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(1952) 07 BOM CK 0020

Bombay High Court (Nagpur Bench)

Case No: None

Gopalprasad Gayaprasad Tiwari	APPELLANT
Vs	
The Board of Revenue and Another	RESPONDENT

Date of Decision: July 31, 1952

Acts Referred:

- Central Provinces Land Revenue Act, 1881 - Section 9A
- Constitution of India, 1950 - Article 226

Citation: (1953) CriLJ 741

Hon'ble Judges: Sinha, C.J; Mudholkar, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Sinha, C.J.
The petitioner has moved this Court for the issue of a writ or order under Article 226 of the Constitution to the Board of Revenue directing the Board to hear an application made by him to the Board on 1.12.1950 or, if it is held that the Board has no jurisdiction to hear it, directing it to return the application to the petitioner for presentation tit the appropriate authority and for issue of a direction to that authority to hear his application.

2. The application made by the petitioner to the Board was u/s 195(5), Criminal P.C. In that application, the petitioner had prayed that a complaint made against him by the Additional Deputy Commissioner, Mandla u/s 177, Penal Code, be ordered to he withdrawn. That application was heard by Shri S. Rajan who rejected it on the ground that the Board had no jurisdiction to entertain it.

3. Section 195(1)(a) of the Code provides that cognizance of any offence punish able under Sections 172 to 188, Penal Code, can be taken by a Magistrate only upon a

complaint in writing of the public servant concerned, or of some other public servant to whom he is sub-ordinate. Sub-section (5) of Section 195 runs thus:

Where a complaint has been made under Sub-section (1), Clause (a), by a public servant any authority to which such public servant is subordinate may order the withdrawal of the complaint and, if it does so, it shall forward a copy of such order to the Court and, upon receipt thereof by the Court, no further proceedings shall be taken on to complaint.

The question, therefore, is whether the Board of Revenue is an authority to which the Additional Deputy Commissioner, Mandla, is sub-ordinate.

4. Section 195 does not provide any clue for determining the authority to which a public servant is subordinate. In Sub-section (3) it) deals only with the subordination of Courts for the purpose of Section 195. According to the learned Counsel, where a complaint is made by the presiding officer of a Court, even when in relates to an offence specified in Section 195 (3)(a), Sub-section (3) would come in and it is by reference to that provision that the subordination of the public servant is to be determined. In support of his contention he relied. on the decision in - Arunachalam Pillai v. Ponnuswami Pillai 42 Mad 64 (67), which, incidentally, is a decision regarding the interpretation of Section 195(3) before its amendment by the Act of 1923. He also relied on the decision in - Dipomal Murijmal v. Emperor AIR 1942 Sind 98, but this decision is distinguishable as in that case the complaint did not relate to an offence falling within the group of offences set out in Section 195(1)(a).

5. However, even if this held that Section 198(3) would govern a case of the kind we have here it is clear that the nature of jurisdiction exercised by the Court over which the public servant presided when the particular offence was committed will have to be the determining factor for ascertaining whether an appeal law from his decision. In this case, the Addition Deputy Commissioner was exercising his jurisdiction u/s 83(1) of the C.P. Municipalities Act, 1922. That is an appellate jurisdiction and a further appeal from this decision is expressly barred by Section 84 of the C.P. Municipalities Act. It may be that the Board of Revenue could exercise revisional jurisdiction in the matter though we should not be understood as saying it has such jurisdiction - but there is a well recognized distinction between an "appeal" and a "revision". Therefore, even if it is assumed that the Board has revisional jurisdiction in respect of an order of the Additional Deputy Commissioner u/s 83(1), Central Provinces Municipalities Act, it cannot be regarded as a Court to which the Additional Deputy Commissioner is subordinate, within the meaning of Section 195(3), Criminal P.C.

6. An Additional Deputy Commissioner is. appointed u/s 9-A, Central Provinces Land Revenue Act, by the State Governmental and as provided by Sub-section (3) thereof exercises such powers and such duties conferred and imposed on a Deputy Commissioner or Collector by the Land Revenue Act or by any other enactment in such cases or class of cases as the Deputy Commissioner of the district may direct. When he

exercises the powers or discharges duties under that provision he shall be. deemed to be doing so as the Deputy Commissioner of the District. Therefore, he cannot be regarded as subordinate to the Deputy Commissioner but subordinate only to the Provincial Government which appoints him. It is said that since section 7(2) of the Board of Revenue Act, 1949, confers certain powers of the Provincial Government on the Board the Additional Deputy Commissioner must be deemed to be subordinate to the Board also, That provision reads thus:

7 (2) In the exercise of any power or the discharge of any function conferred upon or entrusted to it by or under this Act the Board shall have and may exercise all the powers which the Provincial Government or the Chief Controlling Revenue Authority could have exercised under the law applicable to the case.

This provision does not specify the subjects with regard to which the Board can exercise the powers of the Provincial Government but only defines the extent of the power. It is in Section 6 of the Act that the jurisdiction of the Board is indicated. The relevant part of that section reads thus:

6 (1) The Board shall exercise the powers and discharge the functions of the Provincial Government which are specified in the Schedule and such other functions as have been conferred or may be conferred under any Central or Provincial Act or the Chief Revenue Authority or the Chief Controlling Revenue Authority.

2 The Provincial Government may, subject to such conditions as it may deem fit to impose by notification, confer upon or entrust to the Board or any particular member of the Board, additional powers or functions assigned to the Provincial Government by or under any enactment for the time being in force.

Neither is Section 9-A of the Land Revenue Act mentioned in the Schedule nor has any notification been brought to our notice whereunder power u/s 9-A has been conferred by the State Government on the Board.

7. The Board was therefore right in holding that it had no jurisdiction to entertain the application. As regards the alternative prayer for a direction to the Board to return the petition we think it unnecessary to make such a direction as there being no question of limitation, it is open to the petitioner to make an application to the State Government. The question of issuing a direction to the State Government does not arise at this stage. We, therefore, dismiss this petition with costs.