

Hari Singh and ors. Vs. State and ors.

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Court : Rajasthan

Decided On : Feb-06-1997

Reported in : 1997(2)WLC749; 1997(1)WLN183

Judge : B.J. Shethna, J.

Appeal No. : S.B. Civil Writ Petition No. 2289, 3468, 4213, 4210 and 4211 of 1989 and 5237, 5233, 5235, 5236 and

Appellant : Hari Singh and ors.

Respondent : State and ors.

Disposition : petition allowed

Judgement :

B.J. Shethna, J.

1. First five matters commencing from 2289/88 to 5237/90 were on board today for hearing. Remaining matters filed by Mr. Bishnoi were not on the Board today. However, the common point was involved and all these petitions were arising out of the common order passed by the Revenue Board, therefore, the rest of the petitions, which were not listed on board today, were called for and decided by this common order. As the main writ petition No. 2289/88 was there on the board, it was heard. It was also agreed by the learned Counsel appearing for the parties

that the decision rendered in this petition will cover the fate of other petitions.

2. It is the case of the petitioners that settlement operations were decided in their favour way back in Samvat year 2000 i.e. in the year 1943 A.D. and on 15.9.51 (Annex. 1), the Assistant Record Officer passed the order against which objections were filed. After hearing all the concerned persons, the Collector decided the matter and ordered the Tehsildar to make an entry in revenue record in favour of the petitioners (Annex. 2). The same was challenged by the private respondents in appeals before the Additional Commissioner, who dismissed their appeals by an order dated 15.1.60 (Annex. 7). Second appeals were also dismissed by the Revenue Board on 11.6.60 (Annex. 8). It was not carried further by the private respondents. After prolonged litigation, the petitioners succeeded in getting the entries made in revenue record by the Tehsildar in their favour as per the order (Annex. 2) passed by the Collector. Against the recording of entries in favour of the petitioners, the private contesting respondents preferred appeals before the Sub-Divisional Officer, which were dismissed on 10.10.79 (Annex. 16). Second appeals were filed before the Revenue Appellate Authority by the private respondents, were allowed on 7.1.82 (Annex. 17) by a common order and the R.A.A. directed the Collector to re-open the matter which was already decided by him (Collector) on 19.3.59 (Annex. 2). 'Aggrieved by that order passed by the R.A.A., the petitioners preferred revisions before the Revenue Board. The revenue Board disposed of 42 revisions by a common order dated 31.7.87 (Annex. 18). In para No. 7 of its order, the Revenue Board observed that:

It is obvious that the order dated 19.3.59 of the Collector, Pali was made in a matter relating to settlement after the closure of settlement operation and the Revenue Appellate Authority had no jurisdiction in the matter quite apart from the fact that the order dated 19.3.59 had acquired finality appeals against that having been rejected by the Additional Settlement Commissioner and the Board of Revenue.

It also held that:

The order dated 19.3.59 of the Collector Pali is not only final but has merged in the order of the Board of Revenue. The Revenue Appellate Authority therefore could

not have gone behind the decision into facts and evidence led before the Collector and to seek to have the matter re-opened.

It has also held that:

For the reasons the judgment dated 7.1.82 of the Revenue Appellate Authority, Jodhpur deserves to be set aside.

But, the Revenue Board did not rest there. It proceeded to observe in para No. 10 that:

On merits it would be seen that the order dated 19.3.59 of the Collector Pali was sought to be implemented in 1971 by which time jagirs had been resumed and all kinds of intermediaries abolished and the peasant cultivator stood in direct relation to the State. It should be obvious that by 1971 not only Jagirdar, Juna Jagirdar and their Pasayatdar but also the order dated 19.3.59 of the Collector Pali had become anachronisms. The purpose of mutation proceedings is to update land records and an anachronism can find no place in these proceedings. The Jagirdar and Juna Jagirdar had been replaced by the State and in 1971 there was no question of replacing the entry in favour of the State in the record of rights by the entry in favour of Juna Jagirdar. That being so, there was still less no question of replacing persons recorded as khatedars by the erstwhile Juna Jagirdar as Khatedars in the record of rights. The order dated 19.3.59 of the Collector Pali itself did not require this. In other words no action could have been taken by way of mutation proceedings on the order of the Collector, Pali dated 19.3.59 in 1971. The mutations in question were therefore misconceived and also deserved to be set aside.

3. In exercise of the powers vested under Section 84 read with Section 9 of the Land Revenue Act, it not only set aside the common order passed by the R.A.A. allowing all 42 appeals filed by the present private respondents but also set aside the orders dated 10.10.79 (Annex. 16) passed by S.D.O., Bali as well as mutations dated 10.1.71 (Annex. 12 to 15). While setting aside those orders, the Revenue Board observed that if the petitioners feel that they had acquired any rights under the orders dated 19.3.59 passed by the Collector, Pali (Annex. 2), they will be free

to seek redress from the appropriate court by way of a suit. Against the part of that order, passed in all revision petitions against the petitioners whereby the Revenue Board set aside the orders dated 10.10.79 passed by S.D.O., Bali and the mutations dated 10.1.71 (Annex. 12 to 15) the petitioners filed 42 review petitions, which also came to be dismissed by a common order dated 28.9.87 (Annex. 19). Aggrieved by the part of the common order passed in 42 revision petitions setting aside the order passed by the S.D.D. on TO. 10.79 (Annex. 16) and the mutations dated 10.1.71 (Annex. 12 to 15) and rejecting the review petitions, the petitioners have filed above petitions and some other petitions before this Court.

4. Mr. Lodha, learned Counsel appearing for the private respondents in main writ petition No. 2289/88 raised a very strong objection regarding the maintainability of the writ petitions. He submitted that when there were in all 42 appeals, revisions and review petitions, the petitioners ought to have filed 42 writ petitions and not only these petitions. Therefore, he submitted that without going into the merits of the case, only on this ground, all these petitions be dismissed.

5. As against that learned Counsel Shri Bishnoi for the petitioner submitted that the dispute between the parties is going on since 1943. The point involved in these matters is the common point. He has only clubbed together some matters so that it saves extra expenditure as for the petitioners this litigation has proved to be a costly affair. Therefore, he submitted that the objection raised by learned Counsel Shri Lodha is a highly technical objection and this Court should decide the matters on merits instead of deciding it on such objection. He submits that if the matters are dismissed on this ground then the petitioners will suffer a great hardship and irreparable loss. In my opinion, the objection raised by Mr. Lodha has got lot of substance. In normal circumstances, this Court would have accepted it. But considering the fact that all matters were decided by a common order before the courts below, though technically Mr. Lodha may be right, but it would not be in the interest of justice to throw out all these petitions on this ground and it is desirable that this Court dispose of all these petitions on merits.

6. On merits, learned Counsel Shri Bishnoi submitted that the order passed by the Board of Revenue suffers from jurisdictional error and the Board has also

exceeded its jurisdiction and, therefore, though, this is a petition under Article 226/227 of the Constitution of India, this Court should exercise its powers and put an end to the litigation which is going on between the parties for more than half a century. He also submitted that once the Revenue Board accepted the contention of the petitioner that the order passed by the R.A.A. is bad and set aside the order passed by the R.A.A., then no further orders were required to be passed by the Revenue Board because there was no other prayers as such before it. He submitted that the part of the order passed against the private respondents by the Revenue Board, was not been challenged by them (private respondents) before this Court. Hence the same has become final. The petitioner has challenged in this revision petition only the part of the order whereby the Revenue Board wrongly exercised its power under Section 84 read with Section 9 of the Land Revenue Act in setting aside the order dated 10.10.79 passed by the S.D.O. and mutations dated 10.1.71. He also submitted that once one hand the Revenue Board observed that if the petitioners feel that they had acquired any right under the Collector's order dated 19.3.59 (Annex. 2) then there was no need of power observing that they will be free to seek redress from the appropriate court by way of a suit. Mr. Bishnoi also submitted that the Revenue Board could not have exercised its jurisdiction under Section 84 read with Section 9 of the Act without giving notice to the petitioners, therefore, also the order passed by the Revenue Board is required to be set aside.

7.2.97.

7. Learned Counsel Shri Singhvi and Shri Prakash Tatia, however, tried to support the petitioners by submitting that the order dated 10.10.79 passed by the S.D.O., Bali and the mutations dated 10.1.71 could not and should not have been disturbed by the Revenue Board while setting aside the impugned order passed by the R.A.A. in appeal. They also submitted that because of the dispute between the private parties unnecessarily the State has to suffer.

8. Learned Counsel Shri Lodha, appearing for the private respondents in main writ petition No. 2289/88 submitted that no error apparent on the face of the record is committed by the Revenue Board by passing the part of the orders against the

petitioners, and therefore, this Court should not exercise its powers under Article 226/227 of the Constitution of India. In support of his submission, he relied upon the Supreme Court judgment reported in Mohd. Yunus v. Mohd. Mustkim : [1984]1SCR211 . He also submitted that no prejudice is caused to the petitioners by that part of the impugned order passed by the Revenue Board as the Revenue Board has given them a right to approach the appropriate court by way of a suit. If they feel that they had acquired any right under the order dated 19.3.59 (Annex. 2) passed by the Collector, Pali. He also relied upon the Full Bench judgment of Revenue Board reported in Bapu Colony Housing Co-operative Society Ltd. v. State of Rajasthan 1988 R.R.D. 235.

9. Under Section 84 read with Section 9 of the Land Revenue Act, the Revenue Board has powers to review the orders passed by the courts below either suo motu or the matter being moved to it by any parties. But the same can be exercised only after issuing notice to the concerned parties who are likely to be affected. The grievance of the petitioner was that they were not given due notice and passed the impugned orders, therefore, it is bad. This submission of the petitioner cannot be accepted as they were very much aware about the proceedings and the impugned orders under challenge. In alternative, learned Counsel Shri Bishnoi for the petitioners had submitted that in any case the Revenue Board's order suffers from the inherent lack of jurisdiction because the mutation entries dated 10.1.71 was made on the basis of the order passed by the Collector on 19.3.59 (Annex. 2) and the appeal against that mutation was dismissed by the S.D.O. on 10.10.79. Therefore, mutation and the order passed by the S.D.O. could not have been set aside unless and until the order passed by the Collector on 19.3.59 (Annex. 2) is set aside. He further submitted that Revenue Board has not disturbed the order passed by the Collector on 19.3.59 (Annex. 2). On the contrary, it has approved the order and observed that if the petitioners feel that they acquired any right under the order dated 19.3.59 passed by the Collector then they are free to seek redress from the appropriate court. He submitted that this is contradiction in terms. If the petitioners had acquired the rights under the order dated 19.3.59 then the same has to be implemented as per the order itself and they were not required to approach any court for redressal of their grievance by way of suit or any other proceedings. In any case he submitted

that the Revenue Board has exceeded in its jurisdiction in setting aside the order dated 10.10.79 passed by Sub-Divisional Officer in appeal and the mutations dated 10.1.71. He submitted that perhaps this Court or even the Supreme Court could not have passed such orders. I would not go into this as to whether the Supreme Court or this Court could have done it or not. But, in my opinion certainly the Revenue Board had no such jurisdiction. It has exceeded its jurisdiction. Once, the Revenue Board found that the order passed by the R.A.A. in appeal under challenge in revision before it, was illegal then the Revenue Board had only to set aside the impugned order passed by the R.A.A. and should have rested there. Strangely, the Revenue Board thought that it had all powers under Section 84 read with Section 9 of the Act to set aside the mutations dated 10.1.71 and the S.D.O. order dated 10.10.79 passed in appeal which were based upon the order dated 19.3.59 (Annex. 2) passed by the Collector, which was earlier confirmed in appeal filed before R.A.A and before the Board of Revenue in revision and not challenged further. Meaning thereby, it had become final. In view of the above, the submission made by Mr. Lodha, learned Counsel appearing for the private respondents, that Revenue Board has committed no error apparent on the face of the record and no prejudice is caused to the petitioner by the Impugned order, loses all its significance. The judgment of the Supreme Court cited by Mr. Lodha reported In Mohd Yunus v. Mohd. Mustkim (supra) is not applicable in the instant case as this is a clear case of jurisdictional error, which is committed by the Revenue Board while passing the impugned order.

10. The question of prejudice would also not survive once this Court comes to the conclusion that the order is without jurisdiction.

11. The litigation between the parties is going on since more than' half a century and the matter should come to an end. In my opinion, learned Government Advocates, Shri Singhvi and Shri Tatia have rightly supported the case of the petitioners.

12. In view of the above discussion all these petitions are allowed. the part of the impugned order at Annex. 18 by which the Revenue Board set aside mutations dated 10.1.71 and the orders passed by the S.D.O. dated 10.10.79 is hereby set

aside. Accordingly, the order passed in review petitions at Annex. 19 is also set aside. It is made clear that part of the order by which the Revenue Board set aside the order passed by R.A. in appeal on 7.1.82 (Annex. 17) which is not challenged either by the petitioners or by the private respondents is not disturbed.

13. Accordingly, all these petitions are allowed in the aforesaid terms with no order as to costs.

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