(1979) 10 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 662 of 1978

Ramdin Hazarilal and others APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 15-10-1979

Acts Referred:

Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960 — Section 4, 4(1), 4(3)
Madhya Pradesh Land Revenue Code, 1959 — Section 3, 44, 51, 51, 56

Citation : (1979) 10 MP CK 0025

Hon'ble Judges : K.K. Dube, J;A.R. Naokar, J

Bench : Division Bench

Advocate : H.N. Dwivedi, for the Appellant; K.S. Shrivastava for State, for the Respondent

Final Decision : Allowed

Judgement

K.K. Dube, J.—The short question that falls for consideration in this petition is whether or not the Board of Revenue has the powers to review its decision rendered in exercise of powers under sub-section (3) of section 4 of the M. P. Ceiling on Agricultural Holdings Act, 1960.

2. u/s 4 of the M. P. Ceiling on Agricultural Holdings Act (hereinafter referred to as "the Ceiling Act"), the competent authority is vested with a power to declare a transfer to be void when the transfer was made in anticipation of or to defeat the provisions of the Ceiling Act. Certain transfers of land made by petitioner No. 1 to petitioners 2, 3 and 4 were declared invalid by the competent authority exercising jurisdiction u/s 4(1) of the Ceiling Act. The petitioners preferred an appeal under sub-section (3) of section 4 of the Ceiling Act before the Board of Revenue. By its order dated 30-12-1977, the Board of Revenue dismissed the appeal. The petitioners then approached the Board of Revenue to review the order. The learned Member of the Board of Revenue entertained a doubt as to whether the Board had any such power and, therefore, referred the matter for opinion by a larger Bench. A Division Bench constituted to decide the question

was of the opinion that the Board is not given the power to review under the Ceiling Act and therefore dismissed the petitioners application as not maintainable. The petitioners now seek to challenge the correctness of the above view.

3. It is well settled that the power to entertain a review petition and allow it must be conferred by a statute and can be exercised only within the limitation prescribed by the statute for the exercise of that power. We may, therefore, proceed to examine the relevant provisions of the M P. Land Revenue Code and the Ceiling Act to see if such a power has been bestowed by the statute.

4. The preamble of the M. P. Land Revenue Code (hereinafter referred to as ''the Code'') shows forth that it is an Act to consolidate and amend the law relating to land revenue, the powers of Revenue Officers, rights and liabilities of holders of land from the State Government, agricultural tenures and other matters relating to land and the liabilities incidental thereto in Madhya Pradesh. The Code thus specifies the powers of the Revenue Officers and deals with the rights of the land and the matters relating to land and the liabilities incidental thereto. The Board of Revenue is created u/s 3 of the Code. u/s 7 its jurisdiction is specified. By section 7 the Board shall exercise the powers and discharge the functions conferred upon it by or under the Code and such other functions of the State Government as may be specified by notification by the State Government in that behalf and such other functions as have been conferred or may be conferred by or under any Central or State on the Chief Revenue Authority or the Chief Controlling Revenue Authority. The Board, therefore, not only exercises power and discharges the functions conferred upon it by or under the Code but also discharges the functions which have been conferred upon it under other state enactments. As already stated section 4(1) of the Ceiling Act gives power to the competent authority to declare the transfers to be void if it finds that the transfer was made in anticipation of or to defeat the provisions of the Act. Sub-section (3) of section 4, provides for an appeal against such an order and the aggrieved person is given a right to prefer an appeal before the Board of Revenue. Sub-section (3) further lays down that the decision of the Board and subject to the decision of the Board in appeal, the decision of the competent authority shall be final. If no appeal was filed, naturally the order of the competent authority became final.

5. Chapter V of the Code provides for appeal, revisions and review, section 51 provides for review of orders. The Board of Revenue was empowered either on its own motion or on the application of any party interested, to review any order passed by itself or by any of its predecessors-in-office and pass such order in reference thereto as it/he thinks fit. This power is exercised subject to certain limitations enumerated in the section. Section 56 lays down that in Chapter VI unless the context otherwise requires, the expression ''Order'' would mean the formal expression of the decision given by the Board of Revenue Officer in respect of any matter in the exercise of its/his powers under the Code or any

other enactment for the time being in force, as the case may be.

6. In so far as an appeal is concerned, the Ceiling Act provides that there shall be only one appeal before the Board of Revenue and thereafter the order becomes final. No appeal is provided under the Land Revenue Code against the decision of the Board of Revenue. The finality expressed in the latter part of sub-section (3) of section 4 of the Ceiling Act means that there shall be no further appeal against the decision of the Board of Revenue. The Board of Revenue is given the power of review by section 51 of the Code. The language of the section does not confine its power to an order made under the M. P. Lund Revenue Code along as in the case u/s 44. The order of the Board of Revenue passed in appeal under sub-section (3) of section 4 of the Ceiling Act would be as much an order within the meaning of section 56 as any passed under the Code. Section 44 of the Code dealing with the provisions of appeal and appellate authority, by the opening words used in the section confines the rights of appeal in regard to orders made under the Code and the rules made therefore such words curtailing the sweep of the power and restricting itself to the orders under the Code are significantly absent in section 51. The scheme of the Code shows that it was not intended to limit the power of review of a Revenue Officer to orders passed under the Code or rules made thereunder only. The Board of Revenue while passing the order u/s 4(3) of the Ceiling Act passed it with all the incidence of an order u/s 56 and the order was amenable to section 51 of the Code. It is, therefore, logical to conclude that the Board of Revenue would have powers of review in respect of decisions passed by it under the Ceiling Act.

7. Three reasons weighed before the Board for coming to the conclusion that it will not have power of review in respect of orders passed under the Ceiling Act. First, the power was not expressly given under the Ceiling Act and the power of review being a gift of the statute must be found in the statute and was not inherent in the tribunal. Secondly, the finality clause in section 44 of the Code to the effect that the decision of the Board of Revenue shall be final, militated against any construction spelling out a power of review. Once it was said that the decision was final, according to the plain language of the section, the decision was no longer liable to be disturbed or re-opened. And lastly the Board read the decision in Himat Singh Kuber Singh Vs. Board of Revenue and Another, as supporting the view taken by them and the main plank on which the opinion of the Board of Revenue was found is the decision in Thakur HimmatSingh''s case (supra).

8. In Thakur v. Himmatsingh''s case u/s 29 of the M. B. Abolition of Jagirs Act, 1961 (hereinafter called ''the Abolition Act'') an appeal lay to the Board of Revenue and the order in appeal was stated to be final. Section 30 provided for the procedure which was to be adopted by the jagir Commissioner or any other officer conducting an enquiry under the Abolition Act and the Board of Revenue or the Collector when hearing appeals from orders of the jagir Commissioner or the Tahsildar, those authorities were required to follow the procedure applicable

to the proceedings under the Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007 so far as it was necessary. The latter part of this section 30 went on to state that the authorities mentioned shall have the same powers in relation to proceedings before them as a Revenue Officer has in relation to the original or appellate proceedings as the case may be, under the Revenue Administration and Ryotwari Land Revenue and Tenancy Act. The section instead of enumerating separately the powers that would be exercised by the jagir Commissioner or any other officer conducting the original enquiry and the Board of Revenue or the Collector hearing appeals referred to owners as provided under the Tenancy Act in relation to the original or appellate proceedings as the case may be. The question that came for consideration before the Full Bench was whether the Board of Revenue had any power to review its decision passed in appeal under the Abolition Act. The Full Bench observed that the power of review is entirely different from the power which the authority exercises while disposing of a matter in its original or appellate jurisdiction. Then there are observations which have been relied on by the Board to the effect that if the Legislature intended to confer on the Board of Revenue the power to review its own decision it would have done so by inserting an express provision to that effect in the Act like section 40 of the Tenancy Act.

9. The conferment of the power in jagir Commissioner or the Board of Revenue was by reference to such powers of a Revenue officer which he enjoyed under the Tenancy Act in relation to the original or appellate proceedings. If a power of review was required to be bestowed to any of the above officers it could have been easily expressed by making a specific mention of the power. The power of review could not as such be found when the power given u/s 40 was stated to be with reference to those enjoyed in original or appellate proceedings. In contradistinction to Thakur Himmatsing''s case (supra) the decision of the Supreme Court in The Sree Meenakshi Mills, Ltd. Vs. Their Workmen, was cited. In Meenakshi Mill''s case section 103 of the Industrial Disputes Appellate Tribunal Act, 1950 providing for the powers of appellate Tribunal laid down that the Appellate Tribunal shall have the same powers as powers vested in a civil Court when hearing an appeal under the Code of Civil Procedure, 1908. The Supreme Court pointed out that when the the CPC was applied in its entirety to the proceedings before the Tribunal, it would include Order 47 also. Therefore, the powers of review could be clearly found having been conferred by the statute on the appellate Tribunal. But such was not the case in the Abolition of Jagirs Act and the powers contained in section 40 of the Tenancy Act could not be invoked or applied giving to the jagir Commissioner and the Board of Revenue the power to review the decision. In the former case, there was a conferment of the power as given in the Civil Procedure Code, in the latter, no such power was found in the Abolition of Jagirs Act nor did the provisions indicate the conferment of such power anywhere else. Since the Abolition Act referred to conferment of powers in respect of original proceedings and appellate proceeding the power of review could not be said to be donated.

10. There is no analogy between the provisions of the Abolition Act and the Ceiling Act. As discussed above, there was a clear conferment of the power of review by a combined reading of sections 56 and 51 of the Code. In the view we have taken, the cases relied on, namely, Patel Chunibhai Dajibhai etc. Vs. Narayanrao Khanderao Jambekar and Another, Harbhajan Singh Vs. Karam Singh and Others, and J.C. Rishi Vs. Union of India (UOI) and Others, are clearly distinguishable. In these cases, there was no conferment of the powers of review on the authority seeking to review its orders.

11. Once the jurisdiction to review was given under the Code, it could not be taken away unless there were express words or the context otherwise indicates in the Ceiling Act. We have already stated adverting to finality of the order referred to in section 4(3) of the Ceiling Act that in the context it meant it was sought to put an end to any further right of appeal. The decision in Meenakshi Mills Ltd. (supra) supports the above view. We are, therefore, clearly of the opinion that the Board of Revenue passing orders in appeal u/s (3) of section 4 of the Ceiling Act has power to review its own orders u/s 51 of the Code. The Board having not exercised the power, the case would have to be remanded for a decision on merits according to law.

12. The petition is allowed. The order of the Board of Revenue is set aside. We direct that the Board of Revenue shall review the order in accordance with the powers given to it u/s 51 of the M. P. Land Revenue Code. We remand the case to the Board for deciding the case on merits according to law. In the circumstances of the case, there shall be no order as to costs. The outstanding amount of security be refunded to the petitioner.