(1959) 04 AHC CK 0008

Allahabad High Court

Case No: Civil Misc. Writ No. 239 of 1959

Sripat Narain Rai		APPELLANT
	Vs	
Board of Revenue, U.P. and Others		RESPONDENT

Date of Decision: April 13, 1959

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 47 Rule 4, Order 47 Rule 5
- Constitution of India, 1950 - Article 226, 32
- Uttar Pradesh Land Revenue Act, 1901 - Section 219, 220, 220(3), 7(2)
- Uttar Pradesh Tenancy Act, 1939 - Section 273
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 232
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 186, 239

Citation: AIR 1960 All 93 : (1959) 29 AWR 432

Hon'ble Judges: V.D. Bhargava, J; M.L. Chaturvedi, J

Bench: Division Bench

Advocate: Bhawani Prasad, for the Appellant; Surendra Narain Singh, for the Respondent

Final Decision: Dismissed

Judgement

Chaturvedi, J.
This is a writ petition under Article 226 of the Constitution praying that a writ of certiorari be issued quashing an order of the Board of Revenue dated 19-5-58.

2. The necessary facts of the case are in a short compass. Respondents Nos. 2 and 3 filed an application u/s 20 of the U. P. Zamindari Abolition and Land Reforms Act for being reinstated la the plots in suit on the ground that they were adhivasi. The petitioner contested the application and denied that the respondents had acquired adhivasi rights. The trial court decided the case on 27-2-54 holding that the respondents had acquired the rights of adhivasi. The petitioners then went up in appeal to the Commissioner and the Additional Commissioner allowed the appeal

by his order dated 4-6-54. He held that the respondents had not acquired adhivasi rights. On 17-1-55 the respondents filed a revision petition before the Board of Revenue.

This petition appears to have been placed in Chambers of a Member of the Board, Mr. A. N. Sapru, who dismissed it on 13-4-55. He dismissed it on the ground that the revision was barred by time inasmuch as the order sought to be revised was dated 4-6-54 and the revision petition was filed on 17-1-55. It appears that the Board usually allows a period of four months for filing a revision application. According to the respondents, they did not come to know of the dismissal of their revision for a long time and it was on 9-1-58 that respondent No. 2 filed an application purporting to be u/s 151 C. P. C. praying that the ex parte order of the 13th April 1955 be set aside.

In the meantime Mr. A. N. Sapru had ceased to be a Judicial member of the Board and was put in charge of the administrative work, with headquarters at Lucknow, The application for setting aside that ex parte order came up before Mr. Ram Ker Singh, a Judicial Member of the Board, and Mr. Ram Ker Singh allowed the application on 19-5-58 without issuing any notice of the application to the. petitioner. It would thus appear that the respondents were not heard when the revision application was dismissed and the petitioner was not beard when the dismissal order was set aside. After setting aside the order dismissing the revision a date was fixed for hearing the revision on merits and notices were ordered to be issued to the parties.

Before, however, the revision could be heard by " the Judicial Member, the present writ petition was filed on 19-1-59 and an interim order was issued by this Court directing the Board of Revenue not to hear and decide the revision till further orders from this Court. The writ petition itself has now come up for final hearing before us.

3. Learned counsel for the petitioner has urged number of grounds in support of the writ petition, but we shall only deal with those which are necessary to be decided, because, in our view, on some of the points interference by this Court will not be justified, for substantial justice has been done and the revision filed by the respondents has now to be heard and decided on its merits.

4. The first point that we have to consider is whether Mr. R. K. Singh had any jurisdiction to set aside the order passed by Mr. A. N. Sapru. Learned counsel for the petitioner has contended that the application filed by the respondent on 19-1-1958 should be treated as an application for review and not one u/s 151, C. P. C. It does appear that in the application it is stated that there was an error apparent on the face of the record of the case, which is a ground which could be urged under the provisions of Order 47 Rule 1 C. P. C. There has been a great deal of controversy before us on the question whether the CPC applies to applications for review filed in the Board of Revenue in proceedings under the Zamindari Abolition and Land

Reforms Act, But we do not consider it necessary to decide that controversy and shall assume that the CPC applies to cases for review filed before the Board of Revenue. The relevant rule on the point is rule 5 of Order 47. The material words of this rule are;

"Where the Judge or Judges ..... continues or continue attached to the Court at the time when the application for a review is presented .... such Judge or Judges of the Court shall hear the application ....."

The argument of learned counsel is that Mr. A. N. Sapru still continues to be attached to the Court and he was the only Member of the Board of Revenue who was legally authorised to hear and decide the application for review. We do not agree with this contention of the learned counsel. The word "Court" used in Section 5 of Order 47 is significant and the question that we are to consider in the present case is whether Mr. A. N. Sapru continued to be attached to the Court on the date when the review application was allowed by Mr. R. K. Singh.

As already stated in the beginning of this judgment. Mr. Sapru was relieved of his duties of a Judicial Member of the Board before the application was filed and he was appointed as Administrative Member of the Board with his headquarters at Lucknow After the appointment as Administrative Member, he had no judicial work to perform. That being the position, we think it cannot be said that he continued to be attached to the Court as such. The Board of Revenue has amongst its members both Administrative and Judicial Members. The Judicial Members dispose of judicial work, of the Board and the Administrative Member deals with the administrative work. The Board of Revenue is not a court while dealing with administrative work and can be said to be a court only as far as disposal of judicial work is concerned.

Mr. Sapru, because of his appointment as Administrative Member, ceased to have anything to do with the judicial work of the Board of Revenue and as such he was no longer a Member of the Board inasmuch as he was not 1o do any judicial work. That being the position, the provisions of Order 47 Rule 5 do not make it obligatory that Mr. Sapru should himself have dealt with the application for review, and we think the rule has no application to a case like the present.

5. The next point urged by learned counsel for the petitioner is that the order of Mr. Sapru could have been reviewed or set aside only by two Members of the Board and not, by any single Member. This contention is based on three grounds, urged by learned counsel. The first ground is that Sub-section (3) of Section 220 of the U. P. Land Revenue Act applies to the case and that sub-section clearly provides that, a single Member vested with all or any of the powers of the Board shall not have the power to alter or reverse a decree or order passed by Board or by any Member other than himself.

The contention of learned counsel is that this sub-section applies to all cases heard by a Board irrespective of the nature of the case. We do not find it possible to agree

with this contention of the learned counsel. The U. P. Land Revenue Act in which this section occurs deals with matters connected mostly with revenue administration of the state including the assessment and realisation of revenue. It does speak of the constitution of the Board of Revenue and according to Section 7 of the Act the Board has been authorised to distribute its business and to make such territorial division of the jurisdiction amongst its Members as it may deem fit. Sub-section (2) is important. It says that all orders made Or decree''s passed by a Member of the Board in accordance with such distribution or division shall be held to be the orders or decrees of the Board.

The constitution of the Board with connected matters is dealt with in Chapter II in which Section 7 occurs. Chapter III provides for the maintenance of maps and records; Chapter IV for their revision; Chapter V for settlement of revenue; Chapter VI for re-assessment or revision of the settlement: Chapter VII for partition etc. of mahals; Chapter VIII for collection of revenue; Chapter IX for procedure of revenue courts and revenue officers and. Chapter X deals with the subject of appeals, references and revisions. Section 220 occurs in this Chapter. Learned counsel for the Petitioner Con-ceded that upto the first paragraph of Section 219 the provisions of this Chapter were confined to cases arising under the U. P. Land Revenue Act.

But he says that the second paragraph of section, 219 and Sub-section (3) of Section 220 apply to all cases coming up for hearing before the Board, of Revenue. As regards the second paragraph of Section 219 we think it is sufficient, to state that it could not be made to cover all cases coming up-before the Board, because every enactment, the U. P. Tenancy Act, Zamindari Abolition and Land Reforms Act, contains provisions concerning institution of revisions. If the second paragraph was made to apply to all cases coming up before the Board of Revenue the other similar provisions under the other Acts would have to be held to be superfluous.

Even Section 220 Sub-section (1) obviously refers to cases which have been decided under the U. P. Land Revenue Act. The usual legislative practice is to provide in the Act itself for appeals and revisions which arise under it. We see no reason for holding that in the U. P. Land Revenue Act an extraordinary procedure has been followed and provisions have been inserted as parts of Sections 219 and 220 which are of universal application. We presume that the usual legislative practice has been followed in the U. P. Land Revenue Act as well and both sections 219 and 220 are made to apply only to cases which arise under the U. P. Land Revenue Act. The present case arose out of proceedings under the U. P. Zamindari Abolition and Land Reforms Act and would therefore, not be governed by the provisions of Subsection (3) of Section 220 of the Land Revenue Act. (6) The other argument advanced by learned counsel to support the contention that only two members of the Board could have set, aside the order is that rule 190 of the Rules contained in the Revenue Manual would apply to a case under the Zamindari Abolition and Land Reforms Act as well. This rule, along with the other rules contained in the same Chapter of the

Revenue Manual, purports to have been made under the U. P. Land Revenue Act and the U. P. Tenancy Act and not under the Zamindari Abolition and Land Reforms Act. Learned counsel referred to rule 186 of the Rules framed under the Zamindari Abolition and Land Reforms. Act in this connection. Rule 186 is in the following words:

"The provisions contained in the U. P. Tenancy Act, 1939, as regards the hearing and decision of suits under the said Act shall apply to the proceedings u/s 232."

The present proceedings can be said to arise out of proceedings u/s 232, because the question involved was whether the respondents had acquired adhivasi rights. But the rule only says that the provisions of the U. P. Tenancy Act are to be applied as regards the hearing and decision of suits. It has no application to the hearing of revisions arising sunder Section 232 of the Zamindari Abolition and Land Reforms Act. It may be possible to say that suit includes an appeal and the provisions that have been applied to suits should therefore, be applied to appeals as well.

But it is well established that a revision cannot be said to be a continuation of the suit, and Rule 186 nowhere purports to apply provisions of the U. P. Tenancy Act to revisions arising out of cases instituted u/s 232 of the U. P. Zamindari Abolition and Land Reforms Act. The provisions of the U. P. Tenancy Act may or may not apply to appeals arising out of cases instituted u/s 232 of the Zamindari Abolition Act, but no rule has been framed to the effect that they can be applied to revisions. We, therefore, think that neither the U. P. Tenancy Act nor the rules framed there under, including rule 190 can be said to apply to revisions arising out of cases u/s 232 of the U. P. Zamindari Abolition and Land Reforms Act.

7. The third argument of learned counsel in connection with the above point was that Section 273 of the U. P. Tenancy Act itself contemplates that a review application cannot be allowed by one Member of the Board of Revenue. Section 273 of the U. P. Tenancy Act has been applied to the Zamindari Abolition and Land Reforms Act by Rule 239 of the U. P. Zamindari Abolition and Land Reforms Act. Learned counsel for the petitioner has argued that the rule is invalid and it is the CPC which applies to review applications. We do not consider it necessary to decide this controversy. If Section 273 of the U. P. Tenancy Act has not been legally applied to cases arising out of the Zamindari Abolition and Land Reforms Act, the contention of learned counsel on the interpretation of the section need not be considered at all. Assuming that it has been legally applied to cases arising under the Zamindari Abolition Act, we think that the interpretation of the Section of learned counsel is not correct. Section 273 is in the following words:

"The Board on its own motion or on the application of a party to the case, may review and may rescind, alter or confirm any decree or order made by itself, or by a single member."

The contention of learned counsel is that it is only the Board as a whole which can review either its own decision or decision of a single Member of the Board. This argument is met by the provisions of Section 7 of the U. P. Land Revenue Act. Sub-section (2) of that section, as already stated, says that an order passed by a Member of the Board in accordance with the distribution of work shall be held to be the order or decree of the Board; If in deciding a particular case the Board consists of a single Member, his order can ,be reviewed by a single Member, because he constitutes the Board even for the purpose of Section 273 of the U. P. Tenancy Act. If the word "Board" is held to mean the entire body of the Members constituting the Board, a difficulty will arise where the order which is sought to be reviewed was passed by two or three of its Members. According to Section 273 the Board may review or alter an order passed by itself or by a single Member. But it is not said that the Board can review or alter an order passed by two or three Members. So, even if the entire Board has the power to review, it has the power to review an order passed only by all the Members of the Board or by one Member of it. The whole Board will have no power to review or alter an order passed only by all the Members of the Board or by one Member of it. The whole Board will have no power to review or alter an order passed by two or three members. The interpretation of the learned counsel for the petitioner, therefore, cannot be accept ed and it has to be held that an order passed by one or more of the Members constituting the Board can be reviewed or altered by one or more Members constituting the Board for the purpose of that case, as provided by Section 7(2) of the Land Revenue Act. We, therefore, do not find it possible to accept the contention of learned counsel that in case arising out of Zamindari Abolition and Land Reforms Act one single Member of the Board could not have reviewed his own or predecessor''s order.

8. The next point urged by learned counsel for the petitioner is that the application made by the respondents u/s 151, C. P. C., for setting aside the order of Mr. A. N. Sapru, could not have been allowed because such an application could be made under Order 47 Rule 1 C. P. C. and that being the position the inherent powers of the Court could not be invoked for the purpose, as there was specific provision in the Code itself for an application like this. We do not consider it necessary to decide this point, because this point can be argued before the Board of Revenue while it is hearing the revision on its merits. The point can be urged before the Board as a preliminary point at the hearing of the revision.

9. The next point urged by learned counsel for the petitioner is that Order 47 C. P. C. is applicable to proceedings for review pending in the Board of Revenue and Rule 4 Order 47 provides that no application for review shall be granted without issuing notice to the other party. In the instant case, notice was not issued and the review application was allowed. On this point again the question arises whether Order 47, C. P. C. applies to proceedings for review before the Board of Revenue when arising out of cases under the Zamindari Abolition and Land Reforms Act. But we do not consider it necessary to decide this point. The position in this case has been that the

respondents revision application was dismissed without hearing them.

When the respondents applied for setting aside the order the order was vacated without hearing the petitioner. So, one ex parte order has been vacated by another ex parte order. The revision is still pending before the Board of Revenue and will have to be heard and decided on its own merits. The petitioner could have applied to the Board of Revenue for setting aside the ex parte order dated 19-5-1958 the order impugned before us).

The order had been passed in the absence of the petitioner and the petitioner should have gone to the Board of Revenue and requested the Board to give him a hearing. We think there was another remedy open to the petitioner which he failed to avail of. His proper course was to approach the Board itself and not to approach this Court directly with the present petition. Even on the merits, we think the petitioner''s contention is not correct.

10. In somewhat similar circumstances a Division Bench of this Court refused to interfere with the order of the Board of Revenue which had been passed ex parte and then the ex parte order was set aside without notice to the other party. The case mentioned above is the case of Laljit Singh and Others Vs. Pyarelal and Others, . The learned Judges pointed out that there was no authority which laid it down as a matter of law that when both parties were absent and an order was made against one of them, the court had no jurisdiction to set aside that order without hearing the other party. The learned Judges held that the provisions of Order 9 Rules 9 and 14, C. P. C. provided that no order made under rules 8 and 13 should be set aside without notice to the other side, but the said rules were held to apply only to cases in which the order had been passed against one party in the presence of the other party.

The same view was taken by the High Court of Calcutta in the case of Official Trustee of Bengal Vs. Benode Behari Ghose Mal, . In the Calcutta case the appeal was V summarily dismissed under Order 41 Rule 11 C. P. C. and then on the appellant''s application for review the Bench cancelled that order and directed the appeal to be heard again. This last order was passed without notice to the respondent. But the learned Judges upheld its validity and referred to a practice of the High Court extending over 40 years permitting such a course to be adopted.

11. The next case of the Calcutta High Court is Tanaki Nath Hore v. Prabhasini Dasee I.L.R Cal 178 : (AIR 1916 Cal 741). It is on all fours with the case before us. In this Calcutta case the appeal was summarily dismissed by a Division Bench of the High Court. But the order of dismissal was set aside on an application for review filed by the appellant Without issuing notice to the respondent.

It was held that this order was valid even in the absence of notice, as the expression "opposite party" in Order 47 rule 4 C. P. C. means a party which was interested to support the order sought to be vacated. But the respondent was not considered to

be such a person before the appeal had been admitted under Order 41 rule 11 C. P. C, It appears from the case of Baboo v. Jagdei 1957 R D 286 that the Board of Revenue have also been following the same practice.

12. Apart from the cases mentioned above, we think that substantial justice has been done in the case and an ex parte order which the Board of Revenue considered to be wrong has been set aside with the consequence that the revision has been restored to its original number. Notices have been issued to both the parties and both the parties have been given opportunity of arguing their cases before the Board of Revenue. The revision will now be heard and decided on its merits and it is expected that the parte which has law and justice on its side should succeed.

If we were to set aside the order of Mr. R. K. Singh dated 19th May 1958. we might be perpetuating an injustice which had been done to the respondents by an incorrect ex parte order passed by Mr. A. N. Sapru. In such circumstances, it is open to this Court to refuse to interfere in its jurisdiction tinder Article 226 of the Constitution. In the case of A.M. Allison Vs. B.L. Sen, the learned Judges of the Supreme Court observed:

"Proceedings by way of certiorari are ''not of course'' (vide Halsbury''s Laws of England, Hailsham Edition Vol. 9 paragraph 1480 and 1481, pp. 877-878). The High Court of Assam had the power to refuse the writs for it was satisfied that there was no failure " of justice ....."

This Court has also expressed the same view in the case of Pooran Singh and Others Vs. Additional Commissioner and Others, The learned Judges observed that the mere fact that an order was without jurisdiction or that there was an error apparent on the face of the record was not sufficient to justify the issue of a writ, but in addition it had to be established that the order had resulted in injustice to the petitioner.

13. For the reasons given above we do not think that we should allow this writ petition. It is accordingly dismissed, but in all the circumstances of the case we direct that the parties bear their own costs.