
(1968) 09 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writs No"s. 4808, 5736 and 5739 of 1963

Jai Shankar Singh and others

APPELLANT

Vs

The State of UP and others

RESPONDENT

Date of Decision : 26-09-1968

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 194, 212
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 5
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 194, 212

Citation : (1968) 38 AWR 849

Hon'ble Judges : D.S. Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.S. Mathur, J.—This order shall govern Civil Miscellaneous Writ Petitions Nos. 4808 and 5736 to 5739 of 1963. Writ Petition No. 4808 of 1963 is by the tenure-holders, Jai Shanker Singh and others, while the other four by the transferees of the tenure-holders. All the writ petitions pertain to land which was originally a tank, but it appears that the land of the tank had been occasionally or for a long period cultivated by persons with the consent of the then zamindars. The tenure-holders claimed to be Bhumidhars and as such had transferred, the. Land to the Petitioners of writ petitions Nos. 5736 to 5739 of 1963, but on a perusal of the lease it transpired that the lessees had no right of transfer and hence it is no longer in dispute that the tenure-holders were mere sirdars and not Bhumidhars. Sirdars can not transfer their holding to other persons and the transfer, if made, shall be in contravention of the provisions of the UP ZA and LR Act (to be referred hereinafter as the Act) and the transferees cannot claim any title to the land. In the circumstances, there can be no dispute in that the Petitioners of writ petitions Nos. 5736 to 5739 are mere trespassers. Their transferor can, however, have the status of a Sirdar.

2. The Gaon Samaj had instituted a suit u/s 212 of the Act on the ground that

the tank was a land of public utility. Before the suit could be decided, notification u/s 4 of the UP Consolidation of Holdings Act was published and that suit was stayed. In one way the dispute in so far as the tenure-holders are concerned is meant to eject them to make the tank of public utility available to the public. The case of the transferees, however, stands in a different category and they can be ejected on other grounds also.

3. The first question that arises for consideration is whether the consolidation authorities have the jurisdiction to pass an order contemplated by Section 212 of the Act, or the authorities can merely determine the title of the parties leaving it open to the Sub-Divisional Officer to take further action with regard to compensation. The suggestion made by the learned Advocate for the Gaon Samaj is that a proceeding u/s 212 cannot be entertained by the consolidation authorities, though in the case of land of public utility, the consolidation authorities can declare the person to be trespasser. The suggestion thus made is that the consolidation authorities cannot award compensation on account of the absence of such a power being conferred on them under the provisions of the UP Consolidation of Holdings Act.

4. If the above contention is accepted, it will virtually mean that the consolidation authorities can take no action u/s 212 of the Act. In a proceeding u/s 212 a person can be ejected from a land of public utility even if he has a valid title to the land. A person may be sirdar or Bhumidhar of such land but for the public good he can be diverted of his right on payment of compensation. A perusal of Section 212 shall make it clear that the dispossession of a person having a valid title or having no title is dependent upon payment of a compensation as prescribed. The compensation has been prescribed under the UP ZA and LR Rules and the rule also makes it evident that under this provision a Bhumidhar or sirdar can be divested of his rights and he can be dispossessed of the land.

5. There cannot be dispossession or ejectment of the person without payment of compensation and if no compensation is paid, or determined, the person cannot be ejected with the result that he shall continue to have the title which he originally possessed. It is after ejectment that he is divested of his rights. Consequently, if the consolidation authorities cannot award compensation while treating the person as a trespasser they can not treat a Bhumidhar or sirdar as a trespasser nor can they take action u/s 212 of the Act.

6. The question for consideration is whether the proceeding u/s 212 can or cannot be taken by the consolidation authorities. The answer to this question shall also depend upon whether such a proceeding does or does not abate on the issue of the notification u/s 4. If a suit already instituted u/s 212 abates and the consolidation authorities cannot pass an order under this section, it shall be necessary for the Gaon Samaj to institute a fresh suit after the issue of the notification u/s 52 of the UP Consolidation of Holdings Act. A suit u/s 212 has to be instituted within the prescribed period of 10 years from the date of vesting. It

can, therefore, happen that if the suit already instituted cannot proceed and stands abated, a fresh suit may be barred by limitation. The court of law are to take a view which is equitable, of course, not repugnant to the provisions of the various enactments. In the circumstances, if it is possible to hold that the consolidation authorities can pass an order contemplated by Section 212 of the Act, that view can be adopted even though there may be no specific provision for the award of such compensation in the UP Consolidation of Holdings Act.

7. In this connection it may be noted that the UP Consolidation of Holdings Act does not detail the right or title of the tenure-holders. It merely lays down the forum of determination of the rights. The UP Consolidation of Holdings Act is more or less like a procedural law, the rights and interest of tenure-holders being determined under the main enactment, that is, the ZA and LR Act. It is not in dispute that the consolidation authorities can determine the right and interest of the tenure-holders. They can, therefore, hold that a person; who was at one time a Bhumidhar or sirdar has ceased to be as such, that is where a person is divested of his title, the consolidation authorities can record a finding that he has ceased, to be a Bhumidhar or a sirdar. Where the person can be divested of his rights on payment of compensation the consolidation authorities can not only divest him but also award compensation.

8. u/s 5 of the UP Consolidation of Holdings Act, as it stood on the material date, the suit u/s 212 of the Act already instituted had to be stayed as it was a suit for possession and by implication, a declaration as to the title of the tenure-holder after the divesting of the right had to be determined. Prior to the amendment of Section 5 in 1966 a suit stayed had to be decided in accordance with the findings recorded by the consolidation authorities. In view of this provision it could be said that the consolidation authorities had merely the power to lay down that the tenure holder could be divested of his rights or stands divested of his rights and thereafter the compensation was to be paid under orders of the Sub-Divisional Officer and the order passed by the Consolidation Officer would be effective after the payment of compensation. The adoption of this view could lead to complications. I have indicated the above to merely indicate to what extent a view favourable to the Gaon Samaj could be taken. However, after the amendment of Section 5 of the UP Consolidation of Holdings Act in 1966, a suit which had originally to be stayed stands abated. When the suit abates, the Court cannot after the conclusion of the consolidation operations pass orders in that suit. In the circumstances, it shall be necessary for the consolidation authorities to adjudicate upon not only on the title or interest of the tenure-holders but also to dispossess them by not allotting a chak on payment of compensation.

9. To meet this point it was contended by the learned Advocate for the Gaon Samaj that Section 5 as amended in 1966 cannot apply to a suit which had been instituted long before 1966. This contention can be repelled on the basis of the Supreme Court decision in *Ram Adhar Singh v. Ramroop Singh and Ors.* 1968 AWR 14. Therein the Supreme Court had granted special leave to appeal before

the issue of the notification u/s 4 of the UP Consolidation of Holdings Act and it was after the issue of the notification u/s 4, that Section 5 was amended in 1966. Amended Section 5 was held to be applicable to that case. In other words, amended Section 5 applies to even pending suits or proceedings and not merely to suits or proceedings instituted or entertained after the amendment of Section 5 in 1966.

10. To sum up, u/s 212 of the Act a tenure-holder can be dispossessed from the land even though he had a valid title thereto; but the ejectment is on payment of compensation as prescribed. The consolidation authorities have to determine not only the title of the parties, but also to dispossess a person, if necessary, at the time of the allotment of chak, when dispossession is not possible without payment of compensation, the consolidation authorities can make dispossession subject to payment of compensation. The consolidation authorities can, therefore, pass an order as contemplated by Section 212 of the Act.

11. A consideration of the order of the Deputy Director of Consolidation and also of the Consolidation Officer and the Settlement Officer (Consolidation) shall make it clear that no compensation was awarded when tenure-holders like the Petitioners of Writ Petition No. 4808 of 1963 were declared to be trespassers. This order is thus erroneous and deserves to be set aside to enable the consolidation authorities to pass an order in accordance with the law.

12. It is true that the Petitioners of Writ Petitions Nos. 5736 to 5739 have no valid title and are mere trespassers, but they can claim from the transferors compensation paid to them u/s 212 of the Act. The transferees-Petitioners are thus interested parties in that due compensation should be paid before their transferors are dispossessed from the land.

13. In view of the conflict in the provisions of the Act, it cannot be said that a sirdar who has made an illegal transfer ceases to be the sirdar of the land transferred. It is true that Clause (cc) of Section 190(1) of the Act lays down that the interest of the sirdar shall be extinguished on his transferring the holding or a part thereof in contravention of the provisions of this Act; but this provision is directly in conflict with Section 167(2) of the Act which was incorporated under the same Amending Act. Section 167(2) makes a provision for a decree for ejectment of the sirdar from the whole or a part of the holding. Section 168 further provides that upon ejectment in a suit u/s 167 all the rights and interest of the Sirdar in the holding or a part thereof, shall be extinguished. A reference may here be made to Section 194 of the Act also. This section was not amended at the time Clause (cc) was incorporated in Section 190(1) and Sub-section (2) was provided in Section 167. Section 194 does not entitle; the Land Management Committee to take possession of the holding or part thereof on a sirdar or asami illegally transferring the same. On reading the three provisions together, it must be held that the rights of a sirdar or asami do not extinguish automatically on his making an illegal transfer. To avoid confusion it may be laid down that in the case of a Bhumidhar there shall be such conflict and if the sirdar becomes a

Bhumidhar his rights can be deemed to have extinguished with effect from the date he became the Bhumidhar of such land. I am alive to the factor that the above view with regard to the Bhumidhar and the other with regard to the sirdar may appear to be contradictory, but the provisions of the Act as they are must be enforced. In case Sections 167, 168 and 194 had not been incorporated or amended in the form in which they exist and they were drafted on the lines of Section 190 of the Act, one view could be adopted with regard to both the Bhumidhars and Sirdars.

Action u/s 167 of the Act is independent of a proceeding u/s 212 of the Act. Consequently, before the consolidation authorities finally decide the matter, they must obtain clarification from the Gaon Samaj whether it desires action u/s 167 or u/s 212 of the Act.

Orders to be passed in the two proceedings shall be different. No question of award of compensation shall arise if the proceeding taken by the Gaon Samaj is u/s 167 of the Act.

14. Another point which can arise for consideration and on the legal aspect of which I must make my comments, is whether the Petitioners of Writ Petition No. 4808 of 1963 are sirdars, asamis, or trespassers of the land. This will depend upon the validity of the lease and the use to which the tank had been put. Section 21 of the Act confers land status of an asami on a non-occupancy tenant of land covered by water and used for the purpose of growing singhara or other produce. A person growing singhara or other produce in a tank was under the provisions of the UP Tenancy Act a non-occupancy tenant. Consequently, if the tank in question was used for the purpose of growing singhara or other produce, the tenure-holders shall be asamis and not sirdars; but if the tank was not used for such purposes, but was meant for irrigation only, it shall be a land connected with agriculture and hence the tenure-holders can have the status of a sirdar. In case the lease in their favour is invalid, they would be trespassers. The consolidation authorities have not recorded a finding as to the purpose for which the tank was used. This question of fact must be decided before the other questions of law are taken up and finding recorded.

15. Brief comments may also be made on two other points which had been raised before me. The learned Advocate for the Petitioners relied upon the Full Bench decision of this Court where it was laid down that the prescribed period of limitation shall be counted upto the date a suit for ejectment is actually instituted. In view of the above Supreme Court decision the matter has been referred to a larger Bench. The consolidation authorities shall naturally decide this point on the basis of the law as may eventually be laid down by this Court. However, this point shall be of no significance if the Gaon Samaj treats the proceedings to be u/s 212 of the Act, treating the original tenure-holders to be sirdars. In such a case, the Gaon Samaj shall have to pay compensation, before the tenure holders and also their transferees can be ejected.

16. It has been pleaded in the supplementary-affidavit filed in Writ Petition No. 5737 of 1963 that there has been a compromise between the Petitioners and the Gaon Samaj and the Gaon Samaj no longer wishes to eject the Petitioners. The compromise cannot be taken into consideration by this Court. It shall be for the consolidation authorities to pass an order in accordance with the law, keeping in mind the compromise, if validly made.

17. All the five writ petitions are hereby allowed in the sense that the impugned order dated 16-9-1963 is quashed. All the 11 revisions shall now be decided in accordance with the law keeping the observations made above in mind. It is made clear that this Court has not recorded a finding on facts and it shall be for the Deputy Director of Consolidation to record a finding of his own on the basis of such evidence as at present exists or may be brought to his notice. Costs easy. Stay order is vacated.