
(1969) 10 AHC CK 0010

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 4118 of 1968

Ram Raja

APPELLANT

Vs

Board of Revenue, UP Allahabad and Another

RESPONDENT

Date of Decision : 23-10-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 117

Citation : (1970) 40 AWR 36

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Advocate : K.M. Singh, for the Appellant; P.M. Gupta and S.C. for opposite parties., for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Petitioner Gaon Sabha made an application Under Rule 115C of the UP ZA and LR Rules, stating that Gambhir (Respondent No. 2) had encroached upon Gaon Sabha land and praying that he should be ejected. Gambhir contested. He took up plea that he had been in possession for over 12 years and had become an asami. The Assistant Collector First Class went into the merits of this contention and held that on the evidence it could not be said that Gambhir had acquired any title. He, therefore, directed the ejectment of Gambhir. Gambhir filed revision against this order. The Additional Commissioner recommended that revision to the Board of Revenue. He held that Gambhir had raised a question involving a bonafide dispute of title. The Assistant Collector had no jurisdiction to proceed in the matter, much less to direct the ejectment of Gambhir. The Board of Revenue agreed with the Additional Commissioner and quashed the proceedings. It observed that the proper course for the Gaon Sabha was to file a regular suit.

2. The learned Counsel for the Petitioner has urged:

(1) That a revision was not maintainable; and

(2) That the Board of Revenue could not interfere with a finding which did not relate to a question of jurisdiction.

3. Rule 115-C imposes a duty on the land Management Committee to preserve and protect from damage, misappropriation, or wrongful occupation, all properties vested in it u/s 117 of the UP ZA and LR Act. The Chairman of the Land Management Committee has to report all cases of damage or wrongful occupation etc., of such property to the Collector for ejectment as well as compensation. The Pradhan of the Gaon Sabha made an application under this provision. Section 122-B of the Act deals with the power of the Land Management Committee and the Collector. Sub-section (1) authorises the LMC to take steps to recover compensation for damage to, or misappropriation of, the property and for the recovery of possession. This relates to the land or property vested in the LMC. Sub-section (2) confers power on the Collector to take steps for the ejectment of the person (in) wrongful occupation of the land and for recovery of damage etc., provided the LMC fails to take action in accordance with Sub-section (1) within six months from the date of the wrongful occupation. The power of the Collector to take action Under Sub-section (2) is conditional. It does not come into operation in a case involving a bonafide question of title. Under Sub-section (1) read with Rule 115C, the LMC has to approach the Collector for recovery of possession, etc. The Collector cannot act in a case involving a bonafide question of title. So, this exception would apply equally to an application made by the LMC. No such application is maintainable where a case involves a bonafide question as to title. The fact that a particular case does not involve a bona fide question of title is a condition precedent to the coming into existence of the power of the Collector to eject such a person. The language employed by Section 122-B is that "the Collector may, except in a case involving a bonafide question of title" take steps for the ejectment of the person in wrongful occupation or for recovery of compensation etc. The Collector has, therefore, no jurisdiction to take steps to eject a person if the case involves a bonafide question of title. He has merely to see whether a case involves such question. He has no jurisdiction to go into the merits of the question and come to a finding whether the title raised by such a person is valid or not. In other words, in a case where the Collector finds that bonafide question of title is involved, he can proceed only if he finds that the plea is frivolous; otherwise he has to stay his hands and direct the Gaon Sabha or the LMC to go to the regular courts by way of a suit for ejectment. In the present case, the Collector did not find that the case involved a bona fide question of title. But, since this was a jurisdictional issue, the revisional court could go into it and come to its own conclusion. The Board of Revenue came to the conclusion that the case did involve a bona fide question of title. On that finding, the Board of Revenue, was within its jurisdiction to interfere. The power u/s 333 of the Act, is, like Section 115, Code of Civil Procedure, confined to jurisdictional questions. I am not satisfied that the Board of Revenue has exceeded its powers in the present case.

4. Sub-section (4) of Section 122-B of the Act states that the decision of the

Collector Under Sub-section (2) shall, subject to the result of a suit by the aggrieved party before a court of competent jurisdiction, be final and conclusive, anything to the contrary contained in any other law notwithstanding. Relying upon this provision, it was urged that the revisional jurisdiction conferred on the Board of Revenue u/s 333 was excluded from an order passed Under Sub-section (2) of Section 122-B.

5. Section 5 of the U.P. Agriculturists Relief Act, 1934, provided for an appeal against an order granting instalments. It stated that the appellate decision shall be final. A Full-Bench of this Court in *Shah Chaturbhuj v. Shah Mauji Ram* 1938 AWR 437 held that this finality did not warrant an inference that the Legislature, in any way, intended to control the revisional jurisdiction conferred upon the High Court by Section 115, Code of Civil Procedure. Section 45(5) of the Encumbered Estates Act provided that the decision on the appeal under this section shall be final. This Court in *Ashraf v. Saith Mai* 1937 AWR 1081 held that the term "final" used in Section 45(5) could only mean "not subject to appeal". It did not exclude the revisional jurisdiction. These decisions would show that such finality clauses are a restraint upon the litigant and upon the appellate powers conferred on the various authorities. But, the revisional jurisdiction is conferred upon the highest tribunal contemplated by the Act. The power of revision is not a matter of right for a litigant. This jurisdiction is conferred upon a superior court to keep subordinate courts within bounds of the law. Section 333 of the UP ZA Act confers such a revisional jurisdiction upon the Board of Revenue. The Board can call for the record of any suit for proceeding decided by any subordinate court in which no appeal lies and pass such orders as it may deem fit, provided one or more of the conditions specified in its three clauses are fulfilled. The Assistant Collector 1st Class while dealing with an application u/s 122-B does come within the purview of Section 333; as Section 333 covers "any suit or proceeding decided by any subordinate court". In my opinion, the finality clause of Sub-section (4) of Section 122-B does not whittle down the ambit of the jurisdiction conferred upon the Board of Revenue by Section 333.

6. If it is held that Sub-section (4) of Section 122-B makes the order passed by the Collector final even in relation to the revisional jurisdiction, then, in my opinion, it will stand repealed to the extent it is repugnant to Section 333. Section 333 comes later in the Act. It is well-settled that where two provisions of a statutory enactment are in conflict with each other, in the sense that obedience to one is not possible without disobedience to the other, the former stands repealed by implication. Section 333 will, therefore, have the full play of its amplitude and could not be controlled by Sub-section (4) of Section 122-B.

7. For all these reasons, I am not satisfied that the Board of Revenue did not possess the revisional jurisdiction in relation to an order passed Under Sub-section (2) of Section 122-B of the Act. In my opinion, the revision was maintainable and was, on the findings recorded by the Board, correctly decided.

8. Learned Counsel had in his arguments relied upon Section 211-A of the Act. In

my opinion that provision will not apply. Section 122-B directly applies to property vested in the Gaon Sabha, whereas Section 211-A does not specifically do so. It applies to a case where a person is liable to be ejected on a suit by the Gaon Sabha. But I need not deal with this aspect elaborately, because the main point raised by the Petitioner cannot be decided differently, even if Section 211-A is held applicable; actually the finality clause in Section 211-A is much milder in language than that of Section 122-B.

9. The petition fails and is accordingly dismissed with costs.