

A.F.R.

Neutral Citation No. - 2023:AHC-LKO:69736

Court No. - 18

Case :- WRIT - B No. - 695 of 2023

Petitioner :- Smt. Reeta Devi

Respondent :- The Board Of Revenue U.P. Lko. Thru. Its
Member And 6 Others

Counsel for Petitioner :- Amitesh Pratap Singh, Laxmi Narayan
Gupta

Counsel for Respondent :- C.S.C.

with

Case :- WRIT - B No. - 951 of 2023

Petitioner :- Smt. Usha Singh @ Usha Devi

Respondent :- Board Of Revenue, U.P., Lucknow Thru. Member
And 5 Others

Counsel for Petitioner :- Amitesh Pratap Singh, Neetu Bhardwaj

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioners and Shri Hemant Kumar Pandey, learned State Counsel.

2. In WRIT - B No. - 695 of 2023, the petitioner namely Smt. Reeta Devi has assailed the order dated 23.06.2023 passed by opposite party No. 1/Board of Revenue, U.P., Lucknow, in Revision registered as Case No.REV/1709/2020/Ghazipur linked Case No.REV/271/2020, Computerized Case No.20201429001709, (Smt. Reeta Devi vs. Harikesh), which was preferred under Section 333 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short "Act of 1950"), however, the same was registered under Section 210 of U.P. Revenue Code, 2006 (in short "Code of 2006").

3. In Writ-B No. 695 of 2023, the petitioner namely Smt. Reeta Devi has also assailed the order dated 22.09.2020 passed by the opposite party No. 2/Sub-Divisional Officer, Tehsil-Kashimabad, District- Gazipur in Case No. 04418/2019, Computerized Case No. T201914291104418 [Basmati (dead) substituted Surendra, Raju, Chaturbhuj vs. Harikesh], under Section 144 of the Code of 2006, whereby, the opposite party No. 2 allowed the application dated 06.02.2019 for withdrawal of application for restoration dated 30.06.2015, which itself was allowed on 12.07.2018.

4. In Writ -B No.951 of 2023, the petitioner has assailed the order dated 23.06.2023 passed by opposite party No. 1/Board of Revenue, U.P., Lucknow in Case No.REV/1709/2020/Ghazipur linked Case No.REV/271/2020, Computerized Case No.20201429001709, (Smt. Reeta Devi vs. Harikesh).

5. From the aforesaid as also specific averments made in para 3 of both the petitions, indicated above, the impugned order dated 23.06.2023 in Writ - B No. 695 of 2023 relates to Revision No.1709 of 2020, Computerized Case No.20201429001709, (Smt. Reeta Devi vs. Harikesh) and in Writ - B No.951 of 2023, the impugned order dated 23.06.2023 relates to Revision No. 271 of 2020, Computerized Case No.R2020142900271.

6. It is apparent from the impugned order(s) that revision(s), detailed above, were dismissed being not maintainable under Section 210 of the Code of 2006.

7. The revisional authority namely Board of Revenue, Lucknow, U.P. while dismissing each revision considered Section 144, which provides the remedy to tenure holder to institute a case/suit seeking declaration of his rights; Section 207, which provides remedy of appeal and Section 210, under which a revision can be filed and also the Third Schedule of Code of 2006 and the Rule 183(1) of U.P. Revenue Code Rules, 2016 (in short "Rules of 2016") and thereafter observed that in view of remedy of appeal available, the revision is not maintainable.

8. Brief facts, which are relevant for disposal of both the petitions, are as under:-

(i) A case registered as Case No.01 of 2014 (Smt. Basmati vs. Harikesh), instituted under Section 229-B of the Act of 1950, was decided on 01.05.2015.

(ii) Thereafter, an application for restoration dated 30.06.2015 was preferred by Smt. Basmati Devi. This application was allowed vide order dated 12.07.2018 and the above indicated Case No. 01 of 2014, instituted under Section 229-B of the Act of 1950, was restored to its original number.

(iii) During the pendency of the aforesaid case, Smt. Basmati Devi, on whose application the case was restored to its original number, expired on 06.02.2019.

(iv) After the death of Basmati Devi, the sons of Basmati preferred an application dated 06.02.2019 for withdrawal of application dated 30.06.2015, which itself was allowed vide order dated 12.07.2018 and the case was restored to its original number.

(v) The application dated 06.02.2019 seeking permission to withdraw the application dated 30.06.2015 was thereafter allowed, as appears from the order dated 22.09.2020 impugned in Writ-B No. 695 of 2023.

(vi) From the order dated 22.09.2020, it is apparent that during the pendency of the case, an application for impleadment was rejected vide order dated 07.08.2019 and the same was assailed by way of revision registered as Case No.REV/271/2020, Computerized Case No.R2020142900271, (Usha Singh vs. Surendra) before the Board of Revenue and at the time of passing of order dated 22.09.2020, the same was pending consideration.

(vii) From the impugned order dated 22.09.2020 passed on application dated 06.02.2019, it further reveals that the final order dated 01.05.2015 and the decree dated 30.05.2015 were restored despite the fact that the final order dated 01.05.2015 itself was set aside/recalled vide order dated 12.07.2018.

(viii) It transpires from the record that challenging the order dated 22.09.2020, the petitioner preferred the revision before the opposite party No.1-Board of Revenue, U.P., Lucknow registered as Case No.REV/1709/2020.

(ix) Both the aforesaid revisions were preferred under Section 333 of the Act of 1950, which is evident from the memo of revision(s) on record.

(x) From the aforesaid brief facts, it is apparent that case in issue i.e. Case No. 1 of 2014 (Smt. Basmati vs. Harikesh) for declaration of rights was instituted under the Act of 1950 and

it is to be noted that during the pendency of application for restoration of the case dated 30.06.2015, the Act of 1950 was repealed by the U.P. Revenue Code, 2006, which came into force on 11.02.2016.

9. In the aforesaid background of the case, the question/issue to be answered by this Court relates to applicability of provisions of Code of 2006 and Rules of 2016 in the case in issue instituted and pending prior to coming into force of the Code of 2006.

10. On the aforesaid, it would be appropriate to refer Section 231 of the Code of 2006.

11. Section 231 of the code of 2006 being relevant on the issue is extracted hereinunder:-

"Section 231:-(1) Save as otherwise expressly provided in this Code, all cases pending before the State Government or any revenue Court immediately before the commencement of this Code, whether in appeal, revision, review or otherwise, shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had this Code not been passed.

(2) All cases pending in any civil Court immediately before the, commencement of this Code which would under this Code be exclusively triable by a revenue Court; shall be disposed of by such civil Court according to the law in force prior to the date of such commencement.

231. विचाराधीन कार्यवाहियों पर संहिता का लागू होना—(1) इस संहिता में जैसा अन्यथा रूप से उपबन्धित है, उसके सिवाय, इस संहिता के प्रारम्भ होने के पूर्व राज्य सरकार या किसी राजस्व न्यायालय के समक्ष विचाराधीन समस्त मामलों का, चाहे वे अपील, पुनरीक्षण, पुनर्विलोकन या अन्य रूप में हों, का विनिश्चय समुचित विधि के उपबन्धों के अनुसार किया जायेगा, जो उन पर लागू होते यदि यह संहिता पारित न हुयी होती।

(2) इस संहिता के प्रारम्भ होने के ठीक पूर्व सिविल न्यायालय में विचाराधीन सभी मामलों का, जिस पर इस संहिता के अधीन अनन्य रूप से किसी राजस्व न्यायालय द्वारा विचारण किया जाता, ऐसे प्रारम्भ के दिनांक के पूर्व प्रवृत्त विधि के अनुसार ऐसे सिविल न्यायालय द्वारा निस्तारण किया जायेगा।"

12. A perusal of the above quoted provisions i.e. Section 231 indicates that all cases pending before the State Government or any revenue Court immediately before the commencement of the Code of 2006, whether in appeal, revision, review or otherwise, shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had the Code of 2006 not been passed.

13. It would be apt to indicate that this Court in the judgment dated 20.04.2017 passed in the case of **Anand Kumar Singh and Ors. vs. State of U.P. and Ors.**; reported in **MANU/UP/1648/2017**, after considering the provision of U.P. Land Revenue Act, 1901 (in short "Act of 1901") and also the provision of Code of 2006 particularly Section 230 and Section 231 and also Section 6 of General Clause Act, observed that despite the repeal of Act of 1901 the remedy of revision in the Act of 1901 would be available. Relevant paras of the same are as under:-

"12. However, what needs to be noticed at this juncture is the repeal clause in U.P. Revenue Code, 2006, which is embodied in section 230 thereof. Simultaneously, in respect of applicability of U.P. Revenue Code, 2006 in pending proceedings, the provisions of section 231 of the Code, 2006 also needs to be referred to.

13. By section 230 of U.P. Revenue Code, 2006, certain legislations which have been mentioned in the First Schedule appended thereto have been repealed. Sub-section (2) of section 230 provides that notwithstanding anything contained in sub-section (1), the repeal of such enactments shall not affect inter alia the previous operation of any such enactment or anything duly done or suffered thereunder. Section 230 of U.P. Revenue Code, 2006 is quoted hereinbelow:—

"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 Uttaranchal;

(b) the previous operation of any such enactment or anything duly done or suffered thereunder; 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.”

14. *Sub-section (2) (d) of section 230 provides that on repeal of the enactments specified in the First Schedule appended to U.P. Revenue Code, 2006, such repeal shall not affect the validity, invalidity or consequences of anything already done or suffered or any right, title or obligation or liability, claim or demand done under the previous enactments.*

15. *Section 231 specifically provides that except as otherwise provided expressly in the Code 2006 itself,*

all cases pending before the State Government or any Revenue Court before the commencement of Code, 2006, whether in appeal, revision, review or otherwise, shall be decided in terms of the provisions of the appropriate law which would have been applicable to them in case the Code, 2006 had not been passed. Thus, the proceedings pending before the Revenue Courts on the commencement of U.P. Revenue Code, 2006 have been expressly saved.

16. *U.P. Revenue Code, 2006 came into operation with effect from 11.2.2016 and on the said date, the appeal preferred by the petitioners before the Additional Commissioner (Judicial), Lucknow Division, Lucknow was pending and thus, the said proceedings were saved and mandated to be decided as per the provision of section 231 of U.P. Revenue Code, 2006 in accordance with the provision of U.P. Land Revenue Act, as if the Code 2006 was not in existence.*

17. *The question which falls for determination in this case is as to whether the provision of U.P. Land Revenue Act including section 219 would be deemed to be saved on the basis of operation of Sections 230 and 231 of U.P. Revenue Code, 2006 in respect of the proceedings which though initiated before commencement of Code, 2006 but have been concluded after U.P. Revenue Code, 2006 become operational.*

18. *Section 210 of U.P. Revenue Code, 2006, which vests revisional jurisdiction upon the Board of Revenue and the Commissioner of the Divisions would not be available in case of dispute relating to demarcation or boundary dispute for the reason that subsection (4) of section 24 of U.P. Revenue Code, 2006 attaches finality to the order passed by the Commissioner in relation to the said proceedings. Section 210 of U.P. Revenue Code, 2006 can still be invoked for challenging the orders passed by any subordinate Court against which no appeal lies. However, the said provision will not be available to person aggrieved by an order passed by the Commissioner or Additional Commissioner in proceedings of appeal arising out of an order passed by the Sub-Divisional Officer under section 24 of U.P. Revenue Code, 2006 for settling the boundary dispute or demarcation.*

19. *Section 231 of U.P. Revenue Code, 2006 speaks about the applicability of the Code to the pending proceedings. Section 230 (2) (b) of U.P. Revenue Code*

provides that repeal of certain enactments as mentioned in the First Schedule will not affect the previous operation of any such enactment or anything duly done or suffered thereunder. Sub-section (2) (d) of section 230 also saves validity, invalidity or consequences of anything already done or suffered or any right title or obligation under the previous enactments.

20. *Thus, if section 231 of U.P. Revenue Code, 2006 saves the pending proceedings under the previous enactments, in my considered opinion, the remedies available under the whole enactment in respect of proceedings instituted before the subordinate revenue Courts under previous enactments will also be saved.*

21. *The language employed under sections 230 and 231 of U.P. Revenue Code, 2006 suggests that it is not only the proceedings pending under the previous enactments on the date the Code came into operation that have been saved but other provisions of the previous enactments have also been saved including the provision containing judicial remedies, such as remedies available under sections 210 and 219 of U.P. Land Revenue Act and the remedies available under sections 331 and 333 of U.P.Z.A and L.R. Act.*

22. *The repeal of any legislative enactment means that it must be considered as if such repealed Act never existed. The purpose of repeal is to obliterate the Act from the statute book except for certain purpose as provided in section of the General Clauses Act. Section of the General Clauses Act provides the effect of repeal, according to which, unless different attention appears, such repeal does not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. It also does not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability etc. It further provides that any such legal proceeding or remedy may be instituted, continued or enforced as if the repealing Act had not been passed.*

23. *Repeal clause embodied in sections 230 and 231 of U.P. Revenue Code, 2006, thus, appears to be perfectly in tune with the provisions contained in section of the General Clauses Act.*

24. *Accordingly, to take view that after U.P. Revenue Code, 2006 came into force, the remedy under section 219 of U.P. Land Revenue Act in respect of the proceedings drawn under U.P.- Land Revenue Act*

prior to enforcement of Code, 2006 will not be available, will amount to curtailing statutory right of revision to person aggrieved. The statutory remedies are provided in various enactments for protection of right of the parties concerned to contest and get the matter settled through the prescribed procedure.

25. Keeping in view the provisions contained in sections 230 and 231 of U.P. Revenue Code, 2006 as also taking into account the provisions contained in section of the General Clauses Act, find it appropriate to held that remedy of revision as provided under section 219 of U.P. Land Revenue Act will be available to person aggrieved against the order passed by the subordinate Courts under U.P. Land Revenue Act in the proceedings instituted before enforcement of U.P. Revenue Code, 2006, even if they are concluded after enforcement of U.P. Revenue Code, 2006.

26. In the instant case, proceedings of appeal by the petitioners were instituted prior to enforcement of U.P. Revenue Code, 2006 and have culminated in the order passed on 8.3.2017 by the Additional Commissioner (Judicial), Lucknow Division, Lucknow sifter U.P. Revenue Code, 2006 came into force.

27. Thus, for the reasons given above, remedy of revision under section 219 of U.P. Land Revenue Act, will be available to the petitioners in the instant case as well The petitioners, thus, will have right to invoke the provisions of section 219 of U.P. Land Revenue Act for assailing the order dated 8.3.2017 passed by the Additional Commissioner (Judicial), Lucknow Division, Lucknow, which is under challenge in this petition."

14. Further, in the judgment dated 20.08.2019 passed in the case of **Santu vs. State of U.P. and Ors.**; reported in **MANU/UP/3660/2019**, this Court considered the fact that the case was instituted under Section 229-B of U.P. Z.A. & L.R. Act, 1950 (in short "Act of 1950") and also the above quoted provision of Code of 2006 and thereafter observed that despite the repeal of Act of 1950, the remedies provided under the Act of 1950 would be available to the aggrieved party. The relevant paras of the same are as under:-

"8. The question for consideration in this writ petition is whether, the petition, is maintainable or whether it is barred by existence of a statutory alternative remedy. It is not in issue that the provisions of the Civil Procedure Code are applicable to the proceedings under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act.

9. The petitioner preferred an appeal before the Additional Commissioner (Judicial) Bareilly Division, Bareilly, which was dismissed for default. This order necessarily was one under Order 41 Rule 19 C.P.C. The same Rule 19 provides that a restoration application for recall of the order dismissing the appeal. This belated application has been rejected by the impugned order.

10. The order rejecting the recall application on the ground of delay in my considered opinion, is necessarily appealable under Order 43 Rule 1(t). The impugned order therefore, is necessarily appealable before the Board of Revenue.

11. With regard to the above, petitioner in the writ petition has stated that an appeal was filed before the Board of Revenue but the registry refused to accept the same.

12. The averment made is a bald averment not supported by any material on record to show that an appeal was actually preferred before the Board of Revenue was not accepted by the registry. In any case, the averment is that it was refused orally. The bald allegation, in my considered opinion, cannot be accepted.

13. The additional averment made in the same Paragraph of the writ petition is that the appeal preferred by the petitioner was maintainable under Section 207 Sub-section 2(c) of the Revenue Code, 2006.

14. However, this contention cannot be accepted because Section 209(b) creates a bar against appeals being preferred in certain circumstances. It clearly prohibits an appeal against an order granting or rejecting an application for condonation of delay under Section 5 of the Limitation Act, 1963. The appeal allegedly sought to be preferred by the petitioner was therefore, entirely barred by Section 209(b).

15. However, this Court is constrained to hold that the provisions of U.P. Revenue Code, 2006 are not attracted to the case at hand, in view of Section 231 of the Code itself, which reads as follows-

*“231. Applicability of the Code to pending proceedings
 -(1) Save as otherwise expressly provided in this Code, all cases pending before the State Government or any revenue court immediately before the commencement of this Code, whether in appeal, revision, review or otherwise, shall be decided in accordance with the provisions of the appropriate law, which would have been applicable to them had this Code not been passed.*

(2)”

16. The suit filed by the petitioner was one under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act. Therefore, even the subsequent proceedings arising therefrom would be governed by the provision of the U.P. Zamindari Abolition and Land Reforms Act despite its repeal and enforcement of the U.P. Revenue Code, 2006.

17. Sub-section 3 of Section 331 of the U.P. Zamindari Abolition and Land Reforms Act provides for an appeal from amongst others, also against an order of the nature, mentioned in Order 43 Rule 1 C.P.C. Therefore, the petitioner has a statutory alternative remedy of an appeal against the order impugned and for this reason alone, the instant writ petition is not liable to be entertained.

18. Even if for the sake of argument, it is accepted that an appeal will not lie against the order impugned, the petitioner definitely has the remedy of a revision before the Board of Revenue under Section 339 of the U.P. Zamindari Abolition and Land Reforms Act.”

15. The effect of repeal was also considered by the Full Bench of this Court in the case of **Ram Sewak Madan Mohan vs. Commissioner, Commercial Taxes, U.P. Lucknow** reported in **2015 SCC OnLine All 9552**. First para of the judgment being relevant on reproduction reads as under:-

"On 25 February, 2015, a learned single Judge has referred the following questions of law for adjudication by the Full Bench:

*“1. Whether in view of the judgments of the Supreme Court in **Hari Shanker v. Rao Girdhari Lal Chowdhury**¹ and **Shiv Shakti Cooperative Housing Society v. Swaraj Developers**² declaring the power of revision as not a substantive right but merely an enabling*

provision, the provision for a revision under Section 10B of the U.P. Trade Tax Act, 1948 would on the repeal of that Act not be saved under Section 81(2) of the U.P. Value Added Tax Act, 2008; and

2. Whether the view expressed by the Division Benches of this Court in *Dharma Rice Mill v. State of U.P.*³ and *Kumar Rice Mills v. State of U.P.*⁴ taking a contrary view lay down the correct law, having been expressed upon non-consideration of the judgments of the Supreme Court in the case of *Hari Shanker v. Rao Girdhari Lal Chowdhury* (supra) and *Shiv Shakti Co-operative Housing Society v. Swaraj Developers* (supra).”

16. To answer the questions referred, the Full Bench of this Court in the case of **Ram Sewak Madan Mohan** (supra) considered the following provisions:-

- (i) Section 10-B of Uttar Pradesh Trade Tax Act, 1948 (in short "Act of 1948").
- (ii) Sections 56 and 81 of Uttar Pradesh Value Added Tax, 2008 (in short "Act of 2008").
- (iii) Section 6 of U.P. General Clauses Act, 1904 (in short "Act of 1904").

17. The aforesaid is evident from para 6 to 12 of the judgment passed passed in the case of **Ram Sewak Madan Mohan** (supra), which on reproduction read as under:-

"6. Section 10-B of the U.P. Trade Tax Act provides for a revision by the Commissioner. Section 10B was in the following terms:

“Section 10-B. Revision by Commissioner.

(1) The Commissioner or such other Officer not below the rank of Deputy Commissioner as may be authorised in this behalf by the State Government by notification may call for and examine the record relating to any order (other than an order mentioned in section 10-A) passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereof as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed—

(a) to revise an order, which is or has been the subject-matter of an appeal under section 9, or an order passed by the Appellate Authority under that section:

Explanation— Where the appeal against any order is withdrawn or is dismissed for nonpayment of fee payable under section 32 or for non-compliance of sub-section (1) of section 9, the order shall not be deemed to have been the subject-matter of an appeal under section 9;

(b) before the expiration of sixty days from the date of the order in question;

(c) after the expiration of four years from the date of the order in question or after the expiration of two years from the date of commencement of section 19 of the U.P. Sales Tax (Amendment and Validation) Act, 1978, whichever is later.”

7. The U.P. VAT Act repealed the U.P. Trade Tax Act with effect from 1 January, 2008. Section 81 contains a repeal and saving provision in the following terms:

“Section 81. Repeal and saving.—

(1) The Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. XV of 1948) (hereinafter in this section referred to as the repealed enactment) is hereby repealed.

(2) Notwithstanding such repeal,—

(a) any notification, rule, regulation, order or notice issued, or any appointment or declaration made, or confiscation made, or any penalty or fine imposed, any forfeiture, cancellation or any other thing done or any action taken under the repealed enactment, and in force immediately before such commencement shall, so far as it is not inconsistent with the provisions of this Act, be deemed to have been issued, made granted, done or taken under the corresponding provisions of this Act.

(b) any right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act, shall not be affected and manufacturing units enjoying benefit of exemption from payment of tax under Section 4-A of the repealed Act or the units enjoying facility of moratorium for payment of tax under Section 8(2-A) of the said Act shall be entitled to claim moratorium for payment of tax in accordance with provisions of Section 42.

(3) Any officer, authorised by the Commissioner under the repealed enactment, to exercise powers under Section 10-B and sub-section (6) of Section 13-A thereof, shall be deemed to have been authorised by the Commissioner to exercise such powers under Section 56 and sub-section (7) of Section 48 respectively.

(4) Any order made or direction issued by the State Government or by the Commissioner under the repealed Act, for carrying out purposes thereof, to the extent the same are not inconsistent with the provisions of this Act,

shall be deemed to have been issued under the provisions of this Act.

(5) Any security or additional security, furnished under the provisions of the repealed Act, shall be deemed valid for the purposes under this Act only upon furnishing an undertaking from the surety to this effect in the prescribed form and manner within thirty days from the date of the commencement of the Act:

PROVIDED that, in appropriate cases, the assessing authority may extend the time for furnishing undertaking from sureties.

(6) The mention of particular matters in this section shall not be held to prejudice or affect general application of Section 6 of the Uttar Pradesh General Clauses Act, 1904, with regard to the effect of repeals.”

8. *Section 56 of the U.P. VAT Act provides for the remedy of a revision to the Commissioner and is in the following terms:*

“Section 56. Revision by the Commissioner.—

(1) The Commissioner or such other officer not below the rank of Joint Commissioner, as may be authorised in this behalf by the Commissioner may call for and examine the record relating to any order, passed by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order and may pass such order with respect thereto as he thinks fit.

(2) No order under sub-section (1) affecting the interest of a party adversely shall be passed unless he has been given a reasonable opportunity of being heard.

(3) No order under sub-section (1), shall be passed—

(a) to revise an order, which is or has been the subject-matter of an appeal under section 55, or an order passed by the appellate authority under that section.

(b) before the expiration of sixty days from the date of the order in question;

(c) after expiration of four years from the date of the order in question.

EXPLANATION— Where the appeal against any order is withdrawn or is dismissed for non-payment of fee payable under section 72 or for non-compliance of sub-section (3) of section 55, the order shall not be deemed to have been the subject-matter of an appeal under section 55;

(4) No dealer or any other person, aggrieved by an order against which appeal lies under section 55, shall be entitled to present an application for review of such order under this section.”

9. *Sub-section (1) of Section 56 of the U.P. VAT Act is pari materia with sub-section (1) of Section 10-B of the erstwhile Trade Tax Act save and except for the*

modification that the authorisation for an officer not below the rank of Joint Commissioner to exercise the power of revision is now to be issued by the Commissioner (as distinct from an authorisation of the State Government which was required by the erstwhile Act).

10. *Section 81 is the repeal and saving provision. Sub-section (1) repeals the U.P. Trade Tax Act. Sub-section (2) ensures that certain consequences which would have ensued purely as a result of the repeal do not ensue. In other words, it saves certain situations from the consequences of a repeal. Clauses (a) and (b) of sub-section (2) of Section 81 provide for distinct situations or eventualities. The savings clause operates with respect to them, notwithstanding the repeal of the U.P. Trade Tax Act under sub-section (1) of Section 81 of the UP VAT Act. Clause (a) saves (i) notifications, rules, regulations, orders or notices issued; (ii) any appointment or declaration made; (iii) a confiscation made; and (iv) any penalty or fine imposed under the Trade Tax Act. Clause (a) also stipulates that any forfeiture, cancellation or any other thing done or action taken under the repealed enactment which is in force immediately before the commencement of the U.P. VAT Act shall, insofar as it is not inconsistent with the provisions of the latter Act, be deemed to have been issued, made, granted, done or taken under the provisions of the new Act. Clause (b) of sub-section (2) of Section 81 stipulates that a right, privilege, obligation or liability acquired, accrued or incurred under the repealed Act shall not be affected. The emphasis is on the expressions acquired, accrued or incurred. Sub-section (3) inter alia provides that an officer who has been authorized by the Commissioner under the repealed enactment to exercise powers under Section 10-B shall be deemed to have been authorized by the Commissioner to exercise such powers under Section 56.*

11. *Sub-section (6) of Section 81 provides that the general application of Section 6 of the UP General Clauses Act, 1904 with regard to the effect of repeals shall not be affected by the mentioning of particular matters in the section. Section 6 of the U.P. General Clauses Act, 1904 provides as follows:*

“6. Effect of repeal.— Where any Uttar Pradesh Act repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

- (a) revive anything not in force or existing at the time at which the repeal takes effect; or*
- (b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
- (c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any remedy, or any investigation or legal proceeding commenced before the repealing Act shall have come into operation in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such remedy may be enforced and any such investigation or legal, proceedings may be continued and concluded, and any such penalty, forfeiture or punishment imposed as if the repealing Act had not been passed.”

12. *Section 6 of the U.P. General Clause Act, 1904 provides for the general principles to be applied where an enactment has been repealed unless a different intention appears from the repealing statute. Clause (c) provides that the repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. This provision broadly corresponds to Section 81(2)(b) of the U.P. VAT Act. Clause (e) stipulates that the repeal shall not affect any remedy or any investigation or legal proceeding commenced before the repealing Act came into operation in respect of any such right, privilege, obligation or liability and a penalty, forfeiture or punishment. The reference to “such” right, privilege, obligation or liability is in the context of those expressions in clause (c). Similarly “such” penalty, forfeiture or punishment is that which is adverted to in clause (d). Any such remedy may be enforced and investigation or legal proceeding may be continued and concluded and a penalty, forfeiture or punishment may be imposed as if the repealing Act has not been passed. Clause (e) refers to a remedy, investigation or legal proceeding. A remedy in respect of a right, privilege, obligation or liability acquired, accrued or incurred may be enforced even after the repeal of the U.P. Trade Tax Act. If an investigation or legal proceeding has commenced before the repealing Act came into operation, the investigation or legal proceeding may be continued and concluded. Justice G.P. Singh in his seminal treatise on the Interpretation of Statutes observes that:*

“The effect of clauses (c) to (e) of Section 6, General Clauses Act is, speaking briefly, to prevent the obliteration of a statute in spite of its repeal to keep intact rights acquired or accrued and liabilities incurred during its operation and permit continuance or institution of any legal proceedings or recourse to any remedy which may have been available before the repeal for enforcement of such rights and liabilities.”^{13th edition 2012 p 710}

18. The Full Bench of this Court in the judgment passed in the case of **Ram Sewak Madan Mohan** (supra) after considering the

above quoted provisions and various pronouncements on the issue, concluded as under:-

"35. That leads us to the construction of the provisions of Section 6 of the Uttar Pradesh General Clauses Act, 1904. Section 6(c), inter alia, provides that the repeal of an enactment by State legislation shall not, unless a different intention appears, affect any right, privilege, obligation or liability which is acquired, accrued or incurred under any enactment so repealed. Under Section 6(e), the repeal is not to affect, inter alia, any remedy in respect of any such right, privilege, obligation or liability as aforesaid and any such remedy may be enforced as if the repealing Act has not been passed. Now, undoubtedly, Section 6(e) refers to "such right, privilege, obligation, liability. as aforesaid". In other words, the remedy which is referred to in clause (e) is in respect of a right, privilege, obligation or liability of the nature which is referred to in clause (c). Clause (c) refers to a right, privilege, obligation or liability which is acquired, accrued or incurred. We must proceed on the basis that the remedy of a revision is in the nature of an enabling provision and is not in the nature of a substantive right, as has been held in the judgments of the Supreme Court in Hari Shankar ([AIR 1963 SC 698](#)) (supra) and Shiv Shakti Co-op Housing Society (([2003](#)) 6 SCC 659 : [AIR 2003 SC 2434](#)) (supra). That, however, is not conclusive of the matter because the remedy which is saved by Section 6(e) is also in respect of a privilege, obligation or liability which is acquired, accrued or incurred. Under the provisions of the UP Trade Tax Act, Section 3(1) imposes upon every dealer for each assessment year the liability to pay tax at the rates provided by or under Sections 3-A, 3-D or Section 3-H on the turnover of sales or purchases or both, as the case may be. Under Section 7(1), every dealer, who is liable to pay tax under the Act, was required to submit returns of his turnover at such intervals, within such period, in such form and verified in such manner as may be prescribed. Under sub-section (2) of Section 7, the Assessing Authority is empowered to assess the tax on the basis of returns submitted if, after such enquiry as it considers necessary, it is satisfied that the returns submitted are correct and complete. If no return is submitted or if the authority believes it to be incorrect or incomplete, the best judgment assessment can be made under subsection (3). Section 7-D provides for composition of tax liability. Section 9 provides for the remedy of an appeal to a dealer or other person aggrieved by an order made by the Assessing Authority. Section 10-B provides for a revision by the Commissioner. Section 10(2) provides for an appeal to the Tribunal. The remedy of a revision is undoubtedly an enabling provision under Section 10-B. But undoubtedly, this is a remedy within the meaning of Section 6(e) of the General Clauses Act. A dealer who is governed by the provisions of the Act is subject to the provisions contained

in the taxing legislation in regard to the framing of an assessment and the remedies which are available both to him and to the State, as the case may be, against an assessment which has been made. Against an assessment made, the dealer would be entitled to pursue remedies which have been provided and these remedies would not be affected by the repeal of the Act by the UP VAT Act. Similarly, the remedy which is available to the revenue under Section 10-B is not abrogated upon the repeal of the UP Trade Tax Act by the UP VAT Act. In fact, the provisions of Section 56 of the repealing Act would clearly evince an intention on the part of the legislature not to abrogate the remedy of a revision which was available under Section 10-B of the repealed Act. Hence, where an order of assessment has been made under the provisions of the repealed Act, the remedy which is available to the revenue under Section 10-B of the UP Trade Tax Act would survive the repeal. There are no express words in the repealing enactment indicative of an intention to abrogate that remedy. On the contrary, there are sufficient provisions in the repealing enactment to indicate that the remedy of a revision in respect of an assessment made under the UP Trade Tax Act is saved notwithstanding the repeal.

36. *In Universal Imports Agency v. Chief Controller of Imports and Exports*³⁷, a Constitution Bench of the Supreme Court, while considering the ambit of repealing and saving legislation, has held that:

“...This case illustrates the point that it is not necessary that an impugned thing in itself should have been done before the Act was repealed, but it would be enough if it was integrally connected with and was a legal consequence of a thing done before the said repeal...”

37. *The nature of the power of revision in such cases involving fiscal legislation has fallen for consideration before the Supreme Court in Raymond Ltd. v. State of Chhattisgarh*³⁸ in the context of Section 56 of the Stamp Act, 1899 as amended, in relation to the State of Madhya Pradesh. Under sub-section (2) of Section 56, if any Collector acting under stipulated provisions has a doubt as to the amount of duty with which any instrument is chargeable, he can draw up a statement of the case and refer it with his own opinion for the decision of the Chief Controlling Revenue Authority. Under sub-section (4), which was introduced by a state amendment, the Chief Controlling Revenue Authority is, on its own motion or on the application of any party, empowered to call for and examine the record of any case disposed of by the Collector and to pass such order in reference thereto as it thinks fit for the purpose of satisfying itself as to the amount with which the instrument is chargeable with duty. The Supreme Court has held, while construing the provision, that:

“...The intention of the legislature in inserting the said provision is clear and explicit as by reason thereof a power of revision has been conferred upon the highest authority

of Revenue in the State, viz. Board of Revenue. The revisional power is to be exercised by the Board so as to enable it to satisfy itself in regard to the amount with which the instrument is chargeable with duty. The revisional proceeding has a direct nexus with determination of an instrument being charged with duty and not the endorsement made thereupon at a subsequent stage.”[At para 16 p. 85 & 86 \(At. Para 16 p 2857 of AIR\).](#)

38. The principle which has been laid down is that a revisional proceeding of this nature in the context of revenue legislation has a direct nexus with the determination of the instrument being charged with duty. The power of revision is, therefore, construed in the context of revenue or fiscal legislation not as one in the nature of a standalone provision but as a provision which is intended to enable the revisional authority to ensure that the assessment has been carried out in accordance with law. An error on the part of the assessing authority is amenable to correction in revision. The power that is vested in the revisional authority is one which has a direct nexus with the order of assessment and is in the nature of a final determination over the order of the Assessing Officer. The object and purpose is to ensure that the assessment has been made in accordance with law. In the present case, it must be emphasised, even the assessment that took place was after 1 January, 2008, on 9 November, 2009. The power of the revisional authority to call for and examine the records for the purpose of satisfying himself as to the legality or propriety of the order of assessment and to pass such order with respect thereto as he thinks fit is, hence, unaffected by the repeal. This power is intrinsically connected with the right of the authority to ensure that the assessment has been carried out in accordance with law. This imposes a corresponding obligation and liability on the assessee where it is found that the assessment was otherwise than in accordance with law. One cannot be disassociated from the other.

39. Undoubtedly, there is a difference in the language of Section 6 of the General Clauses Act, 1897 and Section 6 of the UP General Clauses Act, 1904. However, we are of the view that this distinction in the language will have no practical meaning or consequence to the construction which has been placed by us on the provisions of the repealed and the repealing legislation.

40. For these reasons, we come to the conclusion that the judgments of the two Division Benches of this Court in Dharma Rice Mill (2010 (4) ALJ (NOC) 542) (supra) and Kumar Rice Mills (supra), insofar as they hold that the remedy of a revision against an order of assessment under the UP Trade Tax Act provided to the Commissioner under Section 10-B survives the repeal lay down the correct principle of law. The remedy is saved by virtue of the provisions of Section 81 of the Uttar Pradesh Value Added Tax Act, 2008 read with Section 6 of the Uttar Pradesh General Clauses Act, 1904. The questions of law are

accordingly answered. The reference shall stand disposed of. The revision shall be placed before the regular Bench for disposal in light of the questions so answered."

19. It would be apt to refer the judgment of the Hon'ble Apex Court passed in the case of **M/s Martin and Harris Private Limited And Another vs. Rajendra Metha & Others**; reported in **(2022) 8 SCC 527**.

20. In the case of **M/s Martin and Harris** (supra), the issue was similar to the issue involved in the present case. The Hon'ble Apex Court considered Section 32 of Rajasthan Rent Control Act, 2001 (referred as "New Act") and Rajasthan Premises (Control of Rent and Eviction), Act 1950 (referred as "Old Act"). In this case, the suit was instituted prior to coming into force of the New Act, which provides similar provision to the provision mentioned in the Code of 2006 i.e. Section 231.

21. The Hon'ble Apex Court, after considering Section 32 of the New Act, observed that Old Act would apply. The relevant paras of the judgment passed in the case of **M/s Martin and Harris Pvt. Ltd. (Supra)** are as under:-

"13. The other side contends that the New Act has come into force on 1-4-2003 by way of notification published in the Official Gazette. As per Section 32 of the New Act, the repeal and savings of the Old Act has been specified. For the said purpose Section 32 is relevant, therefore, it is reproduced as thus:-

"32. Repeal and Savings.—(1) The Rajasthan Premises (Control of Rent and Eviction) Act, 1950 (Act 17 of 1950) shall stand repealed with effect from the date notified under sub-section (3) of Section 1 of this Act.

(2) The repeal under sub-section (1) shall not affect—

(a) anything duly done or suffered under the enactment so repealed; or

(b) any right, title, privilege, obligation or liability acquired or incurred under the enactment so repealed; or

(c) any fine, penalty or punishment incurred or suffered under the provisions of the enactment so repealed.

(3) Notwithstanding the repeal under sub-section (1)—

(a) all applications, suits or other proceedings under the repealed Act pending on the date of commencement of this Act before any court shall be continued and disposed of, in accordance with the provisions of the repealed Act, as if the repealed Act had continued in force and this Act had not been enacted. However, the plaintiff within a period of one hundred and eighty days of coming into force of this Act shall be entitled to withdraw any suit or appeal or any other proceeding pending under the repealed Act with liberty to file fresh petition in respect of the subject-matter of such suit or appeal or any other proceeding under and in accordance with the provisions of this Act and for the purposes of limitation such petition shall, if it is filed within a period of two hundred and seventy days from the commencement of this Act, be deemed to have been filed on the date of filing of the suit which was so withdrawn and in case of withdrawal of appeal or other proceeding, on the date on which the suit, out of which such appeal or proceeding originated, was filed;

(b) the provision for appeal under the repealed Act shall continue in force in respect of applications, suits and proceedings disposed of thereunder;

(c) all prosecutions instituted under the provisions of the repealed Act shall be effective and disposed of in accordance with such repealed law;

(d) any rule or notification made or issued under the repealed Act and in force on the date of commencement of this Act shall continue to govern the pending cases.”

14. From the aforesaid for the present case only sub-section (3) is relevant, which has been given overriding effect to other provisions by which the applications or suit or other proceedings filed under the Old Act (Repealed Act) pending on the date of commencement of the New Act before any court shall be continued and disposed of in accordance with the provisions of the Old Act (Repealed Act) as the Old Act had continued in force and this Act had not been enacted. Thus, it is clear that the suit or proceedings, if any, pending on the date of notification issued by the State Government for applicability of the New Act such proceedings would continue under the Old Act and New Act has no application. Therefore, in our considered view, the High Court has rightly rejected the contention while dismissing the review petition and rightly held that Section 20 of the New Act, by which three times mesne profits to the standard rent was made permissible for the suit or proceedings started under the New Act, have no application in suit or proceedings initiated under the Old Act and pending on the date of commencement of the New Act. In our considered opinion the reasoning given in the order dated 1-4-2019 [Martin & Harris (P) Ltd. v. Rajendra Mehta Civil Review Petition No. 95 of 2018, order dated 1-

4-2019 (Raj)] , while rejecting the review petition by the High Court, is perfectly in consonance to the spirit of Section 32 of the New Act."

22. In the case of **ECGC Ltd. v. Mokul Shriram EPC JV** reported in **(2022) 6 SCC 704**, an order passed by the National Consumer Disputes Redressal Commission (in short "National Commission") was assailed and the appeal was preferred alongwith an application (IA No. 99210 of 2021) *ex abundanti cautela* to entertain the appeal as per the provisions of the Consumer Protection Act, 1986 (in short "Act of 1986"). The Hon'ble Apex Court in this case considered the question as to whether the appeal would be governed under the Consumer Protection Act, 2019 (in short "Act of 2019") or under the erstwhile Act of 1986, as the same is apparent from paras 3 and 4 of the judgment, which are extracted hereunder:-

"3. The question now being examined here is as to whether the present appeal would be governed under the Consumer Protection Act, 2019 (for short “the 2019 Act”) or under the erstwhile the 1986 Act.

4. In terms of Section 67 of the 2019 Act, no appeal against the order of the National Commission shall be entertained by the Supreme Court unless the person has deposited fifty per cent of the amount required to be paid. Whereas, under the 1986 Act, by virtue of a proviso inserted vide Central Act 62 of 2002 w.e.f. 15-3-2003, the condition was that no appeal shall be entertained by the Supreme Court unless the person who is required to pay the amount deposits fifty per cent of the amount or fifty thousand, whichever is less. The two provisions read thus:

“1986 Act				2019 Act			
23.	*	*	*	67.	*	*	*
<i>Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent of that amount or rupees fifty thousand, whichever is less.</i>				<i>Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited fifty per cent of that amount in the manner as may be prescribed.”</i>			

23. In the case of **ECGC Ltd.** (supra), the Hon'ble Apex Court considered various pronouncements including the judgments passed by the Constitutional Bench in the case of **Garikapati Veeraya v. N. Subbiah Choudhry** reported in **AIR 1957 SC 540**, **Vitthalbhai Naranbhai Patel v. CST** reported in **AIR 1967 SC 344** and **Hardeodas Jagannath v. State of Assam** reported in **AIR 1970 SC 724** as also Section 6 of General Clauses Act and Section 107 of the Act of 2019, which are extracted hereunder:-

"Section 6 of the General Clauses Act

“6. Effect of Repeal.—Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—

(a) revive anything not in force or existing at the time at which the repeal takes effect; or

(b) affect the previous operation of any enactment so repealed or any thing duly done or suffered thereunder; or

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

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.”

Section 107 of the 2019 Act

“107. Repeal and savings.—(1) The Consumer Protection Act, 1986 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act hereby repealed shall, insofar as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

(3) The mention of particular matters in sub-section (2) shall not be held to prejudice or affect the general

application of Section 6 of the General Clauses Act, 1897 with regard to the effect of repeal."

24. The Hon'ble Apex Court in the case of **ECGC Ltd.** (supra) after taking note of various pronouncements and relevant statutory provisions observed as under:-

"In view of the binding precedents of the Constitution Bench judgments referred to above, we hold that onerous condition of payment of 50% of the amount awarded will not be applicable to the complaints filed prior to the commencement of the 2019 Act. Therefore, the IA is allowed."

25. Having considered the facts of the case, indicated above, particularly that the case in issue was instituted under Section 229-B of the Act of 1950, the language couched under Section 231 of Code of 2006 as also taking note of observations of Hon'ble Apex Court and of this Court in the judgments, referred above, I am of the view that in the case in issue the Act of 1950 and the Rules made thereunder namely U.P. Zamindari Abolition and Land Reforms Rules, 1952, would be applicable and the same ought to have been considered and as such, the opposite party No.1-Board of Revenue, Lucknow, U.P., erred in law in dismissing the revision(s), indicated above, on the basis of provisions of Code of 2006 and Rules of 2016. Accordingly, this Court is of the view that interference in the matter is required.

26. For the reasons aforesaid, the writ petition(s) are **allowed**. The impugned order(s) dated 23.06.2023 are hereby set aside. The matter is remanded back to opposite party No.1-Board of Revenue, Lucknow, U.P. to consider and decide the revision(s), as per law, expeditiously.

Order Date :- 19.10.2023/Raj/-