(2008) 11 GAU CK 0041

In the Gauhati High Court

Md. Ayaz Ali and Another — APPELLANT

Vs

Md. Nurul Islam Choudhary and Others — RESPONDENT

Date of Decision : 28-11-2008

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 141, 147, 148, 151
Civil Procedure Code, 1908 (CPC) — Section 115, 115(2)
Constitution of India, 1950 — Article 226, 227

Citation : (2009) 5 GLR 468 : (2009) 2 GLT 534

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—This writ petition has put to challenge the order, on 10.8.2008, passed, in Revenue Appeal No. 123(K)/2007, by the Assam Board of Revenue, Guwahati, admitting the appeal, preferred by the respondents herein, after lapse of 3 years 4 months 13 days, against the order, dated 31.1.2004, passed by the respondent No. 15, namely, Settlement Officer, Karimganj, in Misc. Case No. 17/1998, whereby the respondent No. 15 had directed correction of the record of rights by cancelling the names of the present appellants and restoring the patta, in question, in favour of the respondents.

2. I have heard Mr. I.A. Talukdar, learned Counsel for the petitioner, and Mr. N. Dhar, learned Counsel for the respondents. I have also heard Mr. R. Bora, learned Government Advocate, appearing on behalf of the respondent No. 5.

3. Two important questions have been raised in this writ petition, namely, (i) when an order is appealable u/s 147 of the Assam Land and Revenue Regulations (''the Regulations''), whether an application is maintainable u/s 141 of the Regulations; and (ii) when Section 148 of the Regulations prescribes the period of limitation in respect of appeals, which may be preferred u/s 147, whether such period of limitation would also be applicable to the applications made u/s 151 of the Regulations.

4. It is submitted by Mr. Talukdar, learned Counsel for the petitioners, that since the order, which stood impugned in the appeal before the learned Board of Revenue, is an order, which is appealable u/s 147, the respondents could have filed an appeal u/s 148 and the learned Board of Revenue could not have, therefore, entertained the application, in question, made u/s 151, merely because of the fact that this application had mentioned that it was an appeal u/s 151. Mr. Talukdar points out that when the respondents realized that their right to file an appeal u/s 147 stood barred by the period of limitation prescribed by Section 148, they preferred an appeal u/s 151 of the Regulations and thereby circumvented the provisions of Section 147 and, when considered in this light, it becomes clear that the application, made by the respondents herein, u/s 151, was not maintainable inasmuch as Section 151 will apply only to those cases, where there is no right of appeal under the Regulations. This apart, the period of limitation prescribed u/s 148, according to Mr. Talukdar, applies even to an application made u/s 151.

5. While considering the submissions made above, what needs to be noted is that Section 151 of the Regulations vests, in the Board, the power to call for any proceedings held by any officer subordinate to it and pass such order(s) thereon as it thinks fit. Section 151 of the Regulations does not prescribe any period of limitation for exercise of jurisdiction. No other provisions, contained in the Regulations, prescribe any period of limitation in respect of exercise of jurisdiction u/s 151 of the Regulations. The language, employed by Section 151, clearly shows that the jurisdiction conferred by Section 151 of the Regulations is supervisory in nature and it can, therefore, be exercised by the Board on its own motion or on an application made by the aggrieved party. When the Board finds any material irregularity or illegality in the proceedings held by any officer subordinate to it, it has the power to call, on its own motion, the records of such proceedings and correct the same. In other words, if the Board, in a given case, discovers any material irregularity or illegality in the proceedings, it has the jurisdiction to interfere with such an error even if no appeal has been preferred, u/s 147, against such an order. This exercise of jurisdiction by the Board u/s 151 is not controlled by the provisions of Section 147 and/or Section 148.

6. It is contended by Mr. Talukdar, as already indicated above that when there is an appeal, already provided, u/s 147, against an order, such an order cannot be interfered with by taking resort to Section 151. In this regard, it is noteworthy that Section 115 of the Code of Civil Procedure, 1908 (''the Code'') confers revisional jurisdiction on the High Court, in respect of any case, decided by any court, which exercises civil jurisdiction and is subordinate to such High Court. Section 115(2) imposes a limitation on the revisional powers of the High Court by laying down that the High Court shall not, in exercise of its power u/s 115, vary or reverse any decree or order against which an appeal lies either to the High Court or to any court subordinate thereto. Thus, exercise of revisional jurisdiction of High Court, u/s 115 of the Code, is possible only when an order or a decree is not appealable. As against such restrictive provisions contained in

Section 115 of the Code, there is no restriction imposed on the powers of the Board u/s 151 inasmuch as there is nothing in Section 151 or in any of other provisions of the Regulations indicating that the Board cannot exercise its jurisdiction, u/s 151, against an order, which is, otherwise, appealable u/s 147.

7. Similarly, as far as Section 151 is concerned, it prescribes no period of limitation and there is nothing in any other provisions contained in the Regulations, including the provisions contained in Sections 147 and 148, which can be said to have imposed any period of limitation on the Board''s power to exercise its jurisdiction u/s 151. In fact, the subject-matter of this controversy stands closed by a Full Bench decision of this Court in Satyaranjan v. Assam Board of Reveue, AIR 1977 Gau 83. In Satya Ranjan Paul Majumdar (supra), the Full Bench, speaking through M. Sadananda Swami, J, has approved this Court''s earlier decision, in Hem Ali v. State of Assam ILR (1953) (Ass) 532, wherein it had been held as follows:

Under Section 151 the Tribunal had the power to call for any proceeding held by any officer subordinate to it and pass such orders thereon as it thought fit. There is no period of limitation provided for the exercise of this jurisdiction. The jurisdiction may be invoked by an aggrieved party. The Tribunal may of its own motion call for the records of any proceeding. The jurisdiction is supervisory and could be exercised at any time. There is no force in the contention that the revisional jurisdiction could not be exercised because the appeal that had been filed was found to be time barred. If the Tribunal discovered any material irregularity or illegality in the proceedings, it had ample jurisdiction to interfere even though the appeal was time barred. Normally the Tribunal may not interfere in such cases but where it considers interference necessary, it has the power to do so. It was further urged that where a right of appeal exists and is not availed of, the revisional jurisdiction u/s 151 could not be exercised. That contention was also rejected since there is nothing in the language of Section 151 to justify that interpretation and that the restriction placed on the revisional powers of the High Court u/s 115 of the Civil P.C. does not apply, since no such condition is attached to the exercise of jurisdiction u/s 151 of the Regulation. It was, therefore, held that it can be exercised even in cases where there is a right of appeal and has not been availed of.

8. In Satya Ranjan Paul Majumdar (supra), the Full Bench, speaking through Baharul Islam, J, further held as follows:

The language of Section 151 of the Regulation shows that the power of the Board is very wide and unrestricted. The Board can suo motu call for the records of a case and pass an appropriate order. The Board also can pass an appropriate order on an application filed by an aggrieved party. There is also no limitation for exercise of powers u/s 151 of the Regulation. In my opinion the decision of the Supreme Court in Lala Ram Swarup and Others Vs. Shikar Chand and Another, clinches the point.

9. As held in Satya Ranjan Paul Majumdar (supra), the revisional or supervisory jurisdiction has been conferred, on the Board, in the widest terms, by Section 151. This power can be exercised suo motu or on an application filed before it. There is no period of limitation prescribed under the Regulations for making such an application and the Board may exercise its power in respect of any proceeding held by any officer subordinate to it.

10. In the light of the position of law as discussed above, when one turns to the facts of the present case, what becomes clear is that even if, in the present case, no appeal u/s 147 had been preferred against the order, dated 13.2.2004, aforementioned, passed by the Settlement Officer, Karimganj, there was no restriction, on the powers of the Board, to entertain an application against the said order in exercise of its powers u/s 151 and if the Board finds, on the basis of the reasons, which it shall have to assign, that the order, dated 13.2.2004, is not sustainable, it can interfere with the order, dated 13.2.2004, aforesaid by invoking its jurisdiction u/s 151. Since, for the exercise of powers u/s 151, there is no period of limitation prescribed, the order, dated 1.10.2007, which stands impugned in this writ petition and which was passed by the learned Board deciding to entertain the appeal, cannot be said to be illegal and cannot be interfered with by taking resort to this Court''s jurisdiction under Article 226 and/ or 227 of the Constitution of India.

11. By the order, dated 1.10.2007, though the learned Board has condoned the delay in preferring the appeal, such condonation of delay, strictly speaking, was not necessary in respect of an application u/s 151 inasmuch as there is no period of limitation prescribed, in this regard, by the Regulations.

12. Because of what have been discussed and pointed out above, it is clear that this writ petition is wholly without merit and is, therefore, dismissed.

13. No order as to costs.

