
(1972) 12 AHC CK 0001

In the Allahabad High Court

Case No : Sp. A. No. 1246 of 1969 connected with Sp. As. No's. 1247 and 1248 of 1969

Gram Samaj Village Madapur

APPELLANT

Vs

Hari Ram and others

RESPONDENT

Date of Decision : 01-12-1972

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198, 209

Citation : (1973) 43 AWR 65

Hon'ble Judges : Satish Chandra, J;P.N Bakshi, J

Bench : Division Bench

Advocate : S.S. Chandrariya, for the Appellant; Radha Krishna and S.C., for the Respondent

Judgement

Satish Chandra, J.—One Chaloo was Bhumidhar of the plots in dispute. He died heirless. The plots vested in the Gram Sabha. The Gram Sabha appears to have let out these plots to the Respondents on Batai rent. Subsequently the Respondents were asked to pay rent in cash. Later on Gram Sabha filed suits for the ejectment of the Respondents u/s 209 of the Zamindari Abolition Act on the allegations that the Respondents were in occupation as licensees and the Gram Sabha has revoked their licenses.

2. The trial court held that the Gram Sabha had not followed at all the procedure prescribed u/s 198 of Zamindari Abolition Act read with Rules 173 and 174, the Defendants could not hence be held to be lessees in possession. Since they are in occupation of the land with the permission of the Gaon Sabha, they were simply licensees. With the revocation of the licences, the suit was maintainable. The suit was accordingly decreed.

3. On appeal, the Additional Commissioner held that the status of the Respondents was not that of licensees but of lessees. On this view, the suit was dismissed. The matter was taken up to the Board of Revenue. The Board of Revenue held that the Gaon Sabha had not at all followed the procedure laid

down by Section 198 and Rules 173 and 174, but it allowed the Defendants to cultivate the land as an interim arrangement. In this situation, the Defendants would be merely licensees. Later the Gaon Sabha tried to settle the land according to the procedure laid down in the Act. Thereupon the Defendants turned round and contested the rights of the Gaon Sabha. Thereupon, their licenses were revoked. The suit was held maintainable.

4. Aggrieved, the Respondents filed writ petition in this Court. A learned single Judge held that the Respondents had been in possession of the land with the consent of the Gaon Sabha, therefore, Sub-clause (b) of Section 209 of the Act was not applicable and so the suit was maintainable. He was also of the opinion that only possible remedy was u/s 198(2) of the Act. On these findings the writ was allowed and the suits were dismissed.

5. Section 209 of the UP ZA Act provides that a person taking or retaining possession of the land is liable to ejectment on the suit of the Gram Sabha where the land does not form part of the holding of a Bhumidhar, without the consent of the Gaon Sabha. The phrase, "taking or retaining" points to two different situations. Taking refers to the point of time when possession is initially taken; but retaining refers to the continuance of the possession after it has been taken. The situation where person may have taken possession with the consent of the Plaintiff and yet whose continuance of possession may be without his consent is well within the purview of the section because in that event he will be deemed to have retained possession without the consent of the Plaintiff. Since the Plaintiff alleged that the Defendants were licensees and their licenses were revoked, their continuance of possession was clearly retaining possession without the consent of the Plaintiff. The suit was clearly maintainable u/s 209 of the UP ZA and LR Act.

6. On the findings of facts, the position is that the Gaon Sabha had made no effort to make and regularise the allotment in accordance with the statutory provisions. It permitted the Respondents to cultivate the plots on agreed terms, one of which was that they will pay rents initially in kind and subsequently in cash. The Gaon Sabha has been authorised to let out the land in accordance with Section 198 read with Rules 173 and 174. This provision limits the rights if the Gaon Sabha to execute leases. The Gaon Sabha has no right to lease cut land in any other manner. The action of the Gaon Sabha in permitting toe Respondents to take field and cultivate the plots cannot be deemed to create an interest as lessee in them. No other kind of interest is claimed by them. In our opinion the arrangement between the parties did not create any kind of interest in the land which may have (sic) in the Defendant-Respondents.

7. Since the Defendants had taken possession under an arrangement with the Gaon Sabha their possession was permissive. It was not adverse. That status continued till the licence was revoked. Thereafter, their possession was clearly without the consent of the Gaon Sabha. The suit u/s 209 of the UP ZA and LR Act was maintainable.

8. For the Respondents it was urged that the only remedy available to the Gaon Sabha was to proceed u/s 198(2) of the ZA and LR Act. Under that provision, the Assistant Collector incharge can take action to cancel an allotment. The only other person who can apply under that provision is one who is aggrieved by an order of the Gaon Sabha passed Under Sub-section (1). In Sub-section (1), a Gaon Sabha passes an order of allotment whereby it admits any person as Sirdar or Asami. In the present case, the Gaon Sabha had not passed any order Under Sub-section (1) of Section 198. For this reason Sub-section (2) cannot possibly be applied. In the second place Sub-section (2) does not confer any right upon the Gaon Sabha to apply the cancellation of its order. The Gaon Sabha who was Plaintiff in the case could not hence be non-suited on the ground that the remedy was to apply u/s 198. The fact that the Assistant Collector can take action has, in our opinion, no material bearing upon the maintainability of the suit.

9. Learned Counsel for the Respondent relied upon several decisions-- Associated Hotels of India Ltd. Vs. R.N. Kapoor, , Mrs. M.N. Clubwala and Another Vs. Fida Hussain Saheb and Others, and Konchada Ramamurthy Subudhi and Another Vs. Gopinath Naik, --of the Supreme Court in support of his contention that the Respondents were not licencees. These cases laid down the principles to determine whether a transaction was of lease or licence. According to them, the essential ingredient for the creation of a lease is the accrual of an interest in the property.... Even if a person is in exclusive possession, he will not be a lessee unless he can establish that an interest has been created in his favour in the land. In the present case, no interest can possibly be construed to have accrued in favour of the Respondents. They were clearly not lessees. Their status was that of licensees. In our opinion, the Board of Revenue was justified in decreeing the suits.

10. In the result, the appeal succeeds and is allowed. The judgment of the learned single Judge is set aside and the writ petitions are dismissed with costs.