

Court No. - 32

Case :- WRIT - C No. - 11344 of 2024

Petitioner :- Mohd. Yasir Ali Khan

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Archana Singh, Shreeprakash Singh

Counsel for Respondent :- Arvind Srivastava, C.S.C., Vikrant Gupta

Hon'ble Dr. Yogendra Kumar Srivastava, J.

1. Heard Sri Shreeprakash Singh, learned counsel for the petitioner, Sri J. N. Maurya, learned Chief Standing Counsel appearing alongwith Sri Abhishek Shukla, learned Additional Chief Standing Counsel, for the State-respondents and Sri Arvind Srivastava, learned counsel for respondent No.5.

2. The present petition has been filed primarily seeking to assail the order dated 13.07.2023, passed by the respondent No. 3, the Naib Tehsildar, Panwadia, Tehsil Sadar, Rampur, in Case No. 35 of 2023, in proceedings under Section 34 of the U.P. Revenue Code, 2006¹, and the subsequent order dated 04.12.2023, passed by the respondent No. 2, the Sub Divisional Magistrate, Tehsil Sadar, Rampur, in Case No. 3689 of 2023, an appeal under Section 35(2) of the Code, whereby the earlier order has been affirmed.

3. Counsel appearing for the State respondents and also the counsel appearing for the respondent No. 5, have raised an objection with regard to the entertainability of the writ petition by pointing out that the order passed in appeal, under Section

¹ the Code

35(2) of the Code, would be subject to the statutory remedy of a revision under Section 210 of the Code.

4. Learned counsel appearing for the petitioner has sought to refute the aforesaid objection by seeking to urge that the remedy of a revision under Section 210 is available only in a situation where no appeal lies, and in the instant case since the petitioner is seeking to assail an order passed in an appeal under sub-section (2) of Section 35, the remedy of revision would not be available.

5. The question which therefore arises for consideration in the present case is as to whether an order passed in an appeal under sub-section (2) of Section 35 of the Code, would be subject to the remedy of a revision under Section 210 of the Code.

6. In order to appreciate the rival contentions, the relevant statutory provisions under the U.P. Revenue Code, 2006, would be required to be adverted to.

7. The provisions with regard to mutation, as contained under Sections 33, 34 and 35 of the Code, are being extracted below:

“33. Mutation in cases of succession.—(1) Every person obtaining possession of any land by succession shall submit report of such succession to the Revenue Inspector of the circle in which the land is situate in such form as may be prescribed.

(2) On receipt of a report under sub-section (1) or on facts otherwise coming to his knowledge, the Revenue Inspector shall —

(a) if the case is not disputed, record such succession in the record of rights (Khatauni);

(b) in any other case, make such inquiry as may appear to him to be necessary and submit his report to the Tehsildar.

(3) Any person whose name has not been recorded by Revenue

Inspector or who is aggrieved by the order passed by the Revenue Inspector under clause (a) or (b) of sub-section (2) may move an application before Tehsildar.

(4) The provisions of this section shall *mutatis mutandis* apply to every person admitted as a Bhumidhar with non-transferable rights or as an asami by the Bhumi Prabandhak Samiti in accordance with the provisions of this Code or any enactment repealed by it.

34. Duty to report in cases of transfer.—(1) Every person obtaining possession of any land by transfer, other than transfer referred to in sub-section (3) of Section 33 shall report such transfer, in the manner prescribed, to the Tehsildar of the Tahsil in which the land is situate.

Explanation.—For the purposes of this section, the word transfer includes a family settlement.

(2) State Government may fix a scale of fees for getting entry recorded in the record of rights on the basis of transfer. A fee in respect of any such entry shall be payable by the person in whose favour the entry is to be made.

35. Mutation in cases of succession or transfer.—(1) On the receipt of a report under Section 33 or Section 34, or upon facts otherwise coming to his knowledge, the Tahsildar shall issue a proclamation and make such inquiry as appears to be necessary and —

(a) if the case is not disputed, he shall direct the record of rights (Khatauni) to be amended accordingly;

(b) [***]

(c) if the case is disputed, he shall decide the dispute and direct, if necessary, the record of rights (khatauni) to be amended accordingly.

(2) Any person aggrieved by an order of the Tahsildar under sub-section (1) may prefer an appeal to the Sub-Divisional Officer within a period of thirty days from the date of such order.”

8. The power to call for the records, conferred on the Board of Revenue² or the Commissioner, in respect of any suit or proceedings decided by any subordinate revenue court, is provided for under Section 210 of the Code. Section 210 of the Code, as it originally stood, is as follows :-

² the Board

"210 Power to call for the records.—The Board or the Commissioner may call for the record of any suit or proceeding decided by any sub-ordinate revenue court in which no appeal lies, or where an appeal lies but has not been preferred, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding; and if such subordinate court appears to have —

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

(3) No application under this section shall be entertained after the expiry of a period of thirty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later."

9. The Uttar Pradesh Revenue Code, 2006 was amended in terms of the Uttar Pradesh Revenue Code (Amendment) Act, 2016 [U.P. Act No. 4 of 2016]. The amendment made to Section 210 in the amending Act of 2016, was as follows :-

"162. Amendment of Section 210.— In Section 210 of the said Code—

(a) for the figures and words "210. The Board" the figures, brackets and words "210. (1) The Board" shall be substituted.

(b) in sub-section (1), the words and punctuation mark "or where an appeal lies but has not been preferred," shall be omitted;

(c) after sub-section (2) and before sub-section (3), the following explanation shall be inserted, namely —

Explanation.— For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(d) in sub-section (3), for the words "thirty days" the words "sixty days" shall be substituted."

10. The U.P. Revenue Code, 2006 was subject to further amendments made in terms of the Uttar Pradesh Revenue Code (Amendment) Act, 2019 [U.P. Act No. 7 of 2019], which was deemed to come into force on March 10, 2019.

11. There was some inconsistency in the Hindi version of the language of Section 210 inasmuch as the words used in sub-Section (1) where "कोई अपील नहीं हुई" as against the language in the English version which was "in which no appeal lies". The aforesaid inconsistency was removed by making suitable amendment in the Hindi version of Section 210 of the principal Act by providing as follows :-

"19. In Section 210 of the principal Act, in the Hindi version, in sub-section (1) for the words "कोई अपील नहीं हुई" the words "कोई अपील नहीं हो सकती" shall be substituted."

12. Section 210, consequent to the amendment made as per the terms of the U.P. Act No. VII of 2019, stands as under:

“210 Power to call for the records.-(1) The Board or the Commissioner may call for the record of any suit or proceeding decided by any sub-ordinate Revenue Court in which no appeal lies, for the purpose of satisfying itself or himself as to the legality or propriety of any order passed in such suit or proceeding, and if such subordinate Court appears to have —

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of such jurisdiction illegally or with material irregularity;

the Board, or the Commissioner, as the case may be, may pass such order in the case as it or he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner, no further application by the same person shall be entertained by the other of them.

Explanation.- For the removal of doubt it is, hereby, declared that when an application under this section has been moved either to the Board or to the Commissioner, the application shall not be permitted to be withdrawn for the purpose of filing the application against the same order to the other of them.

(3) No application under this section shall be entertained after the expiry of a period of sixty days from the date of the order sought to be revised or from the date of commencement of this Code, whichever is later.”

13. The principal submission raised by the learned counsel for the petitioner, in regard to the question involved, is that the remedy of revision under Section 210 of the Code is available only in a case in which no appeal lies, and therefore since sub-section (2) of Section 35 provides for an appeal against an order of mutation passed under sub-section (1) thereof, there would be no further remedy of a revision available thereagainst under Section 210 of the Code. It is thus sought to be urged that the order passed in an appeal under Section 35(2), would be final with no statutory remedy being available against the said order.

14. Controverting the aforesaid submission, the learned Chief Standing Counsel appearing for the State respondents has submitted that the restriction contained under Section 210 providing for the remedy of a revision only in a case 'in which no appeal lies', would not be attracted since the question under consideration is in regard to the availability of the remedy of a revision against the order passed in appeal under sub-section (2) of Section 35, against which no further appeal lies. To support this argument, reliance has been placed upon a recent decision of this Court, in the case of **Jhinka Devi Vs. State of U.P. And 4 Others**³

³ 2022 (7) ADJ 31

15. Attention of the Court has been drawn to the Third Schedule of the U.P. Revenue Code, 2006, to point out that in respect of proceedings relating to mutation cases under Section 35, the order of the Tehsildar exercising original jurisdiction is subject to an appeal before the Sub Divisional Officer, and there is no provision with regard to a further second appeal. It is therefore contended that since no further appeal lies against the appellate order of the Sub Divisional Officer under sub-section (2) of Section 35, the remedy of a statutory revision under Section 210, would not be barred.

16. Counsel appearing for the respondent No. 5 has also made his submissions on similar lines.

17. Rival contentions now fall for consideration.

18. Section 210, as it stands after the amendment brought about by the U.P. Act No. 4 of 2016, empowers the Board or the Commissioner to call for the record of any suit or proceedings decided by any subordinate revenue court 'in which no appeal lies' for the purpose of satisfying itself as to the legality or propriety of any order passed in such suit or proceedings.

19. The Board or the Commissioner, may pass such order in the case as it thinks fit, if the subordinate court appears to have —

- (a) exercised a jurisdiction not vested in it by law; or
- (b) failed to exercise a jurisdiction so vested; or
- (c) acted in the exercise of such jurisdiction illegally or with material irregularity.

20. It would therefore be seen that under Section 210, the Board or the Commissioner, may exercise the power to call for

the record of any suit or proceedings decided by any subordinate revenue court, under the following conditions :-

- (i) where no appeal lies; and
- (ii) the subordinate court appears to have –
 - (a) exercised a jurisdiction not vested in it by law; or
 - (b) failed to exercise a jurisdiction so vested; or
 - (c) acted in the exercise of such jurisdiction illegally or with material irregularity.

The Board or the Commissioner, as the case may be, may thereafter pass such order in the case as it or he thinks fit.

21. A plain reading of the aforesaid provisions may lead to a possible argument that the remedy of a revision under Section 210 being available only in a case where no appeal lies, the order passed by the Sub Divisional Magistrate, under sub-section (2) of Section 35, would not be revisable under Section 210 of the Code.

22. The aforesaid together with the argument regarding the order passed by the Sub Divisional Officer under sub-section (2) of Section 35, having a finality attached to it as regards mutation proceedings, would be required to be examined in the context of the provisions under Section 210 and the overall scheme of the U.P. Revenue Code, 2006.

23. Under the U.P. Revenue Code, 2006, the expression 'Revenue Court', has been defined under Section 4(16), as meaning all or any of the following authorities, that is to say, the Board and all members thereof, Commissioners, Additional Commissioners, Collectors, Additional Collectors, Assistant

Collectors, Settlement Officers, Assistant Settlement Officers, Record Officers, Assistant Record Officers, Tahsildar and Naib-Tahsildar.

24. The term "Revenue Officer" has been defined under Section 4 (17) of the Code to mean the Commissioner, an Additional Commissioner, the Collector, an Additional Collector, the Sub-Divisional Officer and Assistant Collector, Settlement Officer, an Assistant Settlement Officer, Record Officer, an Assistant Record Officer, the Tahsildar, Tahsildar (Judicial), the Naib-Tahsildar or the Revenue Inspector.

25. A conjoint reading of the definitions of the aforesaid terms "Revenue Court" and "Revenue Officer" would indicate that some persons who act as Revenue Courts also act as Revenue Officers – where a Revenue Officer deals with judicial matters in revenue, he acts as a Revenue Court, which is under the control and supervision of the Board of Revenue; on the other hand, where a Revenue Officer deals with non-judicial matters in revenue, he acts under the control and supervision of the State Government. The functions of the Revenue Officer regarding the land revenue administration may be classified as judicial and non-judicial depending on the nature of the functions being discharged.

26. Section 234 (1) (v) of the U.P. Land Revenue Act, 1901 (now repealed) empowered the State Government to define the matters or proceedings which were deemed to be judicial or non-judicial. In terms of the aforesaid provision, para 911 of the Revenue Manual, provided for certain matters to be deemed to be judicial. This included cases relating to mutation in

matters relating to succession or transfer under Sections 35 and 40 of the U.P. Land Revenue Act, 1901.

27. The Board of Revenue constituted under Section 7 of the U.P. Revenue Code, 2006, as per Section 8 thereof, is to be the chief controlling authority in all matters relating to disposal of cases, appeals or revisions. The revisional jurisdiction is provided under Section 210 of the Code, and in terms thereof the Board or the Commissioner, as the case may be, would be empowered to exercise revisional jurisdiction by calling for the record of any suit or proceedings decided by any subordinate court, in which no appeal lies, for the purpose of satisfying itself as to the legality or propriety of any order passed in such suit or proceedings, provided the conditions laid down under clause (a) or clause (b) or clause (c) of sub-section (1) of the section are satisfied. The language of the section is one of wide amplitude and embraces within its fold all cases decided by courts subordinate to the court.

28. Section 210 whereunder the Board or the Commissioner is empowered to call for the records of any suit or proceedings "decided" by any "subordinate revenue court", indicates the legislative intent that a revision would lie against judicial adjudications of suits and proceedings; administrative proceedings conducted by those very authorities being not within the purview of Section 210.

29. The Tehsildar exercising powers under Section 35, in cases of mutation, on the basis of succession or transfer, if the case is disputed, is empowered to 'decide the dispute' as per terms of clause (c) of sub-section (1) of Section 35, and the order passed

by the Tehsildar, under sub-section (1) of Section 35, is subject to an appeal under sub-section (2), before the Sub Divisional Officer. The provisions contained under sub-section (1) and sub-section (2) of Section 35, leave no room for doubt that Tehsildar and also the Sub Divisional Officer exercising powers thereunder discharge judicial functions.

30. The Tehsildar while deciding a dispute regarding mutation in cases of succession or transfer, in exercise of powers under sub-section (1) of Section 35 of the Code, acts as a 'Revenue Court' within the meaning of Section 4(16) of the Code. The Sub Divisional Officer while deciding an appeal under sub-section (5), against an order passed by the Tehsildar under sub-section (1) also acts as a 'Revenue Court' and as such would be a Court subordinate to the Commissioner and subject to its revisional jurisdiction.

31. The revisional jurisdiction under Section 210, in order to subserve its purpose, would have to be seen not as a mere power but also a duty, which cannot be effectively discharged unless the Board or the Commissioner see to it that the subordinate revenue courts exercise their jurisdiction in accordance with law. The mere fact that there is no further appeal against the order passed by the Sub Divisional Officer in an appeal under sub-section (2) of Section 35 cannot warrant an inference that the legislature intended in any way to limit or control the revisional jurisdiction conferred on the Commissioner, under Section 210 of the Code.

32. Section 210 is essentially a source of power for the Board of Revenue or the Commissioner to supervise the subordinate

revenue courts. The jurisdiction conferred under Section 210 to revise the orders passed by the subordinate revenue courts would not be dependant on a motion being made by a party to the case inasmuch as the section confers power to exercise revisional jurisdiction independent of any such motion having been made. The revisional jurisdiction under section 210 is designed to confer a wide power on the Board or the Commissioner to call for records and supervise the correctness of the proceedings subject to certain conditions.

33. The order of the Sub Divisional Officer passed in exercise of powers under sub-section (2) of Section 35 is an order in appeal against the order of the Tehsildar passed under sub-section (1) of Section 35, and this order is not subject to any second appeal under the Code. This is further clear from a reading of the Third Schedule of the Code wherein in respect of the provisions contained under Section 35 relating to mutation cases the court of original jurisdiction has been specified in column 3 as the court of Tehsildar and the court of first appeal is mentioned in column 4 as the court of Sub Divisional Officer; further column 5 pertaining to the second appeal is left blank. This goes to show that against the order passed by the Sub Divisional Officer in appeal under sub-section (2) of Section 35, against the order of the Tehsildar acting as a court of original jurisdiction under sub-section (1) of Section 35, there is no provision of a second appeal.

34. There being no provision under the Code for a second appeal against the order of the Sub Divisional Officer passed under sub-section (2) of Section 35, it can be said that against the order of the Sub Divisional Officer in appeal, no further

appeal lies, and therefore the necessary condition for invocation of the powers of the Commissioner under Section 210 for calling the records and exercising revisional powers against the order passed by the Sub Divisional Officer in appeal under sub-section (2) of Section 35, stands fulfilled.

35. Taking a similar view, this Court in the case of **Jhinka Devi Vs. State of U.P. And 4 Others**⁴, had held that an order passed in an appeal under Section 24(4) of the Revenue Code would be revisable under Section 210, and the finality attached to the said order would only be to the extent that there is no further appeal thereagainst.

36. A rule of construction, spoken of as, *ex visceribus actus*, helps in avoiding any inconsistency either within a section or between two different sections or provisions of the same statute. It essentially means that every part of a statute must be construed within its four corners and no provision should be interpreted in isolation.

37. **Craies on Statute Law**⁵ has explained the rule of *ex visceribus actus* by stating as follows :-

"...there is a general rule of construction applicable to all statutes alike, which is spoken of as construction *ex visceribus actus*—within the four corners of the Act. "The office of a good expositor of an Act of Parliament," said Coke in the *Lincoln College Case*⁶, "is to make construction on all parts together, and not of one part only by itself—Nemo enim aliquam partem recte intelligere potest antequam totum iterum atque iterum perlegerit." And again he says : It is the most natural and genuine exposition of a statute to construe one part of a statute by another part of the same statute, for that best expresseth the meaning of the makers.... and this exposition is *ex visceribus actus*."

4 2022 (7) ADJ 31

5 Craies on Statute Law, S.G.G. Edgar, Sweet & Maxwell (7th Edn.)

6 (1595) 3 Co.Rep.58b.

38. It would therefore follow as a necessary consequence that the order passed by the Sub Divisional Officer in appeal under sub-section (2) of Section 35, against which there is no further appeal, would be subject to the revisional powers of the Commissioner to be exercised under Section 210.

39. Having come to the aforesaid conclusion, the objection raised on behalf of the State respondents and also the respondent No. 5, with regard to the availability of a statutory remedy against the order passed by the Sub Divisional Officer in an appeal under sub-section (2) of Section 35 of the Code, is sustained.

40. The writ petition is not entertained for the reason of existence of an alternative statutory remedy.

41. The petition stands **disposed of** leaving it open to the petitioner to take recourse to the statutory alternative remedy.

Order Date :- 5.8.2024
Arun K. Singh

[Dr. Y.K. Srivastava, J.]