(1951) 02 AHC CK 0008

In the Allahabad High Court

Case No : Civil Miscellaneous Case No. 102 of 1950

Ram Sunder Dube APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 22-02-1951

Acts Referred:

Citation : (1951) 21 AWR 298

Hon'ble Judges : Malik, C.J;Wali-ul-Lah, J

Bench : Division Bench

Advocate : Harish Chandra Sharma, for the Appellant; S.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Malik, C.J.—Sheo Mangal Pathak. Opposite party No. 3, filed an application u/s 36 of the Land Revenue Act for demarcation of expropriator tenancy claimed by him. The application was contested by the petitioner, Ram Sunder Dube, and two others. The application, was dismissed on 22nd January, 1947. Sheo Mangal pathak filed an appeal before the Collector and] the appeal was dismissed on the 20th March, 1948. A further appeal to the Commissioner failed on the 28th June. 1948, On an appeal to the Board of Revenue, the Board of Revenue allowed the appeal in part and directed demarcation of the plots which were Sir before the zamindari was sold on the l3th December, l942, and dismissed the application as regards the plots which were entered as Khudkasht plots of Shoo Mangal Pathak. This order was passed by Mr. Faiyaz Ali Member, on the 7th March, 1949, and, the order was agreed to by Mr. K. M. Lal, Member, on some date in April, l949. Thereafter, an application for review was filed, which was granted on 28th February, 1950. This application for a writ under Article 226 (1) of the Constitution was riled on the ground that the Board of Revenue has no power to review its previous orders and the order passed on the 28th February. i950, was, therefore, without jurisdiction. It was also prayed that further proceedings before the Board should be stayed. The short point for consideration in the case, therefore is whether the Board of Revenue can review its own orders.

2. The section granting the Board power to review its orders is Section 220 of the Land Revenue Act, (Act III of 1901). This section, before its amendment in 1,922, was as follows:

(l). The Board may review and may rescind, alter or confirm any order made by itself or by any of its members in the course of its non-judicial business.

(2). No decree or order passed judicially by it or by any of its members shall be so reviewed except on the application of a party to the case made within a period of ninety days from the decree or order, or made after such period if the applicant satisfies the Board that he had sufficient cause for not making the application within such period,

(3) A single member vested with all or any of the powers of the Board shall not have power to alter or reverse a decree or order passed by the Board or by any member other than himself.

3. Under the Land Revenue Act, 1901, the Board of Revenue had judicial powers and had certain other powers which might be called non-judicial powers. In 1922 certain powers vested in the Board were transferred to the Government under U.P. Board of Revenue Act, 1922, (Act 12 of 1922).

4. The preamble of the Act is as follows;-

An Act to transfer to the Local Government or to some other authority nonjudicial powers now exercisable by the Board of Revenue under certain enactments.

5. Whereas it is expedient to transfer to the Local Government or to some other authority certain non-judicial powers now exercisable by the Board of Revenue under certain enactments, and whereas the Governor-General has given his previous sanction to the passing of this Act, as required by Sub-section (3) of Section 80A of the Government of India Act.

6. It is hereby enacted as follows:-

In the Schedule attached to this Act there are a number of amendments made in the United Provinces Land Revenue Act. Section 5 of the Land Revenue Act, before its amendment, was as follows:-

The control of all matters connected with the land-revenue in the North western Provinces and Oudh is vested in the Board, subject to the orders of the Local Government.

7. That section was amended and it now reads as follows:

''The control of all non-judicial matters connected with the land revenue in the United Provinces other than matters connected with settlement is Vested in the Local Government, and the control of all judicial matters and of all matters connected with settlement under this Act is vested in the Board.

8. From this it would be clear that the Board has now jurisdiction in all judicial matters and in all matters connected with settlement, whether judicial or nonjudicial. Consequential changes were made in several other sections. For example, the words "non-judicial business" in Section 9 was changed to "business connected with settlement" Again, in Section 210. Sub-section (1), clause (c) the words "orders passed by a Commissioner" were replaced by "judicial or settlement orders passed by a Commissioner''''. A new Sub-section (4) was added to the same section which Was as follows :-

No appeal Khali be allowed from a non-judicial order not connected with settlement passed by a Commissioner.

9. It would appear, therefore, that so far as orders passed in settlement proceedings, whether they were judicial or non-judicial, were concerned, an appeal lay to the Board but no appeal was provided against other nonjudicial orders. It is not necessary to deal with other similar changes. In Section 220 similar change was also introduced and in place of the words "non-judicial business the words "business connected with settlement" were substituted. It is this substitution which has given rise to the doubt which has enabled learned counsel to file this application under Article 226 of the Constitution.

10. The section, as amended in 1922, at the first reading gives one the impression that power of review is confined only to orders passed in the course of business connected with settlement. Reading the whole section and bearing in mind its history, it is clear that the Board has the power to review its orders including orders passed in the course of business connected with settlement. It may be, as has been suggested by a learned Member of the Board of Revenue in the case of Sheo Mangal Pathak v. Sheo Baran Dube 1950 A.W.R. (Rev.) 167 that the introduction of the word ''or'' between the words ''members'' and ''in'' in Section 220 (1) would have removed the doubt that has been created by the amendment of 1922. Be that as it may, we ate satisfied that the Board had the power to review the order passed by it in 1949. The write application has, therefore, no force and is dismissed with costs, which we assess at Re. 160.

11. Mr. S. U. Singh has asked for separate costs. We do not think that it is a matter in which we can award separate costs. The costs awarded are for opposite parties No. 1 and 3. No notice was sent to opposite party No. 2.