
(1959) 09 RAJ CK 0006
In the Rajasthan High Court
Case No : Civil Writ No. 335 of 1958

Sheo Prakash Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-09-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 5
Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 23(2), 40A
Rajasthan Tenancy Act, 1955 — Section 229

Citation : AIR 1960 Raj 72

Hon'ble Judges : I.N. Modi, J; D.M. Bhandari, J

Bench : Division Bench

Advocate : B.P. Beri and H.P. Gupta, for the Appellant; R.A. Gupta, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This writ application by Sheo Prakash Singh son of Thakur Sanwal Singh under Article 226 of the Constitution is directed against the order of the Revenue Board of this State dated 17-10-1958, by which it has granted a review of an earlier order of the Board dated 29-10-1957, and ordered the case to be listed for re-hearing and fresh disposal in accordance with law in a matter arising under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (No. VI of 1952) (hereinafter referred to as the Resumption Act). The petitioner is a minor and was Jagirdar of Thikana Siwar in the former Jaipur State and his jagir was resumed on 1-7-1954, under the Resumption Act and he has filed the present application with Thakur Umed Singh as his next friend.

2. The dispute out of which the present application has arisen relates to a piece of land measuring about 50 Bighas situate on the Tonk road within the municipal limits of the Jaipur city. The petitioner's case is that this land was granted to his grandfather Thakur Mehtab Singh as a gift by the then Ruler of the former Jaipur State for the purpose of building a house and laying out a garden thereon. In

support of this averment, the petitioner has filed a true copy of the sanad granted in the name of the then Dewan Mohammed Makbul Hus-Bain Khan of the former Jaipur State in favour of the petitioner's grandfather Thakur Mehtab Singh and addressed to the Tehsildar Sawai Jaipur, and this is dated Asoj Vadi 1 Smt. 1970.

The case of the petitioner is that ever since Suit. 1970 this land has been in the possession of his ancestors and himself without any dispute until 30-8-1955. It is alleged that on 31-8-1955, the Secretary, Urban Improvement Board, Jaipur City, made reference to the Jagir Commissioner to ascertain the nature of the petitioner's title to this land. Thereupon the Jagir Commissioner made an inquiry and by his order dated 29-12-1955, held that this land did not form part and parcel of the jagir of the petitioner but was his private property within the meaning of Section 23 of the Resumption Act.

The State went in appeal from the aforesaid order to the Revenue Board. The Board by its order dated 10-12-1956, remanded the case back to the Jagir Commissioner for a proper inquiry and a fresh decision. Consequently, the Jagir Commissioner again held an inquiry and by his order dated 4-6-1957, re-affirmed his earlier decision that the land in question was covered by Clause (b) of Section 23 (1) of the Resumption Act and was, therefore, the private property of the petitioner and not liable to resumption.

The State again went in appeal to the Revenue Board. A Bench of the Revenue Board consisting of Sri Kanwar Bahadur and Sri Jainath Kunzru by a fairly elaborate order upheld the decision of the Jagir Commissioner and dismissed the appeal on 29-10-1957. Thereafter the State filed a review application. This review was heard by another Bench consisting of Sri Shyamlal and the other member being the same as before Sri Kanwar Bahadur, and granted by the order dated 17-10-1958, which is impugned before us.

3. It seems that a number of grounds were raised in the review application filed by the State, but the learned members confined their decision to one point only. This point may best be stated in the words of the learned members themselves as follows :

"The judgment under review examined at length the question as to whether it is an open enclosure or not and whether it has been in the continuous possession of the Jagirdar or not. But the question as to whether it was put to agriculture or domestic purpose was not examined in such a manner as may indicate with clarity the requirements of law and the application of those principles with regard to the facts of the present case."

The learned members then relied on a decision of this Court, the citation of which unfortunately does not appear in their order and held that a review could be granted not only on an error of fact but also on an error of law provided the error was such that it did not require a re-search and it should not be possible to hold more opinions than one about it. The learned members thinking that the

case before them was fully covered by the decision of this Court referred to in their judgment further observed as follows :

"Section 23 (b) lays down that an enclosure to be within the exemption must have been used for agricultural or domestic purposes and in the judgment under review the existence or otherwise of this essential ingredient was not examined as pointed out above."

In this view of the matter, the review application was allowed and the judgment of the Board dated 29-10-1957 was set aside and the case was ordered to be listed for re-hearing and fresh disposal in accordance with law.

4. Aggrieved by the above decision, the petitioner has come up with his present application to this Court. His contention is three-fold. First, it is urged that as the land in question was the private property of the petitioner, no authority under the Resumption Act, including the Revenue Board had any jurisdiction to meddle with it, and therefore, the entire proceedings taken by the Jagir Commissioner as well as the Revenue Board were entirely without jurisdiction and should be quashed. In the second place, it is contended that the learned Members of the Revenue Board who granted the review had no jurisdiction to do so on the ground which they felt persuaded to accept inasmuch as the earlier Bench which had decided the appeal on 29-10-1957, had fully discussed the material which had been produced before them and thereafter gave their finding which was to the following effect :

"A scrutiny of these documents shows that the land in question was ever since Smt, 1970 remained in the continuous possession of the grandfather and father of the minor respondent for a domestic purpose.Thus in our opinion all the essential ingredients of Section 23 (1)(b) of the Act have been proved."

It is submitted with great force that the subsequent Bench of the Board had no jurisdiction to interfere with the order of the previous Bench under the circumstances of the case and that in doing what they did, the former had fallen into a palpable and manifest error which was sufficient to attract the certiorari jurisdiction of this Court. In the third place, it was urged that, in any case, since both members who constituted the first Bench continued to be the members of the Board until the subsequent decision was given, the review should and could have been heard according to law only by those very members and not by another Bench consisting of one of the previous members and the other being a different one.

5. The application is opposed by the State and Revenue Board who have been impleaded as respondents Nos. 1 and 2 respectively in this petition.

6. The main contention which has been raised before us on behalf of the respondents is that the Revenue Board had full authority to review its own judgment u/s 40-A of the Resumption Act, and that its power to do so was untrammelled by the limitations provided under the CPC either with respect to

the grounds on which such review could be allowed or as to the personnel of the Bench who could allow it, and that in any view of the matter, the order of the subsequent Bench granting the review was correct on the merits and did not call for interference at the hands of this Court.

7. The crucial question which thus emerges for consideration is as to the nature or character of the power of review vested by law in the Revenue Board in matters arising under the Resumption Act. But before we deal with this, we may say at once that we see no force in the first contention raised by learned counsel for the petitioner before us namely that the Jagir Commissioner, or, for that matter, any other authority under the Resumption Act had no jurisdiction to determine the character of the land in the sense that it is or is not his private property.

We think it sufficient in this connection to refer to Sub-section (2) of Section 23 which clearly provides that if any question arises whether any property of a Jagirdar is of the nature referred to in Sub-section (1) of Section 23, that is, whether it is the Khud Kasht land of the Jagirdar or it is an open enclosure used for agricultural or domestic purposes and has been in his continuous possession or that of his predecessor-in-interest for six years immediately before the date of resumption, or whether it is a private building or a private place of worship, or a private well, or a tank in the purely personal occupation, of the Jagirdar, and so on and so forth, it shall be referred to the Jagir Commissioner who may, after holding an inquiry make such order thereon as he deems fit.

The language of this sub-section is comprehensive and it may be open under it to any body concerned such as the Urban Improvement Board in this case to raise a question as to the character of a certain land within the meaning of Section 23 (1) of the Resumption Act, and if such a question is sought to be raised, then it cannot but be referred to the Jagir Commissioner in accordance with Section 23 (2), and it is for him, after making the prescribed inquiry to hold whether it falls within the four walls of Section 23 (1) or it does not. We have no doubt, however, that before a finding on this question can be properly arrived at, an inquiry has to be made, and the Jagir Commissioner undoubtedly has the requisite preliminary jurisdiction to make such an inquiry and come to an appropriate finding. And a mere allegation on the part of the person claiming the land as his private property cannot be considered sufficient to "negative such an inquiry; the simple reason being that if such a view is held, then the entire purpose of Section 23 (2) would be defeated. We, therefore, overrule this contention.

8. This brings us to the Rajasthan Land Reforms and Resumption of Jagirs (Seventh Amendment) Ordinance, 1958 (Ordinance No. 1 of 1958) which was promulgated by the Governor on 9-1-1958, and by Section 4 of this Ordinance, Section 40-A was inserted in the Resumption Act. This Ordinance was replaced by an Act called the Rajasthan Land Reforms and Resumption of Jagirs (Seventh Amendment) Act, 1958, (hereinafter called the Amendment Act) which came into

force on 24-3-1958, and it was after the commencement of this Act that the impugned order came to be passed. Section 40-A reads as follows:

"Review.--The Board, the Jagir Commissioner or the Commissioner for Khudkasht lands may, either On an application made within three months of 18-1-1958, or of the date of order whichever is later, by any interested party or suo motu review an order passed by the Board or by such Commissioner himself or his predecessor in office and pass such order in relation thereto as it or he thinks fit."

9. It was contended before us by the learned Deputy Government Advocate that this section contains no limitations on the exercise of powers of review by the Board or the other authorities mentioned in the section. In other words, it does not lay down any conditions subject to which the power of review can be exercised either with respect to the grounds on which the review can be entertained, or, in the case of the Board, the personnel of the Bench who could hear the review. We have given our careful consideration to this contention and are unable to accept it.

A proceeding by way of review in legal parlance in our country has acquired a definite signification and it seems to us too much to hold that the Legislature in enacting the Amendment Act intended to give an unlimited power of review to the Board and much less to the subordinate authorities mentioned therein. It seems to us that all that this section contains is a general power of review; and we must look elsewhere, if we may, for the conditions under which the power may be properly exercised, in accordance with the established principles relating to the exercise of such a power,

10. We may in this connection refer to the Rajasthan Board of Revenue Ordinance (No. XXII) of 1949. By Section 3, it is provided that a Board of Revenue shall be established for the State of Rajasthan. Section 11 provides that subject to the provisions of any special law for the time being in force in the whole or any part of Rajasthan, the Board shall be the highest revenue court of appeal revision and reference in Rajasthan. Section 12 provides that the general superintendence and control over all other revenue courts shall be vested in the Board and all revenue courts and officers shall be subordinate to it. This Act does not give any power of review to the Board.

11. We would next refer to the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951 (Act No. 1 of 1951) (hereinafter called the Act of 1951) which came into force on 31-1-1951. This was an Act to provide for and regulate the jurisdiction and procedure of revenue courts and officers in Rajasthan as its preamble shows. Section 8 of this Act provides that the Government may frame rules for regulating the procedure of revenue courts and may, in doing so, extend or apply any provision of the CPC with or without modifications.

Then Section 24 which relates to the review jurisdiction of the Board enacts that the Board, of its own motion or on the application of a party to a suit or other proceeding, may review and may rescind after or confirm any decree or order

made by itself or by any of its members. Section 25 provides for a similar power of review by other courts and lays down that every revenue court other than the Board shall be competent to review any decree, order or judgment passed by such court, in accordance with the rules made u/s 8. Rule 209 of the Rajasthan Revenue Courts (Procedure) Rules, 1951, is in these terms :

"Application for review of judgment.

(1) Any person considering himself aggrieved-

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain, a review of the decree passed or order made against him, may apply for a review of judgment to the court which passed the decree or made the order.

2. A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when being respondent, he can present to the appellate court the case on which he applies for the review."

This rule is almost identical with Rule 1 of Order 47. C. P. C.

12. Then follows Rule 210 which reads as under :

"To whom applications for review may be made.

An application for review of a decree or order of a court, not being a Board, upon some ground other than the discovery of such new and important matter or evidence as is referred to in Rule 209 or the existence of a clerical or arithmetical mistake or error apparent on the face of the decree, shall be made only to the officer, who passed the decree or made the order sought to be reviewed; but any such application may, if the officer who passed the decree or made the order has ordered notice to issue under Rule 212, Sub-rule (2), proviso (a), be disposed of by his successor."

Rule 212 then lays down that where it appears to the court that there is not sufficient ground for a review, it shall reject the application. Where, however, the court is of opinion that the application for review should be granted, it shall grant the same provided that no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the decree or order a review of which is applied for: and further provides that no

such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the decree or order was passed or made, without strict proof of such allegation.

Rule 214 then provides that when an application for review is granted, a note thereof shall be made in the register and the court may at once rehear the case or make such order in regard to the re-hearing as it thinks fit. Rule 215 bars an application to review an order made on an application for a review or a decree or order.

13. The Act of 1951 under which the afore-Said Rules were made has been repealed except with respect to certain provisions with which we are not concerned by the Rajasthan Tenancy Act (No, III) of 1955 (hereinafter called the Act of 1955) which came into force on 15-10-1955. See Section 3 along with the First Schedule. This Act also contains Chapter XV which deals with the procedure and jurisdiction of the revenue courts. Section 229 reads as follows :

"Power of review by Board and other revenue Courts,

Subject to the provision of the CPC 1908 (Central Act V of 1908)

(1) the Board of its own motion or on the application of a party to a suit or proceeding, may review and may rescind, alter or confirm any decree or order made by itself or by any of its members; and

(2) every revenue court, other than the Board, shall be competent to review any decree, order or judgment passed by such court."

It is clear that the power under this section can only be exercised subject to the conditions and limitations prescribed by the rules contained in Order 47 C. P. C. It was perhaps thought that the power of review granted to the Board under this Act was not sufficient to enable it to review its decisions under the Resumption Act, and this is how Section 40-A seems to us to have been added to the said Act.

14. A similar question arose in connection with the Rajasthan (Protection of Tenants) Ordinance (No. IX of 1949) in *Harji Vs. Revenue Board of Rajasthan*. The facts there were as follows. An application for reinstatement was made by a tenant u/s 7 of the Rajasthan (Protection of Tenants) Ordinance, 1949. This was allowed by the Sub-Divisional Officer. A revision application was filed by the landlord against the order of the Sub-Divisional Officer but it was dismissed by the Board. The landlord then filed a review application to the Board which was accepted and the order for reinstatement passed by the Sub-Divisional Officer was set aside.

The tenant then filed an application under Article 226 of the Constitution to this Court. In these circumstances the question arose for consideration whether in a case under the Rajasthan (Protection of Tenants) Ordinance, the Board of Revenue was competent to review its own judgment. It was held by a Full Bench

of this Court that it was a settled principle of law that, leaving exceptional cases apart, unless the court was empowered by statute to review its own judgments, it cannot review it. It was further held that after the coming into force of the Act of 1951, the Board was competent to review its own judgment as provided by Section 24 of the Act although there was no provision for review in the Ordinance itself.

The ratio decidendi of this decision was that once a proceeding lay to the Board, in appeal or revision, its further powers to review its own decisions would be governed by the general law relating to the exercise of its own jurisdiction in the matter of a review, and no particular provision for the exercise of such power need be considered to be necessary under any particular Act. This decision is binding on us. It therefore, seems to us that once the appeal in the present case lay to the Board, as it undoubtedly did, under the Resumption Act the answer to the question whether the Board had a power of review against its own decision should fall to be governed by the general law relating to the powers and jurisdiction of the Board as specified in the Act of 1955. and our answer is, therefore, in the affirmative because Section 229 of the Act of 1955 clearly provides that the Board has a power to review its own decisions of its motion or on the application of a party to a suit or proceeding, subject to the provisions of the Code of Civil Procedure, 1908.

15. We should like to pause and point out at this place that the Act of 1955 is not only a consolidating and an amending Act relating to agricultural tenancies in the integrated state of Rajasthan replacing the separate laws of the various covenanting States which were in force in their respective areas but also regulates the jurisdiction and powers of the revenue courts generally. Thus Chapter XV of the Act, inter alia, enacts provisions governing the procedure and jurisdiction of the various revenue courts including the Revenue Board. To the extent it deals with the powers of the Revenue Board, it may be said to be supplemental to the Rajasthan Revenue Board Ordinance of 1949.

As respects the jurisdiction of the revenue courts generally, it replaces the Act of 1951 (the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, (No. I of 1951)) which stands repealed by it except in relation to some of the provisions of the Act of 1951 with which we are not concerned. Thus we find that Section 216 lays down rules for the place of sitting of the various revenue courts, and inter alia, provides that the Revenue Board may sit for the disposal of cases at any place in Rajasthan. Section 221 lays down that the general superintendence and control over all revenue courts shall be vested in the Board and that all such courts shall be subordinate to it and then proceeds to prescribe the gradation of the subordinate courts to those ranking next higher than them.

This corresponds to Section 12 of the Rajasthan Revenue Board Ordinance in so far as it relates to the Board to which provision we have already made reference above. Again, Section 222 enacts that no appeal shall lie from any decree or order passed by any revenue court except as provided in this Act. Section 224

provides for second appeals to the Board under certain conditions. Then comes Section 229 which governs the power of review by the Board and other revenue courts which we have set out above. We may also point out here that limitation for review applications is provided for by item No, 76 of Part II of the Third Schedule of this Act as being six months from the date of the decree or order of which the review is sought.

16. From the foregoing survey of the various provisions contained in the Act of 1955, we have no hesitation in coming to the conclusion that the Act of 1955 stands in the same position to the Resumption Act which is a special Act as the Act of 1951 stood to the Rajasthan Protection of Tenants Ordinance which was also a special Act. We, therefore, come to the conclusion by parity of the reasoning adopted in *Harji Vs. Revenue Board of Rajasthan*, by a Full Bench of this Court that the Board did possess the jurisdiction to review its earlier decision in the present case by virtue of Section 229 of the Act of 1955; but this would be subject to all the limitations contained therein that is, subject to the provisions of Order 47 of the Code of Civil Procedure; and we think that that is the correct position as indeed it should be.

This conclusion, in our opinion, is not in any way affected by the Amendment Act of 1958. So far as this section relates to the Revenue Board, it undoubtedly gives the Board a specific power of review under the Act itself but as we have already discussed above, this power on the principle of the Full Bench decision of this Court in *Harji Vs. Revenue Board of Rajasthan*, was already available to it. But the aforesaid Amendment Act also vests the power of review in the Jagir Commissioner and Khudkasht Commissioner for the first time as the Legislature seems to have entertained the view that a power of review should also be granted to these officers under the Resumption Act, and as these officers are not courts either, within the scope of the Act of 1951 or the Act of 1955, the amendment was obviously called for, and no exception can be taken to it in so far as it goes.

17. In this view of the matter we must interpret the two provisions so as to harmonise with each other, and it cannot but follow that the correct position in law is that the powers of the Board to review its decisions under the Resumption Act are not unlimited but are subject to the conditions contained in the CPC as provided by Section 229 of the Act of 1955. We hold accordingly.

18. Two questions then fall to be decided. The first is whether the conditions of Order 47 Rule 1 C. P. C. were satisfied in this case so as to give the Board the authority to review its own earlier decision. The second is whether the learned Members of the Bench who granted the review had lawful authority to do so inasmuch as one of the Members who decided the appeal did not sit to hear it though the other member had heard the appeal and also participated in the hearing of the review. Order 47-Rule 5 governs the second question and reads as follows :

"Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for continues or continue attached to the Court at the time when the application for a review is presented and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same."

That being so, a review heard and granted by two Judges of a court, one of whom only was the Judge who passed the decree, is illegal. Likewise where an appeal has been heard by two Judges and a review against it is heard by one of the two Judges and a third Judge, although the Judge not participating in the hearing of the review is still a member of the Court and was not precluded from hearing it by his absence or other similar cause for a period of six months next after the application for review was presented, such a procedure would be illegal on the plain wording of Order 47 Rule 5.

A definite averment has been made by the petitioner in this writ application which has also been supported by an affidavit that Sri Jainath Kunzru, one of the learned members who had decided the appeal had been away on two months' leave only from 2-9-1958 and was otherwise available to hear the review. To this allegation, there is no effective reply on the side of the respondents except that the learned members who granted the review stated in their order that a period of six months had expired since the review application had been presented and the other member who was a party to the judgment under appeal was not available for hearing the review by reason of his illness.

This, in our opinion, is altogether insufficient to show that the other member had been precluded by absence or other cause for a period of six months from considering the order under review within the meaning of Rule 5 of Order 47 C. P. C. Even if we were to hold for the sake of argument that it was so, though we are not prepared to accept that, the only competent member of the Board of Revenue to hear the review in such circumstances would have been the remaining member, namely, Shri Kanwar Bahadur, and the other learned member who took part in the hearing of the review had no jurisdiction whatsoever to do so.

The result, therefore, is inevitable that the subsequent order of the Revenue Board D/-17-10-1958, was illegal and must be quashed. We understand that the two learned members who heard the appeal still continue to be the members of the Board, and, therefore, there should be no difficulty in the way of their re-hearing the review and disposing of it afresh. In this view of the matter, we consider it unnecessary to express our considered opinion on the other question raised before us, namely, as to whether the impugned order was also vitiated owing to its failure to satisfy any of the conditions of Order 47 Rule 1 in which event only the Board would have lawful authority to review its own order. It will be for the learned members of the bench who had heard and decided the appeal

to satisfy themselves and come to a proper decision as to whether the requirements of Order 47 Rule 1 C. P. C. are fulfilled in the present case. For, if they are not, we have no doubt that the decision given in the appeal would not be open to review.

19. We should like to point out, before concluding, that on the aforesaid view which we have felt persuaded to accept, there cannot be any insuperable or serious difficulty in the matter of the regulation of the power of review exercisable by the Board of Revenue, inasmuch as it is a duly constituted court exercising judicial powers. But it seems to us that difficulties may arise as to the exercise of the power of review vested in the Jagir Commissioner and the Khudkasht Commissioner by Section 40A of the Resumption Act, as these officers, do not constitute courts.

For ourselves we find it extremely difficult to imagine that the Legislature could have ever intended that the power of review exercisable by these officers should be unlimited, or that they should not fall to be governed by the conditions prescribed under Order 47 Rule 1 of the CPC and, therefore, we are disposed to think that it would be in the fitness of things if the position is clarified by an amendment of the Act or by making suitable rules u/s 48 of the Resumption Act. Let a copy of this judgment be forwarded to the Chief Secretary of the Government for such action as may be found appropriate.

20. The result is that we allow this application, set aside the order of the Revenue Board dated 17-10-1958 and send the case back to the Board with a direction that the review application filed by the State against the earlier order of the Board dated 29-10-1957, shall be re-heard and decided afresh in the light of the observations made above. The petitioner will have his costs of this application from the State.