
(1996) 05 DEL CK 0024
In the Delhi High Court
Case No : L.P.A. No 138 of 1971

G.S. Fateh

APPELLANT

Vs

Custodian General of Evacuee Property and others

RESPONDENT

Date of Decision : 17-05-1996

Acts Referred:

Citation : AIR 1996 Delhi 358

Hon'ble Judges : M. Jagannadha Rao, C.J; Dalveer Bhandari, J

Bench : Division Bench

Advocate : M.P. Kohli and Baldev Raj, for the Appellant; M. Ahmed, for the Respondent

Judgement

Dalveer Bhandari, J.—The present Letters Patent Appeal has been filed under Clause 10 of the Letters Patent Act, against the judgment and order dated 30-3-1971 passed by S. Rangarajan, J. in writ petition No. 321-D/61, quashing the order of the Assistant Custodian (Judicial) Mr. R. A. Avasthi dated 13th January, 1961 and that of the Deputy Custodian General Mr. Y. L. Taneja, dated 11th April, 1961 and 27th April, 1961.

2. Brief facts which are necessary to appreciate the controversy involved in the case are recapitulated as under:--

3. The dispute between the parties in the instant case relates to 8 plots Nos. 1142, 1143, 1152, 1156, 1309, 1114, 1332, 1344, situated in village Galibpur, District Muzaffarnagar, U. P.

4. Two persons, namely, Mohd. Zikriya and Mohd. Khan were the tenants of the plots mentioned above. The tenancy rights of these persons were taken over as Evacuee Property under the U. P. Administration of Evacuee Property Ordinance No. 1 of 1949.

5. Zahid Hussain, respondent No. 3 in this appeal held the aforesaid plots of land on sub-lease from the tenants several years before the partition of the country.

In the writ petition filed by Zahid Hussain, it is mentioned that the possession over these plots as sub-tenants was first time recorded in Khasra and Khatauni for the Fasli year 1356. Mohd. Mosin was recorded as the occupant of some of the said plots in Revenue papers for some prior to Fasli year 1356. In the writ petition, the main contention of Zahid Hussain (who is respondent No. 3 in this appeal) was that Zahid Hussain being recorded as sub-tenant of the plots in Khasras for Fasli Year 1356 became entitled to Adhivasi rights in view of the provisions of Section 20 (b) of U. P. Zamindari Abolition and Land Reforms Act, 1950. Section 20 (b) of the Act reads as under:--

"20. Every person who

(a)

(b) was recorded as occupant.....

(i) of any land (other than grove land or land to which Section 16 applies of land referred to in the proviso to sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947 in the Khasra or Khatauni of 1356-F prepared under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to retain possession thereof under Clause (c) of subsection (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or

(ii) of any land to which Section 16 applies in the Khasra or Khatauni of 1356 Fasli prepared under Sections 28 and 33 respectively of the United Provinces Land Revenue Act, 1901, but who was not in possession in the year 1359-F, shall, unless he has become a Bhumidar of the land under sub-section (2) of Section 18 or an asami under clause (h) of Section 21, be called adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

Explanation :I. Where a person referred to in clause (b) was evicted from the land after June 30, 1948, he shall, notwithstanding anything in any order or decree, be deemed to be a person entitled to retain possession of the land.

Explanation II. Where any entry in the records referred to in clause (b) has been corrected before the date of vesting under or in accordance with the provisions of the U.P. Land Revenue Act, 1901, the entry so corrected shall for the purpose of the said clause, prevail.

Explanation III. For the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the records.

Explanation IV. For purposes of this section occupant" as respects any land does not include a person who was entitled as an intermediary to the land or any

share therein in the year 1356 Fasli."

6. The further contention of Zahid Hussain in the writ petition has been that he was further entitled to become Bhumidar in view of Para 4 of Schedule V of the said Act, on payment of 20 times of the rent computed at hereditary rates applicable to the land. Para 4 of Schedule V reads under :--

"(1) A person who has become an adhivasi under clause (b) of Section 20 of any land which is evacuee property, shall before 31st day of December, 1957, or such further date as the State Government may from time to time, by notification in the Official Gazette, specify in this behalf pay the Custodian an amount equal to 20 times the rent computed at hereditary rates applicable to the land.

(2) The amount paid under sub-para (1) shall be credited by the Custodian to the account of the evacuee concerned.

(3) If the person liable to pay the amount under sub-para (1)-

(a) pays the same within the period allowed therefore, he shall become a bhumidar of the land liable to pay land revenue equal to one half of the rent computed at hereditary rates applicable to the land; or

(b) fails to pay the same within the period allowed therefore, he shall forfeit all his rights, title and interest in the land of which he was an adhivasi and the provisions of Chapter II of the U. P. Zamindari Abolition and Land Reforms Act, 1950, shall and be deemed always to have had effect in respect of such land as if clause (b) of Section 20 had been never enacted.

(4) Where a person becomes an adhivasi under Clause (b) of Section 20 of a share only in any land, references, to land in sub-paras (1) and (3) shall be construed as references to such share only."

7. Zahid Hussain filed an application before Assistant Custodian on 19th December, 1994 claiming Adhivasi rights in the said plots and prayed that possession of the plots be not delivered to anyone. He submitted that he fulfilled the requisite conditions by depositing the prescribed money in the office of the Assistant Custodian within the prescribed time limit. So he became bhumidar under Para No. 4 of Schedule V of the said Act.

8. The Assistant Custodian took proceedings u/s 8(iv) of the Administration of Evacuee Property Act, 1950 against Mohd. Mosin in relation to the said plots. A warrant of eviction was issued against Mohd. Mosin and it is alleged to have been executed on 19-3-1956. It is further alleged that the said writ petitioner continued to be in possession and submitted an application on 21-3-55 saying that possession had not been taken from him and he had become adhivasi u/s 20-B of U. P. Zamindari Abolition and Land Reforms Act. Zahid Hussain also filed an application dated 30-3-1955 in which he re-asserted his claim of adhivasi rights over the plots.

9. The Assistant Custodian disregarded the rights of Zahid Hussain under U. P.

Zamindari Abolition and Land Reforms Act, and allotted the land to the appellant G. S. Fateh. He further mentioned that Zahid Hussain had been held to be an unauthorised occupant and had been evicted and possession of the land was given to the appellant G.S. Fateh and Zahid Hussain (respondent No. 3) was warned not to interfere with the possession of the appellant. Aggrieved by the order, Zahid Hussain tiled a revision petition u/s 26 of the Act No. 31 of 1950 before the Custodian of Evacuee Property, Lucknow. U.P. The revision was heard by Mr. Roop Chand, Addl. Custodian, Lucknow, U.P. Mr. Roop Chand in his order dated 22-12-1955, arrived at the conclusion and relevant findings are reproduced as under:

"Admittedly possession had not been taken from Zahid Hussain. The warrant of eviction was issued only against Mohd. Mosin and executed against him. The U. P. Zamindari Abolition and Land Reforms Act, which came into force after the order of the Addl. Custodian dated 7-12-1951 by which Zahid Hussain and Mohd. Mosin were held to be unauthorised occupants prior even to Fasli Year 1356 if they are so recorded in public papers, Zahid Hussain if he is recorded as an unauthorised occupant in Khasra and Kha-tauni in Fasli Year 1356 would, Therefore, get rights under the U.P. Zamindari Abolition and Land Reforms Act. Possession from him could not be taken till the application claiming his possession as adhivasi was decided."

10. While allowing the revision petition, the Addl. Custodian vide the said order had set aside the order passed by Assistant Custodian dated 20-4-1955. He further directed the Assistant Custodian to dispose of the application of Zahid Hussain dated 19-12-54, 21-3-55 and 13-3-55 and his claim of being an adhivasi before dispossessing him. He further mentioned that if Zahid Hussain has been dispossessed by virtue of A.C.'s order dated 20-5- 1955, the possession would be restored back to him.

11. The appellant (Major G. S. Fateh) aggrieved by the order of the Addl. Custodian of evacuee property, U. P. dated 22-12-55 filed a revision petition before the Deputy Custodian General of evacuee property, New Delhi. The Deputy Custodian General of evacuee property in his order dated 13-3-1956 observed as under :

"The conjoint effect of Sec. 20 clause (b) of U.P.Z.A. & L.R. Act and para 4 of Schedule 5 to the aforesaid Act is that a person who is recorded as an occupant in the Khasra of Khatauni for the year 1356 Fasli is entitled to retain possession of the land provided he fulfills other conditions laid down by the Schedule 5 referred to above, and the main question that awaits consideration is as to whether the name of respondent No. 2 (Zahid Hussain) was recorded as occupant of the plots of land referred to above in the Khasra or Khatauni for the year 1356 Fasli."

12. He further held that recording of actual possession in Khasra and Khatauni for the Fasli Year 1356 is material subject to other conditions being fulfilled .He

observed that Zahid Hussain was entitled to claim the benefit according to Schedule V of U. P. Zamindari Abolition and Land Reforms Act, on account of his being occupant of the plots in question in Khatauni Fasli Year 1356. This order became final and conclusive between the parties.

13. The Assistant Custodian Meerut Circle Muzaffarnagar only had to examine whether Zahid Hussain paid the amount according to rules within the prescribed time limit. He could not reopen the case which became final after the order of Mr. S. B. Capoor, Dy. Custodian General dated 13-3-56.

14. In the instant case. Assistant Custodian instead of deciding limited controversy and implemented the said orders of Dy. Custodian General reopened the entire case and observed as under :--

"In view of the above Zahid Hussain is entitled to bhumidari rights over 14 plots situated in village Ghalibpore, Teh. Jansath, District Muzaffarnagar and bhumidari certificate shall be issued to him. Further in respect of 8 plots Nos. 1309, 1155, 1142, 1143, 1144, 1152, 1332 and 1334 of village Ghalibpore, his application for bhumidari rights is rejected which will continue to be allotted to Major G. S. Fateh. D. P. allottee."

15. Zahid Hussain aggrieved by the order of Assistant Custodian (Judicial) dated 13-1-1961 filed a revision petition before Mr. Y. L. Taneja, Deputy Custodian General of India. The Deputy Custodian General in the said order mentioned that Khasra and Khatauni for 1359 Fasli show that the writ petitioner (Zahid Hussain) was not in possession of the first four survey numbers. Accordingly, the order of the Assistant Custodian with regard to four survey numbers is correct and must be upheld.

16. Regarding the remaining four Kha-sras, by the said order, he partially accepted the case of the writ petitioner and remanded it to the Assistant Custodian (Judicial) Meerut with a direction that he should record evidence regarding point mentioned in the order and dispose of the case in accordance with law by passing the fresh order.

17. Zahid Hussain aggrieved by the order of the Assistant Custodian and Deputy Custodian General filed a writ petition in which he prayed that both these orders be quashed.

18. The learned counsel appearing for Zahid Hussain submitted before the learned single Judge that after the order of Shri C. B. Capoor, Dy. Custodian General dated 13-3-56, the Assistant Custodian could not reopen the said decision. He was only to satisfy himself if the condition of payment of Bhumidari money within the prescribed limit has been complied with by Zahid Hussain. If this condition was complied with, as it was, he had no option but to implement the order of Deputy Custodian General dated 13-3-56. It has been submitted by Zahid Hussain that he was recorded as an occupant of the land in the Khatauni for Fasli Year 1356 and by reason of this entry, he was entitled to become

adhivasi.

19. It was submitted that Section 232 of the U. P. Zamindari Abolition and Land Reforms Act, did not have application to the property in dispute which was an evacuee property. It did not apply to the case of Zahid Hussain. No application for restoration of possession of evacuee property lay to the revenue Officers under the said provisions of law. It has also been submitted that Section 232 applies only to cases in which occupant of Fasli Year 1356 was out of possession on the date of vesting. Section 232 of the U. P. Zamindari Abolition and Land Reforms Act, reads as under :--

"S. 232. Application for possession by adhivasi--(1) An adhivasi to whom clause (d) of Section 20 applies may, within thirty months from the date of vesting to the Assistant Collector in charge of the sub-division for putting him in possession of the land, of which he is the adhivasi.

(2) The application shall contain such particulars as may be prescribed.

(3) Upon the receipt of the application under sub-section (1) the Assistant Collector shall give notice thereof to the land-holder and any other person who may be in possession of the whole or any part of such land to appear on a date to be specified and show cause why an order directing the applicant to be put in possession of the land be not passed.

(4) On the date fixed or on any other date to which the hearing may be adjourned the Assistant Collector shall, if after such inquiry, as may be prescribed, he is satisfied that the applicant is entitled to be put into possession, make an order to that effect.

(5) Where any improvement as defined in the U. P. Tenancy Act, 1939 (U. P. Act XVII of 1939), was lawfully made before the date of vesting by any person on the land and such person is dispossessed from such land under sub section (1), the Assistant collector shall, at the time of making the order under sub-section (4) direct compensation to be paid to such person for such improvement and the amounts of compensation shall be determined, as far as may be, in the manner and in accordance with the principle laid down in that behalf in Chapter V of the U.P. Tenancy Act, 1939 (U.P. Act XVII of 1939).

(6) The order for possession under subsection (4) shall be conditional on the payment by the adhivasi within such time as the Assistant Collector may fix for the amount of compensation to be paid under sub-sec. (5) provided that if the land or any part thereof is in the possession of any person to whom the land-holder let it out before the first day of July, 1949, such person not being a relation, dependant or servant of the land-holder, the Assistant Collector shall, if the person so applies, direct that he shall not be ejected there from until the expiry of three years from the thirtieth day of June next following the date of the order. Provided further that such person shall, during the period he is allowed to continue the possession under that next preceding proviso, be liable to pay to

the adhivasi the same rent as he was paying for the land on the date immediately preceding the date of vesting."

20. The Deputy Custodian General in his order dated 11-4-1961 has erroneously upheld the order of the Assistant Custodian in relation to 5 plots of land on the ground that Zahid Hussain did not apply for restoration of possession u/s 232 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The Deputy Custodian General has further erred in coming to the conclusion that in spite of three plots No. 1144, 1344 and 1332, he found that possession on Zahid Hussain was for the first time recorded in Fasli Year 1356 and he erroneously remanded the case for enquiry.

21. The writ petition was heard and disposed of by S. Rangarajan, J. The learned single Judge after dealing with the respective contentions of the parties has also dealt with the leading cases decided by the Supreme Court. Learned single Judge placed reliance on Amba Prasad Vs. Abdul Noor Khan and Others, . Hidayatulla, J., as he then was, speaking for the Court held that clauses (a) (i) and (b) (ii) of Section 20 of the Act do not require proof of actual possession in the Fasli Year 1356, and that requirement was merely an entry of the persons named as an occupant in Khasra and Khatauni of Fasli Year 1356.

22. The learned single Judge also relied on another case of the Supreme Court Nath Singh and Others Vs. The Board of Revenue and Others, , it was held that between the tenant and sub-tenant, an entry in favor of the sub-tenant makes its occupant entitled to adhivasi rights u/s 32 when the same was borne by the record of Khasra and Khatauni of Fasli Year 1356. The learned single Judge has held that order of the Deputy Custodian General Mr. S. B. Capoor (Later Mr. Justice Capoor) had become final by virtue of Section 28 of the Administration of Evacuee Property Act, 1950. Section 28 reads as under:

"Save as otherwise provided in this Chapter (Chapter V), every order made by Custodian General, Custodian, Addl. Custodian, authorised Deputy Custodian, etc. shall be final and shall not be called in question in any court by way of appeal or revision in an original suit, application or execution proceedings."

23. The learned single Judge has held that both Mr. Avasthi and Mr. Taneja could not question the correctness of the order passed by Mr. S. B. Capoor, which became final and conclusive. It is further observed that after Mr. Capoor, Deputy Custodian had given the specific direction that Zahid Hussain was entitled to claim the benefit, Schedule V of the Act had conferred on him this benefit by reason of being occupant of the disputed plots in Khasra and Khatauni in Fasli Year 1356 and the revision preferred by him by the present third respondent having been dismissed on that ground, it was not open to Mr. Avasthi and Mr. Taneja to launch an enquiry as to whether Zahid Hussain by reason of his being in occupation, was entitled to his rights as Adhivasi. It will be relevant to mention that 20 times rent as prescribed by para 4 of Schedule V of the Act had also been paid within the prescribed period. Therefore, the order passed by the Deputy

Custodian is unquestionable.

24. We have perused the judgments, orders and documents on record. We have also carefully examined relevant provisions of law and heard learned counsel for the parties.

25. We are in agreement with the findings of Mr. Roop Chand, Additional Custodian dated 22-12-1955 which were upheld by Mr. S. B. Capoor, Deputy Custodian General in his order dated 13-3-1956. According to Section 20 Clause (b) of U. P. Zamindari Abolition and Land Reforms Act, a person who is recorded as an occupant of the Khasra and Khatauni for the year 1356 Fasli is entitled to retain possession of the land provided he fulfills other conditions laid down by Schedule V. Once the name of Zahid Hussain was recorded as an occupant, then he acquired adhivasi rights. Thereafter for acquiring bhumidari rights within a stipulated period bhumidari money has to be deposited which was admittedly deposited within prescribed time by Zahid Hussain. Therefore, according to the provisions of law, Zahid Hussain also became bhumidar.

26. The short enquiry which the Assistant Custodian (Judicial) Meerut Circle had to carry out was whether Zahid Hussain deposited the amount within the prescribed time for acquiring bhumidari rights? The Assistant Custodian erroneously reopened the entire case which was manifestly illegal and without jurisdiction. Similarly, Deputy Custodian General also erroneously passed order dated 11-4-61 and 27-4-1961. The learned single judge was justified in allowing the writ petition filed by Zahid Hussain and set aside judgments of Assistant Custodian (Judicial) dated; 13-1-1961 and of Deputy Custodian General dated 27-4-1961.

27. In our considered opinion, no interference is called for. This appeal being devoid of any merit is accordingly dismissed. In the facts and circumstances, we direct the parties to bear their own costs.

28. Appeal dismissed.