
(1981) 02 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petitions No. 1430, 1451 to 1455

Ramswaroop and Others

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 13-02-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1981) RLW 249 : (1981) WLN 491

Hon'ble Judges : S.R. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.R. Mal Lodha, J.—These six writ petitions before us under Articles 226 and 227 of the Constitution of India involve common questions and they have been heard together. We consider it proper to dispose them of by a common, order.

2. For proper determination of the questions involved in these writ petitions, it Will be useful to notice the facts as stated in Rajendra Prasad v. The Beard, of Revenue and Ors. (D.B. Civil Writ Petition No, 1455 of 1980).

3. The Sub-Divisional Officer, Hanumangarh "decided Case No. 366 of 1971 State v. Laduram by his judgment dated November 8, 1974 and directed for acquisition of some surplus land. Laduram was the grandfather of petitioners No. 1, 4, 5, 7, 8, 9 & 10 & was the father of petitioners No.2 and 3 and was also father-in-law of petitioner No. 3 Smt., Hardai. Ah appeal was preferred by the said Laduram. The Revenue Appellate Authority, Bikaner by its, judgment dated September 2, 1977 dismissed the appeal and also enhanced, the area of the surplus land to be acquired. Aggrieved by the aforesaid judgment of the Revenue Appellate Authority, the said Laduram filed a revision, petition under 230 of the Rajasthan, Tenancy Act, 1955 before the. Board of Revenue at Aimer (for short "the Board", hereinafter). It was presented on November 9, 1977. The copy of the judgment of, the, Revenue Appellate Authority, Bikaner was, filed with sit. It may be

mentioned, here, that the certified or authenticated copy of the judgment dated November 8, 1974 of the Sub-Divisional, Officer was not filed with it but an application (Ex. 2) supported by an affidavit (Ex. 3) of Shiy Raj son of Laduram was filed. In that application, it was, inter-alia, stated, that the petitioner has applied for certified copy of the judgment of the Sub-Divisional Officer but it has not been delivered to him and that the copy will be filed as soon as it is received., It was prayed that permission may be accorded for filing the copy of judgment of the Sub-Divisional Officer, later on. In the affidavit (Ex. 3) apart from the facts that were stated in the application (Ex. 2), it was also stated, "Is ki Kachi Nakal Sath Salangan Hai." (In Hindi)

4. It appears from, the order sheet, (Ex. 4). dated November 9, 1977 that the revision petition be registered and it may be listed for admission along with, the stay application for orders before the Bench on November-14, 1977. This order was made by the Registrar of the Board. It was listed before a learned single Member of the Board on December 13, 1977, who admitted it vide order (Ex. 5) and ordered for requisitioning the record and issuance of notices to the non-petitioners. An ad-interim order was also passed on the stay application to the effect that in respect of the lands mentioned in the order dated September 2, 1977 status quo be maintained upto February 15, 1978. Thereafter this ad-interim order was extended upto the next date vide order sheet (Ex. 6) dated April 11, 1978 and it was directed that the revision petition be put upon May 9, 1978. When the matter came up before the learned single Member of the Board on May 9, 1978, an objection was raised on behalf of the State that the revision petition has not been accompanied by the certified copy of the judgment of the Sub-Divisional Officer and as such, it should be rejected for non-compliance with 17 of Part I of the Rajasthan Revenue Courts Manual (hereinafter referred to as the Manual). The learned Member relying on Smt. Gyan Kumari v. State of Rajasthan 1975 RRD (NUC) 21 rejected the revision petition holding that as Rule 17 of the Manual is mandatory and since it has not been complied with, the revision petition is dismissed.

5. Similar orders were also passed in the other five cases. Six separate review petitions were filed in each of the case. The Board by a common order (Ex. 8) dated May 23, 1980 rejected the review petitions. Hence the petitioners have filed these writ petitions questioning the legality, validity and propriety of the orders Ex. 7 dated May 9, 1978 and Ex. 8 dated May 23, 1980.

6. We have heard Mr. R.N. Bishnoi, learned Counsel for the petitioners and Mr. H.N. Calla, learned Additional Government Advocate.

7. The principal point that has been canvassed by the learned Counsel for the petitioners is that the Board could not dismiss the revision petitions after they were registered and admitted, for, it will be deemed that the Board under proviso to Rule 17 of the Manual has impliedly dispensed with the production of the copy of the order judgment of the court of first instance i.e. Sub-Divisional Officer. It may be mentioned here that this point was raised on behalf of the petitioners

during the hearing of the review petitions. The learned single Member of the Board opined that in the circumstances, the Board did not dispense with the filing of the copy of the judgment of the trial court and that power to dispense with the, production Of copy of the judgment under proviso to Rule 17 is discretionary and when this discretion was not exercised nor any attempt was made by the petitioners to claim dispensation at the time of hearing of revision petitions, it is difficult to interfere in the discretion exercised by the Board at the stage of review.

8. It will be useful here to read the relevant portion of Rule 17 of the Manual

"17. Documents to accompany memorandum of appeal or revision Application:

Ever, memorandum of appeal or application for revision shall be accompanied by

(a).....

(b).....

(c) a copy of the judgment of the court of first instance when the appeal or application is directed against an appellate order or decree;

(d).....

Provided, that the Court Pay for sufficient cause shown dispense with a copy of the formal order under clause (a) or copy of the judgment under clause (b) or (e).

for proper appreciation of the contention, which has been raised, it is necessary to notice Rules 36, 37, 38 and 39 of the Manual. According to Rule 36 (2) when an application for revision is presented to the Registrar of the Board, then it is required to be immediately examined by a responsible official or the Board's Office. He has to report, inter-alia, whether the application for revision is in due form and whether it is accompanied by the copies of the judgments passed by all the courts subordinate to the Board. The relevant portion of Rule 36 (2) is as follows:

Any defect noticed in it shall be pointed out at the time of presentation to the appellant or to the applicant or his counsel or duly authorised agent presenting it and a date shall be fixed within which such defects shall be remedied. The signature of the appellant, or applicant or his counsel or duly authorised agent shall at the time be taken in token of receipt of this preliminary office report.

Rule 37 lays down that if an application for revision is defective or it requires correction, action to remove the defects will be taken and for this purpose a reasonable time will be allowed to the applicant. Rule 38 provides for filing of objections to office reports and procedure for deciding the objections. It, amongst others, says that if the defect pointed out is not removed within time, the memorandum of revision shall be listed for rejection before the Board and it has been empowered to reject it unless written application supported by an

affidavit is filed and it deems fit to grant further time for removal of such defect. The other important rule is Rule 39, which may be quoted in extenso:

39. Registration of appeal or application:

If the memorandum of appeal or application for review or revision is found in order or the defects if any are removed, it shall be admitted and ordered to be registered in a register prescribed there fore. Intimation of the date shall be given to the party or his counsel and his signature obtained on the order sheet. Order for the issue of notice to the parties and calling for record shall also be recorded on the order sheet.

According to this rule, if the revision petition is found in order or defects if any are removed, then it is to be admitted and ordered to be registered in the register prescribed there for.

9. From the facts which have been stated above, it is clear that the certified copy of the judgment of the court of first instance i.e. Sub-Divisional Officer was not filed with the revision petition. It is also clear from the application (Ex. 2) and the affidavit (Ex. 3) that the petitioners sought permission for filing the certified copy of the judgment of the Sub-Divisional Officer later on. It follows, therefore, that the documents that were to accompany memorandum of revision were not filed at the time of the presentation of the revision petition. An uncertified copy {Kachi Nakal) of the judgment of the Sub-Divisional Officer was filed with the memorandum of revision and permission for filing its certified copy later on was sought. The reason mentioned was that though application for copy of the judgment was made but it has not been delivered. No order on the application seeking permission to file the certified copy of the judgment of the Sub-Divisional Officer later on was passed. The application (Ex. 2) was neither allowed nor rejected. As a matter of fact, the ordersheet (Ex. 4) dated November 9, 1977 shows that the revision petition was ordered to be registered and listed for arguments for the purpose of admission along with the stay application for orders before the Bench on November 14, 1977. According to Rule 39, an application for revision could only be admitted and registered either if it was found to be in order or the defects if any were removed. It is, thus, apparent that even though the revision petition was not accompanied by the certified copy of the judgment of the Sub-Divisional Officer as required by Rule. 17 of the Manual, still without insisting on its production, it was registered and ordered to be listed for admission. The matter did not rest at that. After hearing the arguments, the Board admitted the revision petition and ordered for issuance of the notices to the non-petitioners and an ad-interim stay order for a limited period was granted and subsequently, it was extended. The question that, therefore, crops up for our consideration is whether on these facts and circumstances, the Board was right in coming to the conclusion that it had not dispensed with the production of the certified copy of the judgment of the Sub-Divisional Officer under proviso to Rule. 17 of the Manual?

10. Order XXI Rule 17 CPC provides for procedure on receiving application for execution of decrees. The provisions of Order XXI Rule 17 C.P.C. as existed then came up for consideration before a Full Bench of the Madhya Pradesh High Court in *Mst. Saraswatibai and Others Vs. Govindrao Keshavrao Mahajan and Others*, In that case, the execution applications were defective but they were registered and the process in execution was issued. In those facts, it was observed as under:

When neither of the two courses was followed and the applications were duly registered, they can not be subsequently discarded as not being in accordance with law without giving to the decree-holders an opportunity to remedy the defects.

While making these observations, *Jugal Kishore Saraf v. Raw Cotton Co. Ltd.* AIR 1955 SC 376 was relied on. It is well settled that if such of the requirements of Rule 11 to 14 of Order XXI of the CPC (No. V of 1980) as are applicable are complied with, the application for execution must be admitted and registered and if they are not complied with, the Court can either reject the application at once or allow the defect to be remedied then and there or within a time fixed and if it does neither, it cannot after the period of limitation for execution has expired, reject the application without giving the decree-holder an opportunity to amend the application. There is some what similarity between the provisions of Order XXI Rule 17 C.P.C. and Rule 36, 37 and 39 of the Manual. We will not be unjustified in adopting the reasoning given in regard to the interpretation of the provisions contained in Order XXI Rule 17 CPC. The revision petition which was not accompanied by the certified copy of the judgment of the court of first instance i.e. Sub-Divisional Officer was registered and admitted and notices were ordered to be issued to the non-petitioners. The ad-interim order was passed for a limited period and it was extended. The application (Ex. 2) for granting time to produce certified copy of the judgment of the Sub-Divisional Officer which was filed with the memorandum of revision was neither accepted nor rejected prior to registration and admission. In these circumstances, having regard to Rule 39 of the Manual, the only inference is that the Board has implicitly though not explicitly dispensed with the certified copy of the judgment of the Sub-Divisional Officer under proviso to Rule 17 of the Manual. The most important step to take in cases of defective presentation of revision is that it should be carefully scrutinised at the initial stage and for remedying of defects of revision petitions, action as provided in Rule 37 of Manual is to be resorted to. While dismissing the revision petitions for non-production of the certified copy of the judgment of the court of the first instance i.e. Sub-Divisional Officer, the R acted improperly in the exercise of its jurisdiction and this has caused grave miscarriage of justice to the petitioners. The orders Ex.7 and Ex. 8 cannot be sustained.

11. In view of the conclusion, to which, we have arrived at, we refrain from expressing any opinion regarding correctness of the decisions reported in *Smt. Gyan Kumari's case* 1975 RRC (NUC) 21 and *Bherulal v. Danmal* 1980 RRD 228

(LB).

12. The result is that these writ petitions are allowed and the orders ?x. 7 dated May 9, 1978 and Ex. 8 dated May 23, 1980 in each of the writ petitions are set aside. The Board shall dispose of the six revision petitions after re-admitting them to their original numbers in accordance with law. In the circumstances of the case, there will be no order as to costs.