

(2006) 11 AHC CK 0067
In the Allahabad High Court

Ravi Shanker Tripathi

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 15-11-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115, 96
General Clauses Act, 1897 — Section 6

Citation : (2007) 1 ADJ 23 : (2007) 2 AWC 1327 : (2007) 102 RD 229

Hon'ble Judges : Dilip Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Judgement

B.S. Chauhan and Dilip Gupta, JJ.—A learned Judge of this Court has referred the matter to the Division Bench in view of the conflicting decisions of this Court in Kali Shanker Dwivedi v. Board of Revenue and Ors. 2000 (18) LCD 1401, and Sri Ram v. Board of Revenue U.P. and Ors. 1999 JIR 647.

2. The question involved is regarding the jurisdiction of the Additional Commissioner Allahabad Division to decide the Revision under the provisions of the amended Section 219 of the Uttar Pradesh Land Revenue Act, 1901 (hereinafter referred to as the "Act") and in order to appreciate the controversy, it would be relevant to reproduce the unamended and the amended Sections 218 and 219 of the Act.

3. Sections 218 and 219 of the Act prior to its amendment by U.P. Land Laws (Amendment) Act, 1997 which came into force w.e.f. 18th August, 1997 read as follows:

218. Reference to the Board.- The Commissioner, the Additional Commissioner, the Collector, the Record Officer or the Settlement Officer may call for and examine the record of any case decided or proceedings held by any officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings, and if he is of opinion that the proceeding taken or order passed by such subordinate officer should be varied, cancelled, or reversed, he shall refer the case with his opinion

thereon for the orders of the Board and the Board shall there upon pass such orders as it thinks fit.

219. Revision before the Board.- The Board may call for the record of any case decided by any subordinate court, and if the subordinate court appears-

(a) to have exercised a jurisdiction not vested in it in law; or

(b) to have failed to exercise a jurisdiction so vested; or

(c) to have acted in the exercise of jurisdiction illegally or with material irregularity,

the Board may pass such order as it thinks fit.

4. However, by the aforesaid Amendment Act, Section 218 was omitted and Section 219 was substituted and the substituted Section reads as follows:

219. Revision.- (1) The Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, may call for the record of any case, decided or proceeding held by any revenue court sub-ordinate to him in which no appeal lies or where an appeal lies but has not been preferred, for the purposes of satisfying himself as to the legality or propriety of the order passed or proceeding field and if such subordinate revenue court appears to have-

(a) exercised a jurisdiction not vested in it by law, or

(b) failed to exercise it jurisdiction so vested, or

(c) acted in the exercise of jurisdiction illegally or with material irregularity,

the Board or the Commissioner or the Additional Commissioner or the Collector or the Record Officer, or the Settlement Officer, as the case may be, may pass such-order in the case as he thinks fit.

(2) If an application under this Section has been moved by any person either to the Board, or to the Commissioner, or to the Additional Commissioner, or to the Collector or to the Record Officer or to the Settlement Officer, no further application by the same person shall be entertained by any other of them.

5. We must also reproduce Section 10 of the 1997 Amendment Act which is a transitory provision:

10. Transitory Provisions.- Notwithstanding anything contained in this Act all cases referred to the Board u/s 218 of the U.P. Land Revenue Act, 1901, or u/s 333-A of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as they stood immediately before the commencement of this Act and pending before the Board on the date of such commencement shall continue to be heard and decided by the Board as if this Act has not been enacted.

6. In the present case, feeling aggrieved by the order dated 28th February, 1996

passed by the Sub-Divisional Officer, Karchanna district Allahabad, the petitioner preferred a Revision u/s 218 of the unamended Act but during the pendency of the said Revision, the Act was amended on 18th August, 1997. The Additional Commissioner, Allahabad Division Allahabad, before whom the matter was pending decided it on 27th January, 1998 under the provisions of Section 219 of the amended Act. The issue raised in the present petition is whether the Additional Commissioner should have referred the matter to the Board of Revenue under the unamended Section 218 of the Act or whether he had the jurisdiction to decide the Revision under the amended Section 219 of the Act.

7. In Kali Shanker Dwivedi (supra) a learned Judge of this Court observed as follows:

It was argued that this revision No. 145/97-98 filed before the Board of Revenue was passed against the revision decided by the Additional Collector (Finance and Revenue). It may be mentioned that the substitution of Section 219 of the LR Act, has prospective effect and it does not affect the cases pending in Revision on the coming into force of the amendment Act. Therefore, the old law applies. The learned Counsel for the respondent supported his argument with Section 6 of the General Clauses Act under which the previous existing law applies to the pending proceedings. This argument of the learned Counsel for the respondent has got force. So the revision pending before the Court below was not hit by the newly substituted Section 219 L.R. Act.

8. However, in the case of Sri Ram (supra) another learned Judge of this Court took a contrary view and observed as follows:

In view of this transitory (sic: transitory) provision only references which were pending before the Board of Revenue were saved and revisions pending before the Commissioner or the Additional Commissioner were not saved, and as such a Commissioner or the Additional Commissioner ought to have decided the revisions pending before them on 18.8.1997 u/s 219 of the Act. Under the circumstances the judgment passed by the Board of Revenue on 11.1.1999 cannot be sustained.

9. It is in view of the aforesaid conflicting decisions that the matter has been referred to the Division Bench.

10. u/s 218 of the unamended Act, the Commissioner or the Additional Commissioner could call for and examine the records of any case decided and if he was of the opinion that the order passed by the subordinate Officer required to be varied, cancelled, or reversed, he could refer the case to the Board of Revenue for passing appropriate orders but after the amendment which came into effect from 18th August, 1997, the Additional Commissioner could himself decide the matter u/s 219 of the Act. The question, therefore, that arises for our consideration is whether the matters that were pending before the Additional Commissioner on 18th August, 1997 were required to be decided under the provisions of the unamended Section 218 of the Act or under the amended

provisions of Section 219 of the Act.

11. This controversy was also considered by another learned Judge of this Court in *Ram Kailash Yadav Vs. State of U.P. and Others*, After examining the various provisions including the transitory provision contained in Section 10 of the Act, it was observed:

At the time when the revision was filed in the year 1992, the said revision was u/s 218 of the U.P. Land Revenue Act claiming exercise of power of reference. Section 10 of the U.P. Act No. XX of 1997 has only saved the reference which were already referred to the Board of Revenue on 18.8.1997. Thus, even if the reference was filed u/s 218 prior to 18.8.1997 in which no reference was made to the Board of Revenue, the same could not have been continued as the reference u/s 218. Now the Commissioner himself has been vested with the power of revisional jurisdiction u/s 219. In Revision No. 41 of 1992 which is pending before the Commissioner, there is no lack of jurisdiction in the Commissioner to exercise his revisional jurisdiction. The exercise of jurisdiction now has to be made u/s 219 instead of Section 218. Merely because in the memo of revision Section 218 was mentioned earlier, it will not inhibit the Commissioner in exercising his jurisdiction u/s 219 of the U.P. Land Revenue Act.

12. In the present case the application u/s 218 of the unamended Act was filed prior to 18th August, 1997 but it was decided after the amendment had come into force w.e.f. 18th August, 1997. On the said date the Additional Commissioner, Allahabad Division Allahabad, had the jurisdiction to decide the Revision u/s 219 of the amended Act. The transitory provision contained in Section 10 of the Act provides that only those proceedings which were pending before the Board on the date of such commencement shall continue to be heard by the Board as if the amendment had not come into force. This clearly demonstrates that other proceedings that were pending were required to be decided under the provisions of the amended Act.

13. The learned Judge in the case of *Kali Shanker Dwivedi (supra)* relied upon the provisions of Section 6 of the General Clauses Act.

14. The issue of applicability of the provisions of Section 6 of the General Clauses Act has been considered by the Hon'ble Supreme Court in *State of Punjab v. Mohar Singh* AIR 1955 SC 84 ; *M.S. Shivananda Vs. Karnataka State Road Transport Corporation and Others*, ; *Commissioner of Income Tax Vs. Shah Sadiq and Sons*, and *Vishwant Kumar Vs. Madan Lal Sharma and Another*, , wherein it has been held that the rights accrued under the Act/Ordinance which stood repelled would continue to exist unless it has specifically been taken away.

15. In *Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc.*, the Hon'ble Supreme Court explained that the power advantage of an enactment made, without impropriety be termed as right but the question is as to whether it is a right accrued? A mere right existing in the member of the community or any of them to take advantage of an amendment, without any act

done by an individual towards availing himself of that right, cannot properly be deemed to be a right accrued.

16. A similar view has been reiterated by the Hon''ble Apex Court in Bishambar Nath Kohli and Others Vs. State of Uttar Pradesh and Others,

17. In Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, , the Hon''ble Apex Court considered its earlier judgments on the issue and held as under:

38. The position is well-known that at common law, the normal effect of repealing a statute or deleting a provision is to obliterate it from the statute book as completely as if it had never been passed, and the statute must be considered as a law that never existed. To this Rule, an exception is engrafted by the provisions of Section 6(1). If a provision of a statute is unconditionally omitted without a saving clause in favour of pending proceedings, all actions must stop where the omission finds them, and if final relief has not been granted before the omission goes into effect, it cannot be granted afterwards. Savings of the nature contained in Section 6 or in special Acts may modify the position. Thus the operation of repeal or deletion as to the future and the past largely depends on the savings applicable. In a case where a particular provision in a statute is omitted and in its place another provision dealing with the same contingency is introduced without a saving clause in favour of pending proceedings then it can be reasonably inferred that the intention of the Legislature is that the pending proceedings shall not continue but a fresh proceeding for the same purpose may be initiated under the new provision.

18. In the present case there is a transitory provision contained in Section 10 of the amendment Act which saved only those proceedings which were pending before the Board of Revenue. Thus, the proceeding which was pending before the Additional Commissioner on 18th August, 1997 was required to be decided under the provisions of Section 219 of the amended Act. We are, therefore, unable to subscribe to the view taken by the learned Judge in Kali Shanker Dwivedi (supra) and agree with the view taken in Sri Ram (supra).

19. It must also not be forgotten that an application has to be decided as per the law existing on that date.

20. The Hon''ble Supreme Court in Union of India and Ors. v. Indian Charge Chrome and Anr. (1997) 7 SCC 314, has clearly held that the law which is to be applied in a case is the law prevailing on the date of decision making.

21. In State of Tamil Nadu Vs. Hind Stone and Others, while dealing with a similar issue the Hon''ble Supreme Court held that mere pendency of an application does not create any legal right in favour of the applicant and the application is to be decided as per the law applicable on the date of decision. The Court held as under:

While it is true that such application should be dealt with within a reasonable

time, it cannot on that account be said that right to have an application disposed of in a reasonable time, clothes an applicant for a lease with a right to have the application disposed of on the basis of rules in force at the time of making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in any one, an application for a lease has necessarily to be dealt with according to rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of application.

22. The said judgment has been approved and a similar view has been reiterated by the Hon'ble Supreme Court in *V. Karnal Durai Vs. The District Collector, Tuticorin and another*, wherein it has been held that if during the pendency of an application for grant of a mining lease the rules are amended, the application is to be decided as per the amended rules.

23. Similar view has been reiterated in *Howrah Municipal Corpn. and Others Vs. Ganges Rope Co. Ltd. and Others*, wherein reliance had been placed on the judgment of its earlier judgment in *Usman Gani J. Khatri of Bombay and Others Vs. Cantonment Board and others*, and *State of W.B. Vs. Terra Firma Investment and Trading Pvt. Ltd.*, wherein the Apex Court had held that application is to be decided on the basis of the law existing on the date of decision and not on the basis of the law prevailing on the date of submission of the application.

24. We must also keep in mind that Revision is not a substantive remedy. The provisions dealing with revisional powers are concerned only and only with the jurisdiction involving a refusal to exercise jurisdiction where it existed, or an assumption of jurisdiction where it does not exist, and acting illegally or committing material irregularity. The revisional powers are not required to be exercised where question of jurisdiction is not involved, for the reason that if a Court has the jurisdiction to decide a case, it may decide it wrongly or rightly but in that situation, revisional powers cannot be exercised. (Vide *Major S.S. Khanna Vs. Brig. F.J. Dillon*, ; *Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat*, ; *K. Balasubramania Chetty Vs. N.M. Sambandamoorthy Chetty*, ; and *Maitreyee Banerjee Vs. Prabir Kumar Mukherjee*,

25. In *Molar Mal (Dead) Through L.Rs. Vs. M/s. Kay Iron Works(P) Ltd.*, ; and *M/s. I.T.I. Ltd. v. Siemens Public Communication Network Ltd.* AIR 2002 SCW 2438, the Hon'ble Supreme Court held that the powers u/s 115 are very limited and have to be exercised circumspectively for the limited purpose, i.e. examining the correctness of exercise of jurisdiction.

26. In *Jupiter Chit Fund (Pvt.) Ltd. Vs. Dwarka Diesh Dayal and Others*, a Full Bench of this Court held that pending revisions have to be decided in view of the amended provisions of Section 115 of the Code. The Court was dealing with the amendment made in Section 115 of the Code in 1976. Similar view has been

reiterated in Johari Vs. Mahendra Singh and Another,

27. The Supreme Court in Vishnu Awatar Vs. Shiv Autar and Others, held that the amendment made in Section 115, CPC was a procedural reform in the field of revision to the High Court.

28. In Smt. Ganga Bai Vs. Vijay Kumar and Others, the Hon''ble Supreme Court distinguished the right of appeal from the right to file revision, observing that though there is an inherent right in every person to bring a suit of a civil nature, a right of appeal inheres in no one and an appeal for its maintainability must have the clear authority of law. The right of appeal is thus a creature of Statute. Similar, if a right of revision is claimed, it should be conferred by a provision of law. In this connection, difference in the language used in S. 96 CPC and S. 115 CPC is noteworthy. Section 96 CPC provides that an appeal shall be from every decree passed by any Court exercising original jurisdiction, to the Court authorized to hear appeals from the decrees of such Court. Section 96 CPC thus confers a right of appeal. On the other hand, S. 115 CPC, which deals with revisions provides that the High Court may call for the record of any case and if certain conditions are fulfilled, may make such order it thinks fit. But the fact that the discretion of High Court under S. 115 CPC is controlled by that provision does not lead to the conclusion that a substantive right is conferred on a litigant by S. 115 CPC.

29. A Full Bench of Madhya Pradesh High Court in Ramchandra and Others Vs. Dattatraya and Another, , reiterated the similar view.

30. In Chautala Workers Co-operative Transport Society Ltd. and Another Vs. State of Punjab and Others, the Court negated the contention in crystal clear words that it was an "accrued right" as it is a discretionary jurisdiction of the higher Court to revise the order passed by the Court below and is not a substantive right like appeal.

31. In State of Kerala Vs. K.M. Charia Abdullah and Co., , the Supreme Court held that revisional powers are limited and the revisional Court cannot appreciate the evidence like an appellate Court. The powers conferred u/s 115 of the Code are discretionary, to be exercised judiciously within the prescribed limitation. The High Court is not bound to interfere merely because the conditions of Section 115 are satisfied. Revisional power, being purely discretionary, even if the Court below had acted without jurisdiction or acted illegally, the revisional Court may refuse to exercise such powers. (Vide Brij Gopal Mathur and Another Vs. Kishan Gopal Mathur and Others, ; and Rami Manprasad Gordhandas and Others Vs. Gopichand Shersing Gupta and Others,

32. In Hari Shankar and Ors. v. Rao Girdhari Lal Chowdhury AIR 1963 SC 698 the Constitution Bench of the Hon''ble Supreme Court explained the distinction between an "appeal" and a "revision" observing that the distinction is a real one. The Court further observed as under:

A right of appeal carries with it a law of re-hearing on law as well as facts unless the statute confirming the right of appeal limits the hearing in some way, as has been done in second appeals arising under the CPC. The power to hear a revision is generally given to a superior Court so that it may satisfy itself that a particular case has been decided according to law. u/s 115 of the Civil P.C., the High Court's powers are limited to see whether in a case decided, there has been an assumption of jurisdiction where none existed, or a refusal of jurisdiction where it did, or there has been material irregularity or illegality in the exercise of that jurisdiction. The right there is confined to jurisdiction and jurisdiction alone. In other Acts, the power is not so limited, and the High Court is enabled to call for the record of a case to satisfy itself that the decision therein is according to law and to pass such orders in relation to the case, as it thinks fit.

33. In *Manick Chandra Nandy Vs. Debdas Nandy and Others*, the Hon''ble Supreme Court explained the similar distinction, observing as under:

The nature, quality and extent of appellate jurisdiction, being exercised in first appeal, and of revisional jurisdiction, are of very different. The limits of revisional jurisdiction are prescribed and its boundaries are defined by Section 115 of the CPC. Under that Section, revisional jurisdiction is to be exercised by the High Court in a case in which no appeal lies to it...and if it appears to it that the subordinate court has exercised the jurisdiction not vested in it by law and has failed to exercise the jurisdiction vested in it by law, or has acted in exercise of its jurisdiction illegally or with material irregularity. The exercise of revisional jurisdiction is, thus, confined to questions of law, while in a first appeal, the Court is free to decide the question of law and facts which arise in a case. In exercise of its revisional jurisdiction, the High Court is not entitled to re-examine or re-assess the evidence on record and substitute its own findings on facts for those of the subordinate courts.

34. For all the reasons stated above, we answer the reference that the decision in the case of *Kali Shanker Dwivedi (supra)* does not lay down the correct law. However, we respectfully agree with the view taken by the learned Judge in the case of *Sri Ram (supra)*.

35. The sole relief claimed in the writ petition is that the matter may be placed before a Division Bench to resolve the conflict in the aforesaid two decisions. The matter has been placed before us and we have answered the reference. Learned Counsel for the parties are, therefore, agreed that this petition may be disposed of by this Bench. We, accordingly, dispose of this petition by answering the reference in the manner indicated above.