(2015) 05 AHC CK 0087

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 52354 of 2008

Wali Mohammad and Others APPELLANT

Vs

State of Uttar Pradesh and Others RESPONDENT

Date of Decision : 19-05-2015

Acts Referred:

Citation : (2015) 6 ADJ 764 : (2015) 4 AWC 4281 : (2015) 128 RD 523

Hon'ble Judges : Arun Tandon, J;Surya Prakash Kesarwani, J

Bench : Division Bench

Advocate : Ravindra Mishra, for the Appellant; Arvind Kumar Shukla, A.S.G.I., Brijendra Kumar, A.K. Nigam, Pooja Singh and Poonam Singh, Advocates for the Respondent

Final Decision : Allowed

Judgement

1. Heard learned counsel for the parties. From the records of the present writ petition we find that the petitioner Wali Mohammad had filed Revision No. 1 of 1981 before the Board of Revenue against the order of the Assistant Custodian dated 25th November, 1980. The Board of Revenue entertained the revision. The revision was directed to be registered. Notices were issued to the opposite parties fixing 24th April, 1981 as the date for disposal. The records of the Court below were called for. As an interim measure, it was directed that the order impugned dated 25th November, 1980 shall remain stayed and the Assistant Custodian be informed accordingly. This order was made by the Board of Revenue as early as on 20th January, 1981.

2. Surprisingly, the Board of Revenue under the order impugned dated 28th September, 2006 i.e. after keeping the said revision pending for nearly 25 years has made following orders:

3. Learned counsel for the petitioners submits that merely because of (1) the Administration of Evacuee Property Act, 1950, (2) the Displaced Persona (Claims) Act, 1950, (3) the Evacuee Interest (Separation) Act, 1951, (4) the

Displaced Persons (Claims) Supplementary Act, 1954 and (5) the Displaced Persons (Compensation and Rehabilitation) Act, 1954 have been repealed vide Act No. 33 of 2005, which is commonly known is "Repeal Act, 2005", published in the official notification dated 5th September, 2005, it will not mean that the pending disputes covered by the Repeal Act, 2005 are rendered infructuous. The cases had to be decided on the basis of law applicable on the date the proceedings were instituted unless specifically provided otherwise under the repeal Act.

4. Learned counsel for the respondents however, submits that the revision itself was not maintainable, inasmuch as the disputed issues of facts with regard to the Evacuee Property are required to be decided by the competent Civil Court and not by the Board of Revenue.

5. We may not enter into the issue, as raised on behalf of the respondents, inasmuch as the revision has not been dismissed on the ground that it raises disputed issues of facts. The revision has been dismissed on the ground that it has become infructuous because of enforcement of Repeal Act, 2005.

6. The effect of repeal of act has been explained by the Apex Court in the case of Videocon International Ltd. Vs. Securities and Exchange Board of India(2015) 2 AD 351 : AIR 2015 SC 1042 : (2015) 1 BC 443 : (2015) 124 CLA 289 : (2015) 188 CompCas 566 : (2015) 1 CompLJ 465 : (2015) 1 SCALE 293 : (2015) 4 SCC 33 : (2015) 129 SCL 673 . It is settled law that proceedings, which are pending on the date of repeal, are not rendered infructuous because of enforcement of repeal act unless specially provided in the said repeal act. No such provision could be referred to by the respondents.

7. In the totality of the circumstances on record, we find that the Board of Revenue was not justified in dismissing the revision on the ground that it had become infructuous because of enforcement of repeal act. Revision was required to be decided on merits including the issues, which may be raised by the respondents, namely, that the revision raises disputed issues of facts and the same cannot be adjudicated by the Board of Revenue under revisional jurisdiction. Order of the Board of Revenue is hereby set aside. The revision is restored to its original number.

8. Let the revision be decided after affording opportunity of hearing to the parties concerned by means of a reasoned speaking order, preferably within six months from the date a certified copy of this order is filed before the authority concerned. All issues pertaining to the maintainability or otherwise of the revision are left open to be agitated before the Board of Revenue.

9. Any third parties rights created in the meantime shall abide by the orders to be passed on the revision. The present writ petition is allowed subject to the observations made above.