

REVISIONAL CIVIL

Before R. S. Narula, C. J.

Nagina,—Petitioner.

versus

GRAM PANCHAYAT,—Respondents.

Civil Revision No. 881 of 1974.

February 9, 1976.

Punjab Village Common Lands (Regulation) Act (18 of 1961)—Section 7(1) to (4)—Punjab Village Common Lands (Regulation) Haryana Second Amendment Act (47 of 1973)—Sections 5, 9(1) and (2)—Appeal against the order of Assistant Collector pending before the Collector—Amending Act coming into force during such pendency—Right to prefer second appeal against the appellate order of the Collector—Whether taken away by the amending Act.

Held, that a reading of sub-section (2) of Section 9 of the Punjab Village Common Lands (Regulation) Haryana Second Amendment Act, 1973 shows that notwithstanding the repeal of sub-section (4) of section 7 of the Punjab Village Common Lands (Regulation) Act, 1961, the second appeals which were pending before the Commissioner on the date of coming into force of the Amending Act have been saved and have been expressly kept alive. The other part of the express provisions contained in sub-section (2) of section 9 is that a second appeal, which could ordinarily be preferred under sub-section (4) of section 7 of the Principal Act to the Commissioner has been expressly saved in respect of the matters decided by the Collector before the commencement of the Amending Act. It is a well known principle of interpretation of statutes that the Legislature is not expected to have made any provision in an Act meaninglessly. There is no doubt that in the absence of sub-section (2) of section 9 of the Amending Act, all appeals pending before the Commissioner had to be disposed of and every decision of the Collector in a proceeding which had commenced with the Assistant Collector prior to the coming into force of the Amending Act, would have been subject to the right of second appeal. The fact that the Legislature has made an express provision for saving two out of three possible sets of cases which could be heard and decided by the Commissioners, shows that the Haryana Legislature has by necessary intendment taken away by operation of sub-section (2) of section 9 of the Amending Act the right of second appeal which would otherwise have vested in a litigant against whom the Collector might have decided his pre-amendment case in appeal after the coming into force of the Amending Act. Thus, by necessary intendment the Legislature has taken away the right of second appeal which had originally been provided by sub-section (4) of section 7 of the Principal Act from a litigant whose litigation had started prior to the coming into force of the Amending Act provided the Collector

had not decided his appeal arising out of those proceedings before the commencement of the Amending Act.

(Para 5).

Application under Article 227 of the Constitution of India praying that the order of Commissioner, Ambala, dated 18th June, 1974, be set aside and quashed and he be directed to decide the case on merits. The petitioner, however, reserves his right to challenge the order of Assistant Collector and Collector on merits in case it is held that no appeal was competent before Commissioner.

Arun Jain, Advocate, for the Petitioner.

V. K. Bali, Advocate, for the respondent.

JUDGMENT

R. S. Narula, C. J. (Oral) :

(1) The common question of law which calls for decision in each of these three petitions for revision (Nos. 881 to 883 of 1974) of the order of the Commissioner, Ambala Division, dated June 18, 1974, is whether the right to prefer a second appeal under section 7(4) of the Punjab Village Common Lands (Regulation) Act, 1961 (hereinafter referred to as the Principal Act) has or has not been taken away by section 5 of the Punjab Village Common Lands (Regulation) Haryana Second Amendment Act, 1973 (hereinafter called the Amending Act) from a litigant whose first appeal under section 7(3) against the order of the Assistant Collector under section 7(2) of the Principal Act was pending before the Collector on November 30, 1973, the date on and with effect from which the Amending Act came into force.

(2) Since it is the common case of both sides that there is no material difference in the facts of these cases and the decision of one will govern all the three, I need only give the relevant facts of Civil Revision No. 881 of 1974 (*Nagina v. Gram Panchayat*). The respondent-Panchayat filed an application under section 7(1) of the Principal Act before the Assistant Collector First Grade to put the Panchayat in possession of the land which was in the possession of Nagina petitioner and which was claimed to have vested in the respondent-panchayat. The Panchayat's application under section 7(1) of the Principal Act was allowed by the order of the Assistant Collector First Grade, dated September 25, 1973, under sub-section (2) of

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section 7. Sub-section (3) and (4) of section 7 of the Principal Act were in the following words:—

“7(3) An appeal against the order of Assistant Collector, shall lie to the Collector.

(4) An appeal from the appellate order of the Collector shall lie to the Commissioner.”

(3) The petitioner had preferred his appeal to the Collector against the order of the Assistant Collector when the Amending Act came into force on November 30, 1973. The operation of clause (i) of section 5 of the Amending Act, sub-section (4) of section 7 of the Principal Act (whereby an appeal against the appellate order of the Collector had been provided to the Commissioner) was omitted. The Collector, having dismissed the petitioner's appeal on February 5, 1974, a second appeal was filed by him (though erroneously described as a revision petition) before the Commissioner. That appeal has been dismissed by the order of the Commissioner, dated June 18, 1974, on the ground that no appeal can be filed against the appellate order of the Collector under section 7(3) of the Principal Act after the coming into force of the Amending Act. The correctness of that decision has been impugned in these three petitions for revision.

(4) Relying on two judgments of the Supreme Court in *Garikapati Veeraya v. N. Subbiah Choudhry and others*, (1), and *State of Bombay v. M/s. Supreme General Films Exchange Ltd.*, (2), the learned counsel for the petitioners has argued that 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, and that the legal pursuit of a remedy, suit, appeal and second appeal are really, but steps in a series to proceedings all connected by the intrinsic unity and are to be regarded as one legal proceeding. These are the words of the Supreme Court in *Garikapati Veeraya's case* (supra). He has also laid emphasis on the well known principle that the right of appeal is not a mere right of procedure, but is a substantive right. It is on that basis that it has been argued that the right of second appeal which had been conferred on the petitioner by sub-section (4) of section 7 of the Principal Act accrued to him at the time the proceedings under section 7(1) thereof were commenced long before the coming into force of the Amending Act

(1) A.I.R. 1957 S.C: 540:

(2) A.I.R. 1960 S.C: 980:

and that the said right not having been expressly taken away by anything contained in the Amending Act, the order of the Commissioner denying him that right is illegal and must be reversed. There neither is, nor can there be any quarrel with the proposition of law canvassed by Mr. Arun Jain, the learned counsel for the petitioner.

(5) Mr. V. K. Bali, the learned counsel for the respondent, has, without joining issue with the petitioner on the proposition of law enunciated by him, referred me to the equally well settled legal principle that a substantive or a vested right can be taken away by a competent Legislature either expressly or by necessary intendment. His argument is that the intention of the Haryana Legislature to take away the substantive right of the petitioner to prefer a second appeal under sub-section (4) of section 7 of the Principal Act has by necessary implication been taken away by sub-section (2) of section 9 of the Amending Act, which section reads as under:—

- “9. (1) On the commencement of this Act the appeals pending before the Collector shall be disposed of by him while the other proceedings shall stand transferred to the Assistant Collector of the First grade.
- (2) An appeal shall lie to the Commissioner from any order passed by the Collector before the commencement of this Act; but the appeals pending before the Commissioner on the commencement of this Act shall be disposed of by him.”

A plain reading of sub-section (2) of section 9 of the Amending Act shows that notwithstanding the repeal of sub-section (4) of section 7 of the Principal Act, the second appeals which were pending before the Commissioner on the date of coming into force of the Amending Act have been saved and have been expressly kept alive. The other part of the express provisions contained in sub-section (2) of section 9 is that a second appeal which could ordinarily be preferred under sub-section (4) of section 7 of the Principal Act to the Commissioner has been expressly saved in respect of the matters decided by the Collector before the commencement of the Amending Act. The argument of Mr. Bali is that even if section 9(2) of the Amending Act had not provided for an appeal against the pre-amendment decision of a Collector being preferable to the Commissioner, such an appeal would have lain in accordance with the well recognised principles of the law referred to above, and that inasmuch as a special provision has been made in that regard, it by necessary implication excludes the right to prefer a second appeal against any order of

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the Collector passed after the commencement of the Amending Act. It is a well-known principle of interpretation of statutes that the Legislature is not expected to have made any provision in an Act meaninglessly. There is no doubt that in the absence of sub-section (2) of section 9 of the Amending Act, all appeals pending before the Commissioner had to be disposed of and every decision of the Collector in a proceeding which had commenced with the Assistant Collector prior to November 30, 1973, would have been subject to the right of second appeal. The fact that the Legislature has made an express provision for saving two out of three possible sets of cases which could be heard and decided by the commissioners shows that the Haryana Legislature has by necessary intendment taken away by operation of sub-section (2) of section 9 of the Amending Act the right of second appeal which would otherwise have vested in a litigant against whom the Collector might have decided his pre-amendment case in appeal after November 30, 1973. I am unable to find any other explanation for the Legislature having enacted sub-section (2) of section 9. I, therefore, find force in the submission of Mr. Bali that by necessary intendment the Legislature has taken away the right of second appeal which had originally been provided by sub-section (4) of section 7 of the Principal Act from a litigant whose litigation had started prior to the coming into force of the Amending Act provided the Collector had not decided his appeal arising out of those proceedings before the commencement of the Amending Act. That being so, I am unable to interfere with any of the impugned orders passed by the Commissioner and consequently dismiss all the three revision petitions, though without any order as to costs.

N. K. S.

Before M. S. Gujral and B. S. Dhillon, JJ.

BANTA SINGH,—*Petitioner.*

versus

SOHAWA SINGH, ETC.,—*Respondents.*

Criminal Miscellaneous No. 2805 of 1974.

in

Criminal Miscellaneous No. 36-R of 1973.

February 20, 1976.

Code of Criminal Procedure (V of 1898)—Sections 133, 137 and 244—Proceedings under section 133—Parties offering to give evidence by affidavits—Recording of statements of witnesses in Court—Whether mandatory.