(1990) 08 MP CK 0015

In the Madhya Pradesh High Court

Case No : M.P. No. 371 of 1982

Indra Singh and Others APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Limitation Act, 1963 — Section 5, 7
Madhya Pradesh Land Revenue Code, 1959 — Section 47, 53
Madhya Pradesh Lok Abhikaranon Ke Madhyam Se Bis Sutriya Karyakram Ka Karyanvayan Act, 1980 — Section 7, 7(2), 8, 8(2)

Citation : (1992) ILR (MP) 615 : (1991) 36 MPLJ 250 : (1991) MPLJ 250

Hon'ble Judges : T.N. Singh, J;Shacheendra Dwivedi, J

Bench : Division Bench

Advocate : Lokendra Gupta, for the Appellant; N.K. Jain, for Respondent Nos. 2, 3 and 4 and R.A. Roman, Government Advocate for Respondent Nos. 1 and 5, for the Respondent

Judgement

T.N. Singh, J.

Shri Lokendra Gupta, Counsel for the petitioner. Shri N. K. Jain, Counsel for respondents nos. 2, 3 and 4. Shri R. A. Roman, Govt. Advocate for respondents '' nos. 1 and 5. Heard counsel.

In this petition the short question is, whether there was proper disposal of the revision contemplated under the M. P. Lok Abhikaranon Ke Madhya Se Bis Sutriya Karyakram Ka Karyanvayan Adhiniyam, 1976 (No. 25 of 1976) (for short, Adhiniyam). That order dated 21-6-1982 we have perused and in our opinion, for reasons to follow, the order is illegal and without jurisdiction and that has to be quashed.

Respondents Nos. 2, 3 and 4, Lalsingh and others had filed the revision in 1979 impugning the orders passed on 5-12-1977 and 18-7-1978 (Annex. G, H) by Sub- Divisional Officer, Morena, in appeal. Those orders were set aside on the short technical ground that the appeals were time-barred. This view was taken considering only two facts. In the impugned order it has been noted that allotment of the land by the Committee Contemplated under the Adhiniyam aforesaid, had taken place on 7-7-1976. while the memo of appeal filed before the appeal committee contemplated in the Adhiniyam showed that the same was filed on 11-7-1977 and was put up to the Collector on 13-7-1977.

Shri N. K. Jain, who appears for respondents 2, 3 and 4, has done his best to support the impugned order drawing our attention to Sub-section (2) of Section 7 of the Adhiniyam. The provision cited speaks of filing of appeal within 45 days "from the date of final order of Revenue Inspector''s circle level committee." Section 8 contemplates constitution of appeal committee and Sub-section (2) thereof provides that "the appeal committee shall follow the procedure laid down for the disposal of first appeal in the Acts specified in the Schedule". On referring to the Schedule, we find a reference thereunder to M. P. Land Revenue Code, 1959 (for short ''the Code'') and M. P. Ceiling on Agricultural Holdings Act, 1960, besides M. P. Gramo Me Ki Dakhal Rahit Bhumi (Vishesh Upabandh) Adhiniyam, 1970. We have no doubt therefore that we have to refer to the provisions of the Code. u/s 47 thereof period of limitation for different appeals is provided; and it also contemplated that "limitation under this section shall be. computed from the date of communication of such order." Section 53 of the Code makes the provisions of Limitation Act applicable to such appeals and by that salutary right is vested in the appellant to invoke Section 5 of the Limitation Act to pray for condonation for delay in filing the appeal.

Two contentions are however pressed in this matter by the counsel for the parties and those we decide at once. Shri Jain has submitted that the limitation contemplated under the Adhiniyam of filing appeal within 45 days admits of no exception and admittedly appeal being filed beyond 45 days that is time barred. Accordingly, the impugned order is not assailable. However, that contention has no merit for the short and simple reason that there is nothing to be read in the impugned order that any objection was taken before the S. D. O. that the appeal was barred by time and indeed in the two orders passed by the S. D. O. that position is projected. Shri Jain has fairly and rightly conceded that even if that was not done, the point could have been taken in revision. We do not agree with him, because appellant''s statutory right u/s 5 of the Limitation Act would be curtailed, if that proposition is accepted. The jurisdiction of the S. D. O. in appeal to consider any application made for condonation of the delay would also stand curtailed thereby. Indeed, it would have been within the jurisdiction of the Revisional Authority to decide only if condonation was rightly refused or wrongly allowed. When that stage had not come and the surprise was sprung on the appellant in revision, the revisional authority did not possess the jurisdiction to entertain objection for the first time and decide the objection without reference to pleadings of the parties at the lower stage.

Further petitioner''s counsel has also made a submission and that too has substantial force. We appreciate the fairness in this connection of Shri R. R. A.

Roman, Government Advocate, who has drawn our attention to a Government Notification dated 21-7-1977 (Annexure D) on which Shri Lokendra Gupta has relied. Counsel''s submission is that by that Notification period of limitation for filing appeal has been retrospectively extended to expire, in all "pending appeals" or even in appealable cases where appeals are yet to be filed. Statutorily, limitation has been fixed to expire on 31-10-1977. That being the position, petitioner-appellant''s appeal aforesaid filed before that date, i.e. on 31-7-1977, must be held to be within time.

Shri N. K. Jain has further submitted that by the extension of period of limitation contemplated under the Notification dated 21-7-1977, appeals which were already time-barred could not be revived. In our view there is no merit in that contention because of the phraseology of the relevant provision, which speaks of restrospective extension for all "pending appeals" and petitioner''s appeal was such a pending appeal on 31-7-1977, being filed on 13-7-1977.

For all the aforesaid reasons, in our view the order passed in Revision by the State Government (Annexure 1), is wholly without jurisdiction and that is accordingly quashed. The orders passed by the S. D. O. (Annexures G and H) are restored.

Security amount, if in deposit, shall be returned to the petitioner''s counsel.

