

(1962) 12 MP CK 0003

Madhya Pradesh High Court (Gwalior Bench)**Case No:** M.P. No's. 4 and 10 of 1962

Deorao Jadhav

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision: Dec. 5, 1962**Acts Referred:**

- Madhya Pradesh Abolition of Jagirs and Land Reforms Act, 1952 - Section 30

Citation: (1963) LJ 88**Hon'ble Judges:** P.R. Sharma, J; H.R. Krishnan, J**Bench:** Division Bench**Advocate:** V.K. Sapre and S.S. Gaur, for the Appellant; S.T. Mungre, Govt. Advocate, for the Respondent**Final Decision:** Allowed

Judgement

H.R. Krishnan, J.

The problems posed in both the Petitioners under Article 227 of the Constitution from the orders of the Board of Revenue are so similar that they can be examined in a single judgment. In petition No. 4 the Commissioner for Land Reforms and Jagirs, reviewed an earlier order of his, and made a fresh order in favour of the present Petitioner. In appeal before the Board of Revenue the opposite party contended that the Jagir Commissioner had no powers of reviewing his own orders and as such the order in review should be set aside and the original order of the Jagir Commissioner restored. The Board accepted the contention and allowed the appeal:

The Jagir Commissioner did not have any jurisdiction on any date after 30-1-1958 (the date of the original judgment) to pass any order in favour of the Respondent No. 1 and others in modification of the order of 30-1-1958. Under the Act the Jagir Commissioner has no power of reviewing his own orders.

In petition No. 10 the Board was invited by a party to review its own orders. It refused:

The power of review is a separate power which has to be conferred on the Board under the Jagir Abolition Act before it can be exercised by the Board (See Raja-ram v. Rani Jamit Kunwar 1961 J.L.J. 1113). Since no power to review the Board's appellate decision has been conferred on Board by the Abolition of Jagirs Act, these applications are untenable and are dismissed accordingly.

The question before us is simple: whether on the one hand, the Jagir Commissioner exercised original powers, and the Board on the other exercising appellate powers, under the Abolition of Jagirs Act, are competent to review their own orders for sufficient cause. It may be noted even here that we are not dealing with the propriety or sufficiency of cause or otherwise of the review in the two cases. Nor, as for that matter, with the question whether, there being a provision for appeal, the Jagir Commissioner could exercise his powers of review, if any, given by statute. It might even be that in the cases concerned there was no justification on the merits for reviewing the orders passed by the respective tribunals; but we are only examining the general question, whether these tribunals are competent to review their orders in the event of there being sufficient justification.

2. It has been urged by the Petitioners in both the cases that for one thing, competency to review is inherent in every tribunal and even if statute is silent, it can review its judgments and orders in appropriate circumstances Secondly, in the instant case statute itself has given express powers of review by a cross reference to another enactment. Section 30 of the Abolition of Jagirs Act which begins with the word "Procedure" actually goes in its wording, well beyond mere procedure,-

30, Procedure-The Jagir Commissioner...conducting an enquiry under this Act, and the Board of Revenue and the Collector hearing appeals from the orders of the Jagir Commissioner or the Tahsildar. as the case may be, shall follow the procedure applicable to proceedings under the Land Revenue and Tenancy Act Samvat 2007 so far as may be.....

Thus for the reference is clearly to procedure properly so called. Further-

....and shall have the same powers in relation to proceedings before them as a Revenue Officer has in relation to original or appellate proceedings as the case may be under the said Act.

The provision in the Madhya Bharat Land Revenue and Tenancy Act is-

S. 40-The Government, the Board or any Revenue Officer may suo motu or on the application of the party interested, review an order passed by itself or himself or by any of its or his predecessor in-office, and may pass such order in reference thereto as it or he thinks fit.

There are a number of provisos setting out the conditions and the manner in which the review power can be exercised. But we are not concerned with them here. It is thus contended even on the assumption that a power of review can only be derived

from statute, it has been granted in the instant cases and therefore it is prayed that this Court should in exercise of its powers under Article 227 of the Constitution rule that Section 30 gives powers of review both to the Jagir Commissioner and to the Board.

3. The first question, whether a power of review is inherent can be disposed of briefly. It is no doubt a commonsense view that a tribunal should be competent to review its own orders in certain circumstances typical of which have been set out in Order 47 Rule 1 CPC Code. There are a few very old rulings which seem to imply this notion. However, the tendency has been for a long time for statute to make it clear whether or not any tribunal has powers of review to be exercised if there is no appeal or revision available to the aggrieved party. But we are not dealing with that aspect of the matter. The various statutes in our country proceed to mention the rights of appeal and revision, if any, and the manner and circumstances of their exercise; a power of review is at times mentioned while at times there is no mention of it. Nor is it always correct to read a power of review in what is usually set out as "inherent" power. Though it can be argued on commonsense ideas that the inherent power of a Court would include a competency to review its own orders our legislatures have kept the notions very distinct.

4. In fact, we have got three kinds of competency in our statute law of a tribunal modifying its own orders. One is a correction of clerical errors. It can be done by any tribunal whether or not statute empowers it. But the typical statutory provision is in Section 152 CPC providing for the removal of clerical or arithmetical mistakes, incidental slips or omissions and the like. This of course presents no difficulty. Then we have what is called inherent powers typified by those in Section 151 CPC and 561-A Code of Criminal Procedure (with reference to the High Court). These powers again, though apparently wide, are of a nature substantially different from powers of review. Then come the powers of review typified by Section 114 and Order 47 of the CPC Code. If the legislatures in our country had been in theory assuming the inherence of a power of review in a tribunal, this will not be the pattern of legislation here. The Civil and Criminal Procedure Codes have only been referred to as the best known of such statutes; but the pattern is more or less the same in every statute. In addition, there has been a body of caselaw, a good deal of which is summarised in standard annotations under Order 47 Rule 1 CPC laying down that review is a creation of statute. One of them is the comparatively recent pronouncement of this High Court in *Rajaram v. Rani Jamit Kunwar*, 1961 J.L.J. 1113. That ruling sets out earlier citations and concludes-

A matter is finally disposed of by a judicial or quasi judicial-authority, that authority in the absence of any statutory provision becomes *functus officio*, and is left with no authority to re-hear and give a fresh decision unless such authority is given to it by law..... Apart from correcting clerical mistakes or errors arising from incidental slips or omissions, there is no inherent power to review a final decision given on merits

inter parties.

Thus, the first question has to be answered in the negative.

5. The more important argument advanced on behalf of the Petitioners is that Section 30 in its last clause does give express powers of review to both the Jagir Commissioner and the Board of Revenue. As against it, it is urged that this section deals with procedure only so that it does not empower these tribunals u/s 40 of the Land Revenue and Tenancy Act. No doubt, Section 30 of the Abolition of Jagirs Act begins with the word "procedure" as a marginal heading; but its contents go well beyond it. In this connection the interpretation by the Supreme Court of a similarly worded clause in another enactment is instructive. When different enactments contain the same phrase and deal with similar topics-in the instant case of the powers of certain tribunals-it is proper to see whether the interpretation given of one of them may not apply to the other as well. In [The Sree Meenakshi Mills, Ltd. Vs. Their Workmen](#), , the question was in regard to the implications of the wording of Section 11(3) of the Industrial Disputes Act.-

Every Board, Court...shall have the same powers as are vested in a Civil Court under the Code of CPC 1908, when trying a suit in respect of the, following matters.....

(d) in respect of such other matters as may be prescribed." In this connection, the Supreme Court remarked-

As the CPC applies to the proceedings before the Labour Appellate Tribunal, it is clear that the provisions of Order 47 of that Code apply to these proceedings. We must accordingly hold that the appellate tribunal erred in law in coming to the conclusion that it has no jurisdiction to review its own order under the provisions of Order 47 of the Code.

On the same lines, the last clause of section 30 of the Abolition of Jagirs Act attract the provisions of Section 40 of the Land Revenue and Tenancy Act-

The tribunals shall have the same powers in relation to proceeding before them as the Revenue Officer has in relation to original or appellate proceedings under that Act.

This is not the first occasion where the express scope of a section in the statute is wider than what is indicated in the marginal title. Once Section 40 of the Land Revenue and Tenancy Act is attracted, it is clear that both the Jagir Commissioner acting as the original Court and the Board acting in appeal-have powers of review

6. As already noted, we are not called upon to decide in these petitions whether in the instant cases the conditions for the exercise of review-whether or a general nature depending upon the merits or of a special nature attracting one or the other of the provisos to Section 40 are satisfied. That would be for those tribunals to decide. But it is clear that statute has given a right of review to these tribunals.

7. The petitions are accordingly allowed. In the special circumstances, the parties should bear their own costs.