
(1971) 12 MP CK 0016

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 84 of 1970

Jwala Prasad

APPELLANT

Vs

Board of Revenue, M.P., Gwalior and Others

RESPONDENT

Date of Decision : 16-12-1971

Acts Referred:

Madhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 — Section 31, 37
Madhya Pradesh Land Revenue Code, 1959 — Section 261

Citation : AIR 1972 MP 111 : (1972) JLJ 233 : (1972) 17 MPLJ 381 : (1972) MPLJ 381

Hon'ble Judges : Bishambhar Dayal, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : J.S. Verma, for the Appellant; M.V. Tamaskar, Deputy Govt. Advocate for Nos. 3 and 4, P.C. Pathak, for Nos. 5, 6, 8, 9 and 10 and R.K. Tankha, for Nos. 7A, 7B and 7C, for the Respondent

Judgement

Bhawe, J.

In this petition under Article 226 of the Constitution the order dated 25-5-1966 (Annexure F) passed by the Board of Revenue as well as its order dated 11-11-1969 (Annexure G) refusing to review its order are under challenge.

The facts of the case, in brief, are that the petitioner was a Pawaidar of mouza Judmaniya, Tahsil Huzur, District Rewa. The pawai was resumed on 1-7-1954 under the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 (hereinafter called the Abolition Act). In accordance with the provisions of the said Act, the petitioner applied to the Tahsildar for allotment of Sir and Khudkasht lands in Pawai. The Tahsildar allotted 80.33 acres of land to the petitioner by his order dated 9-10-1957. That order was, however, set aside by the Collector and the case was remanded to the Tahsildar for further enquiry. On remand the Tahsildar passed a fresh order on 24-5-1961 allotting lower area to the petitioner. He, therefore, preferred an appeal before the Collector which was dismissed. The petitioner, therefore, preferred a revision against the Collector's

order before the Commissioner, who allowed the revision, set aside the order of the Collector as well as of the Tahsildar and held that the petitioner was entitled to 80.33 acres of land as originally allotted to him. The respondents 5 to 10 thereupon preferred a revision before the Board of Revenue. The Board of Revenue set aside the order of the Commissioner on the ground that the Commissioner had no jurisdiction to entertain the revision, as under the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 finality was given to the appellate order passed by the Collector and also the Us having started before the Madhya Pradesh Land Revenue Code, 1959, the old procedure was applicable. In this view of the matter, the Board of Revenue did not consider the revision on merits and simply set aside the order of the Commissioner and restored that of the Collector.

Section 21 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 authorises the Tahsildar to enquire into an application for allotment of land made by the ex-Jagirdar or Pawaidar. Section 31 of the said Act provides for an appeal against the order of the Tahsildar and further provides that the decision given by the Collector shall be final. Section 34 then provides that the officers before whom the proceedings may lie under the Act shall, so far as may be, follow the procedure applicable to the proceedings under the Rewa Land Revenue and Tenancy Code, 1935, and shall have the same powers in relation to proceedings before them as a revenue officer has in relation to original or appellate proceedings, as the case may be, under the said Code. Even before the application for allotment of the land was made, the Vindhya Pradesh Land Revenue and Tenancy Act, 1953, was brought into force under which the Rewa Land Revenue and Tenancy Code, 1935, was repealed. It is not disputed that the proceedings would be governed by the Abolition Act read with Vindhya Pradesh Land Revenue and Tenancy Act, 1953. u/s 14 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953, revisional powers were conferred on the Board of Revenue in those cases where an appeal did not lie to it. No revisional power was given to the Commissioner.

Section 37 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, provided that no Civil Court shall have jurisdiction to settle, decide or deal with any question which is, by or under this Act, required to be settled, decided or dealt with by the Tahsildar, the Deputy Commissioner, the Land Reform Commissioner, or the Board of Revenue. It further provided that except as otherwise provided in this Act, no order of Tahsildar, a Deputy Commissioner, the Land Reform Commissioner, or the Board of Revenue under this Act shall be called in question in any Court. In the light of these provisions it was urged before the Board of Revenue that inasmuch as no revisional power vested in the Commissioner under the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 and u/s 37 of the said Abolition Act the order passed by any authority described thereunder could not be questioned "in any Court" which expression included even the revisional Court, the Commissioner was not entitled to revise the order passed by the Collector.

On the other hand, it was urged before the Board of Revenue that these very provisions were considered by a Division Bench of this Court in *Surya Prasad v. Mohanlal*. Misc. Petn. No. 117 of 1964 D/- 14-10-1964 (Madh Pra) and that the contention was rejected, and it was held that Section 37 of the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 only barred the jurisdiction of Civil Courts, and when the competent authority under the Code entertained and disposed of a revision petition against a decision of the Collector u/s 31, there was no question of any Civil Court settling, deciding or dealing with any question which under the Vindhya Pradesh Abolition Act was required to be settled or decided by the Tahsildar or the Collector; and that the second sub-section of Section 37 also only prohibited a collateral attack in a Civil Court against the order of the Tahsildar or the Collector etc. It was further held that the words "in any Court" occurring in sub-Section (2) of Section 37 only referred to a Civil Court and not any revenue Court, and thus Section 37, in no way, barred the revisional jurisdiction of the competent authority under the Madhya Pradesh Land Revenue Code, 1959.

But the Board of Revenue instead of following that decision preferred its own view in *Than Singh's case* 1967 Revenue Nirnava 396 which had already been reversed by this Court in *Thansingh v. Board of Revenue* 1967 RN 396. When the matter had come for consideration before this Court in *Than Singh's case*. 1967 R N 396 (supra) it was held by the Bench

"The decision of the Board of Revenue must be quashed on the short ground that the Board was in error in not following the decision of this Court in *Surya Prasad's case* Misc Petn. No. 117 of 1964 D/- 14-10-1964 (Madh Pra) (Supra) in which specific provisions of the V. P. Abolition Act were considered and in the light of the provisions of the M.P. Land Revenue Code, 1959, it was ruled that the revisional powers of the Commissioner and the Board of Revenue were not, in any way, affected by the provisions of Sections 31 and 37 of the V. P. Abolition Act. The action of the Board in brushing aside the decision of this Court given on the specific question at issue and following the Full Bench decision, which was concerned with interpreting the provisions of different statutes, was to say the least, most unfortunate. It was the bounden duty of the Board to follow the decision of this Court in *Surya Prasad's case* (supra) and to base its decision on that decision."

In spite of these clear observations the Board of Revenue in this case also preferred to follow the decision in *Anandrao Laxmanrao Mandloi Vs. Board of Revenue and Others*, which is, to say the least, unfortunate. The subordinate Courts have no jurisdiction to brush aside a decision given on the interpretation of certain provisions of one statute and to prefer another decision given under another statute, though the provisions of that statute may be in *pari materia*, on the ground that another decision is by a larger Bench and. therefore, having a greater binding force.

When any authority is conferred on any well established Court, its procedure

becomes subject to the law governing that Court; and that even if the decision made by that Court is made final, it only means that no appeal lies against that decision; but that it does not take away the right of the revisional Court to interfere with that order subject to the limitations imposed on the revisional Court. The only question that may arise, therefore, for consideration is what happens if originally no revisional powers were conferred on any authority and subsequently such powers were conferred. This question came for consideration before the Supreme Court in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, . Their Lordships observed:

"While a right of appeal in respect of a pending action may conceivably be treated as a . substantive right vesting in the litigant on the commencement of the action" (though it is not so decided), no such vested right to obtain a determination with the attribute of finality can be predicated in favour of a litigant on the institution of the action.

* * * * *

By the very terms of Section 5-B of East Puniab Act 14 of 1947. finality attaches to it on the making of the order. Even if there be. in law. any such right at all as the right to a determination with the attribute of finality, it can in no sense be a vested or accrued right. It does not accrue until the determination is in fact made, when alone the right to finality becomes an existing right. Where, therefore, an application for confirmation of a transfer relating to an evacuee property filed on 23-2-1948 u/s 5A of the East Puniab Act 14 of 1947 is still pending when the Central Act 31 of 1950 came into force, it cannot be contended that the applicant has any vested right as to the finality and conclusiveness of the order passed thereon u/s 5B of the East Punjab Act 14 of 1947 and that such an order is not open to a revision by the Custodian General u/s 27 of the Central Act 31 of 1950."

Under the East Puniab Act 14 of 1947 no revisional powers were conferred on any authority but by Central Act 31 of 1950 revisional powers were conferred on the Custodian-General, who entertained a revision petition. When that order was questioned, it was repelled by the Supreme Court on the above said ground. This matter again came for consideration before the Supreme Court in *Moti Ram Vs. Suraj Bhan and Others*, . u/s 15 (4) of the East Punjab Rent Restriction Act, 1949, before its amendment, finality was attached to the appellate decision. But before the appellate decision could be recorded, Section 15 was amended and power was conferred on the High Court to consider the propriety and legality of the order passed by the appellate Court. The contention that the provision for revisional application, which was made by the amending Act, cannot retrospectively affect the proceedings, which were pending at the time when the amending Act was passed, was repelled by Their Lordships of the Supreme Court, and it was observed:

"Unfortunately for the appellant this point is concluded by the decision of this

Court in the case of Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others, .

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Having regard to this decision it is impossible to accede to Mr. Bindra's argument that the finality of the appellate decision could be invoked by the appellant before the said appellate decision was actually recorded. If no finality could be claimed at an earlier stage it is clear that at the time when the appellate authority decided the matter the amending section had come into force and when the appellate order was actually passed it could not claim the finality under the earlier provision. We may incidentally point out that the said principle laid down in the case of Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others, has been cited by this Court in Garikapatti Veeraya Vs. N. Subbiah Choudhury, . and it has been observed that the question which was left open by the court on the earlier occasion fell to be considered in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, , and was in fact considered and decided."

These two decisions clearly indicate that finality is not attached to any order till it is actually passed; and if, by any subsequent enactment, the order is made subject to further revision, no complaint can be entertained that when the lis was started finality was available to the order that would have been passed. In this view of the matter, even if it is held that under the Vindhya Pradesh Land Revenue and Tenancy Act. 1953, no intermediary revision before the Commissioner was provided and the order of the Collector could only be subjected to the revisional jurisdiction of the Board of Revenue, no party acquired any vested right till that order was actually passed; and inasmuch as the Vindhya Pradesh Land Revenue and Tenancy Act. 1953, was repealed and was substituted by the Madhya Pradesh Land Revenue Code, after the enforcement of which the appellate order was passed by the Collector, it could not be said that it was subject to revision only by the Board of Revenue and not by the Commissioner as well when the Code had. provided for revision before the Commissioner as well. In the face of these pronouncements of the Supreme Court, the Full Bench case of this Court taking a contrary view cannot have a binding force.

Shri Pathak, learned counsel for respondents 5 to 10, however, relied On Sections 261 and 262 of the Madhya Pradesh Land Revenue Code, 1959 and on the basis of these sections it was contended that the Commissioner had no revisional jurisdiction as, by virtue of these sections, the proceeding must be decided under the old law as if "this Code had not been passed." Section 261 of the Code reads:--

"261. Repeal and Savings1-- The enactments specified in Schedule II are hereby repealed to the extent mentioned in the 4th column thereof:

Provided that the repeal shall not affect-

(a) x x xx

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

(c) x x x x (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding 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:

X X X X X"

There are several difficulties in applying this section. Firstly, under this section the Vindhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952, has not been repealed. This Code only repeals the Vindhya Pradesh Land Revenue and Tenancy Act, 1953. So the proceedings in this case were under the Abolition Act and not under an Act repealed by this Code and Section 261 quoted above cannot apply.

Secondly, in *Laxmi Kumar v. Ram Bihari Mishra*, 1970 RN 113 a Full Bench of this Court held that Clause (b) of the proviso to Section 261 of the Madhya Pradesh Land Revenue Code saves only the substantive rights and not mere procedural rights; and that under Clause (d) of the Code the proceeding which is saved must be "in respect of any such right which is acquired under the repealed law, so" that the right must be independent of the proceeding itself. Under the Abolition Act the only right conferred on the Jaeirdar or Pawaidar was to apply for allotment of Sir and Khudkasht lands in his personal cultivation or, if such lands were less than the minimum prescribed, any other land. No right vested in the Pawaidars before the land was allotted to them.

This view is in consonance with the dictum of Their Lordships of the Privy Council. Section 38(2) of the Interpretation Act, 1889, passed by the British Parliament provides that repealing Acts are, unless the contrary intention appears, not to affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid. In *G. Ogden Industries Pty. Ltd. v. Lucas* (1969) 1 All ER 121, the Judicial Committee held that "the mere right existing at the date of the repealing statute to take advantage of the provisions of the Act repealed was not a "right accrued" within the meaning of the saving clause." In another case. *Director of Public Works v. Ho Po Sanq* 1961 AC 901 the Privy Council held:

"any entitlement the Crown lessee might have to have his case considered by the Governor-General-in-Council did not. come within para (e) [the latter part of Section 38 (2) of the Interpretation Act];, since the right there referred to is the right acquired or accrued under a repealed enactment mentioned in paragraph

(c) [the first part of Section 38 (2)], and there was no such right here."

In that case, Lord Morris of Borth-Y-Gest. who delivered the Judgment of the Privy Council, held:

"It may be, therefore, that under some repealed enactment a right has been given but that in respect of it some investigation or legal proceeding is necessary. The right is then unaffected and preserved. It will be preserved even if a process of quantification is necessary. But there is a manifest distinction between an investigation in respect of a right and an investigation which is to decide whether some right should or should not be given. Upon a repeal the former is preserved by the Interpretation Act. The latter is not. Their Lordships agree with the observation of Blair-Kerr, J., that:

"It is one thing to invoke a law for the adjudication of rights which have already accrued prior to the repeal of that law; it is quite another matter to say that, irrespective of whether any rights exist at the date of the repeal, if any procedural step is taken prior to the repeal, then, even after the repeal the applicant is entitled to have that procedure continued in order to determine whether he shall be given a right which he did not have when the procedure was set in motion."

The passage, quoted above, clearly brings out a distinction between a right that has accrued, and a procedure to be followed for acquiring a right. This is exactly what has been held in 1970 RN13 (supra), referred to above. In this view of the matter, it must be held that Section 261 is no bar to the application of the new procedure being followed in these proceedings.

Section 262 of the Madhya Pradesh Land Revenue Code, 1959, merely provides for decision of a pending case in a particular revenue court. This does not govern the decision of the case at all stages of that litigation. The effect of this section only is that a case pending at the point of time, when this Code came into force in a particular Court would be disposed of by that Court according to the law then in force immediately before the coming into force of this Code. After that decision had been given, if a question arises as to whether that decision could be challenged by way of appeal or revision, in a higher Court, that matter was not governed by Section 262 of the Code. For that purpose, the general law as discussed above has to be applied and the forum for such challenge available at the time when that judgment is delivered will be applicable. This section also, therefore, is of no help to the respondents.

For the aforesaid reasons, the petition is allowed. The order of the Board of Revenue, dated 25-5-1966 (Annexure F) as also its order, dated 11-11-1969 (Annexure G) are set aside and the case is remanded to it to decide the same on merits, as the Board has also jurisdiction to entertain the revision against the order of the Commissioner. The respondents 5 to 10, except respondents 7 (a) to 7 (f). shall pay the costs of the petition. Hearing fee is fixed" at Rs. 100/-. The outstanding amount of the security deposit shall be refunded to the petitioner.