(1952) 07 RAJ CK 0003

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ No. 76 of 1951

Kishoresingh APPELLANT

Vs

Revenue Board, Rajasthan and Another RESPONDENT

Date of Decision : 29-07-1952

Acts Referred:

General Clauses Act, 1897 — Section 22
Rajasthan Board of Revenue Ordinance, 1949 — Section 19
Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 — Section 26

Citation : AIR 1953 Raj 37

Hon'ble Judges : K.N. Wanchoo, C.J;K.L. Bapna, J

Bench : Division Bench

Advocate : Pyrelal, for the Appellant; Murlimanohar, for the Respondent

Final Decision : Allowed

Judgement

Wanchoo, C.J.—This is an application by Kishore Singh under Article 226 of the Constitution of India for issue of a writ of prohibition or certiorari against the Board of Revenue of Rajasthan, and has arisen in the following circumstances :

2. The applicant filed a suit for arrears of rent and ejectment in the court of the Assistant Revenue Officer, Jodhpur, in November, 1944. This suit was decreed in May, 1948. Thereupon, there was an appeal by Sitaram, opposite party, who was defendant in the suit. That appeal was dismissed by the Deputy Commissioner, Jodhpur, on the 18th March, 1949. Then followed a second appeal by Sitarani to the Board of Revenue of the former Covenanting State of Jodhpur. This appeal was filed on the 9th July, 1949. Thereafter the Board of Revenue of the State of Rajasthan was created by Ordinance No. XXII of 1949. Section 19 of that Ordinance, which will require interpretation in this case, reads as follows:

"On the coming into force of this Ordinance all Boards or other revenue tribunals discharging functions, similar to those of a Board, prescribed by this Ordinance or by any other law for the time being in force in the whole or any part of Rajasthan shall cease to exist or to exercise those functions, as the'' case may be, and all the cases pending before any such Board or tribunal shall be transferred to the Board constituted by this Ordinance and be heard and disposed of by the Board or such other authorities as the Government may by general or special orders prescribe."

3. By virtue of this section the Board of Revenue of the former State of Jodhpur came to an end, and all cases pending before it including this case were transferred to the Board of Revenue established for the State of Rajasthan. This Ordinance No. XXII of 1949, it may be mentioned, was published on the 13th August, 1949. Thereafter, Notification No. 907-VIII/49, dated the 26th October, 1949, was issued by the Government in the following terms: --

"In pursuance of section 19 of the Rajasthan Board of Revenue Ordinance, 1949 (XXII of 1949), the Government of the U. S. R. is pleased to order that the cases transferred to the Board under the said section shall be heard and disposed of by the Additional Commissioners of the respective Divisions within whose jurisdiction the Boards or other revenue tribunals discharging functions similar to those of the Board constituted under the said Ordinance had been functioning before the commencement of the said Ordinance."

This was followed by another Notification No. 20 (8) Rev./49, dated 17th January, 1950, which was in the following terms:

"In pursuance of Section 19 of the Rajasthan Board of Revenue Ordinance, 1949 (XXII of 1949), and all other powers enabling it in that behalf, the Government of the United State of Rajasthan is pleased to order that the appeals and revisions against decisions of the Commissioners of any of the Covenanting States which were transferred to the Courts of Additional Commissioners under Notification No. 907-VIII/49, dated the 26th October, 1949, published in the Rajasthan Raj Patra, dated the 28th October, 1949, shall be re-transferred to the Rajasthan Board of Revenue, and shall be heard and disposed of by the said Board."

4. As however the present case had been decided by the Deputy Commissioner, Jodhpur, and was not covered by the Notification of the 17th January, 1950, it was heard and decided by the Additional Commissioner of Jodhpur on the 25th February, 1950. Thereafter there was a review application before the Additional Commissioner, which was dismissed on the 5th June, 1950. Then there was a revision to the Board of Revenue on the 28th of July, 1950. This revision was admitted on the 17th April, 1951, and the present application was made in this Court on the 2nd November, 1951. In the meantime, the Board of Revenue, in another case from the former State of Alwar, decided, on 4th July, 1951, that it could hear revision petitions against the decisions of Additional Commissioners in cases which were heard and decided by them by virtue of Section 19 of Ordinance No. XXII of 1949. We may add that the applicant has filed copies of judgments of the three members of the Board in that case in which the Board decided the matter by a majority of 2 to 1. The case of the applicant is that the Board has no jurisdiction to hear any revision from the order of the Additional

Commissioner passed in a case disposed of by him u/s 19 of Ordinance XXII of 1949, as the Additional Commissioner had coordinate jurisdiction with the Board of Revenue and was not a court subordinate to the Board and in fact was acting as the Board of Revenue for purposes of Section 19.

5. The application has been opposed on behalf of the Board. The facts are not in dispute, but the contention is that the Board has jurisdiction by virtue of section 11 of Ordinance XXII of 1949, and section 26 of the Revenue Courts (Procedure and Jurisdiction) Act (No. I of 1951). It has further been urged that the Notification of the 26th October, 1949, has no force, as His Highness the Rajpramukh appointed 1st of November, 1949, as the date with effect from which Ordinance No. XXII of 1949 was to come into force, vide Notification No. 905-VIII/49, dated the 26th October, 1949. No other point was urged on behalf of the Revenue Board.

6. Section 11 of Ordinance XXII of 1949 merely provides that the Board shall be the highest Revenue Court of appeal, revision and reference in Rajasthan. Section 26 of Act I of 1951 provides that the Board may call for the record of any case decided by any subordinate revenue Court in which no appeal lies either to the Board or to a Civil Court u/s 36, and pass such orders in the case as it thinks fit. These two sections together provide for the revenue jurisdiction of the Board, and there is no doubt that ordinarily an order of the Additional Commissioner, who has the same powers as the Commissioner, would be revisable by the Board u/s 26, for the Additional Commissioner, generally speaking, is a subordinate revenue court. The question, however, which arises in this case is whether, for purposes of Section 19 of Ordinance XXII of 1949 also, the Additional Commissioner, who was appointed to hear and dispose of cases under that section, can be said to be a subordinate revenue court. The decision of this depends, in our opinion, on the interpretation of the words of section 9 itself which we have set out above. It will be seen that all cases like the present one pending before Revenue Boards of the Covenanting States were to be transferred to the Revenue Board of Rajasthan. After the transfer, section 19 provided for their hearing either by the Board or such other authorities as the Government may, by general or special orders, prescribe.'' It will thus be seen that the cases, which were transferred to the Board, remained pending in the Board, though it was open to the Government to appoint another authority to hear and dispose them of. The reason why this appears to have been provided is also not far to seek. It may have been felt by the legislative authority that there may be too many cases, some of them of small valuation, pending before Boards, or other Revenue Tribunals discharging similar functions, in the covenanting states, some of which were rather small units, and it may not have been possible for the Rajasthan Board of Revenue consisting of a small number of members to dispose of all those cases within a reasonable time. Therefore, it may have been thought proper that all those cases should be transferred to the Board, and thereafter the Government would decide after the facts were all before it whether all such ceases should be decided by the Board or some other authority should be

appointed to help the Board in their disposal. It seems that the Government decided in October, 1949, to nominate Additional Commissioners within their respective jurisdictions to hear and dispose of these old cases. Later, in January, 1950, it was perhaps felt that some of these cases, which had been decided by Commissioners in the Covenanting States, should not be disposed of by persons of the status of Additional Commis- sioners, and, therefore, these cases were ordered to be heard by the Board itself, but cases like the present, which were decided by authorities below the rank of Commissioners in the covenanting states, still remained with the Additional Commissioners who had been nominated to hear and dispose of the same. Therefore, when these cases continued to be heard and disposed of by Additional Commissioners after the 17th January, 1950, the Additional Commissioners were acting as authorities empowered by the Government, u/s 19 of Ordinance XXII of 1949, to hear and dispose of the same, and their jurisdiction for that purpose was co-ordinate with the jurisdiction of the Board. These officers, who were designated to hear these cases u/s 19, could not thus be called courts subordinate to the Board of Revenue. We may point out that it was only a matter of chance that Additional Commissioners were designated by the Government for this purpose. The Government could have well designated some other authorities and merely because the name of the person" designated was Additional Commissioner, it does not follow that the person so designated u/s 19 was a court subordinate to the Board on that ground.

7. Our attention was also drawn to Section 9, Sub-section (4) of Ordinance No. XX of 1949. Under that Sub-section, the Government had the power by notification to direct that any Commissioner or Additional Commissioner shall either be an Additional member of the Board of Revenue for such purposes as may be specified in the notification, or constitute a revenue court for the purpose of such cases or matters or class of cases or matters as may be specified as aforesaid. It has been urged on behalf of the Board that Additional Commissioners were constituted courts within the meaning of Section 9 (4) (ii) and, therefore, they would be subordinate to the Board of Revenue as the highest Court of appeal, revision and reference, and so section 26 of Act I of 1951 would apply.

It was conceded that there was no notification of the Government constituting Additional Commissioners as revenue courts, u/s 9 (4) (ii) of Ordinance No. XX of 1949, for the disposal of those cases which were pending before the Board of Revenue of Rajasthan. On the other hand, we definitely find a notification u/s 19 nominating Additional Commissioners to hear and dispose of the cases which were pending before the Revenue Board. It cannot, therefore, be said that when Additional Commissioners heard these cases u/s 19, they were courts subordinate to the Board of Revenue. In this view of the matter, section 26 of Act I of 1951 would not apply, and the Board had no jurisdiction to entertain revisions from decisions of Additional Commissioners u/s 19 of Ordinance XXII of 1949.

8. It was further urged on behalf of the Board of Revenue that this was a case of extension of powers of Additional Commissioners, and the Additional Commissioners remained courts subordinate to the Board even when they were deciding cases entrusted to them u/s 19 of Ordinance No. XXII of 1949. Reference was made in this connection to -- ''National Telephone Co. Ltd. (In Liquidation) v. His Majesty''s Postmaster-General (No. 2)'' (1913) A. C. 546, at p. 562 where Lord Parker of Waddington observes as follows:

"Where by statute matters are referred to the determination of a Court of Record with no further provision, the necessary implication is, I think, that the Court will determine the matters, as a Court, its jurisdiction is enlarged, but all the incidents of such jurisdiction, including the right of appeal from its decision, remain the same."

9. We are of opinion that this case has no application to the facts before us. The statute transferred the cases to the Board u/s 19, and if there was any extension of the powers of any court it was the powers of the Board which were extended. So far as the Additional Commissioners are concerned, the cases were not transferred to them by the Statute, and it cannot, therefore, be said that the powers of the Additional Commissioners were extended u/s 19. The Additional Commissioners came into the picture merely as persona designata, as section 19 specifically provided that the cases transferred under it to the Board may be disposed of by the Board or such other authority as the Government may deem fit to appoint.

10. It only remains now to deal with the argument that the Notification of the 26th October, 1949, has no force, because it was issued at a time when Ordinance XXII of 1949 was not in force, as the Rajpramukh nominated 1st November, 1949, for it to come into force. In this connection it is sufficient to refer to section 22 of the General Clauses Act, 1897, which authorises the Government to issue orders with respect to the application of any Act, or with respect to the establishment of any court or office, or to the appointment of any Judge or officer thereunder, after the passing of the Act. It also provides that such, orders shall not take effect till the commencement of the Act. It is obvious, therefore, that there is a distinction between the commencement of the Act and the passing of it. Various orders, which are required to bring a particular law into operation, may be made in view of section 22 after the passing of the Act, though the commencement of the Act may be at a later date.- Such orders take effect from the commencement of the Act. The Government was, therefore, entitled to pass the order which it did on the 26th October, 1949, and it would come into force on the 1st November, 1949, which was the date fixed for the commencement of Ordinance No. XXII of 1949. There is, therefore, no force in this argument.

11. We are, therefore, of opinion that the Board has no jurisdiction to entertain revision applications from orders passed by Additional Commissioners in cases entrusted to them u/s 19 of Ordinance XXII of 1949. The present case is still

pending before the Board. We, therefore, allow this application, and order that a writ of prohibition be issued to the Board. In view of the circumstances of this particular case, we order parties to bear their own costs.

