
(1954) 01 AHC CK 0045

In the Allahabad High Court

Case No : Civil Miscellaneous (Writ) No. 20 of 1954

Mukhtar Singh

APPELLANT

Vs

Board of Revenue U.P. at Allahabad and Another

RESPONDENT

Date of Decision : 12-01-1954

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 30
Constitution of India, 1950 — Article 226

Citation : AIR 1954 All 454 : (1954) 24 AWR 256

Hon'ble Judges : V. Bhargava, J

Bench : Single Bench

Advocate : Harish Chandra Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

V. Bhargava, J.—I have heard learned counsel for the petitioner in support of this petition under Article 226 of the Constitution. The petitioner seeks to challenge an order of the Board of Revenue on three grounds.

The first two grounds amount to an allegation that the Board of Revenue in deciding the case before it went wrong in applying the provisions of Section 20, U. P. Zamindari Abolition and Land Reforms Act to the plaintiff's case and in holding opposite party No. 2 to be an Adhivasi under that section. Learned counsel has urged that this is an error of law apparent on the face of the record and consequently in such a case a writ of certiorari can be issued by this Court.

The question of interpretation of Section 20, U. P. Zamindari Abolition and Land Reforms Act and its applicability to the proceedings before the Board of Revenue is a point which was with-in the competence of the Board of Revenue to decide and the Board of Revenue could decide it rightly or wrongly. An incorrect decision of such a controversial point cannot be said to be an error of law apparent on the face of the record. An error, even if it is found to be such after argument, as to the incorrect application of any law or as to its incorrect interpretation is not the

type of error apparent on the face of the record which has been considered a ground for exercising the powers of issuing a writ of certiorari. On these grounds, therefore, this petition cannot be entertained.

2. The third ground taken relates to a question of jurisdiction as it is alleged that a decision by two members of the Board of Revenue without one of them giving a hearing to the parties was without jurisdiction, and it is contended that Section 3, U. P. Board of Revenue (Declaration of Procedure and Validation) Act (Act 30 of 1953) is ultra vires" of the legislature. It has authorised the Board of Revenue to give a judgment without hearing the parties. Learned counsel has not been able to advance any argument to show that the provisions of Section 3 of Act 30 of 1953 are "ultra vires" of the legislature.

The Board of Revenue was constituted by U. P. Acts and it is the U. P. legislature which is competent to lay down the procedure according to which the Board of Revenue is to act in exercising its judicial powers. Obviously, until the passing of Act 30 of 1953 the procedure in writ cases arising under the U. P. Tenancy Act was governed by the procedure laid down in the CPC with the amendments to it made by the U. P. Tenancy Act itself. That procedure which was applicable to the Board of Revenue has now been amended by this Act and it does not appear that in passing such an enactment the U. P. Legislature in any way exceeded its legislative powers.

Learned counsel alternatively argued that even u/s 3, U. P. Board of Revenue (Declaration of Procedure and Validation) Act of 1953 both Members should have given a hearing to the parties before deciding the appeal pending before them. His contention is that the last paragraph of this section requires the hearing of the appeal by both Members because of the provision made in Order 41, Rule 30, Civil P. C.

It was held by a Full Bench of this Court in -- Suraj Mal Vs. The Board of Revenue, U.P., Allahabad and Others, , that, according to the U. P. Tenancy Act and the CPC as made applicable to the proceedings under that Act, the law at that time required that every Member of the Board of Revenue taking part in a decision should give a hearing to the parties under Order 41, Rule 30, Civil P. C. The provisions of Order 41, Rule 30, Civil P. C. do not, however, now apply to proceedings before the Board of Revenue because of the first paragraph of Section 3 of Act 30 of 1953 which specifically lays down that no appeal, reference or revision shall be construed as requiring all the Members of the Board who participate in the decision of any appeal, reference or revision or concurring in or pronouncing the judgment, to actually hear, whether sitting together or separately, the parties thereto or their counsel. The second part of the Section 3 reads as follows :

"it shall always be deemed to be sufficient compliance of the law that except where it is expressly provided to the contrary at least one such member has so heard them,"

The use of the words "except where it is expressly provided to the contrary" mean that there should be some express provision of law requiring that hearing must be given by more than one member. Order 41, Rule 30, Civil P. C. does not make any express provision requiring every member of a court to give a hearing to the parties and it does not lay down that an appeal cannot be heard by one member and must be heard by more than one or all the members of the Board of Revenue. The provision of law cannot be said to be one making an express provision to the contrary within the meaning of Section 3, of the U. P. Act 30 of 1953. Consequently the hearing by the Board of Revenue in this case was correct.

3. The petition has no force and is rejected.