

Malojirao Narasingarao Shitole

Vs

State of Madhya Pradesh

Civil Appeal No. 302 of 1966

(CJI M. Hidayatullah, G. K. Mitter, V. Ramawami I JJ)

07.03.1969

JUDGMENT

MITTER, J. –

1. This is an appeal by special leave from an order of the Madhya Pradesh High Court under Article 227 of the Constitution refusing to quash an order made by the Board of Revenue of the State throwing out the appeal of the appellant on the ground that it was barred by time.

2. The facts are as follows : The appellant was a Sardar and a Jagirdar in the former Gwalior State. His Jagir known as Fehari Jagir was resumed by the State on December 4, 1952, under the Madhya Bharat Abolition of Jagirs Act, 28 of 1951. He received a memorandum from the Jagir Commissioner on February 23, 1958, regarding the compensation payable to him under Section 13 of the Act in respect of the resumption of his Jagir. On February 24, 1958 he applied to the Jagir Commissioner for a copy of the judgment. The memorandum received by him gave the total amount of compensation determined and the deductions to be made therefrom. It did not contain the data forming the basis of the calculations nor did it show how the authority disposed of the appellant's claim to compensation and made its own computation. At the hearing, a copy of the judgment of the Jagir Commissioner running into twenty-three pages was handed up to us giving full details of the claim and showing how the same were dealt with for fixing the amount payable to the appellant.

3. It appears that the application of the appellant for a copy of the judgment was returned to him on March 11, 1958 with an endorsement that the same could be had on payment of fees. On the very next day the appellant applied for a copy of the judgment after paying the fees mentioned and a copy of the judgment was given to him on March 18, 1958. The appellant preferred his appeal to the Board of Revenue on June 2, 1958. As already stated, the Board did not go into the merits of the case holding the appeal to be barred by time under the provisions of Section 29 of the Act.

4. It is necessary to note a few of the provisions of the Madhya Bharat Abolition of Jagirs Act, 1951 (hereinafter referred to as the 'Act'), to find out whether the appeal to the Board of Revenue was out of time. Under Section 3 of the Act the Government had to appoint a date for the resumption of all jagir lands in the State, as soon as may be, after the commencement of the Act. The consequences of the resumption of the jagir land are given in Section 4. By the operation of that section the right, title and interest of every jagirdar and of every other person claiming through him in his jagir lands including forests, trees, etc. whether being worked or not, were to stand resumed to the State free of all encumbrances and certain other consequences were to follow. Section 5 of the Act however enabled the Jagirdar to continue to remain in possession of lands personally cultivated by him and of certain other items of property mentioned in clause (b) of the said section. Under Section 8 the

Government was to be liable to pay to every jagirdar whose jagir land was resumed under Section 3 such compensation as would be determined in accordance with the principles laid down in Schedule 1. Under Section 12 every Jagirdar whose jagir land had been resumed under Section 3 was to file in the prescribed form within two months from the date of resumption, a statement of claim for compensation before the Jagir Commissioner. Sub-section (2) of the section prescribed the particulars which such statement of claim had to furnish. On receipt of a statement of claim under Section 12 or if no statement was received by him within the period fixed, it was the duty of the Jagir Commissioner to determine (a) the amount of compensation payable to the Jagirdar under Section 8; (b) the amount recoverable from under clause (e) of sub-section (1) of Section 4; (c) the amounts of the annual maintenance allowances payable to maintenance holders, if any, under Section 9(4) the amounts payable annually to the Zamindars of the Jagirdar, if any under Section 10; and (e) the amount payable to the co-sharers of a Jagirdar, if any, under Section 11. The section cast a duty on the Jagir Commissioner to communicate his decision to the Government, the Jagirdar, the maintenance holders, the co-sharers and the Zamindars, if any, as soon as may be practicable. Under Section 29 the Government or any person aggrieved by the decision of the Jagir Commissioner under Sections 4, 10, 11, 13 or 14 had the right to appeal to the Board of Revenue within 20 days from the date of the communication of such decision to it or him and the decision of the Board of Revenue was to be final.

5. From the above provisions of the Act, it is amply clear that neither the Government nor the Jagirdar nor any person aggrieved by the decision of the Jagir Commissioner under Section 13 can file an appeal to the Board of Revenue to any purpose without a copy of the judgment showing how the decision under Section 13 was arrived at. In this case, the memorandum of compensation merely showed that a sum exceeding Rs. 17,00,000/- lakhs had been determined as the amount payable to the appellant. The memorandum did not show how the same was computed or how the claim for compensation preferred by the petitioner under various heads was dealt with. In order that an appeal may be effective the appellant must be able to formulate his grounds for challenging the judgment which has gone against him.

6. The question therefore arises as to whether the time taken in obtaining a copy of the judgment which forms the basis of the decision in determining the compensation can be excluded from the period of 90 days mentioned in Section 29 of the Jagirs Abolition Act. There is no provision in the Act which expressly empowers the Board of Revenue to entertain an appeal filed beyond the period of 90 days from the date of the communication of the decision under Section 13. Under Section 30 of the Act :

"The Jagir Commissioner, or any other officer conducting an enquiry under this Act, and the Board of Revenue and the Collector hearing appeals from the orders of the Jagir Commissioner or the Tahsildar, as the case may be, shall follow the procedure applicable to proceedings under the Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007, so far as may be and shall have the same powers, in relation to proceedings before them as a Revenue Officer has in relation to original or appellate proceedings, as the case may be, under the Act." (Hereinafter referred to as the Ryotwari Act).

Section 34 of the Ryotwari Act provides :

"Subject to the provisions of the Limitation Act in force for the time being regarding the extension and computation of the period of limitation :-

(1) no appeal to the Board shall be brought after the expiry of ninety days from the date of the decision or the order complained of;

#(2) X X X X.###

Section 149(2) of the Ryotwari Act provides that :

"Except where it is otherwise specially provided the general principles of Law of Limitation for the time being in force in the United State regarding extension of the principles of limitation shall apply to claims made under this Act before a Revenue Officer."

It is clear from the language of Section 34 that in hearing an appeal under the Ryotwari Act the Board must guide itself by the provisions of the Limitation Act in force for extension and computation of the period of limitation. It would appear that Section 149(2) was aimed at giving a similar guideline to the Revenue Officer. To give the said interpretation to Section 149(2) it is necessary to read "extension of the principles of limitation" occurring therein as "extension of the period of limitation" for otherwise the section would be devoid of any meaning. The general principles of limitation are those contained in the Limitation Act of 1908 which were in force at the date when the appeal was filed before the board of Revenue. Section 3 of the Limitation Act, 1908, laid down that subject to the provisions contained in Sections 4 to 25 (inclusive), every suit instituted, appeal preferred, and application made, after the period of limitation prescribed therefor by the First Schedule was to be dismissed although limitation had not been set up as a defence. Under Section 5 of the Limitation Act of 1908 an appeal could be admitted after the period of limitation prescribed therefor when the appellants satisfied the court that he had sufficient cause for not preferring or making the application within such period. Under Section 29(2) of the Limitation Act :

"Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefor by the First Schedule, the provisions of Section 3 shall apply, as if such period were prescribed therefor in that Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by the special or local law -

(a) the provisions contained in Section 4, Sections 9 to 18 and Section 22 shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law; and

(b) the remaining provisions of this Act shall not apply."

These sections go to show that unless excluded by the Jagirs Act or Ryotwari Act, Section 12 of the Limitation Act would be applicable to appeals filed before the Board of Revenue under any of these Acts.

7. It has been held by a Division Bench of the Madhya Pradesh High Court in Brijraj Singh v. The Board of Revenue and Another (Misc. Civil Case No. 22/1962, decided on 18-3-1963) that the expression "principles of limitation" in Section 149(2) mentioned above should be construed as extension of the period of limitation. For the reasons given above, we are in agreement with the said conclusion of the Madhya Pradesh High Court. In our view, the word 'principle' therein was inserted due to inept or careless drafting and what was meant was "period" and not 'principles'.

8. Even if we were to read the Statute as it is, the principle of the Limitation Act is to dismiss a suit, appeal or application if filed beyond time but also to extend the time for filing an appeal if the delay is explained. That principle is clearly capable of extension in the present case.

9. If Sections 34 and 149(2) were applicable to the facts of the case before the Board of Revenue and we hold to that effect, the time spent in obtaining a copy of the judgment forming the basis of giving the reasons of the decision should have been excluded in computing the period of 90 days under Section 29 of the Jagirs Act. The appellant was not guilty of any laches in his appeal to the Board of Revenue. He applied for a copy of the judgment of the Jagir Commissioner on the day next after communication to him of the order of the Jagir Commissioner. Even if the application was unaccompanied by any fees prescribed for the purpose, the Board of Revenue should have taken this fact into consideration before holding the appellant's appeal to be out of time. If the application for the copy of the judgment made on the 24th February was in order, the appeal was in time. Even if the time taken in obtaining the copy of the judgment be reckoned from the 12th March to 18th March, 1958, the appellant was out by two days only in filing the appeal to the Board of Revenue. If the 1st of June 1958 which happened to be a Sunday be left out of consideration, the appellant was out by one day only.

10. As appears for the order, dated September 28, 1961 the Board of Revenue refused to entertain the appeal on the ground of limitation without considering the question as to whether the appellant had made out a case for condonation of delay, if any. In our view, the Board of Revenue had not acted judicially in throwing out the appeal. The High Court was therefore not right in upholding the order of the Board of Revenue which ignored the provisions of Sections 34 and 149(2) of the Ryotwari Act and the relevant provisions of the Limitation Act. A sounder view of the law was taken by another Division Bench of the same High Court in Brijraj Singh's case noted above.

11. For the reasons given the appeal is allowed, the order of the Board of Revenue is quashed and the matter sent back to the Board for disposal of the appeal according to law and in the light of the observations made by us. The appellant will have the costs of this appeal.

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