

(2006) 09 UK CK 0027

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 5897 of 2001

Fakir Singh and Others

APPELLANT

Vs

1st Addl. District Judge and Others

RESPONDENT

Date of Decision : 29-09-2006

Acts Referred:

Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 — Section 10(2)
Uttar Pradesh Tenancy Act, 1939 — Section 180, 180(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 130, 131, 209, 210

Citation : (2006) 09 UK CK 0027

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Advocate : Alok Mehra, for the Appellant; Atul Bansal, Brief Holder for State, for the Respondent

Final Decision : Allowed

Judgement

B.S. Verma, J.—By means of this writ petition, the Petitioners have prayed for quashing the impugned order dated 14-6-1985 (Annexure 4) to the writ petition and 30-9-1978 (Annexure No. 1) passed by the Respondent No. 2 and Respondent No. 1 respectively. By the order dated 30-9-1978, the Competent Authority declared irrigated land measuring 12-35 Hectares as surplus vacant land under the provisions of U.P. Imposition on Land Holdings Act 1960 (for short the Act). The appeal preferred by the Petitioner before the appellate court too was dismissed by the impugned order dated 14-6-1985 by the Additional District Judge, Nainital.

2. For a just decision of the case, a reference to the brief facts are necessary. Notice u/s 10(2) of the Act was issued to the original tenure holder Laxmi Lal. He did not file any objection before the Prescribed Authority and the land in question was declared surplus vacant land, which is situate in village Haripur, Tahsil Kaladhungi, district Nainital (as prevailing at that time). In the proceedings objections were filed before the Prescribed Authority alleging that they were in

adverse possession over the surplus land of plots comprised in the holding of Laxmi Lal thereby perfected their title to the land in question as tenure holder, therefore, the plots in question were not to be considered as part of the holding of original tenure holder. The Appellants including the present Petitioners went up in appeal before the appellate court and the case was ultimately remanded vide order dated 12-3-1977. After remand Prescribed Authority again rejected the objections of the Petitioner-Appellants vide judgment and order dated 30-9-1978 thereby holding that the rights of the objectors had not been declared and they have not perfected their right and title by adverse possession. Aggrieved, appeals were preferred before the I Additional District Judge, which were registered as Ceiling Appeal Nos. 232 of 1978, Fakir Singh and Ors. v. State of U.P. and Ceiling Appeal No. 233 of 1978 Sardara Singh v. State of U.P. which too were dismissed by judgment and order dated 11-12-1979. The learned Additional District Judge held that the Appellants were in possession over disputed plots from 1375 Fasli onwards, but they were not entitled to any relief having not perfected their title to the plots before 8-6-1973, as after coming into force of the Z.A. and L.R. Act the limitation was 12 years. Aggrieved, the Petitioners/Appellants went up in Writ Petition before the Allahabad High Court and the petition filed by the Petitioners was registered as Civil Misc. Writ Petition No. 1227 of 1980. The writ petition was decided along with CMWP No. 975 of 1980 vide judgment dated 12-12-1983. The judgment and order dated 11-12-1979 passed by the Appellate Court in Ceiling Appeal Nos. 231,232 and 234 of 1978 was quashed and the appeals were remanded to the Additional District Judge Nainital for decision afresh.

3. After remand of the appeals, cases were heard afresh as per directions of the High Court. The Appellate Court with respect of the Appeal preferred by the present Petitioners observed that the Petitioners were recorded on the land in question in 1375 Fasli. The period of three years ended in 1378 Fasli, but before expiry of this period of three years, the provisions of U.P. Zamindari Abolition and Land Reforms Act became applicable on 1-7-1969, which corresponds to 1377 Fasali. Accordingly, it was found that the Appellants could not perfect their title over the said plots. The learned Appellate Court on the basis of material on record came to the conclusion that the Fakir Singh was recorded on the said land in 1375 Fasli, 1376 Fasli, 1380 Fasli, 1382 and 1383 Fasli. It was also found that Appellant Sardar Singh was also recorded during the years 1375 F., 1376 F., 1380 F., 1381 F. and 1382 Fasli. Learned appellate court further observed that in the remarks column of the Khasara on record, the Petitioners were recorded as trespassers against the consent of the true owner. It was also observed that the name of a person in remarks column is recorded only when he is found in temporary possession of the land without the consent of the original tenure holder. Ultimately, it was held that on the basis of the entries made in the Khasara, the Petitioners cannot be held to have perfected their title by adverse possession over the plots in dispute. Accordingly, the appeals preferred by the Petitioners were dismissed by a common judgment and order dated 14-6-1985,

which gave rise to the present writ petition.

4. The main grounds on which the impugned judgment and orders have been challenged are that the finding of the appellate court is contrary in itself because on the one and it was mentioned that the U.P. Tenancy Act 1939 was applicable, but the same was not scrutinized in the light of the evidence on record; that the limitation for eviction of the unauthorised occupant is two years u/s 180 of the U.P. Tenancy Act and not three years as held by the appellate court and that the Petitioners have already been declared as Bhumidhar of the disputed land by the Revenue Authority but the finding of the Additional Commissioner was ignored on the ground that the judgment was passed after 8-6-1973.

5. I have heard learned Counsel for both the parties and perused the entire material on record.

6. By the Government Notification No. 226/1A-2-1(2)-69, dated June 30, 1969 the U.P. Zamindari Abolition and Land Reforms Act, 1950 with certain modification and deletion of certain provision has been made applicable to the areas mentioned in the notification. In place of Section 131 of the said Act, the following were substituted:

131. Every persons belonging to any of the following classes shall be called as Sirdar and shall have all the rights and be subject to all the liabilities conferred or imposed upon Sirdars or under this Act; namely:

(a) Every person who, on the date immediately preceding the appointed day held land as-

(i) An occupancy tenant;

(ii) A hereditary tenant, Not being a tenant referred to in Clause (a) of Section 130.

(iii) a grantee at favourable rate or rent.

(iv) A lessee holding a lease under the provisions of the Government Grants Act, 1895 and having rights of a hereditary tenant under the terms of the lease, but not possessing the right to transfer the holding by sale,

(b) Every person who is admitted as sirdar of vacant land under the provisions of this Act,

(c) A tenant in any of the 42 Buxari villages specified in the annexure, appended hereto, who was recorded in Class X(1) in the Khatauni of the previous agricultural year and

(d) Every person who in any other manner acquired the rights of a sirdar under or in accordance with the provisions of this Act.

7. Now, it has to be seen as to what was the limitation to evict the trespasser in possession before the date of vesting under the Tenancy Act as well as under the

U.P.Z.A. and L.R. Act after date of vesting. If no suit was filed against the trespasser in possession before and after the date of vesting, what would be the effect of non-filing the suit within the prescribed limitation under these Acts.

8. Under the Z.A. and L.R. Act, limitation for filing the suit u/s 209, U.P.Z.A. and L.R. Rules, Appendix III, Serial No. 30, Clauses (i) and (iii) provide the limitation in case the suit to be filed after the date of vesting for ejectment of a person taking or retaining possession of land unlawfully. Clause (i) of the Rules prescribes a period of three years commencing from the date of vesting where the person was in possession of land on the date of vesting and the period of limitation for ejectment specified in U.P. Tenancy Act had not expired. Clause (iii) thereof prescribes a period of six years commencing from July 1 following the date of occupation and governs case where the land taken possession of the holding of Bhumidhar, Sirdar or Asami.

9. It is pertinent to mention here that at the time of vesting in entry 30 of Appendix III the limitation was two years for filing the suit for ejectment against the trespasser in possession of the land. The period of limitation of two years for suits mentioned in Clause (i) of entry of Appendix III changed to three years by a Notification of the State Government on April 9, 1955. By this amendment, Governor made amendments in existing Rules framed under the U.P.Z.A. and L.R. Act. Paragraph 32 of the Notification deals with the amendments in Appendix III Clause (6) as follows:

6. For the existing entries in column 4 against serial No. 30 of following shall be substituted against items (i), (ii) and (iii) of column 3, three years.

10. Thus, the period of limitation which was two years for all the three clauses changed to three years on 9th April, 1955.

11. The controversy whether the amended Rules can be applied retrospectively came before the Hon'ble Allahabad High Court in the case of Hanumant Rai v. Deputy Director of Consolidation and Ors. 1973 All.L.J. 612 referred to above, wherein it was held by the Division Bench that the change in period of limitation would apply prospectively and not retrospectively.

12. Now, the second aspect of the case whether the period of limitation prescribed in U.P. Tenancy Act has expired before the date of vesting. This controversy has been decided by the Division Bench of the Allahabad High Court in the case of Mohd. Yaseen v. Amarnath and Ors. 1974 R.D. 239. Paragraph No. 5 of the judgment reads as under:

5. Where the period of limitation prescribed in the U.P. Tenancy Act has expired before the date of vesting, the trespasser acquires a right and the tenant loses his tenancy rights. For such a case it is not necessary to lay down a fresh period of limitation as one party acquires the right and the other is deprived of his right. There is no question of redetermination of the rights of the parties. It is only where the possession is not for a period to mature the rights that a fresh

limitation has to be provided. Where the period of limitation has not expired, the tenant retains his rights and the trespasser continues to be a trespasser. The tenant under the U.P.Z.A. and L.R. Act became a Bhumidhar Sirdar or Asami. Consequently, if in such cases Clause (iii) is applicable, Clause (i) shall become redundant. The redundancy is not to be assumed. In fact, an attempt has to be made to harmonize the provisions so that all the parts of the provisions may be fully applicable. On the application of this Rule, it must be held, as has been observed by the learned Single Judge also, that Clause (i) applies to a trespasser in possession from before the date of vesting, where the trespasser has not acquired any right in the land, while the Clause (iii) applies to cases where the trespass is after the date of vesting. The prescribed period of limitation for a suit u/s 209 for the ejectment of Amar Nath was thus three years commencing from the date of vesting (July 1, 1961). The suit was instituted long after the expiry of three years period. The suit being barred by limitation was liable to dismissal.

13. In that case, the date of vesting was July 1, 1961 and suit was dismissed being barred by limitation. In the case at hand, the date of vesting is 1-7-1969 and admittedly no suit was filed against the Petitioners by the original tenure holder for eviction before or after the date of vesting. According to the finding of the Appellate Court, the Petitioners were found in possession of the land in question since 1375 Fasli. The prescribed period of limitation was two years under the Tenancy Act 1939, which expired on 1-7-1969, i.e. 1377 Fasli.

14. The learned Appellate Court did not accept the contention of the Petitioners and held that the Petitioners did not acquire any tenancy rights till the date of vesting in the land in question and a fresh period of limitation shall run after the date of vesting and the Petitioners continued to be trespassers and limitation of 12 years would apply as has been mentioned in Appendix III, Serial No. 30 Clause (iii) of the Z.A. Rules and the period of 12 years came to an end after enforcement of the Ceiling Act.

15. The finding of the learned Appellate Court is perverse. The learned Appellate Court has also relied upon the case of Mohd. Yaseen v. Amarnath and Ors. 1974 R.D. 239 in which the question of limitation was elaborately discussed by the Division Bench of Allahabad High Court. Paragraph 5 of the said judgment has already been quoted above. The learned appellate court mis-read the judgment. Clearly it was held by the Division Bench of the Allahabad High Court that Clause (i) applies to trespasser in possession from before the date of vesting, where the trespasser had not acquired any rights in the land, while Clause (iii) applies to cases where the trespass is after the date of vesting. The period of limitation for a suit u/s 209 of the Z.A. and L.R. Act applies against those who trespassed the land after the date of vesting. In the case at hand, it is not disputed that the Petitioners entered into possession since before 1375 Fasli as held by the appellate court. The learned appellate court lost sight to the fact by applying the period of limitation as three years u/s 180 of the Tenancy Act and the appellate court has held that the Petitioner did not perfect their rights and the limitation

had not expired. It may be added that the limitation was two years and not three years at the relevant time and the limitation against the Petitioners for eviction had expired before the date of vesting because no suit was filed against them by the original tenure holder. Thus, the Petitioners had perfected their hereditary rights u/s 180(2) of the said Act and at the time of vesting as per Section 131, they became Sirdar.

16. The Petitioners had perfected their rights at the relevant time, i.e. on the date of vesting, but even for the sake of arguments it may be taken, according to the Respondent's case that they had not perfected their rights on the date of vesting, the limitation would apply as that of Clause (i) and not of Clause (iii), as has been mentioned in the Schedule u/s 209 because Clause (iii) only applies in those cases in which the land was trespassed after the date of vesting, as has been held earlier. In that eventuality also, from 1-7-1969, the limitation u/s 209 of the ZA and LR Act had also expired on 1-7-1972 before the enforcement of the Ceiling Act and it is not disputed that no suit was filed after the date of vesting against the Petitioners, therefore, the Petitioners had acquired rights u/s 210 of the said Act.

17. It was further argued that the entry of the relevant Khasaras, referred to above, do not show that the name of the Appellant-Petitioners were recorded in the remarks column of Khasra in accordance with law over the land of which they are trespassers, they cannot be deemed to have perfected their title over the land and such entry would not be of any avail to the persons concerned. It has been held by the Apex Court in the case of Wali Mohammad (Deceased) by Lrs Vs. Ram Surat and Others, that entries in revenue records should generally be accepted at their face value, but presumption of its correctness does not apply to forged or fraudulent entries. What the entry states in revenue records cannot be challenged, but the same can be challenged if the same was made fraudently or surreptitiously. It was further held by the Apex Court that "It is true that the earlier in the revenue record ought, generally to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

18. Learned Counsel for the Petitioners further contended that the Petitioners had filed a suit for declaration in the Court of the Additional Commissioner, Kumaun Mandal and they were declared Bhumidhars by the said date. In this regard they have also filed copy of the judgment passed by the Additional Commissioner dated 15-8-1984. The learned Commissioner did not accept the contention of the Petitioners because the declaration was made by the Additional Commissioner after the Ceiling Act came into force. If this finding is to be

accepted, even the finding to this effect that the entry was not made in the revenue records as per provision of the Land Record Manual goes. The declaration was made by the Additional Commissioner taking into consideration the fact that the entries were made in the revenue records as per provisions of the Land Record Manual.

19. In the view of the discussion above, it is clear that the Petitioners had perfected their rights before the date of vesting and they had become Sirdar u/s 131 of the U.P.Z.A. and L.R. Act being hereditary tenants. It is not disputed that no suit u/s 180 of the U.P. Tenancy Act or Section 209 of the Z.A. and L.R. Act was filed against the Petitioners. As such the land in possession of the Petitioners could not be clubbed with the land of the original tenure holder Laxmi Lal.

20. Accordingly, the writ petition is allowed and the impugned order dated 14-6-1985 passed by the Additional District Judge Nainital as well as the order as well as the order dated 30-9-1978 passed by the Prescribed Authority/S.D.M. Bhabar Haldwani are set side. However, if the Prescribed Authority finds the land in excess of the ceiling limit has been held by any of the Petitioners independently, he may proceed against them in accordance with law.