

(1979) 01 AHC CK 0067

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7527 of 1973

Chatar Singh

APPELLANT

Vs

Sahayak Sanchalak and Others

RESPONDENT

Date of Decision : 16-01-1979

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1976 —
Section 15, 209, 210, 49
Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1976 —
Section 15, 209, 210, 49
Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1976 —
Section 15, 209, 210, 49

Citation : (1979) AWC 398 : (1979) RD 226

Hon'ble Judges : K.P. Singh, J

Bench : Single Bench

Advocate : N.C. Rajvanshi, for the Appellant; K.B. Garg and S.C., for the Respondent

Final Decision : Dismissed

Judgement

K.P. Singh, J.—This writ petition is directed against the judgment of the Assistant Director, Consolidation, U.P. Lucknow, dated 11-7-1973, whereby the revision petition filed by the Petitioner was dismissed.

2. The main grievance in the present writ petition raised on behalf of the Petitioner is that the consolidation authorities have failed to consider the oral evidence adduced on behalf of the Petitioner to prove his continuous possession for more than 12 years, hence according to the Petitioner the findings recorded by the appellate authority and the revisional court suffer from mistakes of law apparent on the face of the record.

3. For the sake of argument even if it is assumed that the oral evidence led on behalf of the Petitioner was not considered by the revisional court, that would not vitiate the findings recorded by the revisional court in the present case. In view

of the recent amendment made in the provisions of Sections 209 and 210 of the UPZA and LR Act even if the Petitioner is in possession over the property of Gaon Sabha for 12 years he would not acquire Sirdari right in the disputed land. In this connection it is proper to mention the decision of this Court in Civil Misc. Writ petition No. 3424 of 1972-Vakil Ahmad v. Deputy Director of Consolidation wherein a learned single Judge of this Court has observed as below :

Having heard counsel for the parties I am of opinion that in view of the amendment made in Section 210 of the U.P. Zamindari Abolition and Land Reforms Act by the Uttar Pradesh Land Laws (Amendment) Ordinance, 1976, it will serve no useful purpose in considering the case of the Petitioner on merits. As seen above the Petitioner was claiming sirdari rights on the plots in respect of which the present writ petition has been instituted u/s 210 (iii) of the Act aforesaid. Section 15 of the Ordinance reads:

15. For Section 210 of the Principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

210. If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall-

(i) Where the land forms part of the holding of a bhumidhar or sirdar, become a sirdar of such land and the rights, title and interest of an asami, if any, in such land shall be extinguished :

(ii) Where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, become an asami thereof holding from year to year.

Section 210 as it stands after its amendment does not now contain any such provision as was contained in Clause (iii) of Section 210 of the Principal Act. It is this Sub-clause (iii) in pursuance of which alone the Petitioner could have acquired sirdari rights over the land in question. Section 210 has been substituted by the Ordinance with retropective effect as is clear from the plain language of the section when it uses the words "and be deemed always to have been substituted". In The Inspecting Assistant Commissioner of Agricultural Income Tax and Sales Tax and Another etc. Vs. V.M. Ravi Namboodiripad, etc., the effect of retrospective amendment of an enactment was considered at page 1372. It was held that by legal fiction the provision which has been subsequently enacted with retrospective operation will be deemed to form part of the statute book from the very date of the commencement of the Act which has been amended with retrospective effect. Consequently it is with effect from July 1, 1952, itself, which is the date of the commencement of the U.P. Zamindari Abolition and Land Reforms Act, that Clause (iii) of Section 210 would be deemed not to be there, in the said Act. Since the Petitioner could have claimed sirdari rights only on the basis of the said Sub-clause the very foundation of his claim

has disappeared with retrospective effect. It is in this view of the matter that it is now unnecessary to consider the merits of the Petitioners' claim inasmuch as even if it is ultimately held that the Petitioner had been in continuous possession for more than 12 years over the land in dispute he cannot be held to be sirdar thereof.

4. In the present case even if the Petitioner succeeds in proving that he was in continuous possession for more than 12 years over the disputed land he would not acquire sirdari right in view of the recent amendment with retrospective effect. Relying upon the above observation made by a learned single Judge of this Court, I am of the view that the present writ petition cannot succeed even if the oral evidence is accepted by the revisional court in toto. In the circumstances of the present case it is difficult for me to say that the impugned judgment deserves to be quashed. No useful purpose will be served in quashing the impugned judgment as the Petitioner cannot acquire sirdari right in the disputed land.

5. The Learned Counsel for the Petitioner, Sri N.C. Rajvanshi, placed reliance upon a ruling reported in Yeshwantrao Laxmanrao Ghatge and Another Vs. Baburao Bala Yadav (Dead) by L. Rs., and has contended that the provisions of Section 210 of UP ZA and LR Act amended by Section 49 of U.P. Act No. 8 of 1977 cannot be applied retrospectively and the decision of the learned single Judge in Civil Miscellaneous Writ No. 3424 of 1974 Vakil Ahmad v. Deputy Director of Consolidation is no longer a good law in view of the aforesaid ruling of the Supreme Court.

6. I have gone through the ruling relied upon by the Learned Counsel for the Petitioner, but I do not agree with his contentions. Their Lordships of the Supreme Court have considered the provisions of Section 52A of the Bombay Public Trusts Act, 1950 as amended by Bombay Act 23 of 1955 and the aforesaid section reads thus:

Notwithstanding anything contained in the Indian Limitation Act, 1908, no suit against an assignee for valuable consideration of any immovable property of the Public Trust which has been registered or is deemed to have been registered under this Act for the purpose of following in his hands, such property or the proceeds thereof, or for an account of such property or proceeds, shall be barred by any length of time.

7. Construing the aforesaid provisions their Lordships of the Supreme Court have observed as below:

It is a well established proposition of law that the law of limitation fixing a period of limitation for the initiation of any suit or proceeding is a procedural law and not a substantive one. Section 52A had, by no stretch of imagination, the effect of reviving an extinguished and lost claim and giving life to a dead horse.

8. According to the Learned Counsel for the Petitioner the latter had acquired

sirdari rights in the disputed land much before the amendment effected in the provisions of Section 210 of the principal Act (U.P. Act No. 1 of 1951), hence the aforesaid provisions cannot be given retrospective effect so as to affect the right acquired by the Petitioner in the disputed land. I think the Learned Counsel for the Petitioner has not correctly appreciated the provisions of Section 49 of U.P. Act No. 8 of 1977.

9. The aforesaid provisions will be read along with the provisions of Section 15 of U.P. Act No. 35 of 1976. The Learned Counsel for the Petitioner has not correctly construed the provisions of Section 15 of U.P. Act No. 35 of 1976. The aforesaid provisions have been differently worded than the provisions of Section 52A of Bombay Public Trusts Act, 1950 as amended by Bombay Act 23 of 1955.

10. When the Petitioner does not acquire sirdari rights in view of the provisions of Section 15 of U.P. Act No. 35 of 1976 his case does not stand on a better footing due to the provisions of Section 49 of U.P. Act No. 8 of 1977. The aforesaid provision does not confer Sirdari rights upon the Petitioner and the aforesaid provisions will be construed in the light of the previous history.

11. To my mind no question of giving retrospective effect to the provisions of Section 210 as amended by Section 49 of U.P. Act No. 8 of 1977 arises in the circumstances of the present case. The Petitioner lost his sirdari right due to retrospective operation of the provisions of Section 15 of U.P. Act No. 35 of 1976 and that right does not revive due to later amendment effected in the aforesaid section by Section 49 of U.P. Act No. 8 of 1977. The Petitioner does not get sirdari right u/s 49 of U.P. Act No. 8 of 1977 which reads as below:

49. Substitution of Section 210:for Section 210 of the principal Act, the following section shall be substituted, namely:

210. Consequences of failure to file suit u/s 209.-If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar or asami, or a decree for eviction obtained in any such suit is not executed within the period of limitation provided for institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall-

(a) where the land forms part of the holding of a bhumidhar with transferable rights, become a bhumidhar with transferable rights of such land and the right, title and interest of an asami if any, in such land shall be extinguished,

(b) where the land forms part of the holding of a bhumidhar with non-transferable rights, become a bhumidhar with non transferable rights and the right, title and interest of an asami, if any, in such land shall be extinguished,

(c) where the land forms part of the holding of an asami on behalf of the Gaon Sabha, become an asami of the holding from year to year.

12. To my mind, the Petitioner has failed to establish his sirdari right in the disputed land under the provisions of Section 210 of UP ZA and LR Act.

13. For the reasons given above, the writ petition lacks merits and it is accordingly dismissed, but parties shall bear their own costs.