

(1967) 03 RAJ CK 0005
In the Rajasthan High Court
Case No : Civil Writ Petition No. 256 of 1965

Maji Mohan Kanwar and Others	Vs	APPELLANT
The State of Rajasthan and Another		RESPONDENT

Date of Decision : 31-03-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, Order 47 Rule 4, Order 47 Rule 5, Order 47 Rule 8
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 40A

Citation : AIR 1967 Raj 264 : (1967) RLW 561

Hon'ble Judges : D.S. Dave, C.J.; L.S. Mehta, J

Bench : Division Bench

Advocate : P.N. Datt, for the Appellant; Rajnarain, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dave, C. J.

1. This is a writ application under Articles 226 and 227 of the Constitution of India challenging the validity of the orders of the Board of Revenue dated 5th December, 1958, 28th June, 1963, 6th March, 1964 and 2nd December, 1964, In order to appreciate the question which arises for our determination, it would be proper to state briefly the facts giving rise to this petition.

2. Thakur Balasingh son of Thakur Bijay Singhji was a jagirdar of thikana Ladhu which was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (Act No. VI of 1952), which will hereinafter be referred as the Act. After the resumption of the jagir, Thakur Balasingh filed a claim for compensation & rehabilitation grant under the Act. The final award on that claim was given by the Jagir Commissioner on 23-2-57. Thereafter, Thakur Balasingh died on 5-3-57. Against the said final award and an order dated 19-3-57, the State preferred an appeal before the Board of Revenue for Rajasthan.

In that appeal the legal representative of the deceased (including six petitioners before this Court) were impleaded as respondents. The said appeal was dismissed by a Division Bench of the Board of Revenue on 27-11-57. Shri Kanwar Bahadur and Shri Jainath Kunzru were members of the Bench which dismissed the appeal. A review application was then filed against the said judgment. It was put up before another Division Bench consisting of Shri Kanwar Bahadur and Shri Ramniwas Hawa on 5-12-58 and they admitted it. After a notice was issued to the opposite party, the review application was listed before another Bench consisting of then Chairman of the Board of Revenue Shri M.U. Menon and another learned member Shri Gajendrasingh. There was difference of opinion between the members of this bench on the question whether the review application could be admitted by the Bench consisting of Shri Kanwar Bahadur and Shri R.N. Hawa on 5-12-58 as Shri R.N. Hawa was not a member of the Bench which had dismissed the appeal and when Shri Kanwar Bahadur continued to be the member of the Board.

The case was then referred to a third learned member Shri S.D. Ujwal. He was of the opinion that the admission of the review application was a ministerial act and not a judicial order and that it was no more than registration of the review application. It was observed by him that Shri Menon and Shri Gajendrasingh had heard the review application on merits, that they had even written out their separate judgments and, therefore, he returned the reference to the said members with a request that the judgments written on by them should be delivered. He passed this order on 6-3-64.

It appears that after this order, Shri Menon and Shri Ujwal did not deliver the judgments as Shri Menon retired from service. The case was then put up before another Bench consisting of Shri Gajendrasingh and Shri R.N. Madhok. It was observed by them that in accordance with the opinion of Shri Ujwal the review petition may be taken to be admitted in accordance with law and that it should be listed for hearing on merits on 23-2-65.

3. It is urged by learned counsel for the petitioners that all the learned members of the Board of Revenue who passed orders regarding the review application on 5-12-58, 28-6-63, 6-3-64 and 2-12-64 did not correctly appreciate the procedure laid down in Order 47 of the CPC and that all the said orders should, therefore, be quashed and that the Board should be directed to proceed and decide the matter according to law.

4. Before dealing with the impugned orders, it may be observed that the right of presenting an application for review is a creature of Statute and where the law lays down the forum for presentation of such an application and the grounds on which the application can be based, those conditions must be fulfilled. Section 40-A of the Act provides that the Board, the Jagir Commissioner or the Commissioner for Khudkasht lands may either on an application made within three months of the date of order or suo motu review an order passed by the Board or by such Commissioner himself or his predecessor in office. At the same

time, it provides that no order passed by the Board or the Jagir Commissioner or Commissioner for Khudkasht lands shall be reviewed otherwise than on any of the grounds mentioned in Rule 1 of Order 47 C. P. C. and that the provisions of the said order would apply.

It is, therefore, quite clear that the Board of Revenue can review its order only according to the provisions of Order 47. Rule 1 of Order 47 provides that an application for review of Judgment should be made to the Court which passes the decree or the order which is sought to be reviewed. It also lays down the grounds on which the application may be founded. Rule 3 provides that the provisions as to the forum of preferring appeals would apply *mutatis mutandis* to application for review. Rule 4, Sub-rule (1) lays down that if it appears to the Court that there is not sufficient ground for review, it should reject the application. Then Sub-rule (2) provides that if the Court is of opinion that the application for review should be granted, it should grant the same. But according to proviso (a) to the sub-rule, such an application should not be granted without giving notice to the opposite party, to enable him to appear and be heard in support of the decree, or order, a review of which it applied for.

Rule 5 provides that if the decree or order a review of which is applied for, has been passed by a single Judge and if he continues to be attached to the Court at the time when the application for review is presented and if he is not precluded by his absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, he alone would hear the application and no other Judge would hear the same. If, however, the decree or order, which is sought to be reviewed, is passed by more than one Judge and if one or more of them continue to be attached to the Court at the time when the application for review is presented and if they are not precluded by absence or other cause for a period of six months next after the application, from considering the decree or order to which the application refers, such Judge or Judges shall hear the application.

Thus if the decree or order sought to be reviewed, is passed by a Division Bench consisting of two Judges and if both of them continue to be attached to the Court, then the application for review must be heard by both of them. If only one of the two Judges continues to be attached to the Court and the other one has retired, or is no longer attached to that Court for any other reason, then the application should be heard by the single Judge who continues to be attached to the Court. It cannot be heard by other Judges nor by the same Judge sitting with another Judge who was not a party to the original decree or order sought to be reviewed.

Rule 6 provides what would happen if the application for review is heard by more than one Judge. It says that if the Judges are equally divided in their opinion, the application should be rejected. If, however, there is a majority on one side, the decision should be according to the opinion of the majority. For instance, if the original decree or order is passed by two Judges and while hearing the

application for review, they are divided in their opinion, the application should be rejected. If, however, the original decree or order was heard by three Judges and when the review application is heard by the same three Judges two of them are on one side, then the decision should be according to the opinion of the majority.

Rule 7 provides that an order rejecting the application is not appealable. But an order granting an application for review is appealable under Order 43, Rule 1, Clause (w) and it may be objected if the application was in contravention of the provisions of Rule 4 or if it was filed after the expiration of the period of limitation and without sufficient cause. Rule 8 lays down that if an application for review is granted, a note thereof should be made in the register and thereafter, the Court may re-hear the case. Lastly, Rule 9 lays down that no application to review would be entertained against an order made on an application for review. In other words, there is no second review application.

5. It is clear from the said scheme of Order 47 C. P. C. that it provides three stages for hearing, after a review application is filed. The first stage comes when the application for grant of review is placed before the Judge or Judges under Rule 4, Sub-rule (1). At that stage, if it appears to the Court that there is not sufficient ground for a review, it should reject the application. If, on the other hand, the Court is satisfied that one or more of the grounds detailed in Rule 1 is made out *prima facie*, it should order notice to be issued to the opposite party to enable him to appear and be heard in support of the decree or order whose review is applied for. Thus, the first one is an *ex parte* stage because the opposite party is not present before the Court at that time,

The next stage is reached when the same application (for grant of review) is placed for hearing before the Judge or Judges. At this stage, if the Court comes to the conclusion that the application for review should be granted, it should grant it under Sub-rule (2) of Rule 4. If, however, it is of opinion after hearing the opposite party that the application is not covered by Rule 1, it should be rejected. If the Rule is discharged, the matter ends there. If, on the other hand, the rule is made absolute, then the third stage is reached.

This stage is arrived under Rule 8 after the original case is registered and the Court rehears it on merits. After rehearing, it may either result in repetition, or in reversal or in variation, of the former decree or order. In either case, since the whole matter is reheard, there is a fresh decree or order. The view which we have expressed stands fortified by the following observations made by Sir Lawrence B. Jenkins, Chief Justice of the Bombay High Court, sitting with another learned Judge in *Sha Vadilal Hakamchand v. Sha Fnlchand Umedram*, ILR (1906)30 Bom 56

"An application for review commences ordinarily with an *ex parte* application u/s 623 of the Civil Procedure Code. The Court then may either reject the application at once, or may grant a rule calling on the other side to show cause why the review should not be granted. In the second stage the rule may either be

admitted or rejected and it is obvious that the hearing of this rule may involve, to some extent, an investigation into the merits. If the rule is discharged then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached; the case is reheard on the merits and may result in a repetition of the former decree or in some variation of it. Though in one aspect the result is the same whether the rule be discharged or on the rehearing the original decree, be repeated, in law there is a material difference, for in the latter case, the whole matter having been reopened, there is a fresh decree. In the former case the parties are relegated to, and still rest on, the old decree"

6. Following the same view, it was observed by a Division Bench of the Calcutta High Court in *Gour Krishna Sircar and Another Vs. Nilmadhab Saha and Others*, as follows :--

"The matter commences ordinarily, as is clear from Order 47 of the Civil Procedure Code, with an ex parte application. The Court then may either reject the application at once or may grant a rule calling on the other side to show cause why the review should not be granted. In the second stage the rule may either be admitted or rejected, and it is obvious that the hearing of this rule may involve to some extent an investigation into the merits. If the rule is discharged, then the case ends. If, on the other hand, the rule is made absolute, then the third stage is reached; the case is reheard on the merits and may result in a repetition of the former decree or in some variation of it. Though, in one aspect, the result is the same whether the rule be discharged or on the rehearing the original decree be repeated, in law there is a material difference, for in the latter case, the whole matter having been reopened, there is a fresh decree; in the former case, the parties are relegated to and still rest on the old decree".

7. The same view was followed by the Madras High Court in *Pakkiri Muhammad Rowther Vs. L. Swaminatha Mudaliar*,

8. We may now examine the present case in the light of the above observations.

9. It has already been narrated above that the judgment dated 27-11-57 which was sought to be reviewed by the review application dated 4-4-58 was put up on 5-12-58 before a Division Bench consisting of Shri Kanwar Bahadur and Shri R.N. Hawa. Shri R.N. Hawa was not a party to the judgment dated 27-11-57 and, therefore, according to Rule 5 he could not hear the same. It is common ground between the parties that Shri Jainath Kunzru who was member of the Bench which produced the judgment dated 27-11-57 continued to be a member of the Board of Revenue on 5-12-58 and, therefore, the review application ought to have been listed before the Bench of Shri Kanwar Bahadur and Shri Jainath Kunzru. It could not be heard by any other Bench till that date. If both Shri Kanwar Bahadur and Shri Jainath Kunzru were to find that there were good prima facie grounds, they could issue notice to the opposite party to show cause against the grant of review application.

If, however, they were to come to the conclusion that the grounds under Rule 1

were not made out, they could reject the application forthwith and in that case the necessity of issuing notice to the opposite party would not have arisen. Even if one of them were of opinion that the application was fit to be rejected, it would have been rejected under Rule 6. If the application was filed after one of them ceased to continue as a member of the Bench, it could be put before the other member. In other words, so long as one of the two members continued to be attached to the court, it could not be put up before any other Judge or Judges. It was thus not in accordance with Rules 4 and 5 when the review application was listed before the Bench consisting of Shri Kanwar Bahadur and Shri R.N. Hawa.

Shri Gajendra Singh, who disagreed with the Chairman of the Board of Revenue Shri M.U. Menon, was correct to the extent when he observed admission of a review application is only an interim order and not a final one, but he was not correct in holding further that "the provisions of Order 47, Rule 5 only come into play when the application for review is to be heard and granted after issuing notice to the opposite party" It was not appreciated by him that under Rule 4 it is open to the Court hearing the application for review to reject it if there is no sufficient ground for a review. It is, therefore, not correct to say that Order 47, Rule 5 comes into play only when the application for review is to be granted after issuing notice to the opposite party. Unfortunately Shri S.D. Ujwal to whom the matter was referred on a difference of opinion between Shri " Menon and Shri Gajendra Singh went to the length of observing that "the admission of a review application is like an admission of an appeal as provided under Order 47, Rule 3 read with Order 41, Rule 9 C. P. C. and is purely a ministerial act and not a judicial order which consists of nothing more than the registration of the review application".

It is obvious that the learned member made a confusion between the "admission" and the "registration" of a review application. It is true that entering a review application in the register is a ministerial act, but admission and registration are two different concepts and their distinction needs to be properly understood. The word "admission" has not been used in Order 47, Rule 4 but a review application would be said to be admitted only after it is put up before the Judge or Judges who passed the decree or order a review of which is applied for and when after hearing the applicant, they find that there are good prima facie grounds for the grant of the application and they pass an order that notice be issued to the opposite party. Thus, the order for admission is not a ministerial act, but a judicial order which cannot be passed by the ministerial staff. The Division Bench which passed the last impugned order dated 2nd December, 1964, considered itself bound by the majority view already expressed and, therefore, their order adopting the erroneous view is also incorrect.

10. It is urged by the petitioner's learned counsel that we should dismiss the review application on the mere ground that in that application the State did not implead all the legal representatives of the deceased Thakur Balsingh. To this argument, it would suffice to observe that it is not for this Court to examine the

validity of the review application at this stage. Since we are sending the application for review back to the Board of Revenue, it will be for the learned members of the Board to take this aspect in view before they admit the review application. In case the application is admitted and a notice is issued to the present petitioners, they will have an opportunity to argue this point before the Board.

11. We allow the writ application and set aside the impugned orders of the Board of Revenue dated 5-12-58, 28-6-63, 6-3-64 and 2-12-64. The case be sent back to the Board of Revenue to proceed in the matter according to the observations made by us above.