

Deorao Jadhav Vs Board of Revenue

M.P. No"s. 4 and 10 of 1962

Court: Madhya Pradesh High Court (Gwalior Bench)

Date of Decision: Dec. 5, 1962

Acts Referred:

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

Citation: (1963) J 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 that 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.