

Kalika Prasad vs Additional Commissioner, Agra ... on 5 October, 1955

Equivalent citations: AIR1956ALL103, AIR 1956 ALLAHABAD 103

ORDER

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ of certiorari be issued quashing the order passed by the learned Additional Commissioner dated 11-1-1955.

2. An application under Section 27 of Act 10 of 1947 was filed by the grand-father of Samokhi Lal, opposite party 2 for reinstatement of his possession. In those proceedings a compromise was arrived at between Kishan Lal and the petitioner in the present petition, Kalika Prasad under which, four plots were given to him. During the pendency of those proceedings a bhumidhari sanad was obtained by Kalika Prasad applicant. Proceedings under Section 202, U. P. Zamindari Abolition and Land Reforms Act were started.

Those proceedings were stayed and on an application made by the opposite party the sanad granted to the applicant was cancelled by the Assistant Collector under Section 12, U. P. Agricultural Tenants (Acquisition of Privileges) Act, An appeal was preferred to the Additional Commissioner Agra' division against the order of the Assistant Collector cancelling the sanad and the Additional Commissioner by his order dated 22-11-1954, allowed the appeal, set aside the order of the Assistant Collector and maintained the order granting sanad to the applicant.

Thereafter opposite party filed an application for review of judgment of the Additional Commissioner, who by his order dated 11-1-1955, recalled his order dated 26-11-1954, and dismissed the appeal with costs. The order of the Assistant Collector cancelling the sanad was, therefore, maintained by the Additional Commissioner by his order dated 11-1-1955.

By the present petition the order passed by the Additional Commissioner is sought to be quashed on the ground that there is no power given to the Court acting under the U. P. Agricultural Tenants (Acquisition of Privileges) Act to review its own order. Section 12 of the Act provides that a declaration granted under Section 6 may, on the application of any person interested, be cancelled or modified by the Assistant Collector for any of the following reasons namely:

(a) that the declaration was obtained fraudulently by the making of a, false suggestion, or by the concealment from the Assistant Collector of something material to the case;

(b) that the declaration was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant thereof,

(c) that a decree or order passed by a competent Court in a suit or other proceedings with respect to the holding for which the declaration has been granted renders it proper that the declaration should be cancelled.

3. The order passed by the Assistant Collector cancelling the original order has been filed as annexure 'B' to the counter affidavit and from a perusal of the order it appears that the Assistant Collector cancelled the sanad granted to the applicant on two grounds. Firstly he held that the compromise arrived at between Kalika Pd. applicant to the present petition and the opposite party during the pendency of the proceedings under Section 27 of the Act was never- acted upon between the parties and secondly, on the ground that in those proceedings the opposite parties were declared to be tenants in chief and Kalika Prasad was only recognised as a subtenant and consequently there was a declaration by a competent Court that the opposite parties were tenants-in-chief and the applicant could not be granted a sanad.

On appeal the Additional Commissioner held that a compromise had been arrived at between Kalika Prasad and the opposite parties under which four plots were retained by Kalika Prasad. He had obtained a declaration in respect of these plots and no fraud was committed by him in obtaining the sanad. Certainly that compromise acted as a bar to subsequent proceeding by Samokhi Lal and Santokhi. The Court below did not correctly appreciate the situation in granting the relief to the respondents.

Earlier in the judgment the Additional Commissioner has taken notes of the contention of the opposite party that there was no compromise between the parties and that the present petitioner had only been declared a sub-tenant in the proceedings under Section 27 of the Act. When an application for review was filed the review was entertained on the ground that the powers of a Court dispensing justice are very wide and it is always open to Court of law to review an order passed incorrectly earlier by him.

The Additional Commissioner, thereafter, referred to the compromise and remarked that the compromise was in respect of four plots only, and that it had been rightly rejected by the Court below. Kalika Prasad had said that he did not agree with the terms of the compromise. At the time when the application for grant of a sanad was made, the proceedings under Section 27 of the Act were pending, and both the parties desired for the compromise.

The main contention in the present petition is that although under Section 13, U. P. Agricultural Tenants (Acquisition of Privileges) Act the right of appeal is given to a party against the order cancelling a sanad, no power to review has been given to any Court under the Act and in the absence of any express provision in the Act which confers jurisdiction on the Court to determine a particular controversy granting power of review no inherent power can be exercised by a Court to review its judgment.

The power of review is a power which is the creation of the statute, and unless the power is given to a Court to review its order once the Judgment has been signed, it cannot be reviewed. Reliance has been placed by the applicant on the case of -- 'Sampu Gowda v. state of Mysore', AIR 1953 Mys 156 (FB) (A). In that case the petitioners were granted certain land.

An appeal to the Government against that order of the Revenue Commissioner was also dismissed. Thereafter an application for review of the order passed by the Government was presented and rejected but on a second petition the Government passed an order setting aside the grant of the land to the petitioner. An application was then filed under Article 226 of the Constitution, and it was held by a Full Bench of that Court that the review is a remedy to be sought for and delivered under the special circumstances.

Reference- was also made to the case of -- 'Mt. Abhilakhi v. Sadhanand', AIR 1931 All 244 (FB) (B). The question raised in the Full Bench case of this Court was whether a Bench of this Court hearing an appeal under the Letters Patent had power to review its judgment, and it was held that a Bench hearing an appeal from the decision of a Single Judge derives its jurisdiction under the Letters Patent, and not under Section 114, Civil P. C., and as such it has no power to review its own judgment.

In an earlier case reported -- 'In re Kajori Mal Kalyanmal', AIR 1930 All 209 (C), it was held that the High Court had no power to review its order passed on the reference under Section 66, Income-tax Act. In another case of this Court reported in -- 'Mt. Siraj Fatima v. 'Mahmood Ali', AIR 1932 All 293 (FB) (D), it was held by a Full Bench of this Court that the subordinate Revenue Courts had no power to review their judgments.

That was a suit brought for setting aside a decree obtained in the Revenue Court against the minor on the ground that the guardian acted negligently, and it was observed at page 301 of the judgment that there is no provision for a review of judgment by a subordinate Revenue Court under the U. P. Land Revenue Act. The doctrine of inherent jurisdiction can hardly be invoked in such a case.

It would not be open to the Revenue Court to reopen the partition on the allegation that the guardian of the minor had been negligent. Similarly it has been held by a Calcutta Court in 45 Cal 809 (sic) and -- 'Inder Mahton v. Ramkishun Missir', AIR 1931 Pat 409 (E), that the power of review cannot be exercised until there is an express statutory provision to that effect. In. -- 'Ramchandra v. Beero Pollai', AIR 1936 Mad 531 at p. 540 (F), of the report it has been observed by a Full Bench that generally no Court has got a power of revising its own appellate orders nor has a Court the power of review unless specially conferred on it.

From the examination of these authorities it is clear that the power to review can only be exercised if it has been expressly conferred by the Statute. There is no inherent powers given to the Courts to reconsider their order once passed unless the power of review is granted expressly under the provisions of the statute. The contention of the opposite party is that there has been suppression of certain material facts and consequently the applicant is not entitled to a relief under Article 226 of the Constitution.

It is true that the power given under Article 226 is a discretionary power and it has not to be exercised in favour of the petitioner who has suppressed the material facts of the case but the opposite party has not been able to point out any material fact which the petitioner failed to mention in his petition and which, if pointed out to this Court, would not have entitled him to get a preliminary order in the case.

4. The next contention of the applicant is that in order to meet the ends of justice and to avoid abuse of the process of law the Additional Commissioner had inherent jurisdiction to recall the incorrect order which he passed. This argument has been based on two grounds. Firstly it is contended that the provisions of the C. P. C. apply to the proceedings under the Acquisition of the Privileges Act.

Section 16 of the Act gives power to the State Government to (sic)take rules for the purpose of carrying into effect the provisions of the Act. No power has been conferred on the State Government under Section 16 to frame rules regarding the maintainability and the disposal of the review applications. No rule has been pointed out which authorises the Additional Commissioner to review his judgment.

The Act does not make the provisions of the Civil Procedure Code applicable to the proceedings in appeal under the said section. On the contrary Section 16 which expressly gives power to the State Government to frame rules relating to the procedure before the Assistant Collector and the appellate Court, suggests that the Civil Procedure Code did not apply to the proceedings under the Act and the proceedings under the said Act are to be governed by the express provisions in rules framed by the State Government under Section 16.

It is contended that the proceedings under the Agricultural Tenants (Acquisition of Privileges) Act are proceedings of a civil nature and the procedure prescribed in the Civil Procedure-Code, should be applied in view of the provisions of Section 141, Civil P. C. There are two objections to this contention of the opposite party.

Firstly it is said that in view of the power given to the State Government under Section 16 to frame rules for the procedure to be followed in proceedings under the Act, the provisions of the Civil Procedure Code have been expressly excluded from its application to the proceedings under this Act and secondly it is contended that Section 141 only makes the procedure in suits under the Civil Procedure Code to be applicable to the proceedings under the Act. But power of review is not a matter relating to the procedure.

It is a matter relating to the jurisdiction of the Court.

In this connection reference can as well be made to the case of AIR 1931 All 244 (B). The provisions of Section 114, Civil P. C. and Order 47, therefore, cannot be made applicable to the proceedings under the Agricultural Tenants (Acquisition of Privileges) Act. Reliance was placed by the applicant on the decision of their Lordships of the Privy Council reported in -- 'Debi Bakhsh Singh v. Habib Shah', 35 All 331 (G). That was a case where a suit was dismissed for default when the plaintiff was already dead.

Subsequently the heirs made an application under Order 22 for substitution of their names on the ground that the suit was still pending and the order of dismissal was void. The trial Court granted the application ignoring its previous order dismissing the suit for default and ordered the substitution of names of the heirs.

Thereafter an appeal was filed to the Judicial Commissioner's Court and the Judicial Commissioner's Court allowed the appeal and rejected the application for substitution on the ground that as there was an order dismissing the suit for default, no application for substitution could be made as no suit was pending unless the order dismissing the suit for default was set aside on a proper application.

The matter went up in appeal to the Privy Council and the order of the appellate Court was set aside by the Privy Council and the trial Court's order restored. Their Lordships of the Privy Council observed that the Court had ample powers to ignore its previous order which was a void order inasmuch as there could be no default of a person who was dead on the date when the suit came up for hearing.

It was not a case where their Lordships came to the conclusion that the trial Court had exercised its power of review. It was a case where an order which was void, was ignored by a subsequent order and the suit was regarded as pending. The case is, therefore, entirely distinguishable on the facts. In cases where a previous order passed by a Court is ignored on the ground that the order was a void order, the position is entirely different.

But there is no power in any Court to review its judgment unless that power is given under the provisions of the Statute. The Statute which confers a right of review itself indicates the limitation under which that power is to be exercised. But in the absence of any such power the Court cannot review its order on the mere ground that at a later stage it considers that its previous order was wrong.

5. I have already stated the facts of the present case in the earlier part of my order and it is apparent that all the matters on which the Additional Commissioner thought that his previous order was wrong, were present before him at the previous stage when the appeal was disposed of and all the points were urged by the parties and it cannot be said that there was any new facts given to the Additional Commissioner on which he could review his previous order. He could not sit in appeal over his own previous judgment and on a second thought quash the order of the subordinate Court on the ground that it was erroneous.

6. I, therefore, allow this petition quashing the order of the Additional Commissioner dated 11-1-1955, with costs.