
(1964) 01 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2592 of 1958

Jhamman Lal and Others

APPELLANT

Vs

Deputy Custodian General and Others

RESPONDENT

Date of Decision : 30-01-1964

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20, 231(1)

Citation : AIR 1965 All 253

Hon'ble Judges : V.G. Oak, J;S. Chandra, J

Bench : Division Bench

Advocate : Dhan Prakash Agarwal, H.C. Sharma and K.M. Dayal, for the Appellant; N.D. Pant and N.S. Singhal, for the Respondent

Final Decision : Allowed

Judgement

Oak, J.—This petition under Article 226 of the Constitution arises out of a proceeding under para 6 of Schedule V to U. P. Act No. 1 of 1951.

2. Jhaman Lal and two others are petitioners before this Court. Girdhari Lal and four others are respondents Nos. 2 to e. The dispute between the parties relates to 32 plots situate in village of, district Mathura. At one time one Syed Mahammad was the tenant or these 32 plots. He migrated to Pakistan. The plots were declared as evacuee property. The evacuee property Department allotted the plots to respondent Nos. 2 to 6. The petitioners claim that they are Adhivasis of these 32 plots. So on 17-11-1954 they filed an application u/s 232 of the Act to recover possession over the plots. They claimed Adhivasi rights u/s 20(b)(1) of the Act on the ground that, they were recorded as "occupants" in the village records for 1356 Fasli. The revenue Court directed the petitioners to get a declaration of their alleged Adhivasi rights from the Custodian under para. 6 of Schedule V to the Act. In pursuance of that direction, the petitioners filed on 25-7-1956 an application in the Court of the Assistant Custodian of Evacuee Property, Agra Circle for the necessary declaration. The application was opposed

by the allotted, Girdhari Lal and others. The Assistant Custodian was satisfied that the petitioners were Adhivasis of the 32 plots. A declaration was granted accordingly. Respondent Nos. 2 to 4 filed a revision. The revision was allowed by the Deputy Custodian General of Evacuee Property, Mussoorie by his order dated 23-6-1958. He held that, for various reasons, the petitioners' claim to Adhivasi rights could not be accepted. This writ petition by Jhamman Lal and others is directed against the order of respondent No. 1 dated 23-6-1958.

3. When the writ petition came up before a learned Single Judge of this Court, he noticed a conflict Between two decisions by different Benches of this Court, in view of that conflict, he referred the case to a larger Bench.

4. The 32 plots in dispute may be divided into two groups. The first group consists of 15 plots. At one time the petitioners surrendered these plots in favour of the then zamindar. The remaining group consists of 17 plots. The petitioners appear to have been ejected from these 17 plots in the year 1953 or 1954.

5. Respondent No. 1 rejected the petitioners' claim to 15 plots on the ground of the surrender. It was held that, in view of the surrender, any rights u/s 20(b) (1) of the Act should be deemed to have been extinguished. Mr. R. C. Sharma appearing for the petitioners challenged that view.

6. He relied upon a decision by a Division Bench of this court in Dwarika Prasad v. Board of Revenue 1957 All LJ 593. In that case there was a compromise between the parties in a suit u/s 180, U. P. Tenancy Act. The compromise was dated 19-2-1951. It was agreed that the respondents should surrender certain plots to the applicants. It was held by the Bench that, notwithstanding the compromise dated 19-2-1951, it was open to the respondents to recover those plots on an application u/s 232 of the Act.

7. A different view was, however, taken by another Division Bench of this Court in Jain v. Board of Revenue, Civil Misc. Writ No. 2023 of 1958, D/- 22-7-1958 (All), in that case a party had voluntarily surrendered possession over a plot in the year 1359 Fasli. It was held that he was thereby precluded from recovering that plot u/s 232 of the Act. The judgment is brief, and makes no reference to the previous judgment of another Bench dated 9-4-1957 in Dwarika Prasad's case 1957 All LJ 593. Different considerations arise depending on whether such a surrender took place before or after the date of vesting (1-7-1952). If an Adhivasi surrenders his rights after the date of vesting, that would be a good ground for not recognising the Adhivasi rights after such surrender. But bearing in mind that the Adhivasi rights did not accrue till 1-7-1952, the question of surrender of such rights before that date hardly arises. In the present case, it is common ground that the surrender in question took place before the date of vesting. In such a case it would be open for a party to establish Adhivasi rights in spite of the surrender prior to 1-7-1952. On this point, we are in agreement with the view taken by the first Bench in Dwarika Prasad's case 1957 All LJ. 593.

8. Respondent No. 1 rejected the petitioners' claim to 17 plots on the ground

that they were evicted from these plots after the date of vesting, we do not see how that circumstance can be a good answer to a claim u/s 232 of the Act under Sub-section (1) of Section 232 of the Act, an Adhivasi may claim recovery of possession within 30 months from the date of vesting. It appears that in the instant case the petitioners did apply to the revenue court for this purpose within 30 months from the date of vesting. The claim could not be rejected on the ground that the petitioners were dispossessed on a date subsequent to 1-7-1952.

9. Thus we and that the two reasons given by respondent No. 1 for reversing the decision of respondent No. 7 are not sound. Mr. N. S. Singhal appearing for respondents No. 2 to 6 urged that, the decision of respondent No. 1 should be allowed to stand for another reason. The reason is that the petitioners were recorded in the village papers in 1356 Fasli as sub-tenants. Such, an entry does not qualify for acquiring Adhivasi rights u/s 20 (b) of the Act.

10. For this contention, reliance was placed upon a full Bench decision of this Court in Ram Dular Singh and Another Vs. Babu Sukhu Ram and Others, . In that case it was held by the Full Bench by majority that, if a person's name is entered as a sub-tenant in the Khasra and Khatauni of 1356 Fasli, that entry does not establish Adhivasi rights u/s 20(b) of the Act.

11. On the other hand, Mr. H. C. Sharma relied upon a Supreme Court decision in The Upper Ganges Sugar Mills Ltd. Vs. Khalil-ul-rahman and Others, . In that case a certain company was recorded in village papers as a Thekedar for the year 1356 Fasli. Nonetheless, the Court held that the company was recorded as an occupant, and that it had acquired Adhivasi rights. It was explained on page 145 that, the word "occupant" is not a term of art, and has not been defined anywhere in the Act or in the U. P. Tenancy Act or in the Land Revenue Act. It must, therefore, be given its ordinary dictionary meaning which is "a person in occupation". It was further observed on page 147:

"The words in Section 20(b)(1) only speak of a person being recorded as occupant and there is nothing in that section as to the nature of the occupancy, namely, whether it is on behalf of the person recorded or on behalf of somebody else. That is a matter which in our opinion must always be decided on other evidence for the entry does not contemplate recording the nature of the possession in the sense of its being on behalf of the person recorded or on someone else's behalf".

It will be noticed that in that case, although the entry by itself suggested that the occupation of the company was on behalf of another person, the company was given the benefit of Section 20(b)(i) of the Act.

12. The Full Bench decision of this Court in Ram Dular Singh and Another Vs. Babu Sukhu Ram and Others, must be read subject to the Supreme Court's decision in the The Upper Ganges Sugar Mills Ltd. Vs. Khalil-ul-rahman and Others, . When the two decisions are considered together, the true position appears to be this. Ordinarily, an entry as a subtenant does not establish

Adhivasi rights u/s 20(b)(1) of the Act, But it is possible to establish that such an entry Is not quite correct. In fact, the occupation of the plot was as a trespasser, and not as a sub-tenant, if that situation is established, the occupier can be given the benefit of Section 20(b)(1) of the Act.

13. Mr. H. C. Sharma contended that, that is the position in the present case also. Although the petitioners were recorded as sub-tenants, they were in fact in possession as trespassers. This position has been disputed by Mr. N. S. Singhal He contended that the petitioners were not in possession in 1356 Fasli at all unfortunately this aspect of the matter did not receive attention from respondents Nos. 1 and 7. They proceeded on the assumption that mere entry as a sub-tenant was sufficient to establish Adhivasi rights u/s 20(b)(i) of the Act. As explained above, that assumption is not correct. What the petitioners had to establish was that, they occupied the plots in 1356 Fasli as trespassers. Respondent No. 7 made a passing remark that the petitioners were trespassers. But that remark appears to have been made merely for emphasising that the petitioners were not subtenants. There was no definite finding as regards possession of the petitioners in the year 1356 Fasli, it appears necessary to remand the case to respondent No. 7 to enable him to record a definite finding as regards possession in 1356 Fasli.

14. Mr. N. S. Singhal further contended that, on the stand taken by the petitioners themselves, they would be Sirdars and not mere Adhivasis. Reference was made to Section 240-B of the Act. According to that provision, Adhivasis became Sirdars in the year 1954. It may be that the petitioners were initially Adhivasis, and later became Sirdars. But that is hardly a ground for rejecting the petitioners' claim altogether. That is a matter, which can be looked into by respondent No. 7, when he takes up the matter again.

15. Mr. N. D. Pant appearing for respondent Nos. 1 and 7 raised certain additional grounds for opposing the writ petition. He suggested that the present proceeding is barred by res judicata. He pointed out that in the proceeding u/s 7 of the Administration of Evacuee Property Act, the present petitioners filed an objection. That objection was dismissed on 6-10-1952. Again, the petitioners filed an application before the Assistant Custodian, evacuee Property. That application was dismissed on 21-2-1956. It was then that an application was filed by the petitioners on 25-7-1956. It was contended that the application dated 25-7-1956 is barred by the previous decisions, dated 6-10-1952 and 21-2-1956.

16. It appears that respondent Nos. 2 to 5 did not raise any plea of res judicata before respondent No. 7. No copy of the order dated 6-10-1952 has been filed even in this Court. Paragraph 20 of the counter-affidavit purports to be a copy of the order dated 21-2-1956. In that order it was observed: "the application of Jhamman Lal and others is rejected and they are estopped to claim any right in the disputed numbers". In paragraph 5 of the counter-affidavit it was stated that the previous application by the petitioners was dismissed by the Assistant Custodian on the ground that the application was not maintainable. If the

previous application was dismissed on the ground that it was not maintainable, any observations by the Officer on the merits of the controversy cannot operate as res Judicata in a subsequent proceeding. for all these reasons, respondent Nos. 1 and 7 cannot be permitted to raise the plea of res Judicata in the present proceeding before this Court.

17. Mr. N. D. Pant also relied upon Section 8 of the Administration of Evacuee Property Act, 1958. Sub-section (4) of Section 8 of that Act states:

"Where after any evacuee property has vested in the Custodian any person is in possession thereof, he shall be deemed to be holding it on behalf of the Custodian and shall on demand surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf."

The respondents could get some assistance from this provision, if they had established that vesting took place before 1356 Fasli. But that fact is not at all clear from the record. All that Section 8(4) lays down is that, the occupier shall be deemed to be holding on behalf of the Custodian. That provision need not imply that all previous rights are extinguished.

18. As discussed above, the decision of the application filed by the petitioners is likely to turn on the question whether they actually occupied the plots in dispute in the year 1356 Fasli. The respondent No. 7 will have to look into that point, and give a fresh decision on the petitioners' application.

19. The petition is allowed. The orders of respondent Nos. 7 and 1 dated 29-12-1956 and 23-6-1958 respectively are quashed. Respondent No. 7 is directed to re-admit the petitioners' application dated 25-7-1956 to its original number, record a clear finding as to whether the petitioners were in possession in 1356 Fasli or not, and decide the case according to law as explained in this judgment. Parties shall bear their own costs in this Court.