# Daryao Singh And Ors. vs Board Of Revenue And Anr. on 6 March, 1952

## Equivalent citations: AIR1952ALL829, AIR 1952 ALLAHABAD 829

JUDGMENT

Bind Basni Prasad, J.

1. This is an application under Article 226 of the Constitution directed against the Hon'ble Board of Revenue, Uttar Pradesh and one Gandra Gir for a writ of prohibition to restrain opposite party No. 1 from trying revision No. 44 of 1950-51 in a case under Section 27, U. P. Tenancy (Amendment) Act of 1947.

2. The relevant facts are as follows: Section 27, U. P. Tenancy (Amendment) Act, 1947 provides for the reinstatement of certain tenants who had been ejected from their holdings under Section 165 or Section 171 or Section 180, U. P. Tenancy Act, 1939. Gendra Gir made an application under this section to the revenue Court. The trial Court dismissed that application. There was an appeal to the Collector under Sub-section (6) of Section 27 but it was infructuous. A petition in revision was filed before the Commissioner, but without any success. Thereupon ha filed a revision purporting to be under Section 275, U. P. Tenancy Act, 1939 before the Hon'ble Board of Revenue. The present applicants took a preliminary objection that the revision was not maintainable inasmuch as Section 27 of the Amending Act was self-contained and the order passed by the Collector was final under Sub-section (6) of that section. A learned member of the Hon'ble Board of Revenue considered this objection by an order, dated 14-8-1951, and held that the Board possessed the revisional jurisdiction. In this application, it is contended that the view taken by the Board of Revenue is erroneous and it has no jurisdiction to entertain and hear the revision.

3. Two objections have been raised before us. Firstly, it is contended that Section 27 being not a part of the U. P. Tenancy Act, 1939, orders passed under it do not fall within the purview of Section 275 of the present Act and there being no provision for revision in the Amending Act, the Board of Revenue has no jurisdiction to entertain the revision. Secondly, it is argued that the word "final" in Sub-section (6) of Section 27 has not been correctly interpreted by the Hon'ble Board of Revenue.

4. Taking up the first objection, we agree entirely with the reasons given by the Hon'ble Board of Revenue. The preamble of the parent Act, namely, the D.P. Tenancy Act, 1939 will show that its object was to consolidate and amend the law relating to agricultural tenancies, proprietary cultivation and other matters connected therewith in this State. No one will deny that the object of the U. P. Tenance (Amendment) Act also is the same. Its preamble runs as follows :

> "An Act further to amend the United Provinces Tenancy Act XVII [17] of 1939. Whereas it is expedient to amend certain provisions of the United Provinces Tenancy Act, 1939, and to give relief to certain tenants ejected thereunder, and also to provide for the better utilization of land."

Section 27 deals with the ejectments effected prior to the amendment under Sections 165, 171 and 180 of the parent Act and it purports to give relief to those tenants who had been ejected under those sections prior to the amendment. The working of those three sections brought into prominence certain hardships to the tenants and it was, therefore, considered desirable to soften, their rigours. In a way, Section 27 is intended to amend the effect of Sections 165, 171, and 180 of the parent Act. The section is, in effect, a proviso to each of these three sections. Section 27 of the Amending Act was not given a permanent place in the parent Act because Section 27, as its terms would show, was temporary in operation. An application under it could be made within six months from the date of the commencement of the Amending Act. To find out whether or not a certain law amends an existing law one has to see its pith and substance and not to its form. There is no room for any doubt that the scope of Section 27 is the same as that of Sections 165, 171 and 180 of the parent Act. It amends the previous operation of those three sections to a certain extent by nullifying the decrees which have been passed under them. The very name "Amending Act" shows that it is an Act intended to amend the U. P. Tenancy Act, 1939.

5. Learned counsel for the applicants has argued that an application under Section 27 of the Amending Act has not been included in Schedule 4 of the parent Act ; hence it should be taken that it is not an application under the D.P. Tenancy Act, 1939. We are not at all impressed with this contention. Section 242, U. P. Tenancy Act, 1939 provides that the suits and applications of the nature specified in Schedule 4 shall be heard and determined by the Revenue Court. When Section 27 of the Amending Act was enacted and power was given to the Revenue Court to entertain an application under it, the clear effect was to insert in Schedule 4, an application under Section 27 of the Amending Act also.

6. If Section 27 is a part and parcel of the U. P. Tenancy Act, 1939, then clearly an application for revision is maintainable under Section 275, U. P. Tenancy Act, 1939. But apart from this, the scope of Section 275 is very wide. It provides :

> "The Board may call for the record of any case decided by any Subordinate Revenue Court in which no appeal lies either to the District Judge or to the Board ....."

There can be no doubt that the Collector is a Court subordinate to the Board of Revenue and no appeal, in the present case, lay either to the District Judge or to the Board. It is important to note here that the revisional power under Section 275 is not confined to orders passed under the parent Act of 1939. The revisional jurisdiction extends also to orders passed under the Amending Act. The first contention, therefore, falls to the ground.

7. Sub-section (6) of Section 27, U. P. Tenancy (Amendment) Act, 1947 runs as follows :

> "An appeal against an order passed under this section shall lie to the Collector whose appellate order shall be final."

Learned counsel relies upon the Full Bench decision of the late Chief Court of Oudh in Mahipal Singh v. Kamta Prasad, A. I. R. 1940 Oudh 33 (F.B.). In that case, Section 5 (2), U. P. Agriculturists' Relief Act No. XXVII of 1934 in which there is a provision that 'the decision of the appellate Court shall be final' came in for interpretation. Their Lordships held that even the revisional jurisdiction was barred by that provision. They referred to a previous decision of that Court in Nihal Singh v. Ganesh Dass Bam Gopal, 1936 Oudh W. N. 1158, and upheld it.

As against this, we have a long chain of authorities of this Court. So far back as the year 1890, a Full Bench of five Hon'ble Judges held in Bal Koran v. Gobind Nath, 12 ALL. 129 (P. B.), that the word 'final' in Section 5, Court-fees Act means 'unappealable'. In Ashraf v. Saith Mal, 1937 ALL. L. J. 1101, the word 'final' occurring in Sub-section (5) of Section 45, Encumbered Estates Act came in for interpretation. The decision in Nihal Singh v. Ganesh Dass Bam Gopal, 1936 Oudh W.N. 1158, was not followed. Relying upon Bal Karan v. Gobind Nath, 12 ALL. 129 (P. B.) and Mohd. Ibrahim Mulla v. S.B. Jandas, A. I. R. 1923 Bang. 94 (P.B.), it was held that the word 'final' could only mean 'not subject to appeal' and it could not be final in the sense that the power to interfere in revision is shut out. The High Court was held to possess a revisional jurisdiction under Section 115, Civil P. C. Then we have the Full Bench decision of this Court in Shah Chaturbhuj v. Shah Mauji Bam, 1938 ALL. L. J. 628. In that case also, Sub-section (2) of Section 5, U. P. Agriculturists' Relief Act came in for consideration. It was held that despite the use of the word 'final' in that subsection, this Court possessed the power to interfere in revision, Lastly there is the case of Mohd. Maqsood Ali v. Hoshiar Singh, 1945 ALL. L. J. 185. That was also a case under the Encumbered Estates Act. Their Lordships held that the word 'final' could only mean "not subject to appeal" and that it could not be final in the sense that the power to interfere in revision was shut out. The weight of the authorities is thus decidedly in favour of the view that the revisional jurisdiction of this Court is not shut out when the Legislature used the word 'final' in a statute The view taken by the Hon'ble Board of Revenue was, therefore, correct. It had the jurisdiction to entertain the revision.

8. The application fails and it is, hereby, dismissed with costs. We assess Rs. 80 each as counsel fee for each lawyer of the opposite party. The record shall at once be returned to the Hon'ble Board of Revenue to proceed with the revision according to law.