer was sixty days as provided by the Madhya Bharat Land Revenue and Tenancy Act (hereinafter referred to as the "Act"), and hence the appeal was filed within the period of limitation. In this view of the matter, the Board set aside the order of the Sub-Divisional Officer and the Additional Commissioner and directed the Sub-Divisional Officer to hear the appeal on merits. Aggrieved by this order, the petitioner has preferred this petition.

3. Shri Chaphekar, learned counsel for the petitioner, contended that the impugned order suffered from an error apparent on the face of the record inasmuch as the Board held that the period of limitation prescribed by the Madhya Bharat Land Revenue and Tenancy Act, was applicable to an appeal presented against an order dated 31-12-1966 by the Tahsildar, even though the Act had been repealed and the Madhya Pradesh Land Revenue Code, 1959 had come into force on 2-10-1959 prescribing by section 47 (a) thereof a period of forty-five days for filing an appeal. On behalf of respondents No. 2 and 3 Shri S. D. Sanghi, learned council fully supported the order of the Board. He contended that by virtue of clause (d) of the first proviso to section 261 of the Code, the procedure prescribed under the repealed law in respect of the enforcement of vested rights, was saved and as the respondents No. 2 and 3 had a vested right of appeal prevailing on 1-10-1953, the date of institution of proceeding for mutation by them, the provisions of the Act providing a period of sixty days for filing first appeal would be applicable. The question for consideration therefore is whether the period of limitation for filing an appeal against an order which was passed after the coming into force of the Code would be that which is prescribed by the Code or would be one prescribed by the Act which was in force when the proceedings in question were instituted.

4. Now, the law of limitation is a law relating to procedure. Salmond, in his authoritative work on Jurisprudence, has put the matter thus :--

Whether I have a right to recover certain property is a question of substantive law for the determination and the protection of such rights are among the ends of the administration of justice; but in what Courts and within what time I must institute proceedings are questions of procedural law, for they relate merely to the modes in which the Courts fulfil their function.

As observed by Sulaiman Ag. C. J. (as he then was in Hazari Tewari Vs. Mt. Maktula Chaubain and Another , it cannot be said that there is a vested right in a litigant to wait for a particular period of limitation before instituting his suit. Sometimes, however, the new statute of limitation which shortens the period of limitation have the effect of destroying vested rights if no provision is made to safeguard them In such a case, Courts have struggled against the acceptance of

the proposition that the law of limitation is a matter of procedure only. In *Manjuri Bibi and others v. Akkel Mahmud and others* [19 IC 793]. Sir Asutosh Mookerjee to whom the case was referred on a difference of opinion, surveyed the entire case-law on the subject and expressed the matter thus :--

No doubt, we find it frequently asserted in judicial decisions that a statute of limitation embodies merely a rule of procedure; but this statement is only generally and not universally true. The essence of the matter is that when a new Statute of Limitation which shortens the period for institution of suits and comes into force the moment it becomes law is sought to be made retrospectively applicable to causes of action which have accrued earlier than the length of time prescribed, it causes to be a statute of mere procedure and serves to destroy preexisting and enforceable rights. Under circumstances, like these, the Court, when invited to hold that the new statute has retrospective operation, will struggle against the acceptance of such interpretation, unless there is the clearest indication that the Legislature intended to destroy existing rights without notice and thus to penalise innocent litigants.

It, therefore, appears to be fairly well settled that if the new law of limitation does not have the effect of destroying vested rights or the effect of reviving barred rights, then it can be classified as a law of procedure only. Now, no person has a vested right in any course of procedure (See *Anant Gopal Sheorey Vs. The State of Bombay*, . In *Craies on Statute Law*, Sixth Edition, at page 400, It has been observed as follows :--

It is perfectly settled that if the legislature forms a new procedure, that, instead of proceeding in this form or that, you should proceed in another and a different way, clearly there bygone transactions are to be sued for and enforced according to the new form of procedure. Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be. In other words, if a statute deals rightly with the procedure in an action, and does not effect the right of the parties, it will be held to apply *prima facie* to all actions, pending as well as future.

5. Now, the Madhya Pradesh Land Revenue Code, 1959 came into force on 2-10-1959 repealing the Madhya Bharat Land Revenue and Tenancy Act, which was in force at the time when the proceedings for mutation were instituted. Section 47 of the Code in Chapter V, which prescribes the period of limitation is as follows :--

47. No appeal shall lie--

(a) to the Sub-Divisional Officer or Collector or Settlement Officer or Settlement Commissioner, after the expiration of forty five days from the date of the order to which objection is made; or

(b) to the Commissioner after the expiration of sixty days from such date; or

(c) to the Board, after the expiration of ninety days from such date :

Provided that an appeal to any Revenue Officer specified in clause (a) from an order passed in the Madhya Bharat Region before the coming into force of this Code may be filed before the expiration of sixty days from the date of such order :

Provided further where a party, other than a party, against whom the order has been passed *ex parte*, had no provisions notice of the date on which the order is passed, limitation under the section shall be computed from the date of the communication of such order.

It is pertinent to note that as clause (a) of section 47 of the Code shortened the period of limitation which was in force in the Madhya Bharat Region, it might have in some cases destroyed the right of appeal against an order passed before the coming into force of the Code. The first proviso to section 47 is, therefore, enacted to safeguard the right of appeal vesting in the litigant in such cases. The relevant provision for limitation under the Act is kept alive in cases where an order against which an appeal could be preferred was passed before the coming into force of the Code but no appeal had in fact been preferred till the coming into force of the Code. In the absence of such a proviso, the new provision for limitation contained in section 47 (a) of the Code might have ceased to be a statute of mere procedure as it would have served to destroy pre-existing and enforceable rights. The provisions of section 47 of the Code, therefore, without obliterating any vested right are made applicable to actions pending on the date when the Code came into force. To avoid any doubt in this behalf, the legislature has further enacted section 55, which reads as follows :--

55. For avoidance of doubt, it is hereby declared that save as otherwise expressly provided in this Code, the provisions of this Chapter shall apply to--

(a) all orders passed by any Revenue Officer before the date of coming into force of this Code and against which no appeal or revision proceedings are pending before such date; and

(b) all proceedings before Revenue Officers, notwithstanding that they were instituted or commenced before the coming into force of this Code,

Therefore, unless there is an express provision to the contrary, the new period of limitation provided in section 47 (a) of the Code, would govern the proceedings in question even though those proceedings were instituted before the coming into force of the Code. Learned counsel for the respondents is unable to draw our attention to any express provision to the contrary contained in the Code. In *Asafiah Begum v. Bashir Begum and others* [1964 RN 89= 1964 JLJ 46], on which reliance was placed by the Board of Revenue, the provisions of section 262 of the Code, were held to be "express" provisions to the contrary as contemplated by section 55 of the Code. Apparently, provisions of section 262 of the Code, are inapplicable to the present case and hence the Board undoubtedly committed an error apparent on the face of the record in relying on that decision to come to the conclusion that applicability of section 47 (a) of the Code, was

excluded in the present case.

6. On behalf of the respondents, it is, however, contended that the provisions of section 47 (a) of the Code, cannot be looked into because section 261 of the Code, which saves the vested rights, including a right of appeal, provides that those rights would be enforced "as if the Code had not been passed". The relevant provisions of section 261 are as follows :--

261. The enactments specified in Schedule II are hereby repealed to the extent mentioned in the fourth column thereof:

Provided that the repeal shall not affect-

(a)

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or

(c)

(d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceedings or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.

Now, there can be no doubt that the right of appeal is a vested right and such a right to enter the superior Court accrues to the litigant and exists as on and from the date the lis commences (See Garikapatti Veeraya Vs. N. Subbiah Choudhury, . This right is expressly saved by proviso (b) of the first proviso to section 261 of the Code, and clause (d) of the proviso further provides that legal proceedings in respect of such right may be instituted, continued or enforced as if the Code had not been passed. The question for consideration, therefore, is whether clause (d) of the first proviso to section 261 of the Code, embraces, the procedural law as well, under the repealed enactment for the purpose of enforcing the rights saved by clause (b) thereof.

7. Now, these clauses i.e. clauses (b) and (d) of the first proviso to section 261 of the Code are similar to clauses (a) and (c) of section 6 of the General Clauses Act, which came up for consideration before the Supreme Court in Nani Gopal Mitra Vs. The State of Bihar, The Supreme Court approved the principle enunciated by Lord Alverstone, C. J., in the King v. Chandra Dharma [(1905) 2 KB 355], and observed as follows :--

It is therefore clear that as a general rule the amended law relating to procedure operates retrospectively. But there is another equally important principle, viz., that a statute should not be so construed as to create new disabilities or obligations or impose new duties in respect of transactions which were complete at the time the amending Act came into force (See in re a Debtor, 1936 Ch. 237 and in re Vernazza, 1960 Ac 965). The same principle is embodied in S. 6 of the

General Clauses Act.

After referring to the provisions of section 6 of the General Clauses Act, the Supreme Court further observed as follows :--

The effect of the application of this principle is that pending cases, although instituted under the old Act but still pending, are governed by the new procedure under the amended law, but whatever procedure was correctly adopted and concluded under the old law cannot be opened again for the purpose of applying the new procedure.

8. It is thus clear that clause (d) of proviso to section 261 of the Code does not displace the general rule that pending cases under the old Act are governed by the new procedure under the amended law. The said clause merely provides that the fact that the Act under which rights had accrued has been repealed, shall in no way be an impediment for the enforcement of rights acquired under the repealed Act. But that clause cannot be construed to mean that while enforcing those rights the Courts have to apply the procedure not in force. Such a construction will run counter to the established principle of law that no person has a vested right in any course of procedure and will also render otiose the provisions contained in section 55 and the first proviso to section 47 of the Code. It is a well known canon of construction of statutes that every clause of a statute should be construed with reference to the context and other clauses in the Act, so as, as far as possible, to make a consistent enactment of the whole statute. See *Canada Sugar Refining Co. v. The Queen* [(1898) AC 735 at p. 741] In *Colouhoun v. Brooks* [(1889) 14 AC 493], Lord Herschell said:

It is beyond dispute, too, that we are entitled, and indeed bound, when construing the terms of any provision found in a statute, to consider any other parts of the Act which throw light on the intention of the legislature, and which may serve to show that the particular provision ought not to be construed as it would be alone and apart from the rest of the Act.

The contention of the learned counsel for the respondents that the provisions of section 261 of the Code should be construed in isolation without reference to section 47 or 55 of the Code, cannot be therefore upheld.

9. In support of his contentions, learned counsel for the respondents relied on a decision reported in *Swastik Oil Mills Ltd. Vs. H.B. Munshi*, Deputy Commissioner of Sales Tax, Bombay, The contention advanced in that case was that the notice issued by the Deputy Commissioner of Sales Tax, u/s 31 of the Bombay Sales Tax, Act, 1953, intimating that he proposed to revise suo motu the appellate orders passed by the Assistant Collector of Sales Tax, was invalid because the Act of 1953 had been repealed by Act of 1959 when the notice in question was issued on 7th January 1963. This contention was repealed by the Supreme Court by referring to the Repeal and Savings clause in the Act of 1959 which provided that the earlier Act was to continue in force for the purpose of levy, assessment, reassessment and collection of Sales Tax in pursuance of proceedings initiated

under the repealed Act. It was therefore held by the Supreme Court that in respect of a liability to tax under the repealed Act the rights and liabilities of the assessee had to be determined in accordance with the provisions of the repealed Act and all legal proceedings or remedies in respect thereof had also to be the same Act. It can therefore be hardly urged that the decision in that case supports the contention advanced before us on behalf of the respondents that the existence of a repeal and savings clause makes the applicability of procedural law under the repealed enactment obligatory.

10. Mr. Sanghi then referred to the decision reported in *Abdul Aziz Ansari v. State of Bombay* [AIR 1958 Bom. 27] in support of his contention. The question for consideration in that case was whether an application for reference made to the Tribunal was barred by limitation. The application was made on 11th August 1956 but was in respect of an assessment made under the Act of 1946 which was repealed by the Act of 1953. The application was barred by time if the provisions of Act of 1946 which prescribed a period of 60 days only were made applicable. It was however within time if the provisions of Act of 1953 were held to be applicable as they provided a period of 90 days. On a consideration of repeal and savings clause in the Act of 1953, similar to the provisions of section 261 of the Code, it was held in that case that legal proceedings including an application for reference to Tribunal had to be continued and disposed of under the repealed enactment and the application was therefore barred by time. Now the law of limitation remains in the domain of procedural law so long as it does not either destroy a vested right or revive a barred right. But if the new law of limitation has the effect of reviving a barred right, as it had in the case before the Bombay High Court, it ceases to be a part of the procedural law. It is this principle that has been implicitly recognized by the Division Bench of the Bombay High Court in *Abdul Aziz Ansari v. State of Bombay* (Supra). This decision therefore cannot be an authority for the proposition that repeal and savings clause in the new enactment should be construed to mean that the procedural law under the repealed enactment is kept alive for the enforcement of rights accrued under the repealed enactment.

11. Lastly, the learned counsel for the respondents relied on, the decision of the Supreme Court in Civil Appeal No. 405 of 1962 (*Murlidhar v. Bherondan and others*) decided on 9th September 1964. Now that case is entirely distinguishable. The Madhya Bharat Interest Act, which was in force at the time the judgment and decree of the High Court was passed, stood repealed by the Madhya Pradesh Second Extension of Laws Act, 1961 and the question for consideration before the Supreme Court was the effect of repeal of the M. B. Interest Act in the appeal pending before the Supreme Court. It is against this background that the Supreme Court held that as section 19 (c) of the M. P. General Clauses Act, 1957 specifically provided that the legal proceedings in respect of any right would be, instituted or continued as if the repealing Act had not been passed, the appeal before the Supreme Court had to be considered as though the repealing Act was not in operation. The decision in that case

therefore does not in any manner support the contention of the learned counsel for the respondents.

12. For all these reasons, we have no hesitation in holding that the Board committed an error apparent on the face of the record in holding that the appeal before the Sub-Divisional Officer was filed within the period of limitation prescribed therefor. The question as to whether the respondents are entitled to such extension of the period of limitation under any of the provisions of the Limitation Act was not considered by the Board of Revenue and we, therefore, refrain from expressing any opinion in that behalf. Consequently, the order dated 7th January 1970 passed by the Board of Revenue remanding the case to the Sub-Divisional Officer for deciding the appeal on merits is hereby quashed.

13. This petition is therefore allowed with costs. Counsel's fee Rs. 100 if certified. The outstanding amount of security deposit shall be refunded to the petitioner.