

*arbitrariness, irrationality, malafides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or malafides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of Superior Courts, but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues, the Courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give fair play in the joints to the Government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to public exchequer."*

42. In *Michigan Rubber (India) Limited versus State of Karnataka*, 2012 (8) SCC 216, the Supreme Court held that a court while interfering in tender or contractual matters, in exercise of power of judicial review, should itself pose the following questions:

(i) *Whether the process adopted or decision made by the authority is Mala fide or intended to favour someone;*

*or*

*whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible Authority, acting reasonably, and in accordance with relevant law could have reached?; And*

*(ii) whether the public interest is affected?.*

43. We find that neither of the aforesaid two questions as we pose them to ourselves can be answered in favour of the petitioner.

44. Consequently, the writ petition stands **dismissed**.

45. Interim order, if any, shall stands discharged.

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**(2024) 10 ILRA 195**

**ORIGINAL JURISDICTION**

**CIVIL SIDE**

**DATED: ALLAHABAD 04.10.2024**

**BEFORE**

**THE HON'BLE DR. YOGENDRA KUMAR  
SRIVASTAVA, J.**

Writ C No. 10523 of 2024

<b>Mohd. Muslim &amp; Ors.</b>	<b>...Petitioners</b>
<b>Versus</b>	
<b>State of U.P. &amp; Ors.</b>	<b>...Respondents</b>

**Counsel for the Petitioners:**

Dhananjai Rai, Vibhu Rai

**Counsel for the Respondents:**

Azad Rai, C.S.C., Sudhir Kumar Singh  
Parmar

**(A) Revenue Law / Procedural Law - The U.P. Revenue Code, 2006 - Section 210 - Revisional Powers, Section 144 - Declaratory Suits, Section 146 - Injunction, Revision is maintainable only if the impugned order amounts to a "suit or proceeding decided" and no appeal lies against it - Jurisdictional error must exist - An order withdrawing an earlier injunction does not dispose of the interim application and hence cannot be termed as a "proceeding decided" under Section 210.(Para - 23 to 28 ,35 to 37)**

Petitioners are tenure holders of land - recorded in revenue records - Private respondents-initiated litigations - filed an application for interim injunction- rejected - Petitioners instituted a declaratory suit - sought an injunction - Ex parte status quo was granted - later withdrawn by Sub-Divisional Magistrate - Private respondents filed a revision against the withdrawal order- allowed - Petitioners challenged revisional order - asserting not maintainable – hence petition. (Para 5 to 11)

**HELD:** - Order against which the revision has been entertained and also allowed, cannot be said to be an order relating to a 'suit' or proceeding decided. Revisional order passed by Commissioner legally unsustainable. Impugned order set aside. Interim application to be decided expeditiously, preferably within two months. (Para 37,39-44)

**Petition Allowed.** (E-7)

**List of Cases cited:**

1. Paltoo Ram Vs St. of UP & ors., WRIT C No. 10192 of 2023
2. Riyasat Ali Vs Deputy D.D.C. & ors., WRIT - B No. - 85 of 2022
3. Rishi Kumar Vs St. of U.P. & ors., Writ-C No.36341 of 2015

(Delivered by Hon'ble Dr. Yogendra Kumar Srivastava, J.)

1. On an oral prayer, counsel for the petitioners is permitted to correct the array of parties.

2. Heard Sri Vibhu Rai, learned counsel for the petitioners, Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents and Sri Surendra Kumar Chaubey holding brief of Sri Sudhir Kumar Singh Parmar, learned counsel for respondent nos.5 and 6.

3. The present petition has been filed seeking to assail the order dated 20.01.2024 passed by respondent no.2, Commissioner, Prayagraj Division, Prayagraj in Revision No.1369 of 2022 (Computer Case No.C202202000001369, Mohd. Salim and another Vs. Mohd. Muslim and others), under Section 210 of the UP Revenue Code, 2006.

4. The factual matrix of the case, as laid down in the writ petition, is as follows.

5. The petitioners herein claim to be tenure holders of land bearing arazi no.410 situate at Village Beli Kachhar, Phaphamau, Prayagraj, and that their names are duly recorded in the revenue records.

6. It is stated that in regard to the land in question there have been litigations between the petitioners and the private respondents, in the past. Reference has been made to a civil suit being Original Suit No.374 of 2020, instituted by the private respondents, which is said to be pending. It is stated that the application for interim injunction in the aforesaid suit has been rejected.

7. It has been asserted that concealing the fact of pendency of the aforesaid civil suit, the petitioners instituted a declaratory suit under Section 144 of the Revenue Code, registered as Case No.T202002030304753 in the Court of Sub-Divisional Magistrate, Soraon, Prayagraj.

8. An application for injunction under Section 146 was also moved in the aforesaid suit.

9. Upon the aforesaid application, the Sub-Divisional Magistrate is said to have passed an ex parte order of *status quo* dated 17.10.2022, whereupon detailed objections were filed by the petitioners herein, and the earlier order granting *status quo* was thereafter withdrawn/recalled by means of an order dated 01.11.2022.

10. The aforesaid order, recalling the earlier order, was assailed in a revision filed by the private respondents, before the Commissioner, Prayagraj Division, Prayagraj under Section 210 of the Revenue Code, which has been allowed by means of an order dated 20.01.2024, which is now being assailed by means of the present petition.

11. The principal ground on which the order dated 20.01.2024 passed by respondent no.2, is sought to be challenged is by seeking to raise a contention that the order dated 01.11.2022 passed by respondent no.7 in the declaratory suit, against which the revision had been filed, did not finally dispose the application for injunction, and as such a revision would not lie against the said order. Accordingly, it is contended the order passed by the revisional court is without jurisdiction and is legally unsustainable.

12. In support of the aforesaid contention, reliance has been placed on the decisions of this Court in **Paltoo Ram Vs. State of UP and others<sup>2</sup>** and **Riyasat Ali Vs. Deputy Director of Consolidation and others<sup>3</sup>**.

13. Counsel appearing for the contesting respondents has refuted the aforesaid submissions by contending that in terms of the order dated 01.11.2022, the interim order granted earlier on 17.10.2022 having been withdrawn, it cannot be said that the revision would not be maintainable against the said order.

14. Learned counsel has placed reliance upon the decision in **Rishi Kumar Vs. State of UP and others<sup>4</sup>** to support his submissions.

15. Rival contentions now fall for consideration.

16. The provision with regard to declaratory suits finds place under Chapter IX of the Revenue Code. Section 144 is with regard to declaratory suits by the tenure holders and the same reads as follows:-

**"144. Declaratory suits by tenure holders.—** (1) Any person claiming to be a bhumidhar or asami of any holding or part thereof, whether exclusively or jointly, with any other person, may sue for a declaration of his rights in such holding or part.

(2) In every suit under sub-section (1) instituted by or on behalf of—

(a) a Bhumidhar, the State and the Gram Panchayat shall be necessary parties;

(b) an asami, the land-holder shall be a necessary party."

17. Section 144 contains the provision for declaratory suits by tenure holders and in terms thereof any person claiming to be a *bhumidhar or asami* of any holding or part thereof, whether exclusively or jointly with any other person, may sue for a declaration of his rights in such holding or part thereof.

18. Section 146 contains the provision for injunction, and the same reads as follows :-

**"146. Provision for injunction.**—If in the course of a suit under Section 144 or 145, it is proved by affidavit or otherwise —

(a) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or

(b) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court may grant a temporary injunction, and where necessary, also appoint a receiver."

19. Section 146 contains the provision for injunction and in terms thereof, if in the course of a suit under Section 144 or 145 it is proved by affidavit or otherwise : i.e. (i) that any property, trees or crops standing on the land in dispute is in danger of being wasted, damaged or alienated by any party to the suit; or (ii) that any party to the suit threatens or intends to remove or dispose of the said property, trees or crops in order to defeat the ends of justice, the Court is empowered to grant a temporary injunction, and where necessary, also appoint a receiver.

20. Section 210 relates to the revisional powers of the Board or the

Commissioner to call for the records of any suit or the proceeding decided by the subordinate revenue court in which no appeal lies. Section 210 reads as follows:-

**"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 subordinate 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 of 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."

21. The language of Section 210 indicates that the powers of revision may be exercised in respect of any order passed in a suit or 'proceeding decided'. The word 'proceeding' though not defined under the Revenue Code, when applied to a suit, is

generally used, to express the separate steps taken in the course of a suit.

22. Section 210 of the Revenue Code which provides the remedy of a revision empowers the Board or the Commissioner to call for the record of 'any suit or proceeding 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 suit or proceeding.

23. A plain reading of Section 210 of the Revenue Code indicates that a revision would be entertainable on the cumulative satisfaction of the following circumstances:

I. (i) impugned order amounts to a 'suit or proceeding decided';

(ii) such an order must have been passed by any Revenue Court subordinate to the Board of Revenue or Commissioner;

(iii) such an order must not be appealable.

II. there must be an assertion with regard to jurisdictional error by the subordinate revenue court, i.e. to say:

(i) exercise of jurisdiction not vested in it by law, or

(ii) failure to exercise a jurisdiction so vested, or

(iii) acting in the exercise of such jurisdiction illegally or with material irregularity.

24. The section comprises two parts, the first prescribes the condition under which jurisdiction of the Board or the Commissioner arises, i.e. there is a 'suit or proceeding decided' by a subordinate Revenue Court in which no appeal lies, the second sets out the circumstances in which the jurisdiction may be exercised.

25. The former concerns the power to call for records of courts subordinate to it by the Board or the Commissioner and relates to existence of condition precedent on the basis of which such exercise of jurisdiction under Section 210 depends. The latter relates to spelling out the circumstances under which the jurisdiction under Section 210 may be exercised.

26. The **maintainability of a revision** would therefore depend on **two conditions; first**, that it must relate to a suit or proceeding decided by any Revenue Court subordinate to the Board or Commissioner and **second**, it must be in connection with any 'suit or proceeding decided', against which no appeal lies.

27. It would be upon a cumulative satisfaction of the aforementioned two conditions that a revision would be entertainable. The jurisdiction of the revisional court would depend on the existence of both the conditions – in a case where either of the conditions is not present, the revision would not be entertainable.

28. The order against which the revisional jurisdiction is proposed to be invoked must amount to a 'suit or proceeding decided'. This would be the necessary pre-condition which must exist before the revisional court can assume jurisdiction in a particular case.

29. The word 'proceeding', in the expression 'proceeding decided' occurring in Section 210 of the Revenue Code is to be construed in a manner so as to include any suit, appeal or application.

30. In order for a revision to be entertainable the impugned order must amount to a 'suit or proceeding decided'.

31. In addition, the order must have been passed by any revenue court subordinate to the Board of Revenue or Commissioner, and such order must not be appealable.

32. The expression 'proceeding decided', in the context of maintainability of a revision under Section 210 of the Revenue Code, has been discussed *in extenso* in a recent judgment of this Court in **Paltoo Ram Vs. State of UP and others**<sup>2</sup>, wherein it has been held that one of the conditions precedent for the entertainability of a revision is that the impugned order must amount to a 'suit or proceeding decided'.

33. The decision in the case of *Riyasat Ali Vs. Deputy Director of Consolidation and others*<sup>3</sup>, relied upon by the petitioner, has reiterated the legal position that a revision would not be entertainable against an interlocutory order.

34. In the case of **Rishi Kumar Vs. State of UP and others**<sup>4</sup>, sought to be relied upon by the counsel appearing for the contesting respondent, the application filed under Section 229-D of the UPZA and LR Act, 1950<sup>5</sup>, seeking injunction, had been rejected, and in the said circumstances it was held that the remedy thereagainst was to file a revision under Section 333 of the 1950 Act. The aforesaid judgment would therefore be distinguishable on facts, as it was a case where the application for injunction had been disposed, whereas in the present case the same is pending.

35. In the facts of the present case, there can be no manner of doubt that the order dated 01.11.2022 passed by the Sub-Divisional Magistrate, in terms of which the earlier ex parte order dated 17.10.2022

granting *status quo*, has been withdrawn, does not dispose the application for injunction filed under Section 146 of the Revenue Code. The aforesaid application still remains pending before the court concerned.

36. The application for injunction, under Section 146, in the course of the suit under Section 144 of the Revenue Code, having not been disposed in terms of the order dated 01.11.2022, it would not be covered within the ambit of 'proceeding decided', and in view thereof a revision would not lie against the said order under Section 210.

37. In this view of the matter, the order against which the revision has been entertained and also allowed, cannot be said to be an order relating to a 'suit or proceeding decided'.

38. The condition precedent for the entertainability of a revision under Section 210 of the Revenue Code, having thus not been fulfilled, the submissions raised on behalf of the petitioners with regard to the revision being not entertainable, are held to be sustainable.

39. The order dated 20.01.2024 passed by respondent no.2, Commissioner, Prayagraj Division, Prayagraj in Revision No.1369 of 2022 is, therefore, held to be legally unsustainable, on the point of entertainability of the revision.

40. The writ petition is therefore **allowed**, and the impugned revisional order dated 20.01.2024, passed by respondent no.2 is set aside.

41. Counsel for the contesting respondents, at this stage, submits that a

direction be issued to the concerned respondent authorities to decide the interim application in the pending suit at an early date.

42. Counsel appearing for the petitioners has no objection to the aforesaid prayer.

43. Learned Additional Chief Standing Counsel for the State-respondents has submitted that efforts would be made to decide the aforesaid interim application in the pending suit at an early date, and that an endeavour would be made to dispose of the application within a period of two months from date.

44. In view of the aforesaid, it may be observed that the court concerned would be expected to make an endeavour to decide the application for interim relief, in the suit stated to be pending before it, in accordance with law, expeditiously and preferably within a period of two months from the date of production of a certified copy of the instant order, without granting any unnecessary adjournments to either of the parties, provided there is no other legal impediment.

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**(2024) 10 ILRA 201**  
**ORIGINAL JURISDICTION**  
**CIVIL SIDE**  
**DATED: LUCKNOW 01.10.2024**

**BEFORE**

**THE HON'BLE ALOK MATHUR, J.**

Writ Tax No. 226 of 2024

**M/S Archita Tour and Travels ...Petitioner**  
**Versus**

**State of U.P. & Ors. ...Respondents**

**Counsel for the Petitioner:**

Manish Misra, Bhavini Upadhyay, Dileep Pandey, Gaurav Upadhyay

**Counsel for the Respondents:**

C.S.C.

**Civil Law- Code of Civil Procedure-1908- Order XLI Rule 17-** Deciding a case ex parte on merits without giving reasonable opportunity to the parties is blatant violation of rule of "Audi alterum partem". In absence of the appellant, the Commercial Tax Tribunal had the authority to dismiss the appeal in default as provided in the Order XLI Rule 17 of the Code of Civil Procedure, 1908 rather than hearing it ex parte and deciding it on merits. **(Para 11)** (E-15)

**List of Cases cited:**

1. Benny D'Souza & ors.Vs Melwin D'Souza & ors.; S.L.P. (C) No.23809 of 2023
2. Siemens Engineering & Manufacturing Company of India Ltd. v. Union of India, (1976) 2 SCC 981
3. M/s Ram Sewak Coal Depot, Deori, Mirzapur Vs The Commissioner of Trade Tax, U.P, Lucknow; 2003 NTN (Vol.22)- 341

(Delivered by Hon'ble Alok Mathur, J.)

1. Heard Shri Manish Misra, learned counsel for the petitioner as well as Sri Sanjay Sarin, learned Standing Counsel for the respondent and perused the record.

2. By means of the present writ petition, the petitioner has challenged the order dated 18.12.2023 passed by the Additional Commissioner, Grade ? II (Appeal ? 5), Commercial Tax, whereby he has rejected the appeal of the petitioner and upheld the order of adjudicating authority dated 26.07.2021.

3. Learned counsel for the petitioner has submitted that the impugned order dated 18.12.2023 has been passed ex-parte