

A.F.R.

Neutral Citation No. - 2024:AHC:194002-DB

Court No. - 45

Case :- WRIT - C No. - 43025 of 2018

Petitioner :- Charan Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Vishal Khandelwal

Counsel for Respondent :- C.S.C.,Manu Singh

WITH

Case :- WRIT - C No. - 14682 of 2021

Petitioner :- Gulshan E Gaeshe Azam Welfare Trust

Respondent :- Additional Commissioner And 9 Others

Counsel for Petitioner :- Dharm Vir Jaiswal,Harsh Vikram

Counsel for Respondent :- Arun Kumar Pandey,C.S.C.,Mohd. Azam,Neelabh Srivastava

WITH

Case :- WRIT - C No. - 5671 of 2023

Petitioner :- Pyare Lal

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Gaurav Singh,Sr. Advocate

Counsel for Respondent :- C.S.C.,Krishna Kant Singh

AND

Case :- WRIT - C No. - 9440 of 2019

Petitioner :- Dharam Veer Singh And Another

Respondent :- State Of U.P. And 8 Others

Counsel for Petitioner :- Bhuvnesh Kumar Singh

Counsel for Respondent :- Bhuvnesh Kumar Singh,C.S.C.,Madhav Jain,Mohd. Zaid,Sudhanshu Pandey

Hon'ble Siddhartha Varma,J.

Hon'ble Vinod Diwakar,J.

1. Heard Shri Vishal Khandelwal, Shri Harsh Vikram, Shri Gaurav Singh and Shri Bhuvnesh Kumar Singh, learned counsel for the petitioners in all the connected writ petitions and Shri Neelabh

Srivastava, Shri Sudhanshu Pandey, Shri Mohd. Zaid, learned counsel for the private respondents in all the connected writ petitions, Shri S.N. Srivastava learned Additional Chief Standing Counsel and Shri Krishna Kant Singh, learned counsel for the Gaon Sabha.

2. The instant reference to the following effect has been placed before us by Hon'ble the Chief Justice. The issue raised in the reference is reproduced herein below for the sake of clarity:

“Whether when Section 231 of the Code specifically states that only such proceedings which were pending before the commencement of the Code would be decided in accordance with provisions of the law under which those proceedings were filed then would an Appeal or Revision against the orders/judgments/ decrees which would be passed in those proceedings be governed by the previous enactment i.e. the U.P. Zamindari Abolition and Land Reforms Act, 1950 or by the provisions of the U.P. Revenue Code, 2006.”

3. In the instant petition, the order under challenge was passed in a revision filed by the applicants against the judgment and decree dated 19.8.2014 passed in a suit filed under section 229B of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter referred to as ‘the U.P. Z.A. & L.R. Act, 1950) and on specific query by the Court from the petitioners’ counsel about the maintainability of the revision on in contrast to the remedy of appeal available under section 207 of the U.P. Revenue Code, 2006 wherein a party aggrieved by the final decree passed in any suit specified in Column-II of the 3rd-Schedule appended with the U.P. Revenue Code, 2006 could have filed, the learned counsel had taken recourse to the provisions of section 333 of the U.P. Z.A. & L.R. Act, 1950.

4. Therefore, the learned Single Judge referred the matter for reference to Hon'ble the Chief Justice of this Court and that is how the instant reference petition is placed before this Court.

5. In response to the issue raised in reference, learned counsel for the petitioners submits that **(i)** since there is already a judgement of

this Court passed in **Misc. Single No.8354 of 2014**¹ laying down the law that after the enactment of the U.P. Revenue Code, 2006, which enforced w.e.f. 11.2.2016, the remedy as was available in the U.P. Z.A. & L.R. Act shall continue to remain in force for the petitioners as the suit was filed prior to 11.2.2016 and the provisions of U.P. Revenue Code, 2006 would be applicable only on the suits filed post 11.2.2016, **(ii)** as per the judgement and order dated 20.4.2017 passed in **Anand Kumar Singh & Another case (supra)**, a Revision shall be maintainable in the instant case as per the provisions of U.P. Z.A. & L.R. Act, 1950, **(iii)** the Supreme Court in **Garikapati Veeraya v. N. Subbiah Choudhry and others**² has held that the legal pursuit of a remedy, suit, appeal and second appeal are really steps in a series of proceedings all connected by an intrinsic unity and ought to be regarded as one legal proceedings. The institutions of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit, and **(iv)** such legal remedy of appeal as was available to a litigant on the date of the filing of the suit, in fact, is a substantive right and right to file an appeal or revision is not a mere matter of procedure but it is a right, which accrues to a litigant from the date when the lis commenced. Even though that right could be exercised when an adverse judgement would be pronounced, the law with regard to the filing of appeal or revision shall be governed by the law prevailing on the date of the institution of the suit or proceeding and not by the law that would prevail on the date of the decision. For clarity, the relevant portion of **Garikapati Veeraya case (supra)** is extracted herein below:

“23. From the decisions cited above the following principles clearly emerge:

(i) That the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected

1 **Anand Kumar Singh & Another v. State of U.P. Thru. Secy. Revenue U.P. Civil Sectt. & Ors.** reported in 2017 (135) RD 642

2 **AIR 1957 SC 540**

by an intrinsic unity and are to be regarded as one legal proceeding.

(ii) The right of appeal is not a mere matter of procedure but is a substantive right.

(iii) The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

(iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

(v) This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.”

6. Learned counsel for the petitioner next submits that despite the remedy as provided in Section 230(2) of the U.P. Revenue Code, 2006, and repeal of U.P. Z.A. & L.R. Act, the substantive right to file a revision under the U.P. Z.A. & L.R. Act arises out of a judgment and decree passed in a suit filed prior to the enactment and subsequently enforcement of U.P. Revenue Code, 2006 could not take away by the new Act. Therefore, since the right to file a Revision was a remedy recognized as a substantive right under the U.P. Z.A. & L.R. Act could not be taken away by the subsequent enactment of the U.P. Revenue Code, 2006 in the instant case.

7. Learned counsel for the petitioner since has relied upon Section 230 of the U.P. Revenue Code, 2006, the same is being reproduced here as under for better understanding:

“230. Repeal. - (1) The enactments specified in the *First Schedule* are hereby repealed.

(2) Notwithstanding anything contained in sub-section (1), the repeal of such enactments shall not affect-

(a) the continuance in force of any such enactment in the State of Uttarakhand;

(b) the previous operation of any such enactment or anything duly done or suffered there under; or

(c) any other enactment in which such enactment has been applied, incorporated or referred to; or

*(d) the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title or obligation or liability already acquired, accrued or incurred (including, in particular, the vesting in the State of all estates and the cessation of all rights, title and interest of all the intermediaries therein), or any **remedy or proceeding** in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted or the proof of any past act or thing; or*

(e) any principle or rule of law or established jurisdiction, form or course of pleading, practice or procedure or existing usage, custom, privilege, restriction, exemption, office or appointment:

Provided that anything done or any action taken (including any rules, manuals, assessments, appointments and transfers made, notifications, summonses, notices, warrants, proclamation issued, powers conferred, leases granted, boundary marks fixed, records of rights and other records prepared or maintained, rights acquired or liabilities incurred) under any such enactment shall, insofar as they are not inconsistent with the provisions of this Code, be deemed to have been done or taken under the corresponding provisions of this Code, and shall continue to be in force accordingly, unless and until they are superseded by anything done or action taken under this Code.”

8. Learned counsel for the petitioners next submits that as per Section 230(2)(d) of U.P. Revenue Code, 2006, **any remedy or proceeding** in respect of any order passed in the proceedings which initiated under the earlier Act, has been saved by Section 230 of the U.P. Revenue Code, 2006. He next submits that Section 231 of the U.P. Revenue Code, 2006, is only a section which states that all cases pending before the revenue court immediately before the commencement of the U.P. Revenue Code, 2006, whether in appeal, revision, review or otherwise, would be decided in accordance with the provisions of the appropriate law, and appropriate law means the law which was prevailing at the time of institution of the suit and not otherwise.

9. Learned counsel for the petitioners next submits that the reference, inasmuch as, it questions as to whether by virtue of Section 231 of the U.P. Revenue Code, 2006, remedies as were available to a

litigant at the time of filing of the suit under the U.P. Z.A. & L.R. Act, 1950, would still be available after the commencement of the U.P. Revenue Code, 2006, and the same shall not be governed by the provisions of Section 231 of the U.P. Revenue Code, 2006, but shall accordingly be decided while taking the assistance of Section 230(2) (d) of the U.P. Revenue Code, 2006. He, therefore, submits that when the remedy of filing of a revision as was available to the petitioners by virtue of Section 333 of the U.P. Z.A. & L.R. Act, 1950, the same shall be preserved to the parties till the rest of the career of the suit.

10. Learned counsel for the petitioners further submits that the vested right of appeal can be taken away only by a subsequent enactment, if it so provides, expressly or by necessary intendment and not otherwise. He has also relied upon Section 6 of the U.P. General Clauses Act, 1904, and specifically referred to Section 6 (c) and, therefore, the same is being reproduced here as under:

“6. (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;”

11. To substantiate the aforesaid arguments, learned counsel for the petitioners has relied upon the ratio culled out in judgments referred herein by the Supreme Court in *ECGC Ltd. v. Mokul Shriram EPC JV*³ and *M/s Martin and Harris Private Limited and another v. Rajendra Metha & Others*⁴, and concluded with the submissions that the applications or suits or other proceedings which had been filed under old act (Repealed Act) pending on the date of commencement of the new act shall be continued or disposed of in accordance with the provisions of the old act (Repealed Act) as if the old act had continued and was still in force.

12. Shri Satendra Nath Srivastava, learned Additional Chief Standing Counsel for the State-respondents also appeared and

³ (2022) 6 SCC 704

⁴ (2022) 8 SCC 527

assisted the Court in deciding the case and submitted that, in fact, on 3.11.2020, the Government had also issued a Government Order elaborating that the earlier remedies as were available under the U.P. Z.A. & L.R. Act, 1950, and under the U.P. Land Revenue Act, 1901, shall continue to exist for such a litigant which had filed their lis before the commencement of the U.P. Revenue Code, 2006.

13. Learned counsel appearing for the respondents in few of the cases, namely, Shri Neelabh Srivastava who appeared for the respondent no.4 in Writ-C No.14682 of 2021 and Shri Krishna Kant Singh, learned counsel appearing for the Gaon Sabha have opposed the writ petition and submitted that under provision of Section 231 of the U.P. Revenue Code, 2006, there was a clear averment that all cases, Appeals, Revisions, Reviews or otherwise shall be decided in accordance with the provisions of the appropriate law which would have been applicable to them, had the U.P. Revenue Code, 2006, not been in existence would mean that the cases, Appeals, Revisions or Applications alone had to be decided by the court which was seized of those proceedings. The new Code had not saved the remedies as were available to the litigant at the time of the filing of the Suit, Appeal or Revision.

14. Having heard learned counsel for the parties and having gone through the record, we are of the view that the learned Single Judge, who had made the reference, had not considered the provisions of Section 230(2)(d) of the U.P. Revenue Code, 2006, in its right perspective, and therefore, while only considering the provision of Section 231 of the U.P. Revenue Code, 2006 the reference was made. Had the court been shown the provisions of Section 230(2)(d) of the U.P. Revenue Code, 2006 then it would have become clear that such remedies as were available to the party which had filed any lis before the commencement of the new Act then all the remedies would have

continued as were available to the litigant at the time of the filing of the Suit. All remedies upon the filing of the Suit namely the filing of Appeals, Second Appeals, Revisions etc. are really but steps in a series of proceedings connected by an intrinsic unity and are to be treated to be as a one legal proceeding. The Right of Appeal is not a matter of procedure but is a substantive Right. The institution of a Suit carries with it the implication that all remedies in force at the time of the filing of the Suit were to be preserved to the parties till the rest of the career of the Suit. The Appeal or a remedy to go to higher Court accrues to a litigant on the very date the lis commences and although it may be actually exercised when the adverse judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the Suit. In the instant case, since all remedies available at the time of the notification of the U.P. Revenue Code, 2006, had to continue, the remedy of Revision would also continue, even if it was not an inherent right which had accrued to the litigant as would be the case with an appeal.

15. Any repealing law which repeals an earlier law shall not affect the remedies available to a party which were available to the party on the date when the suit was filed. It would continue to be in existence for the litigant just as it was available to him or her on the date of the filing the lis. A vested right to go to a higher Court can be taken away by a subsequent enactment if the latter expressly provides or a bare reading of it shows that the right of going to a higher Court as per the earlier law had been by a necessary intendment taken away.

16. In the case at hand, we find that not only by the repealing act the remedies of going to a higher Court had not been taken away but in fact they had been continued by the provisions of the U.P. Revenue Code, 2006, as is contained under section 230(2)(d) of the U.P. Revenue Code, 2006. The section 231 of the U.P. Revenue Code,

2006 only states that all the cases pending before the Revenue Courts immediately before the commencement of the U.P. Revenue Code, 2006 whether any case, Appeal, Revision or otherwise shall be decided in accordance with the provisions of appropriate law which would have been applicable, as if the U.P. Revenue Code, 2006 had not been passed. Hence, section 231 of the U.P. Revenue Code, 2006, was a provision which only clarifies that a remedy which was available at the time when the lis was filed and had been availed would be decided by the provisions of the Old Act. There is no provision in the new Act which after repealing the U.P. Z.A. & L.R. Act, 1950, snatches from a litigant the right of further **remedies** as were provided under the U.P. Z.A. & L.R. Act, 1950, and hence we are answering the reference by observing that the Revision which was filed by the petitioner could have been filed and there was no provision in the U.P. Revenue Code, 2006, which had expressly taken away the vested right of having a remedy to go to a higher Court by means of a Revision.

17. The reference is accordingly, answered. It may be placed before Court which is now seized with the various petitions in which the reference was made.

18. The interim order however, granted earlier, shall continue till the petitions are decided.

Order Date :- 11.12.2024

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(Vinod Diwakar,J.) (Siddhartha Varma,J.)