

(2002) 07 RAJ CK 0010

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1928 of 2001

State of Rajasthan and Another

APPELLANT

Vs

Mohan Singh and Another

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 39

Citation : (2002) 2 WLC 281 : (2003) 3 WLN 238

Hon'ble Judges : K.S. Rathore, J

Bench : Single Bench

Judgement

K.S. Rathore, J.—This present petition is directed against the order dated 10.5.1999 and 9.8.1999.

2. Brief facts of the case are that after resumption of Jagir of village Kanota, the Jagirdar submitted the list of personal property under the Rajasthan Land Reforms and Resumption of Jagirdars Act on 29.9.1959. Upon which Tehsildar, Bassi submitted his report regarding list of personal property on 9.5.1960 and on 19.2.1961.

3. The Jagir Commissioner, Jaipur passed an order on application so moved by the petitioner dated 29.9.1959 declaring the personal property of the petitioner on 30.11.1994.

4. Against the order dated 30.11.1994 passed by Jagir Commissioner, Jaipur the appeal was preferred by the Jagirdar respondent No. 1 before the Board of Revenue. The Board of Revenue partly allowed the appeal vide order dated 3.8.1995 and case was remanded back to Jagir Commissioner for further inquiry in the case.

5. Against the order dated 3.8.1995 passed by the Board of Revenue respondent No. 1 preferred a review petition before the Board of Revenue. The review petition was admitted and notices were ordered to be issued. During the pendency of the review petition filed by respondent No. 1. one Member Shri S.D.

Dadhich was transferred from Board of Revenue and the sitting member U.P. Mathur after hearing the review petition allowed the review petition and set aside the order passed by the Board of Revenue in appeal dated 3.8.1995 by order dated 10.5.1999.

6. Learned counsel for the State Mr. N.L. Pareek submits that u/s 39 of the Act against the order passed by Jagir Commissioner can only be heard and decided by the Division Bench of Board of Revenue, therefore, learned Member assumed the jurisdiction of D.B. while passing the order dated 10.5.1999 in the review petition.

7. In support of his contention learned counsel for the petitioner Mr. Pareek placed reliance on the judgment Maji Mohan Kanwar and Others Vs. The State of Rajasthan and Another, in the case of Maji Mohan Kanwar and Ors. v. The State of Raj. and Anr., The Division Bench of this Court has held that it is clear from the said scheme of Order 47, CPC that it provides three stages for hearing after a review application is failed. The first stage comes when the application for grant of review is placed before the Judge or Judges under Rule 4, Sub-Rule (1), At that stage, if it appears to the Court that there is not sufficient ground for a review, it should reject the application. If, on the other hand, the Court is satisfied that one or more of the grounds detailed in Rule 1 is made out prima facie, it should order notice to be issued to the opposite party to enable him to appear and be heard in support of the decree or order whose review is applied for. Thus, the first one is an ex parte, stage because the opposite party is not present before the Court at that time.

8. The next stage is reached when the same application (for grant of review) is placed for hearing before the Judge or Judges. At this stage, if the Court comes to the conclusion that the application for review should be granted, it should grant it under Sub-Rule (2) of Rule 4. If, however, it is of opinion after hearing the opposite party that the application is not covered by Rule 1, it should be rejected. If the Rules is discharged, the matter ends there. If, on the other hand, the rule is made absolute, then the third stage is reached.

9. This stage is arrived under Rule 8 after the original case is registered and the Court rehears it on merits. After rehearing, it may either result in repetition, or in reversal or in variation, of the former decree or order. In either case, since the whole matter is reheard, there is a fresh decree or order. The view which we have expressed stands fortified by the following observations made by Sir Lawrence B. Jenkins, Chief Justice of the Bombay High Court, sitting with another learned Judge in Sha Vadilal Hakamchand v. Sha Fulchand Umedram ILR (1906) 30 Bom 56.

10. Division Bench of this Court further held that it is obvious that the learned member made a confusion between the "admission" and the "registration" of a review application. It is true that entering a review application in the register is a ministerial act, but admission and registration are two different concepts and

their distinction needs to be properly understood. The word "admission" has not been used in Order 47, Rule 4 but a review application would be said to be admitted only after it is put up before the Judge or Judges who passed the decree or order a review of which is applied for and when after hearing the applicant, they find that there are good prima facie grounds for the grant of the application and they pass an order that notice be issued to the opposite party. Thus, the order for admission is not a ministerial act, but a judicial order which cannot be passed by the ministerial staff. The Division Bench which passed the last impugned order dated 2.12.1964, considered itself bound by the majority view already expressed and, therefore, their order adopting the erroneous view is also in-correct.

11. He also placed reliance on the judgment rendered in the case of State of Rajasthan v. Gopal Singh, 1994 Supp. (2) SCC 404 wherein Hon'ble Supreme Court has held as under:

Constitution of India-Articles 226 and 227 - Review petition-Proper constitution of Bench-Writ Petition filed by Police Constable challenging his dismissal from service, dismissed by Division Bench of two Judges of Rajasthan High Court-Review application filed against order heard and disposed of by one of the Judge who heard the writ petition as the second Judge was not available - Held, procedure followed was not in keeping with Rule 64 of the Rules of Rajasthan High Court which provided that in such a situation the papers should be placed before the Chief Justice for constitution of a Bench of two Judges for disposal of the review petition-Hence impugned order set aside and case remanded to High Court for disposal of the review petition in accordance with law-Rules of the High Court of Judicature for Rajasthan 1952, Rule 54- Civil Procedure Code, 1908, Order 47, Rule 5-Practice and procedure-Review.

Counsel appearing on behalf of the respondents submits that no irregularities has been committed by the Board of Revenue while deciding the review petition. The State Government is assailing this order passed in the review petition by way of this writ petition, the objection which are raised herein the writ petition has not been raised before the Board of Revenue. And they are raising this issue first time in this writ petition.

12. Even though the law permits that one member can hear the review petition as held in the judgment 2000 (3) RLR 479 titled Om Prakash Purohit v. Union of India and Ors., Wherein the Division Bench of this Court held that assuming it to be an appeal against the order passed by the learned Single Judge in Review Petition No. 9 of 2000 as his companion Judge was not continuing with the High Court at the time when review petition was being heard, sitting singly is concerned, as discussed above, we do not find any illegality in review petition being heard by the learned Single Judge who was Member of the Bench who had made the order sought to be reviewed and was the only Member continued to be attached with the High Court by sitting singly. We are further of the opinion that in the circumstances where a Judge sitting singly decides a review petition

against an order passed by a Division Bench because of non-availability of the other members of the Bench, it must still be deemed to be a decision by Division Bench against which no appeal lay, as has been held by High Court of Andhra Pradesh in Achuttam's case (supra).

13. Thus Division Bench of this High Court has held that the single member of the Bench has heard the review petition and decide the same on non-availability of the other member of the Bench, it must still be deemed to be a decision by Division Bench against which no appeal lay, as has been held by the High Court of Andhra Pradesh in Achuttam's case.

14. In support of his argument he also placed reliance on the judgment passed by this Court in the case of HCM Institute RIPA v. Jai Singh and Ors. 2000(2) RLR 498 wherein this Court has held that when all the Judges deciding a matter are not available, the Chief Justice has to constitute a new Bench-When one of them is available, the Chief Justice has no discretion and he has to place review application before available Judge of the Bench as provided by Order 47 Rule 5, CPC-Supreme Court decision in State of Rajasthan v. Gopal Singh, 1994 Supp. (2) SCC 404 per incuriam.

15. Learned counsel for the respondents also submits that during the pendency of this writ petition, Jagir Commissioner has already passed the order dated 28.2.2001 with regard to the personal property belonging to non-petitioner No. 1 and he also placed a judgment dated 28.2.2001 passed by the Jagir Commissioner. He further submits that the only dispute remains with regard to personal property situate in village Kanota in items No. 1, 7 and 12 which are shown in the personal list submitted by the petitioner.

16. Heard rival submissions of the learned counsel for the parties and carefully examined the material available on record as well as judgments referred by both the parties before me.

17. By close looking of the judgment passed by the Division Bench of this High Court and the Supreme Court, it reveals that the illegality pointed out by the learned counsel for the petitioner that non-availability of one member single member cannot hear the same controversy, has been considered by the Division Bench of this High Court in the case of Om Prakash Purohit v. Union of India and Ors., (supra) wherein this Court has held that decision passed by one member on account of non-availability of another member is deemed to be decision passed by the Division Bench and in the case Seemakurty Achyutam Vs. Seemakurti Kasi Annapurnamma and Others, and State of Rajasthan v. Gopal Singh, 1994 Supp. (2) SCC 404 which has been referred by learned counsel for the petitioner has been considered and the judgments which are relied by the petitioner as per incuriam.

18. Judgments referred by the respondents are fully covered with the present controversy and are applicable to the instant case.

19. Be that as it may. Since no decision has been passed with regard to items No. 1, 7 and 12 of the personal property, I deem it proper to remand the matter to the Jagir Commissioner to decide the matter only on the items No. 1, 7 and 12 after affording the opportunity of hearing to the petitioner as early as possible.

20. With these observations writ petition stands disposed of.