(1972) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 446 of 1969

Harbans Rai APPELLANT

Vs

Board of Revenue, Gwalior and Another RESPONDENT

Date of Decision : 22-09-1972

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 41
Madhya Pradesh Land Revenue Code, 1959 — Section 44(2), 50

Citation : AIR 1973 MP 1

Hon'ble Judges : Shiv Dayal Shrivastava, J;G.P. Singh, J;A.P. Sen, J

Bench : Full Bench

Advocate : K.B. Sinha, for the Appellant; J.P. Bajpai, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

Shiv Dayal, J.—The competent authority (the Collector Jabalpur) by his order dated December 31, 1965, provisionally declared 72.07 acres of land of the petitioner as surplus. Eventually by his order dated February 28, 1967, the Collector, rejecting the objections of the petitioner, confirmed his interim order and finally declared 72.07 acres of land as surplus. The petitioner preferred an appeal u/s 41 of the Ceiling Act, read with Section 44 of the Land Revenue Code. The Additional Commissioner affirmed the order of the Collector, The petitioner then filed a revision in the Board of Revenue. The learned Member of the Board of Revenue, relying on an earlier decision of the Board in Shivgovind v. State of M. P., 1968 Revenue Nirnaya 400, held that the revision did not lie and dismissed it accordingly. The petitioner then filed this petition under Articles 226 and 227 of the Constitution, It was referred to this Bench along with Misc. Petn. No. 480 of 1968. (Madh Pra) as there had occurred a conflict of opinion between Division Bench decisions of this Court.

2. In Misc. Petn. No. 480 of 1968 (Madh Pra) (supra) it has been held as follows:--

(1) Those who exercise original jurisdiction under the M. P. Ceiling on Agricultural Holdings Act, 1960, are of three categories.

No. 1. A "Revenue Officer" within the meaning of Section 11 of the M. P. Land Revenue Code acting as a "competent authority" (as defined in Section 2 (e) of the Ceiling Act)

No. 2. Such "Revenue Officer", acting otherwise than as such "competent authority".

No. 3. Such "competent authority" who is not such Revenue Officer.

(2) In case of No. 1 or No. 2 :--

(a) From every order (other than an interlocutory order) an appeal lies u/s 41 (i) of the Ceiling Act to an appellate authority competent to hear the appeal as specified in Section 44 (1) of the Land Revenue Code. Besides the Board of Revenue, all such appellate authorities are "Revenue Officer" within the meaning of Section 11 of the Land Revenue Code.

(b) From an order passed in appeal u/s 41 (i) of the Ceiling Act, a second appeal does not lie u/s 44 (2) of the Land Revenue Code inasmuch as the order is not "under that Code or the rules made thereunder".

(c) From an order passed in appeal u/s 41 (i) of the Ceiling Act, a revision lies u/s 50 of the Land Revenue Code, read with Section 56 of the Code.

(d) From an interlocutory order also, a revision lies in case of No. 2, u/s 50 of the Land Revenue Code and in case of No. 1 u/s 42 of the Ceiling Act.

(e) Power of revision u/s 50 of the Land Revenue Code can be exercised suo motu by the competent revisional authority even when the order is appealable.

(3) In case of No. 3 :--

(a) From every order (other than an interlocutory order) an appeal lies u/s 41 (ii) to the Board of Revenue.

(b) From an order passed by the Board of Revenue in such appeal, the question of second appeal or revision does not arise.

(c) From an interlocutory order, revision lies u/s 42 of the Ceiling Act.

(d) Power of revision under Sec, 42 of the Ceiling Act can be exercised suo motu by the competent revisional authority, even when the order is appealable.

(e) Since by virtue of Section 2 (p) of the Ceiling Act, read with Section 11 of the Land Revenue Code, the Commissioner exercises jurisdiction u/s 42 of the Ceiling Act as a "Revenue Officer", a revision will lie from his order to the Board of Revenue u/s 50 of the Land Revenue Code, read with its explanation and Section 56 of that Code.

(4) The expression "every order" in Section 41 of the Ceiling Act means an order which determines the rights and liabilities of the parties; it does not include within its purview interlocutory orders which do not affect any right or liability of the parties, but are merely steps taken towards the final adjudication and for assisting parties in the prosecution of their case in the pending proceedings; they regulate the procedure only.

(5) By virtue of Section 56 of the Land Revenue Code, an order passed by a Revenue Officer under the Ceiling Act is revisable u/s 50 of the Land Revenue Code.

(6) The expression "for the time being in force" refers to the time when the order in question is passed; not to the date of the commencement of the enacts ment in which it occurs.

(7) The wider import bestowed upon the word "order" in Section 56 of the Land Revenue Code is curtailed by the restrictive provision in Section 44 (1) of the Code, so that an order passed "under any other enactment" is not under that section.

(8) Sub-sections must be read as parts of an integral whole. No sub-section can be read as divorced from or independent of the others unless to do so results in absurdity, (Sardar Gurmej Singh Vs. Sardar Partap Singh Kairon, and Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd., . A second appeal, under subsection (2) of Section 44 of the Land Revenue Code, lies only from an order passed in appeal under Sub-section (1) of that section.

(9) The right of appeal is a substantive right; it is a creature of the statutes it must be expressly conferred by the statute; it cannot be implied nor borrowed by analogy from another enactment.

(10) The impact of Section 49 of the Ceiling Act is not to make the Act a self-contained one; it merely gives overriding effect to the provisions of that Act in case of inconsistency with the provisions of another enactment, etc.

(11) A Revenue Officer, while exercising powers under the Ceiling Act, is not a "persona designata" which expression refers to a person who is pointed out or described as an individual as opposed to a person ascertained as a member of a class or as filling a particular character.

3. In the present case, it must be said that the appeal before the Additional Commissioner was under Clause (i) of Section 41 of the Ceiling Act read with Section 44 (1) of the Land Revenue Code, inasmuch as the competent authority was a Revenue Officer. Since the Additional Commissioner is a Revenue Officer within the meaning of Section 11 of the Land Revenue Code, his order passed in appeal was revisable by the Board of Revenue u/s 50 of the Land Revenue Code.

4. Therefore, this petition is allowed. The order of the Board of Revenue is quashed. The case shall go back to the Board of Revenue for dealing with the

revision according to law. Parties shall bear their own costs. The outstanding amount of the security deposit shall be refunded to the petitioner.

A.P. Sen and Singh, JJ.

5. The petitioner in this petition being aggrieved by the order of the Competent Authority passed on February 28, 1967, declaring 72.07 acres of land as surplus filed an appeal u/s 41 of the Ceiling Act to the Commissioner, Jabalpur Division. The appeal was heard and decided by the Additional Commissioner on July 31, 1967, and the order of the Competent Authority was confirmed. The petitioner then filed a revision against the order of the Additional Commissioner in the Board of Revenue which was dismissed on November 25, 1968, on the ground that no revision lay against the order of the Additional Commissioner. The petitioner then filed the present petition under Articles 226 and 227 of the Constitution for quashing the order of the Board of Revenue. This petition was heard along with Misc. Petn. No. 480 of 1968 (Madh Pra) (Ravishankar Dube v. Board of Revenue, M. P.. Gwalior). For the reasons given in our order in that petition which is being decided today, the position that emerges is that an appeal lay u/s 44 (2) of the M. P. Land Revenue Code 1959, against the order of the Additional Commissioner passed in appeal u/s 41 of the Ceiling Act, Section 50 of the Land Revenue Code bars a revision against an order which is appealable, therefore, the petitioner''s revision was not maintainable, but as the law was then somewhat uncertain the Board should have treated the revision as an appeal.

6. The petition is allowed. The order of the Board of Revenue dated November 25, 1968 is quashed end the Board is directed to treat the revision as an appeal and to decide it according to law. There shall be no order as to costs of this petition. The amount of security deposit shall be refunded to the petitioner.

FINAL ORDER BY THE COURT

7. In accordance with the order of majority this petition is allowed. The order of the Board of Revenue dated November 25, 1968, is quashed and the Board is directed to treat the revision as an appeal and to decide it according to law. There shall be no order as to costs of this petition. The outstanding amount of the security deposit shall be refunded to the petitioner.

