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**(1956) 03 AHC CK 0042**  
**In the Allahabad High Court**  
**Case No : Civil Misc. Writ No. 1136 of 1955**

Ramanand Rai

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

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**Date of Decision :** 14-03-1956

**Acts Referred:**

Constitution of India, 1950 — Article 14, 226

**Citation :** (1956) 03 AHC CK 0042

**Hon'ble Judges :** Chaturvedi, J;Agarwala, J

**Bench :** Division Bench

**Advocate :** H.C. Sharma and R.B. Misra, for the Appellant; Govt. Advocate, for the Respondent

**Final Decision :** Allowed

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## Judgement

Chaturvedi, J.—This is a petition Under Article 226 of the Constitution praying for the setting aside of a decision of the Board of Revenue passed in a second appeal and also of the order passed in review. It is also prayed that the order of the Addl. Commr. passed in the first appeal be quashed.

2. The Petitioner filed a suit u/s 183 of the UPT Act for possession of the plots in dispute against the Respondents Nos. 4 to 10. The Petitioner's case was that he was the adopted son of Naurang Rai, the previous tenant of the plots, and the zamindars had wrongfully dispossessed him from the land. The Respondents contested the suit before the Judicial Officer mainly on the ground that the Petitioner was not the adopted son of Naurang Rai and had no right to the possession of the plots. The Judicial Officer, on 5-11-1951, held in favour of the Petitioner on this point and decreed his suit u/s 183, holding that the Petitioner was the adopted son of Naurang Rai and that he had been wrongfully dispossessed by the Defendants. He also allowed certain amount of damages to the Petitioner. The Respondents Nos. 4 to 10 then went up in appeal against this order to the Commissioner. The appeal remained pending before the Commr. till the ZA and LR Act came into force and it was heard and disposed of by him on

11-8-1954. The learned Commr. did not enter into the controversy which was the subject-matter of the decision by the trial court and allowed the appeal only on the ground that the Respondents Nos. 4 to 10 were entered as occupants of these plots in the year 1356 Fasli and had thus acquired the rights of an adhivasi. The Petitioner went up in second appeal to the Board of Revenue and the Board of Revenue dismissed that appeal on 13-4-1955.

3. It was argued before the Board that in view of the introduction of Explanation IV to Section 20 of the ZA and LR Act, the Respondents Nos. 4 to 10 would not acquire the rights of an adhivasi because they were intermediaries. We might state here that during the pendency of the appeal before the Board of Revenue the ZA and LR Act was again amended and the amendment was by means of UP Act XX of 1954. By Section 4 of this Amending Act a number of amendments were made in Section 20 and one of which was the introduction of Explanation IV. Explanation IV is in the following words:

Explanation IV--For purposes of this section "occupant" as respects any land does not include a person who was entitled as an intermediary to the land or any share therein in the year 1356 Fasli.

4. The Respondents Nos. 4 to 10 were admittedly intermediaries and the question that arose before the Board was whether this Explanation has retrospective operation or not. The Board of Revenue was of opinion that the Explanation did not have retrospective operation and would not apply to a case where the plaint had been filed before UP Act X of 1954 came into force. In this view of the matter it dismissed the appeal. After this decision of the Board of Revenue, it appears that, the Board changed its own view and the view subsequently held was that the said. Explanation had retrospective operation and applied to all cases which were pending before the trial court or the first appellate court or before the Board in second appeal. The Petitioner made an application for the review of the judgment which was also dismissed on the 18th October, 1955 on the ground that a change of opinion by the Board of Revenue on a question of law was not a sufficient ground for allowing a review application. The learned member of the Board observed:

In this case I had taken the view that this explanation was not retrospective. I have, however, since changed my view. The consistent view of the Board appears to be that Explanation IV is retrospective. If the Board had since changed its view on this question, it could not be held that there was an error apparent on the face of the record and no review would lie.

5. The Petitioner prays for the quashing of the judgment given in appeal as also in the review application.

6. The learned Counsel for the Petitioner has argued that Explanation IV, added by Act XX of 1954 which came into force on 10-10-1954, is retrospective in operation and the judgment of the Board of Revenue contains an apparent error of law. The learned Counsel for the Respondents has argued that an enactment

which alters substantive rights is presumably not retrospective in operation and this particular enactment purports to take away the rights of an Adhivasi from the intermediaries which rights had been previously conferred upon them by Section 20 of the ZA & LR Act. There can be no doubt about the general proposition that the amendments making a change in the substantive law are presumed to be prospective in operation and do not have retrospective effect unless there is something in the Act itself, or the circumstances under which it was passed, which rebuts the presumption. In this case, it does not appear to be necessary to deal with this last question in detail because the question whether Section 20 of the ZA and LR Act is retrospective in operation or not came up for consideration before a Full Bench of this Court in the case of Jagannath v. Board of Revenue 1955 A.W.R. (H.C.) 297. The Full Bench was of the view:

It is a general rule that where the intention of the legislature is doubtful, an enactment will not be construed so as to affect vested rights of action; but the matter is one of construction, and if upon a consideration of the enactment as a whole it is Appellant that it was the intention of the legislature that the provisions of the Act should be applicable to pending suits, they will be so applied.

7. The learned Judges then considered the enactment as a whole and came to the conclusion that the intention of the Legislature was that the provisions of Section 20 of the ZA and LR Act should be applied to pending suits. U.P. Act XX of 1954 has made a further amendment in Section 20 and the amendment affects rights which accrued as a result of an entry in the papers of 1356 F., i.e. 1948-49 A.D. The ZA and LR Act came into force subsequently, on 1-7-1952, and from the very nature of things it is clear that the Amending Act intend to give the provisions of Section 20 retrospective operation. The present amendment is in only one of the provisions of Section 20 and we do not find any difference, so far as the question of the retrospective operation of the Act is concerned in Section 20 of the original Act and as it has been modified by Act XX of 1954. In these cases the court has to determine the rights which accrued long before the passing of the Main Act even; and if effort is to be given to the provisions, it can only be done by applying retrospectively; excepting, perhaps, in some rare cases.

8. The second point argued in this connection is that even if the Explanation had retrospective operation with respect to suits which were pending on the date the U.P. Act XX of 1954 came into force, it should not apply to cases where the suit had come to an end and a first or second appeal against the decree was pending before the appellate court. As far as this point is concerned, we may refer to a decision of the Federal Court of India in AIR 1941 5 (Federal Court) in which it was held:

We have frequently held that in the exercise of our appellate jurisdiction we have power not only to correct error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the Court is bound to consider any change, either in fact or in law, which has supervened since the judgment was entered.

9. Following this decision of the Federal Court, this Court has taken the same view in two cases reported in *Niranjan Lal Bhargava v. Ram Kali Devi* 1950 A.L.J. 642 and *Lala Kedar Nath v. Lala Kishen Lal* 1952 A.W.R. (H.C.) 204. These were cases which arose under the Rent Control and Eviction Act and the question was whether the provisions of U.P. Control of Rent and Eviction Act: should be made applicable to cases pending in second appeal in this Court. The learned Judges answered the question in the affirmative.

10. Learned Counsel for the Respondents drew our attention to two provisions in the Amending Act which have expressly said that certain provisions of that Act had retrospective operation. We have been referred to Section 20 of the U.P. Act XX of 1954 and to Sub-Section 2 of Section 4 of that Act. It is true that in two places the Legislature considered it necessary to mention that certain provisions will have retrospective operation but it does not necessarily follow that it also meant that other provisions should not have that operation. It all depends upon the nature of the enactment and the intention of the Legislature, which as we have already held above, appears to be to give retrospective operation even to Explanation IV as added by Section 4 of the Amending Act.

11. The other point urged was that the Respondents do not come within the wording of Explanation IV. We have already quoted the Explanation. The contention of the learned Counsel is that the intermediaries, namely Respondents 4 to 10 were not entitled to the land or any share therein and therefore the Explanation does not apply to them. We find absolutely no force in this contention because it is admitted that the Respondents 4 to 10 were the zamindars of the land and if they were zamindars they were certainly entitled to interest in the land or a share therein.

12. The third point argued is that this application has been made after an undue delay. The Board of Revenue delivered the judgment on 13-5-1955, and the Writ Petition was filed in this Court on 22-11-1955. If nothing had intervened between these two dates we might have rejected the petition on the ground of delay alone, but it appears that the Petitioner moved an application for review of the judgment of the Board of Revenue and that application was dismissed on 8-10-1955. The application was made because the Board of Revenue itself had taken a different view of the matter and the consistent view subsequently of the Board was that Explanation IV had retrospective operation. The different view taken by the Board of Revenue might have reasonably induced the Petitioner to make an application for review. We also think that it was possible for the Board to have allowed the application. The Petitioner, could reasonably expect to get relief from the Board itself and the delay that occurred during the disposal of the review application has, therefore, to be condoned. After the decision of the review application, the petition was filed within a reasonable time.

13. The last point argued was that the provision in Explanation IV that the intermediaries should not acquire Adhivasi rights is inconsistent with Article 14 of the Constitution, inasmuch as it improperly discriminates the intermediary's case

from that of the other persons. But we do not agree with this contention. The Legislature could classify different citizens, and intermediaries and the tenants were separately classified by the Legislature. The Legislature was of the opinion that the intermediaries did not deserve the conferment of Adhivasi rights upon them simply because they were entered as occupants in a particular year. It is well known that the UPZA and LR Act has been enacted with a view to improve the conditions of the tenants and all the rights of the zamindars were taken away and most of those rights have been conferred on tenants. Under the circumstances, the classification must be held to be a reasonable one.

14. This petition will have to be allowed and the judgments of the Board of Revenue as also the learned Additional Commissioner will have to be quashed, with the result that it would be open to the learned Commissioner now to hear and dispose of the appeal filed before him by the Respondents Nos. 4 to 10 according to law, on the points that still remain to be decided on merits.

15. We consequently allow this petition and direct the issue of a writ of certiorari quashing the judgment of the Board of Revenue dated 13-5-1955, and of the Additional Commissioner dater 11-8-1954. The Petitioner will be entitled to his costs of this petition from the Respondents 4 to 10.