

(1952) 02 RAJ CK 0013

In the Rajasthan High Court

Case No : Civil Original Writ Application No. 21 of 1951

Harji

APPELLANT

Vs

Revenue Board of Rajasthan

RESPONDENT

Date of Decision : 01-02-1952

Acts Referred:

Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 — Section 24

Citation : AIR 1952 Raj 132 : (1952) RLW 338

Hon'ble Judges : K.N. Wanchoo, C.J;K.D. Sharma, J;J.S. Ranawat, J

Bench : Full Bench

Advocate : J.P. Jain, for the Appellant; Ram Avtar Gupta, Government Advocate, for the Respondent

Judgement

Ranawat, J.—The facts of this case appear in the order of reference and it is not necessary to repeat them here. It would suffice to say that an application made by Harji u/s 7 of the Rajasthan (Protection of Tenants) Ordinance, 1949, for reinstatement was allowed by the Sub-Divisional Officer, Tonk, and a revision application, which was filed by the landlord against the order of the Sub-Divisional Officer, was dismissed by the Rajasthan Board of Revenue. The landlord then filed a review application which was accepted and the order for reinstatement passed by the Sub-Divisional Officer was set aside. The tenant then filed an application under Article 226 of the Constitution of India in this Court. The question then arose whether in a case under the Rajasthan (Protection of Tenants) Ordinance the Rajasthan Board of Revenue was competent to review its own judgment. A Division Bench of this Court, as the question was of general importance, referred the following point to a Full Bench:

"Whether the Rajasthan Revenue Board is competent to review its own judgment in a case under the Rajasthan Tenants Protection Ordinance, 1950 from the territories of the former Tonk State, by virtue of the provisions of the Land Regulations of Tonk or of the Civil P. C.?"

2. In the Rajasthan (Protection of Tenants) Ordinance, there is no provision for

the exercise of the powers of review by the Rajasthan Board of Revenue in cases which come before it u/s 10 (2) of the Ordinance. The learned counsel of the petitioner has cited a decision of this Court in "NATHULAL v. COLLECTOR SAWAI JAIPUR", Civil Revn. No. 6 of 1950, D/- 8-1-1951 in which it has been observed that it is settled law that a case is not open to appeal unless the Statute gives such a right and the power to review must also be given by the statute. Prima facie a party who has obtained a decision is entitled to keep it unassailed unless the legislature has indicated the mode by which it can be set aside. The principles laid down in "ANANTHARAJU SHETTEY v. APPU HEGADE" AIR 1919 Mad 244, were approved in the judgment of this Court referred to above.

In AIR 1919 Mad 244 it has been held that except in special cases where the previous judgment of a Court is void or it has been passed by inadvertence of the Court or on account of fraud or some such other grounds a Court cannot review its own decision unless it is permitted to do so by statute. It is therefore a well settled principle of law that leaving exceptional cases apart unless a Court is empowered by statute to review its own judgment it cannot review it.

The learned Government Advocate has however argued that in the present case the Rajasthan Board of Revenue was authorised to review its own judgment by virtue of Sections 190, 191 and 251 of Tonk Regulations. Section 190 of Tonk Regulations gives a list of cases which could be entertained by the Revenue Courts of the Tonk State and it is evident that the scope of the list is wide enough to include cases relating to reinstatement of tenants. Section 191 of the Tonk Regulations provides that Civil suits hearable by the Revenue Courts shall be dealt with as laid down in Civil P. C. (Act V (5) of 1908). It is contended that the Civil P. C. is applicable to the proceedings of the Revenue Board in cases coming from the territories of the former Tonk State, by virtue of Section 191 of the Tonk Regulations. The language of Section 191, it may be pointed out, is not very clear in this behalf. Civil suits hearable by the Revenue Courts cannot mean Revenue cases or the cases specified in Section 190 of the Tonk Regulations. It may be that the Revenue Courts in the former Tonk State were authorised to hear certain Civil Suits and the provision of Section 191 of said Regulations was therefore made to govern the proceedings of the Civil suits cognizable by the Revenue Courts. It cannot therefore be inferred from Section 191 of the Regulations, that the CPC was made applicable to the Revenue Courts in dealing with Revenue cases coming before them. Section 251 of the Tonk Regulations is as follows:

"The definition of review and the procedure under which the review is heard are given in Order XLVII. All reviews shall be dealt with under that Order."

These sections are headed by the following words:

"The following instructions and notes are issued for the guidance of the officers and clerks concerned."

3. It would be clear that Section 251 is intended to serve as an instruction for

the guidance of the officers. It is not a substantive piece of law. Moreover these instructions are intended to be followed in the trial of civil suits when they are heard by Revenue Courts. Section 251 of the Regulations, therefore, has no application to the case of a revenue suit in a Revenue Court. Sections 190, 191 and 251 therefore cannot help the case of the opposite party. It was further argued by the learned Government Advocate that the Rajasthan Board of Revenue inherited the jurisdiction of the Revenue Boards functioning in the various States" of Rajasthan which were merged in the United State of Rajasthan, He has produced a number of records from the archives of the former Tonk State in some of which the Revenue Member of the former Tonk State reviewed his own judgments in Revenue cases. The practice of the Tonk State Courts in reviewing their own judgments cannot help the case of the opposite party as a practice cannot be considered to be at par with a statute. Such a practice of the Tonk Revenue Courts cannot be followed by the Rajasthan Board of Revenue when it cannot be considered to be in accordance with the recognised principles of law.

4. The learned counsel" of the petitioner has cited the case of N.K. Segu Abdul Khadir Hadjar Vs. A.K. Murthy, which is a case under the Madras Buildings (Lease and Rent Control) Act. In that case the Chief Judge of the Court of Small Causes, Madras, in his capacity as the appellate authority under the Madras Buildings (Lease and Rent Control) Act of 1946 allowed an appeal but subsequently the opposite party appeared and satisfied him that the summonses were not properly served upon him. He set aside his previous judgment and proceeded to rehear the case. The appellant then moved the Madras High Court for a writ of certiorari on the ground that the Chief Judge of the Court of Small Causes had no jurisdiction to review his own decision. It was held in that case that as there was no procedure prescribed in the Act to review the judgments of an appellate tribunal the Chief Judge of the Court of Small Causes was not competent to review his own judgment. It may be observed that under the Madras Buildings (Lease and Rent Control) Act of 1946 the provincial Government was authorised to confer the powers of appellate authority for the purposes of that Act upon such officers or authorities as it thought fit. In exercise of its powers the Provincial Government appointed the Chief Judge of the Court of Small Causes, Madras, to hear appeals under the Act. The Chief Judge was therefore a persona designata and the decision in that case, therefore, will not apply to the present case, because the Rajasthan Board of Revenue cannot be regarded as a persona designata in the matter of hearing revision petitions u/s 10(2) of the Rajasthan Protection of Tenants Ordinance.

Section 10(2) of the Rajasthan Protection of Tenants Ordinance invests jurisdiction in the Board of Revenue to hear revision petitions. The legislature when it Invested revisional powers in the Board of Revenue must be deemed to have intended that the Board of Revenue which was a tribunal would exercise its ordinary powers which it had under the law in dealing with the cases coming before it under the Tenants Protection Ordinance. The Board performs its duties

in accordance with certain rules applicable to it. Those rules are to be followed by the Board even though no mention in that behalf is made in the Protection of Tenants Ordinance. For instance, the rules regarding disposal of the Board's business by a single Member or by a Division Court or by a Pull Bench of the Board have to be followed by the Board in cases of Revision arising under the Protection of Tenants Ordinance, even though in the said Ordinance nothing has been provided in this respect. Similarly, the Board would be justified in exercising its own jurisdiction in such cases, which the Board possesses under the authority of law. It has been provided by Section 24 of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, that the Board of its own motion or on the application of a party to a suit or other proceeding, may review and may rescind, alter or confirm any decree or order made by itself or by any of its members. The Revenue Board therefore can exercise its powers u/s 24 in cases arising under the protection of Tenants Ordinance and review its own decisions. After the passing of the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act of 1951, there can be no doubt that the Rajasthan Board of Revenue can review its own judgment in a case u/s 10(2) of the Protection of Tenants Ordinance. But when this case was decided by the Revenue Board, the Rajasthan Revenue Courts Procedure and Jurisdiction Act of 1951 had not come into force and the provisions of Section 24 cannot, therefore, help the case of the opposite party. Before the passing of the Revenue Courts Procedure and Jurisdiction Act of 1951 the Rajasthan Board of Revenue had to follow the laws of the Integrating States which merged in the United State of Rajasthan governing the procedure and powers of the Revenue Courts and Boards of Revenue of the former State of Rajasthan. As the present case arose from the territories of the former Tonk State, the law applicable to this case would be the law of the former Tonk State, governing the procedure of the Revenue Courts. The learned Government Advocate has failed to bring to the notice of this Court any provisions of the laws of the Tonk State which authorised a Revenue Court or more specially a Board of Revenue functioning under the laws of the Tonk State to review its own judgments.

5. As has already been discussed above, it is well settled that a Court cannot review its own decision unless it is permitted to do so by statute, except in exceptional cases where the previous judgment cannot be regarded as a judgment according to law. The Board of Revenue in the present case had therefore no authority to review its own decision in a case coming before it from the territories of the former Tonk State before the passing of the Rajasthan Revenue Courts Procedure and Jurisdiction Act of 1951.

6. The learned counsel of the petitioner has also argued that the Protection of Tenants Ordinance is an Act which should be regarded as complete in itself and the Revenue Board therefore could not have exercised its own jurisdiction to review its judgment even if it had possessed such a jurisdiction under the law. It may be pointed out that the Rajasthan Protection of Tenants Ordinance cannot be considered to be an Act complete in itself. As has already been discussed

above, the intention of the legislature appears quite clear in investing the powers of revision in the Board of Revenue to permit the exercise of the ordinary jurisdiction of that tribunal in cases coming before it u/s 10(2) of the Protection of Tenants Ordinance.

7. The answer to the question referred to this Bench therefore is that the Rajasthan Board of Revenue was not competent to review its own judgment in a case under the Rajasthan Protection of Tenants Ordinance, 1949, arising from the territories of the former Tonk State, by virtue of the Land Regulations of Tonk State or the Code of Civil Procedure, before the passing of the Rajasthan Revenue Courts Procedure and Jurisdiction Act of 1951. The position would however be different after the passing of the Rajasthan Revenue Courts Procedure and Jurisdiction Act of 1951.

Sharma, J.

8. I agree with the opinion of my learned brother Ranawat J. and have nothing to add.

Wanchoo, C.J.

9. I agree and have nothing to add.