
(2019) 07 MP CK 0109

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4882 Of 2011

Madho Singh And Others

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 02-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 226
Limitation Act, 1963 — Section 5
Code Of Criminal Procedure, 1973 — Section 167(2)
Code Of Civil Procedure, 1908 —

Citation : (2019) 07 MP CK 0109

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Arvind Dudawat, S.N. Seth, J.S. Bhatia, Vikas Samadhiya

Final Decision : Allowed

Judgement

Heard on I.A. No. 16465/2017 which is an application for intervention.

Considering the submissions made by the counsel for the proposed intervenor, this Court is of the considered opinion that any third party cannot be

permitted to intervene in the matter specifically when the revision filed by grand father of the proposed intervenor namely Harkanth was already

dismissed by the Commissioner and the same was not put to challenge by his grand father. Accordingly, I.A. No. 16465/2017 filed for intervention is

hereby rejected.

This petition under Article 226 of the Constitution of India has been filed challenging the order dated 30.05.2011 passed by the respondent No. 1 in

case No. F-1/1/II/VII-2A/revision as well as order dated 28.06.2003 passed by Nayab Tahsildar, by which the land in dispute was allotted in favour of

the respondents No. 5 and 6.

It appears that initially, the order dated 28.06.2003, by which the land in dispute was allotted to the respondents No. 5 and 6 was not challenged by

anybody. However, on 06.09.2003, an application (Annexure R5/3) was filed by one Ramveer Singh before the Court of Naib Tahsildar. Thereafter,

Naib Tahsildar sought permission for suo motu review of order dated 28.06.2003 and by order dated 01.05.2004 the Naib Tahsildar reviewed the order

dated 28.06.2003 (Annexure P-2) and allotted the land in question to the Petitioner.

The respondents No. 5 and 6 filed an appeal against the order dated 01.05.2004 along with an application for condonation of delay. The SDO rejected

the application filed by the respondents No. 5 and 6 under Section 5 of Indian Limitation Act and consequently dismissed the appeal as barred by

limitation. Being aggrieved by the order of the SDO, the respondents No. 5 and 6 filed a revision before the Court of Commissioner and the said

revision was allowed by order dated 11.07.2007 and the order of SDO was set aside and the matter was remanded for decision on merits. Against the

order dated 11.07.2007 passed by the Commissioner in revision, the petitioner filed second revision before the State, which was dismissed and the

order of the Commissioner was upheld. Accordingly, the SDO vide order dated 22.12.2008 (Annexure P-7) set aside the order dated 01.05.2004 by

holding that in absence of any provision for review, the order dated 28.06.2003 could not have been set aside in review and resultantly the order of

allotment dated 28.06.2003 was restored. Thereafter, it appears that the petitioner filed an appeal against the order dated 28.06.2003 and by order

dated 31.03.2010, the said appeal was dismissed by the SDO, Morena on the ground that it is barred by limitation as well as on the ground that it is

barred by principle of res judicata as the rights of the parties have already been finally adjudicated by order dated 22.12.2008.

Being aggrieved by the order dated 31.03.2010, the petitioner filed a revision before the Commissioner and the Commissioner, Chambal Division,

Morena by order dated 28.09.2010 set aside the order of the SDO and held that delay in filing the appeal was liable to be condoned as the delay has

occurred because of legal proceedings which were pending between the parties and since the rights of the parties were not finally adjudicated by the

SDO by its order dated 22.12.2008, therefore, the appeal filed by the petitioner against the order dated 28.06.2003 is not barred by principle of res

judicata. Being aggrieved by the order of the Commissioner, respondents No. 5 and 6 filed a second revision before the State which has been allowed

by order dated 30.05.2011 passed in case No. F-1/1/II/VII-2A/revision (Annexure P-10).

Challenging the order dated 30-5-2011 passed by the respondent no.1/State Government, it is submitted by the Counsel for the petitioner that as per

the provisions of Chapter 4 Part 3 Clause 30 of Revenue Book Circular, no second revision is provided and in view of Clause 30(6) of Chapter 4 Part

3 of R.B.C., even the State Govt. has no jurisdiction to entertain the suo motu powers against the order passed in a revision. It is further submitted that

even otherwise, the order dated 28-9-2010 passed by the Commissioner, Chambal Division, Morena, was correct because there were sufficient

reasons for the petitioner, for not filing the appeal against the order dated 28-6-2003 within the period of limitation, and since, the rights of the parties

were not decided by the S.D.O. By its order dated 22-12-2008, therefore, the said order would not apply as res-judicata.

Per contra, it is submitted by the Counsel for the respondents, that 2nd revision would lie to the State Govt. and the order dated 22-12-2008 would

apply as res-judicata and therefore, the S.D.O. had rightly dismissed the appeal as barred by time.

Heard the learned Counsel for the parties.

The following three questions arise in the present petition for adjudication :

1. Whether the State Govt. has revisional power against the order of Commissioner, passed in a Revision?

2. Whether the appeal filed by the petitioner against the order dated 28-6-2003 was barred by time and whether the petitioner had given sufficient

reasons for the condonation of delay?

3. Whether the order dated 22-12-2008 passed by S.D.O. would apply as res-judicata?

Revisional Power of State Govt.

Chapter 4 Part 3 Clause 30 of Revenue Book Circular deals with Appeal and Revision, which reads as under :

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(8) â??â??From the

plain reading of Clause 30(5) of the RBC, it is clear that against the order of S.D.O passed in appeal, a revision would lie to the Commissioner,

whereas against the order of Commissioner passed in appeal, a revision would lie to the State Govt.

However, as per the provisions of Clause 30(6) of RBC suo motu powers have been given to the Commissioner as well as to the State Govt.

However, in view of the use of words â??Original or Appellateâ? in clause 30(6) of RBC, it is clear that the legislature has deliberately omitted the

words â??Revisionalâ?. It is submitted by the Counsel for the respondents no. 5 and 6, that it appears that because of faulty draftsmanship, the word

â??Revisionalâ? might not have been mentioned, therefore, it should be held that the State Govt. has suo motu revisional powers against the orders

passed by a revisional authority.

Considered the submissions made by the Counsel for the respondents no. 5 to 6. In Clause 30(6) of Chapter 4 Part 3 of RBC, the words "Original

or Appellate" have been deliberately used. If the intention of the framer of these circulars was to include the Revisional orders also, then there was

no need to incorporate the words "Original or Appellate". It could have been simply mentioned that the Commissioner or the State Govt. shall

have suo motu powers against any order passed under the RBC. Thus, deliberately, the word "Revisional" has been omitted and thus, it cannot be

said that the word "Revisional" was omitted because of poor draftsmanship. Further it is well established principle of law that when the

interpretation of the provision is clear and unambiguous, then the Courts cannot add or subtract any word. The Supreme Court in the case of Rakesh

Kumar Paul Vs. State of Assam reported in (2017) 15 SCC 67 has held as under :

67. While interpreting any statutory provision, it has always been accepted as a golden rule of interpretation that the words used by the legislature

should be given their natural meaning. Normally, the courts should be hesitant to add words or subtract words from the statutory provision. An effort

should always be made to read the legislative provision in such a way that there is no wastage of words and any construction which makes some

words of the statute redundant should be avoided. No doubt, if the natural meaning of the words leads to an interpretation which is contrary to the

objects of the Act or makes the provision unworkable or highly unreasonable and arbitrary, then the courts either add words or subtract words or read

down the statute, but this should only be done when there is an ambiguity in the language used. In my view, there is no ambiguity in the wording of

Section 167(2) of the Code and, therefore, the wise course would be to follow the principle laid down by Patanjali Shastri, C.J. in Aswini Kumar

Ghose v. Arabinda Bose, where he very eloquently held as follows: (AIR p. 377, para 26)

"26. It is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate

application in circumstances conceivably within the contemplation of the statute."

In Jugalkishore Saraf v. Raw Cotton Co. Ltd., S.R. Das, J., speaking for this

Court, held as follows: (AIR p. 381, para 6)

6. The cardinal rule of construction of statutes is to read the statutes literally, that is, by giving to the words used by the legislature their ordinary, natural and grammatical meaning.

68. External aids of interpretation are to be used only when the language of the legislation is ambiguous and admits of two or more meanings. When the language is clear or the ambiguity can be resolved under the more common rules of statutory interpretation, the court would be reluctant to look at external aids of statutory interpretation.

69. Gajendragadkar, J., speaking for this Court in *Kanai Lal Sur v. Paramnidhi Sadhukhan* held : (AIR p. 910, para 6)

6. the first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself.

70. These sound principles of statutory construction continue to hold the field. When the natural meaning of the words is clear and unambiguous, no external aids should be used.

Thus, this Court is of the considered opinion that in view of Clause 30(5) and (6) of Chapter 4 Part 3 of RBC, the order passed by the Revisional

Authority is final and the State Government has no suo motu power of revision against the order passed by the Revisional Authority. Therefore, the

order dated 30-5-2011 passed by the Respondent no. 1 is without jurisdiction and hence bad in law.

Whether the appeal filed by the petitioner against the order dated 28-6-2003 was barred by time and whether the petitioner had given sufficient reasons for the condonation of delay?

Initially by order dated 28-6-2003, the disputed land was allotted to the respondents no. 5 and 6 and thereafter, the order dated 28-6-2003 was

reviewed by the Naib Tahsildar and by order dated 1-5-2004, the order dated 28-6-2003 was modified and the disputed lands were allotted to the

petitioner. The order dated 1-5-2004 was challenged by the respondents no. 5 and 6 and ultimately, the order dated 1-5-2004 was set aside by the

S.D.O., by order dated 22-12-2008. Thus, it is clear that after 1-5-2004, the order dated 28-6-2003 was not in existence, and therefore, nobody could

have challenged the non-existing order. However, after the revival of the order dated 28-6-2003, the petitioner, filed an appeal before the S.D.O. along

with an application for condonation of delay. Under these circumstances, this Court is of the considered opinion, that the Commissioner, Chambal

Division, Morena had rightly held that the delay had occurred due to litigations between the parties. Accordingly, the condonation of delay by the

Commissioner, Chambal Division, Morena cannot be said to be erroneous.

Whether the order dated 22-12-2008 passed by S.D.O. would apply as res-judicata?

The operative part of Order dated 22-12-2008, passed by S.D.O. reads as under :

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28.06.2003. .

01.05.04 â??â??

Thus, it is clear while passing order dated 22-12-2008, the S.D.O. had not considered the correctness of the order dated 26-8-2003 and had merely set

aside the order dated 1-5-2004 on the ground that the Naib Tahsildar had no power to review the order dated 26-8-2003. Even otherwise, the

correctness of the order dated 26-8-2003 was not directly or substantially involved in the previous litigation.

Section 11 of CPC reads as under :

11. Res judicata.â?" No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in

issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court

competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such

Court.

Explanation I.â?" The expression â??former suitâ? shall denote a suit which has been decided prior to the suit in question whether or not it was

instituted prior thereto.

Explanation II.â?" For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of

appeal from the decision of such Court.

Explanation III.â?" The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV .â?" Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.â?" Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.â?" Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.â?" The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.â?" An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

The Supreme Court in the case of Sri Bhavanarayanawamivari Temple v. Vadapalli Venkata Bhavanarayanacharyulu reported in (1970) 1 SCC 673, has held as under :

8. In Balakotayya case while examining the effect of a decision under Section 84(2), it was observed that the doctrine of res judicata is not confined to a decision in a suit but it applies to decisions in other proceedings as well. But how far a decision which is rendered in other proceedings will bind the parties depends upon other considerations one of which is whether that decision determines substantial rights of parties and the other is whether the parties are given adequate opportunities to establish the rights pleaded by them. The doctrine of res judicata is not confined to the limits prescribed in

Section 11 of the Civil Procedure Code. The underlying principle of that doctrine is that there should be finality in litigation and that a person should not be vexed twice over in respect of the same matter.

Thus, it is clear that the principle of res-judicata applies to other proceedings also, because the underlying principle is to provide finality in litigation and not to vex a person twice over in respect of same matter.

The order dated 26-8-2003 was not the subject of appeal which was decided by the S.D.O. by its order dated 22-12-2008, but the subject-matter of

the said appeal was the order dated 1-5-2004, by which the order dated 26-8-2003 was reviewed. Thus, by no stretch of imagination, it can be said

that the correctness of the order dated 26-8-2003 passed by the Naib Tahsildar was directly or substantially in issue in the previous litigation. Since,

the question of correctness of order dated 26-8-2003 was not the subject matter of the appeal which was decided by order dated 26-8-2003, therefore,

it cannot be said that the correctness of the order dated 26-8-2003 has been heard and finally decided in the previous litigation. Accordingly, the

Commissioner, Chambal Division, Morena did not commit any mistake in holding that the order dated 22-12-2008 does not apply as res-judicata.

Consequently, the order dated 30-5-2011 passed by the State Govt. in case no. F-1/1/II/VII-2A/revision is hereby set aside. The order dated 28-9-

2010 passed by Commissioner, Chambal Division, Morena in case No. 28/2009-10/Revision is hereby restored.

This Court by order dated 29-7-2011 had directed the respondents to maintain the status quo which was in existence on the said date. Accordingly, it

is directed that till the appeal filed by the petitioner is not finally heard and decided by the S.D.O., the parties shall maintain the status quo.

Resultantly, the petition succeeds and is hereby Allowed.

No order as to costs.