(1987) 05 AHC CK 0048

In the Allahabad High Court

Case No : Civil Misc. Writ No''s. 15833 and 16624 of 1985

Nihal Singh APPELLANT

Vs

The Board of Revenue and Others RESPONDENT

Date of Decision : 19-05-1987

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Land Revenue Act, 1901 — Section 151, 210, 218, 219, 279

Citation : (1987) RD 308

Hon'ble Judges : R.K. Gulati, J;K.C. Agarwal, J

Bench : Division Bench

Advocate : S.C. Verma, for the Appellant; R.D. Gupta, R.P. Misra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This writ petition Under Article 226 of the Constitution was filed by the Petitioner Nihal Singh challenging the order of the Board of Revenue dated 07.10.1985 in Revision No. 20 L.R. 84.85, and the order of the Additional Commissioner, Agra Division, Agra dated 18.03.1985. The Additional Commissioner by the aforesaid order rejected the objection of the Petitioner filed Under Rule 2851 of Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952, for setting aside the sale of plots belonging to him sold in connection with the realisation of arrears due to the U.P. Financial Corporation Limited, Agra. The Additional Commissioner held that the auction sale challenged by the Petitioner was neither irregular nor illegal, and, as such, the sale could not be set aside. It was against this order that revision had been preferred by the Petitioner before the Board of Revenue. The Board of Revenue rejected it on the preliminary point raised before it, which was that since the Commissioner .vas not a court, no revision lay u/s 219 of the Land Revenue Act, 1901.

2. The connected writ petition No. 16624 of 1985 preferred by Rajvir and others has been filed against a rejection of the objection filed by them to the

attachment of the plots belonging to them. This revision was also rejected on the same ground as the revision of Nihal Singh in Writ Petition No. 15833 of 1985.

3. Both of these writ petitions came up for hearing before Hon''ble K.P. Singh, J., who finding contradictory observations in the two decisions reported in Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra 1984 AWC 772 and Sudama Prasad v. State of Uttar Pradesh 1968 RD 88 : 1967 AWR 657 referred the two writ petitions to a larger Bench. While making the reference, the learned Judge observed:

Therefore, in this connection the provisions of Section 293 of Uttar Pradesh Act No. 1 of 1951 need be considered and the question whether any revision to the Board would lie in the facts and circumstances of the present case at all. If the answer is in affirmative, whether it would lie u/s 219 of the Uttar Pradesh Land Revenue Act or u/s 333 of the Uttar Pradesh ZA and LR. Act.

4. We may briefly refer to the relevant provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, (Uttar Pradesh Act No. 1 of 1951) and the Rules, aswell as the Uttar Pradesh Land Revenue Act, 1901.

5. Chapter X of Uttar Pradesh Act No. 1 of 1951 deals Land Revenue. Section 279 provides procedure for recovery of arrears of land revenue. Section 294 conters power on the State Government to make Rules for the purposes of carrying into effect the provisions of this Chapter. In exercise of this power that the State Government has framed the Rules, which are to be found in Chapters I to XII of the Rules. The relevant rules, with which we are concerned in the present writ petition, are Rule 285(1) Under this rule at any time within thirty days from the date of the sale, application may be made to the Commissioner to sst aside the sale on the ground of some material irregularity or mistake in publishiag or conducting it.

6. Section 293 of Uttar Pradesh Act No. 1 of 1951 applies Chapters IX and X of Uttar Pradesh Land Revenue Act in so far as they are not'' inconsistent with the provisions of this Act to applications and proceedings made or taken under this Chapter. The expression "this Chapter " used in Section 293 refers to Chapter X of Uttar Pradesh Act I of 1951. The rules framed u/s 294 would also be covered. Consequently, Section 219, which is to be found in Chapter X of Uttar Pradesh Land Revenue Act, applies to the proceedings covered by Chapter X of Uttar Pradesh Act I of 1951 and the rules framed there under.

7. Section 219 initially provided for a revision to the Board of Revenue as against a judicial order. So far as a noa-judicial order was concerned, revision lay to the State Government. Section 219 as it stood at that time is quoted below:

The Board may call for the record of any case of a judicial nature or connected with a settlement in which no appeal lies to the Board, if the officer by whom the case was decided appears to have exercised a jurisdiction not vested in hina by law, or to have failed to exercise a jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity, may pass such orders in the case as it thinks fit.

8. The question of maintainability of revision as against an order passed in connection with the arrears of land revenue came up for consideration before a Division Bench of this Court in Sudama Prasad v. State of Uttar Pradesh (Supra). The Division Bench held:

According to the classification of judicial and non-judicial orders found in paragraphs 911 and 912 of the Revenue Manual proceedings for realizations of dues under Uttar Pradesh Large Land Holdings Act and other statutes should be treated" as a non-judicial proceeding. It may be that paragraphs 911 and 912 of the Revenue Manual do not in terms apply to the instant case But the classification made in the Revenue Manual is on the whole sound.

A proceeding for collection of land revenue is essentially of administrative nature. It may be that at some stage in the proceeding the hearing before the Commissioner assumes the character of quasi-judicial nature. But that circumstance does not alter the essence of the proceeding as a whole.

9. Consequently this Court found that the collection of land revenue being administrative in nature, no revision lay to the Board of Revenue u/s 219.

10. Subsequent to the above decision, the State Government in exercise of the power u/s 234(1) Clause (v) amended paragraph 911 of Chapter XXXV of the Manual of Orders of the Government of Uttar Pradesh by means of notification No. 236/3/69/II-862, dated December 3, 1969, published in the Official Gazette of the State of Uttar Pradesh dated 12th December, 1969, Part I, at page 2159. The addition of the new clause was as follows:

(k) Proceedings taken before the Commissioner or orders passed by him in matters relating to recovery of arrears of land revenue or sums of money recoverable as arrears of land revenue.

11. As a result of this amendment in Paragraph 911 of the Revenue Manual, an order passed in connection with the recovery of arrears of land revenue became revisable before the Board.

12 A Full Bench of the Board of Revenue reported in Raj Kumar v. Bhagwat Singh 1956 AWR 202 had also taken the view that the Board had no jurisdiction to entertain any revision or to act in revision u/s 219 of the U.P. Land Revenue Act in a non-judicial matter. After the amendment of Paragraph 911, the Board of Revenue in Deepak Cold Storage v. Uttar Pradesh Financial Corporation 1978 RD 289 held that a revision u/s 219 was maintainable. In arriving at this decision, the Board of Revenue followed its earlier view in Chhabi Nath v. State Uttar Pradesh 1975 RD 319.

13. By the Uttar Pradesh Land Laws (Amendment) Act, 1975 (Uttar Pradesh Act No. 30 of 1975) several provisions of Uttar Pradesh Act No. 1 of 1951 and Uttar

Pradesh Land Revenue Act, 1901, were amendmed. Section 43 of the Amending Act, which is relevant for our purposes, is as under:

43. Substitution of Section 219. For Section 219 of the Principal Act, the following section shall be substituted, namely:

219. Revision before the Board. The Board may call for the record of any case decided by any subordinate court, and if the subordinate court appears-

(a) to have exercised a jurisdiction not vested it in law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of jurisdiction illegally or with material irregularity,

the Board may pass such order it thinks fit.

14. It was argued on behalf of the Petitioner before the learned Single Judge aswell as before us that in view of the amendment made in paragraph 911 of the Revenue Manual by the notification dated December 3, 1969, referred to above, all the proceedings before the Commissioner or orders passed by him in matters relating to recovery of arrears of land revenue were revisable before the Board, and, as such, the Board of Revenue committed an error in holding that revision did not lie u/s 219.

15. We have seen above that after the amendment made in Paragraph 911, .the Board of Revenue changed its earlier view and started entertaining revisions on that basis.

16. The question now is about the substitution of ne"v Section 219 in place of the old one. It is settled that after a Statute is amended, the Statute there after is to be read and construed with reference to the new provisions, and not with reference to the provisions that originally existed. Lord Wanston in Bradlaugh v. Clarke (1983) 8 AC 354 at page 380 observed:

It is an extremely hazardous proceeding to refer to provisions which have been absolutely repealed in order to ascertain what the legislature meant to enact in their room and stead.

17. Section 219 bad been substituted by Section 43 of the Amending Act, as noted above. The substitution would mean that new section came in place of the old one. It is the new section which has to be read and applied. At this place, we may also refer to Section 46 of U.P. Act No. 30 of 1975, which is a transitory provision.

It reads as under:

46. Transitory provisions - All cases referred to the State Government u/s 218, and all revisions filed before the State Government u/s 219 of the principal Act, as they stood immediately before the date of commencement of the Uttar

Pradesh Land Laws (Amendment) Act, 1975, and pending before the State Government on the said date, shall, notwithslanding anything in any judgment, decree or order of any court or authority, stand transferred to the Board and decided by the Board, and the decision of the Board shall be final.

18. The transitory provision does not lead any doubt that revisions after the enforcement of Uttar Pradesh Act: No. 30 of 1975 could be filed under the amended provision.

19. Section 293 of Uttar Pradesh Act No. 1 of 1951 is a case of a Statute incorporating by general reference the law concerning the particular Chapters IX and X. Broadly speaking, legislation by referential incorporation falls in two categoreis. First, where a Statute by specific reference incorporates the provisions of another Statute as of the time of adoption, second, where a Statute incorporates by general reference the law concerning a particular subject. It was said by the Supreme Court in Bajaya Vs. Gopikabai and Another, that:

In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also, made from time to time in the generic law on the subject adopted by general reference.

20. In the aforesaid case, the expression "Personal Law " was used in the Code enacted on February 5, 1955. Subsequently, the Hindu Succession Act, 1956, came into force. The question was as to whether the Hindu Succession Act could be applied. The Supreme Court found that the case before it was one of general reference, and therefore, held:

Construed in accordance with the above principle, the expression " personal law " referred to in Section 151 of the Code, comprehends the Hindu Succession Act, 1956........

21. This is the undoubted principle. Consequently, Section 219, as it was amended, became applicable to the proceedings of recovery of land revenue as provided for by Section 293 of Uttar Pradesh Act No. 1 of 1951.

22. Reverting to the opinion of the learned Single Judge about the contradictory observations made in the two cases, noted above, we are unable to find any such contradiction as was raised before us by the learned Counsel. In Sudama Prasad v. State of Uttar Pradesh (Supra) the Division (?) administrative in nature. This decision has been followed in Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra (Supra) by observing:

In Sudama Prasad v. State of Uttar Pradesh (Supra) it was held that proceedings for realisation of land revenue are essentially of a non-judicial character, and although at some stage the hearing before the Commissioner may assume the character of a quasi-judicial proceeding but the circumstance does not alter the essence of the proceeding as a whole It was further held that Section 219 of the Land Revenue Act was to be deemed to be part of the Zamindari Abolition and Land Reforms Act and there was no conflict between Rule 285-K of the Uttar

Pradesh Zamindari Abolition and Land Reforms Rules and Section 219 of the Land Revenue Act, and full effect had to be given to the provisions of Section 210 of the Land Revenue Act.

23. In Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra (Supra) the controversy was whether the Commissioner dealing with the objection Under Rule 285-1 prescribing thirty days period for filing of the same could extend the time u/s 5 of the Limitation Act. The court negatived the argument by holding that a Commissioner is not a Court and, as such, Section 5 could not be applied. For the view taken in the aforesaid decision, there is ample authority.

24. In Sakuru Vs. Tanaji, the Supreme Court held that the provisions of the Limitation Act, 1963, applied only to proceedings in " Courts ", and not to appeals or applications before bodies other than courts, such as quasi-judicial Tribunals or Executive Authorities notwithstanding that such bodies or authorities have been vested with certain specified powers conferred on courts under the Code of Civil Procedure.

25. Counsel for the Petitioner urged that the learned Judges in the case of Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra (Supra) wrongly held that the Commissioner although was exercising judicial function, still was not a " Court " in respect of the proceedings before him. We are unable to uphold the submission. Unless the Commissioner was specifically constituted as a court, he could not be termed as such merely because he was performing judicial functions. It would be a needless exercise to refer to various decisions on this controversy. Indu Engineering and Textiles Ltd. v. Commissioner Agra Division, Agra (Supra) has referred to 27 authorities for coming to the view:

We have already held that the Commissioner in matters relating to realisation of arrears of land revenue acts as a revenue officer, and not as a revenue court.

26. Reference may be made to a decision of the Supreme Court in Shri Virindar Kumar Satyawadi Vs. The State of Punjab, it was observed:

When a question therefore arises as to whether an authority created by an Act is a Court as distinguished from a quasi judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court.

27. The question as to what would constitute a court properly so called was considered by the Supreme Court in Brajnandan Sinha Vs. Jyoti Narain, . Paragraph 18 of this decision is as follows:

It is clear, therefore, that the order to constitute a court in the strict sense of the term, an essential condition is that the Court should have, apart from having some of the trappings of a judicial tribunal, power to give a decision or definitive judgment which has finality and authoritativeness which are the essential tests of a judicial pronouncement.

28. In Surendra Kumar Goel v. State Transport Appellate Tribunal 1979 ALR 599 a Full Bench of this Court, after reference to a number of decisions of the Supreme Court and other courts, held that Motor Accident Claims Tribunal is not a court.

Speaking of an Industrial Tribunal, Kania, C.J. in Bharat Bank v. Employees Bharat Bank (22), said that such a tribunal is discharging functions very near to those of a Court although it is not a Court in the technical sense of the words. Mahajan, J. in the same case said (paragraph 27) that the Industrial Tribunal might rightly be described as quasi-judicial body because they are out of hierarchy of the ordinary system. Again Gajendragadkar, J. in Engineering Mazdoor Sabha v. Hind Cycles Limited, Bombay (23) pointed as follows:

The expression '' a court '' in the technical sense is a Tribunal constituted by the State as a part of ordinary hierarchy of courts which are invested with the State''s inherent judicial powers. The Tribunal as distinguished from the court, exercises judicial powers and decides matters brought before it judicially or quasi-judicially, but it does not constitute a court in the technical sense.

29. In view of the decision of the Division Bench in Indu Engineering and Textiles Ltd. v. Commissioner, Agra Division, Agra (Supra) holding that the Commissioner in matters relating to realisation of arrears of land revenue acts as a revenue officer and not as a revenue court, we find that the revision u/s 219 of the Land Revenue Act as against an order of the Commissioner passed Under Rule 285-1 will not be maintainable.

30. We have found above that the two decisions in the case of Indu Engineering (Supra) and Sudama Prasad (Supra) do not contradict with each other. The observations made in the two decisions in the set of facts as they arose in each one of them were fully justified.

31. We respectfully agree with the view taken in the case of Indu Engineering and Textiles Limited (Supra) that a Commissioner deciding an objection Under Rule 285-1 is not a court. That being so, Section 219 would not be attracted, and, as such, a revision under that section would not lie.

32. So far as Section 333 of Uttar Pradesh Act No. 1 of 1951 is concerned, it may be stated that a revision under that section could be filed if it arises out of an order passed in a suit or proceedings. An order rejecting an objection is not passed either in any suit or proceeding contemplated by Section 333.

33. The observations of the Division Bench in Indu Engineering and Textiles Limited (Supra) in that connection which negatived the argument of the Petitioner, are as follows:

A Commissioner has two capacities under the Land Revenue Act. u/s 4(8) of that Act, he acts as a court while u/s 4(9) he acts as a revenue officer. It seems to us that he acts as a court in respect of proceedings mentioned in Appendix III and Schedule II to the Act, while he acts as a revenue officer in respect of other proceedings.

34. For what we have said above we reject both the writ petitions with costs. The stay orders in both the cases stand vacated.