
(1954) 05 AHC CK 0016
In the Allahabad High Court
Case No : Special Appeal No. 15 of 1954

Raghubir

APPELLANT

Vs

Govt. of U.P., Lucknow and Others

RESPONDENT

Date of Decision : 03-05-1954

Acts Referred:

Constitution of India, 1950 — Article 14, 215, 226, 254(2)

Citation : AIR 1954 All 660

Hon'ble Judges : Malik, C.J.;Gurtu, J

Bench : Division Bench

Advocate : A.P. Dube, for the Appellant;

Final Decision : Dismissed

Judgement

Malik, C.J.—This is an appeal filed on behalf of one Raghubir against the order of a learned single Judge dismissing a petition under Article 226 of the Constitution.

2. Raghubir filed a suit for possession of a number of plots in the court of an Assistant Collector. The suit was dismissed. He filed Civil Appeal No. 371 of 1948 before the Additional Commissioner of Meerut. The appeal was allowed and the suit was decreed. The other side then filed a Second Appeal before the Board of Revenue. On 29-10-1951, Mr. Ram Nagina Singh, one of the Members of the Board, heard the arguments of the parties and wrote out his judgment which he sent to another Member of the Board. Mr. J. O. N. Shukla for concurrence. Mr. Shukla on 3rd of November, 1951, without hearing the parties concurred with the opinion of Mr. Ram Nagina Singh, as a result of which the appeal was allowed and the judgment of the trial court restored.

Raghubir then filed a writ petition in this Court (Writ No. 391 of 1952). This came up before a Bench of this Court -- Mr. Justice Mootham and Mr. Justice Chaturvedi. Relying on the judgment of a Full Bench in -- Suraj Mal Vs. The Board of Revenue, U.P., Allahabad and Others, , they held that the judgment of Mr. J. O. N. Shukla was a nullity as he had passed it without hearing the parties.

They, therefore, passed the following order :

"We consequently allow this application in part and quash the order passed by Sri J. O. N. Shukla dated 3rd November, 1951, only."

Obviously, it meant that the judgment of Mr. Ram Nagina Singh dated 29-10-1951, stood but the opinion of Mr. J. O. N. Shukla dated 3-11-1951, was held to be null and void. The case had, therefore, to go back to the Board so that the appeal might be disposed of according to law.

Three days after the decision of this case the U. P. Legislature passed a new Act -- U. P. Act XXX of 1953, U. P. Board of Revenue (Declaration of Procedure and Validation) Act, 1953. The Act came into force on 5-12-1953. The Act provided that it was not necessary for all the Members of the Board, who participated in the decision of an appeal, to actually hear, whether sitting together or separately, the parties or their counsel. Purporting to act under the provisions of this Act, the other Member of the Board, Mr. S. N. Mitra, on 18-12-1953, concurred with the opinion of Mr. Ram Nagina Singh without giving the parties an opportunity to be heard afresh.

3. Thereafter, a writ petition was again filed in this Court which was dismissed by a learned single Judge on 15-1-1954, and it is against the order of dismissal that this appeal has been filed.

4. Two points have been raised by learned counsel;

Firstly, that the order of the Bench dated 2-12-1953, in Writ Petn. No. 391 of 1952, was binding on the Board and the Board should have conducted itself in accordance with that decision and should have given the parties an opportunity to be heard before deciding the appeal. We have looked into the judgment of this Court dated 2-12-1953. This Court declared the judgment of Mr. J. O. N. Shukla invalid and left it to the Board to decide the case according to law.

If the new Act had not intervened, the second Member would no doubt have also heard the parties or their counsel, but as there was a new legislation on the point, the Board acted in accordance with the provisions of the new Act and it cannot, therefore, be said that in passing this order the Board in any way disregarded the decision given in Writ Petition No. 391 of 1952.

5. The Board having acted in accordance with the provisions of Act 30 of 1953, the order passed by the Board can be challenged only if learned counsel can show that that Act is invalid.

6. Learned counsel has urged three grounds for holding the Act to be invalid: Firstly, that it is discriminatory and hits against the provisions of Article 14 of the Constitution. Reliance has been placed on the decision of the Supreme Court in -- The State of West Bengal Vs. Anwar Ali Sarkar, .

That case has no bearing on the point. In that case, offences under the same section of the Indian Penal Code were made triable in accordance with the

provisions of the Criminal Procedure Code by regular courts of law or at the option of the State Government by a special tribunal in accordance with a special procedure prescribed under the impugned Act. In other words, if two persons had committed the same kind of offence, one could be convicted under the Indian Penal Code and tried in accordance with the procedure of the Criminal Procedure Code, and the other could be tried at the option of the State Government before a special tribunal and in accordance with the special procedure prescribed which was less advantageous to the accused.

It was in those circumstances that their Lordships said that there was discrimination and, therefore, the Act was bad. There is no discrimination in the case before us. There is a special procedure prescribed for all cases before the Board of Revenue and the same procedure is applicable to every case before the Board.

7. The next submission is that there is a rule of natural justice that no case shall be decided without giving the parties an opportunity to be heard, and this rule of natural justice which was recognised by the Supreme Court in -- *Surendra Singh and Others Vs. The State of Uttar Pradesh*, has been violated.

8. In -- "*Surendra Singh's case (C)*", the Supreme Court did not rely on any rule of natural justice. The Court relied on the provisions of the Criminal Procedure Code and pointed out that a judgment has to be pronounced in open court and so long as the judgment has not been pronounced, it is merely a draft judgment and it is open to the Judges to change their minds. The Supreme Court pointed out that as one Judge had died before the judgment was pronounced, it could not be said with any degree of certainty that if he had been alive he might not have changed his mind, and in the circumstances the judgment could not be said to be valid. Moreover, no so-called rule of natural law can in our country invalidate an Act passed by our legislatures within their legislative competence.

9. The third point urged by learned counsel is that the new Act involves an amendment of the Civil Procedure Code, which cannot be valid without the sanction of the President. To our minds, no such question arises in the case. The CPC is not applicable to proceedings in revenue courts, except to the extent that the revenue law makes it applicable and this Act provides that in revenue courts the procedure laid down in the Act shall be followed.

10. We are not, therefore, satisfied that the judgment of the learned single Judge was erroneous.

11. The appeal has no force and is dismissed.