
(1976) 11 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 3985 of 1973

Hakim Ali and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 17-11-1976

Acts Referred:

Arbitration Act, 1940 — Section 2, 20, 21, 46, 47

Constitution of India, 1950 — Article 226

Uttar Pradesh Land Revenue Act, 1901 — Section 192, 203, 204, 205, 206

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 229B

Citation : (1977) AWC 42 : (1977) RD 147

Hon'ble Judges : H.N. Seth, J

Bench : Single Bench

Advocate : G.P. Bhargava, for the Appellant; S.N. Verma, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—By this petition under Article 226 of the Constitution, Hakim Ali and Shakru, challenge the validity of an order of the Board of Revenue, dated 9th March, 1973 holding that it could at the second appellate stage, refer the dispute involved in a suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act to arbitration.

2. One Badlu, father of Petitioner Hakim Ali, filed a suit u/s 229-B of the U.P. Zamindari Abolition and Land Reforms Act against Lakhi Ram who has been arrayed as Respondent No. 2 in this petition. Trial court dismissed the suit but the lower appellate court allowed the appeal and held that Badlu was entitled to the declaration claimed by him. Lakhi Ram then filed a second appeal before the Board of Revenue. On 25th March, 1972, the Board, as agreed between the parties, referred the dispute involved in the second appeal to the arbitration of one Sri Anup Singh. After the arbitrator made his award and forwarded it to the Board, Hakim Ali objected to the reception of the award. He contended that Arbitration Act has no application to a suit under the Zamindari Abolition and

Land Reforms Act which is pending at the second appellate stage, before the Board of Revenue. Accordingly, the very reference to the arbitration u/s 21 of the Arbitration Act, 1940, was vitiated and the Board of Revenue was bound to decide the second appeal ignoring the award. The Board of Revenue, by its order dated 9th March, 1972, repelled the plea raised by Hakim Ali and held that Revenue Courts are not debarred from applying the provisions of the Indian Arbitration Act, 1940 to the proceedings arising from a suit under U.P. Zamindari Abolition and Land Reforms Act. Reference to arbitration in accordance with Section 20 of the Arbitration Act, was, therefore, quite valid. Being aggrieved, Hakim Ali has come up before this Court and prays that the order of the Board of Revenue dated 9th March, 1973, be quashed.

3. Section 21 of the Arbitration Act provides that where in any suit all the parties interested agree that any matter in difference between them be referred to arbitration, they may, at any time before judgment is pronounced, apply in writing to the court for making an order of reference. Learned Counsel for the Petitioner contends that under this section, an order referring a dispute to arbitration can only be made by a court which expression as defined in Section 2(c) of the Act means a Civil Court having jurisdiction to decide the questions forming the subject-matter of reference. He relied upon a division bench decision of this Court, in Bithal Dass Khanna v. Shri Nath Das Khanna AIR 1949 All. 360 wherein it has been held that for purposes of the Arbitration Act, the word "Court" as used therein does not include a "Revenue Court", and urged that the Board of Revenue, not being the court contemplated by Section 21 of the Arbitration Act was not competent to refer a dispute pending before it to arbitration. I find no merit in this argument.

Section 47 of the Arbitration Act runs thus:

Subject to the provisions of Section 46, and save in so far as is otherwise provided by any law for the time being in force, the provisions of this Act shall apply to all arbitrations and to all proceedings thereunder...

This clearly indicates that if there is any enactment other than the Arbitration Act, which contemplates a reference to arbitration, the arbitration proceedings under that enactment are, save as otherwise provided therein, to take place in accordance with the provisions of the Indian Arbitration Act, and that provisions of the Indian Arbitration Act are to apply to such arbitration. Section 203 of the U.P. Land Revenue Act provides that the courts mentioned therein, including Board of Revenue, may with the consent of the parties, by order, refer any dispute before it to arbitration. Section 204 thereafter specifically provides that in all cases of reference to arbitration u/s 203, the provisions of the Arbitration Act, 1940 shall apply in so far as they are not inconsistent with anything contained in the Land Revenue Act. Section 205 contemplates hearing of objections to the award and Section 206 provides for deciding the case in accordance with the award. There is thus clear statutory provisions applying the provisions of the Arbitration Act, 1940 to cases coming up for hearing before the

Board of Revenue.

4. Learned Counsel for the Petitioner contended that Sections 203 - 206 of the U.P. Land Revenue Act are applicable only to such cases coming before Revenue Courts, which arise under the Land Revenue Act. These sections have no application to cases coming up before Revenue Courts under the U.P. Zamindari Abolition and Land Reforms Act. Section 6 of the Land Revenue Act provides for the constitution of the Board of Revenue and Section 5 of the Act lays down its function under the Act. There is nothing in the Land Revenue Act which prevents the legislature from conferring additional jurisdiction and functions on the Board, or any other Revenue Court constituted under it. Chapter IX of the Land Revenue Act makes provision with regard to procedure in Revenue Courts and revenue officers. The procedure provided in this Chapter would generally be applicable to all cases coming up before Revenue Courts, irrespective of whether they arise under the Land Revenue Act or under some other statutory provisions. This becomes apparent from perusal of Section 192 which also finds place in Chapter IX of the Land Revenue Act. This section empowers the Revenue Courts mentioned therein to transfer the cases under the Land Revenue Act or otherwise pending in courts subordinate to them to other subordinate courts. Use of the words "under the Act or otherwise" clearly indicates that this section is intended to apply even to cases coming up before the Revenue Courts otherwise than under the Land Revenue Act. Unless there be something in a particular section in Chapter IX of the Land Revenue Act or in any other statute, to show that the procedure laid down in that section is to apply only to such cases that arise under the Land Revenue Act, and is not intended to apply to cases arising under enactment, it would be inapt to limit its applicability only to cases arising under the Land Revenue Act and not to apply the same to cases arising under enactments. There is nothing in Section 203 of the Land Revenue Act which limits its applicability only to cases arising under the Land Revenue Act. I am therefore of opinion that the procedure laid down in this section applies also to cases arising under the U.P. Zamindari Abolition and Land Reforms Act. Board of Revenue, therefore, had, u/s 203 of the Land Revenue Act, ample jurisdiction to refer a dispute involved in a second appeal under U.P. Zamindari Abolition and Land Reforms Act to arbitration. In the circumstances, no case has been made out for interfering with the action of the Board in referring with the consent of the parties the dispute involved in the second appeal to arbitration.

5. I may add that learned Counsel for the Respondent also contended, that inasmuch as the Board of Revenue had referred the dispute to arbitration with the consent of the Petitioner, he should not be permitted to invoke the discretionary jurisdiction under Article 226 of the Constitution and to challenge the jurisdiction of the Board to refer the dispute to arbitration. However in the view which I have taken it is not necessary to deal with this objection.

6. In the result, the petition fails and is dismissed with costs. The stay order dated 13th July 1973, is vacated.