
(1965) 03 AHC CK 0012
In the Allahabad High Court
Case No : Writ Petition No. 140 of 1961

Anis Ahmad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-03-1965

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 15

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 211A

Citation : (1965) 35 AWR 458

Hon'ble Judges : M.G. Desai, C.J.;Lakshmi Prasad, J

Bench : Division Bench

Advocate : Mohd. Husain, for the Appellant;

Judgement

M.G. Desai, C.J.—The Petitioners claimed to be sirdars of plot No. 132, area 58 acres, on a portion of which there stand houses and a mosque. Proceedings u/s 211 A for their ejectment from this land were started before opposite party No. 4, described (erroneously) as Tahsildar. They appeared before him and objected to their being ejected from the land on several grounds. The opposite party rejected all the grounds and passed an order for their ejectment. It appears that the order of ejectment has not yet been executed. u/s 211 (6) they had a right to institute a suit to establish the right claimed by them but they have not instituted such a suit; instead they filed this petition for the quashing of the order of the opposite party.

2. One ground for the quashing of the order is that the opposite party is a Tahsildar and not Collector within the meaning of Section 211-A and reliance is placed upon a decision of this Court in Paras Nath Singh v. The State of Uttar Pradesh (1) (1960 AWR 327) decided by one of us. What was held in that case is that a Tehsildar does not become an Assistant Collector, First Class, merely because the powers of an Assistant Collector, First Glass, are conferred upon him and that the powers of Collector can be conferred only upon an Assistant Collector, First Class, and not upon any other authority. The opposite party is a

Tahsildar but we find that under notification No. 3736. (2)/I-A-414.53, dated June 6, 1953, all Tehsildars have been appointed ex officio Assistant Collectors, First Class, u/s 15 of the UP Land Revenue Act read with Section 221. The Tehsildars have not merely been invested with the powers of Assistant Collector, First Class, they have been appointed as Assistant Collectors, First Class. Consequently, the opposite party is an Assistant Collector, First Class, and not a mere Tehsildar and what was said in the case of Paras Nath Singh (1) does not hold good. It appears that this notification was not brought to the notice of the Court at the time when that case was decided. The opposite party, being an Assistant Collector, I Class, could be invested with the powers of Collector.

It is not disputed that all Assistant Collectors, First Class, had been invested with Collector's powers. Therefore, the opposite party was competent to pass the impugned order.

3. Another ground is that there is no "land" and this ground is based upon the act that a mosque and houses stand upon a portion of plot. No. 132.

What has been found by the Collector is that the plot was held by the Petitioners for cultivation and that consequently, it is "land". The Petitioner's own case is that they were sirdars and they could not be sirdars unless the plot was "land." Further, the Petitioners claim to have acquired Bhumidhari rights and they could not have acquired Bhumidhari rights except over "land". Therefore, it cannot be disputed that the plot is "land" with in the meaning of Zamindari Abolition and land Reforms Act. It is immaterial that on a portion of it stand a mosque and houses.

4. We find no merit in the claim of the Petitioners that they have now become bhumidhars. While these proceedings were pending the Petitioners deposited ten times the rent payable by them as sirdars and obtained an order from a Tehsildar to the effect that they were entitled to become bhumidhars but they never actually obtained the certificate referred to in Section 137. It is clear from the language of Sub-section (1) and (2) of Section 137 that a sirdar becomes a bhumidhar only upon the grant of the certificate: he becomes a bhumidhar with retrospective effect from the date of his depositing ten times the rent but he becomes so upon the grant of the certificate. If by a certain date no certificate has been granted, he is not a Bhumidhar on that date even though he may be entitled to the certificate and to be bhumidhar with effect from a prior date What happened in the instant case is that after the Petitioners obtained a routine order that they were entitled to the certificate, the Tehsildar realised that it had been obtained during the pendency of the proceedings u/s 211 A and quashed that order and refused to grant the certificate.

We are not concerned with the question whether he had jurisdiction to quash the order and to refuse the certificate; it is enough for our purpose that he did not grant the certificate. As the Petitioners never got the certificate they never became bhumidhars.

5. Then it was contended that Section 211-A infringes Article 14 of the Constitution because it discriminates arbitrarily between sirdars, who are sued by the Gaon Samaj concerned u/s 211; and others who are subject to the summary procedure of ejectment u/s 211-A. Any sirdar who is liable to be ejected on a suit by the Gaon Samaj is liable to summary ejectment u/s 211-A. There is difference between the procedure in a suit and the procedure to be followed by a Collector acting u/s 211A No appeal lies from a Collector's order u/s 211A where as an appeal lies from a decree passed in a suit by the Gaon Samaj. Though there is this distinction between the procedure to be followed in a suit and the procedure to be followed u/s 211 A, it cannot be said that the division of sirdars into two Classes, one of those against whom suits are brought by the Gaon Samaj concerned and other of sirdars against whom proceedings for their summary ejectment are started by the Collector concerned, is arbitrary. If a Gaon Samaj institutes a suit against a sirdar for his ejectment u/s 211, there arises no question of a Collector's proceeding against him summarily. The power to proceed against him summarily appears to have been conferred upon the Collector so that a sirdar does not escape ejectment because of collusion between the sirdar and the Chairman of the Gaon Samaj or because of the latter's inefficiency or negligence. The Legislature must have thought that if a sirdar who was liable to be ejected could be ejected only on a suit instituted against him by the Gaon Samaj, many sirdars would escape ejectment on account of collusion between them and the Chairman of the Gaon Samaj or the latter's inefficiency or negligence. So, they conferred alternate power upon Collectors to start summary proceedings for the ejectment of such sirdars. What the Legislature contemplated is that Section 211 A would be applied to those sirdars who were liable to be ejected on a suit by the Gaon Samaj but against Whom no suit had been brought by the Gaon Samaj on account of collusion, inefficiency or negligence. Therefore, dividing sirdar into two classes, one of sirdars who are sued by the Gaon Samaj concerned and the other of those who have not been sued on account of collusion etc., cannot be said to be arbitrary. A sirdar, who deserved to be ejected ought to be ejected and the Legisla true had to provide machinery for his Ejectment in the event of his colluding with the Chairman of the Gaon samaj of the latter's being inefficient or negligent and the discrimination between the two classes of sirdars cannot be said to be invidious or irrational.

6. As regards the contention that a sirdar against whom the summary procedure of Section 211 is applied is left without any remedy because he has no right of appeal, we find no substance in it because Sub-section (6) gives him ample remedy which is as good as if not better than, appealing to a superior authority. He has a right to institute a suit to establish the right claimed by him. If an order of ejectment has been passed against him he can sue for a declaration that he has not done the acts on account of which he was said to be liable to ejectment and if he has been ejected in pursuance of the order of ejectment, he can bring a suit for recovery of possession. When this remedy is open to him, it cannot be

said that he is placed in a worse position than he would be if he were a Defendant in a suit brought by the Gaon Samaj u/s 211. We were referred to *Rai Amar Nath Agarwal v. Tehsildar Assistant Collector First Glass, Sadar, District Mirzapur (2)* (1960 AWR 564) in which it was held by V.D. Bhargava, J. that a summary procedure is not proper where a dispute about title is involved. This is a matter of policy and for the Legislature; if it in its wisdom adopts a summary procedure in a proceeding even though there may be a dispute regarding title it does not contravene any constitutional provision. Sri Mohammad Husain did not point out to us any provision of the Constitution laying down that a Legislature cannot provide for a summary procedure in a dispute involving a question of title. Moreover the result of the summary procedure is subject to a decision by a regular Court. We, therefore, cannot say that Section 211-A is invalid, because it provides for a summary procedure even though there may be a dispute about title.