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Court : Orissa

Decided On : Mar-28-1961

Reported in : AIR1962Ori97

Judge : S. Barman and ;J.K. Mishra, JJ.

Acts : [Constitution of India](#) - Article 226

Appeal No. : O.J.C. 78 and 79 of 1960

Appellant : Basudeb Prasad Modi and ors.

Respondent : Biswanath Modi and ors.

Advocate for Def. : Standing Counsel, ;B.M. Patnaik and ;R.C. Mohanty, Advs.

Advocate for Pet/Ap. : Ranjit Mohanty, Adv.

Disposition : Petition allowed

Judgement :

Barman, J.

1. The genesis of these two writ petitions, analogously heard is a long standing dispute between two adjoining neighbours on both sides of a certain house (hereinafter referred to as the middle house) in Nayasarak in Cuttack Town, arising out of an application to the Executive Officer, Cuttack Municipality, for

permission to make some additions and alterations in respect of the said middle house belonging to the petitioners herein. The adjoining owners (the contesting opposite parties herein) challenged the validity of an order of remand by the Revenue Divisional Commissioner, Central Division, Orissa, in appeal from an appellate order passed by the District Magistrate Cuttack in his capacity as Chairman of the Municipal Council against the decision of the said Executive Officer of the Municipality whereby the District Magistrate,--in modification of the permission granted by the said Executive Officer,--ordered that no additions should be allowed either in the back-ground or in the open verandah in the first floor and that alterations within the existing building were allowed.

The Revenue Divisional Commissioner, in appeal being Municipal Appeals Nos. 6 and 7 of 1957-58 from the District Magistrate's said order remanded the case to the District Magistrate, Cuttack, for fresh enquiry and disposal according to law. It was against the said order of the Revenue Divisional Commissioner that a writ petition being O. J. C. No. 13 of 3953 was filed in this court for quashing the said order of remand. This Court,--by its Judgment dated: December 11 1959 made in the said writ petition (O. J. C. No. 13 of 1958) quashed the said order of remand made by the Revenue Commissioner and accordingly allowed the said O. T. C. No. 13 of 1958. Thereafter the petitioners made an application to the Board of Revenue (who is stated to be suecessor-in-office of the Revenue Divisional Commissioner by virtue of certain notification) praying before him to hear the said Municipal Appeals Nos. 6 and 7 of 1957-58 on merits, because the previous order of remand of the Revenue Divisional Commissioner had been quashed by the High Court as aforesaid. On the said application before the Board of Revenue for hearing on merits, the Board held that the High Court having quashed the order of the Revenue Divisional Commissioner, there is no question of either revival of the appeal proceedings before the Revenue Divisional Commissioner or the Board of Revenue considering the matter on review and accordingly dismissed the petition as misconceived.

It is against this Order of the Member, Board of Revenue, refusing to hear the appeals on merits that the present writ petitions have been filed for quashing the order of the Members Board of Revenue dated March 15, 1960 and to direct him

to hear the said Municipal Appeals Nos. 5 and 7 of 1957-58 on merits.

2-3. The only question for consideration in the present writ petitions, is whether it was incumbent on the Board of Revenue to take up the appeals and hear the same on merits after the previous order of remand made by the Revenue Divisional Commissioner had been quashed by the High Court in the said writ petition, O. J. C 13 of 1958, on the ground that the Revenue. Divisional Commissioner did not deal with the merits of the case. The Board of Revenue took the view that it was open to the High Court

"to have returned the case for further hearing if they so thought fit but by their failing to do so, the position.....is that the order of the Revenue Divisional Commissioner has been quashed'.

The Board further took the view that the decision of the High Court quashing the Revenue Divisional Commissioner's order is a final order and that there is no scope for any arguments that the appeals are again revived in the Revenue Divisional Commissioner's Office or in the court of its successor. It is made clear in the order of the Member of the Board of Revenue that he was not shown any authority in support of the proposition urged by the petitioners that the appeals were again before the Board for hearing on merits, after the previous order of the Revenue Divisional Commissioner had been quashed.

It appears that certain points were raised before the Board of Revenue including the question of his jurisdiction and also with regard to the scope of Section 398 of the Orissa Municipal Act, which it was argued before him does not provide for modification but for suspension or cancellation of the resolution. On the point of jurisdiction, the Board of Revenue did not decide it, and kept it open; while on the other point, the Board appears to have casually expressed certain views and made certain observations.

4. The point which now arises, is whether after the quashing of the order of the Revenue Divisional Commissioner, his successor, Board of Revenue can again take up the appeals and hear the same on merits. The settled position in law is that when the order of the inferior Tribunal on an application properly made to

them is quashed by the High Court by a writ of certiorari on any ground which does not deal with the merits of the case it is not only permissible but it is also incumbent on the inferior Tribunal to take up the application and re-hear the same; if the order is quashed the inferior court or tribunal is left at large to pass any proper order in the light of the decision of the High Court; if, on the other hand, the High Court refuses to rehear on the writ of certiorari and discharges the rule and dismisses the petition then the order of the inferior Court or tribunal stands and assumes the necessary finality. Thus, it is evident that there is no finality until the case is reheard by the inferior tribunal; once the order is quashed it follows that the applicant will be able to go back to the inferior court or tribunal where an opportunity is to be given for the matter to be dealt with in the light of the Judgment of the High Court (N. S. Sattar Sahib v. State of Madras, AIR 1952 Mad 605. M. D. Thakar v. Labour Appellate Tribunal, AIR 1957 Bom 46; Rex v. Northumber-land, Compensation Appeal Tribunal, (1951) 1 KB 711 at P- 724.

5. In the present case, the High Court in the previous writ petition O. J. C. No. 13 of; 1958, had quashed the order of the Revenue Divisional Commissioner without going into merits. The Board of Revenue (who is stated to be the successor-in-office of the Revenue Divisional Commissioner, as aforesaid) should have taken up the appeals and heard them on merits and dealt with or disposed of them according to law. It was not only permissible but it was also incumbent on the Board of Revenue to take up the appeals and hear the same. Indeed, their Lordships of the Supreme Court made it abundantly clear that it is open to issue a direction in the nature of mandamus requiring the appropriate authority to follow the law as laid down by the court: it is true that where it is a case of discretion of an authority the Court would only quash the order and ask the authority to reconsider the matter if the discretion has not been properly exercised (Mahaboob Sheriff and Sons v. Mysore State Transport Authority Bangalore, AIR 1960 SC 321 at p. 327.) In the present case, the Orissa Municipal Act lays down that it shall be the duty of the State Government to see that the proceedings of municipal council are in conformity with law and rules in force thereunder, and the powers of the State Government in this regard are provided for in section 398(1) of the Act.

6. In this view of the case, we hold that the Member, Board of Revenue took a wrong view of the position in law with regard to the effect of the quashing of the order of the Revenue Divisional Commissioner by High Court, where the High Court did not express any view on the merits of the case. We, accordingly, direct the Member, Board of Revenue to hear the said two appeals on merits and to pass any proper order in the light of the decision of the High Court in accordance with law; he is also directed to give his decision on the other points raised before him including the point of his jurisdiction. We must make it clear that the Member, Board of Revenue is not bound by any of his views expressed or observations made in his order dated March 15 1960, whereby he refused to hear the appeals on merits; he is left at large to deal with or dispose of the appeals and give his decision on all the points, after hearing the parties as he may think fit and proper according to law.

7. The result, therefore, is that these writ petitions are allowed and the order of the Member, Board of Revenue dated March 15, 1960 is set aside. We make no order for costs of this Court.

Misra, J.

8. I agree.