
(1973) 09 AHC CK 0044
In the Allahabad High Court
Case No : Sp. A. No. 593 of 1971

Ram Niranjana Singh and another

APPELLANT

Vs

Ram Awadh Singh and others

RESPONDENT

Date of Decision : 11-09-1973

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (1973) 43 AWR 547

Hon'ble Judges : Satish Chandra, J;A. Banerji, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish Chandra, J.—This appeal arises out of consolidation proceedings. Aggrieved against the order dt. 23-3-1963 allowing a second appeal the Appellants filed a revision before the Commr. The Commr. held that the revision was not maintainable and dismissed it. The Appellants then instituted a writ petition in this Court. This Court held that the revision was maintainable. It sent the case back to the Commr. for deciding the revision on merits. The revision was disposed of by the Commr. on its merits on 18-12-1968. It was allowed and the order of the Dy. D.C. was set aside.

2. The Respondents then came to this Court by way of a writ petition. In support of the writ petition it was urged that in view of the Amending Act No. 18 of 1968, which introduced an explanation to Section 48 of the U.P.C.H. Act with retrospective effect no revision was maintainable against the decision of the Dy. DC. This contention was fully supported by a Division Bench decision of this Court in Ram Singh v. Dy. D.C. 1970 AWR 838. The learned single Judge upheld the submission. He also held that the order of the Dy. D.C. did not disclose any error of law to call for any interference. On this finding the order of the Director passed in revision was quashed. Hence the present special appeal.

3. Mr. G.P. Bhargava appearing for the Appellants urged that the judgment of this

Court deciding a writ petition on an earlier occasion will operate as *res judicata*. It is true that normally a judgment which has become final operates as *res judicata* between the parties to the litigation on the points already decided. But this principle does not hold good when the Legislature alters the law especially when it is altered with retrospective effect. Retrospective alteration has the necessary consequence that the law which was construed by the Court before its amendment ceases to exist. In such a situation the declaration of the law made by the court loses its value and efficacy and such a declaration cannot operate as *res judicata* between the parties after the law itself has been amended. In *Deep Chand Jain v. Board of Revenue* 1966 ALJ 113 it was held that:

The Courts while deciding cases do not make law. When the courts interpret any law they only explain what the pre-existing law is. They do not create or impose it. The courts do not possess the power to say that its view of the law will hold good from a date of its choice or for a period of time set by itself. That will in substance amount to amending the law from time to time. That is a power which vests exclusively in the law-making authority and not in the courts.

The true rule appears to be that the court's declaration is co-extensive with the life of the law. It is effective for the whole of the time that that law remains in force.

It necessarily follows from this principle that if a law is repealed then the declaration of law made by a court construing it lapses.

4. Till Section 48 was amended by U.P. Act No. 18 of 1958 the construction placed upon that provision was that the Dy. D.C. was an authority subordinate to the Director within meaning of Section 48(1). The Explanation retrospectively changed that position. Under the Explanation, the Dy. D.C. was not an official subordinate to the Director. With this retrospective change in the law the declaration of the unamended law would no longer hold the field. Even between the parties, to hold that the High Court's decision will operate as *res judicata* in these circumstances would be to nullify the retrospective change in the Act effected by the amendment. No judgment of a court can take away the power of the Legislature to make law with retrospective effect. If there is any conflict between the declaration of law made by a court and the exercise of legislative power the declaration of law made by the Court will yield to the legislative enactment. In this view the Director had no jurisdiction to entertain or to decide the revision on merits.

5. In the next place it was argued that Section 3(2) of the Amending Act would save the order of the Director. A perusal of that provision shows that it saves from the operation of the Amending Act decrees or orders of the court passed before the commencement of this Act. The Act came into force on 28-6-1968 and the Director decided the revision much later on 18-12-1968.

6. In the next place it was urged that the order of the Dy. D.C. was manifestly erroneous and as such was liable to be quashed. We have heard learned Counsel

for the parties and have perused the order of the Dy. D.C. We find that the conclusions of the Dy. D.C. were based upon appreciation of evidence. We are unable to hold that the findings arrived by the Dy. D.C. suffer from any manifest error of law.

7. In the result the appeal fails and is accordingly dismissed with costs.