
(2007) 02 AHC CK 0072
In the Allahabad High Court

Kayam Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2007) 3 ADJ 149 : (2007) 2 AWC 1453 : (2007) 102 RD 472

Hon'ble Judges : Anjani Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjani Kumar, J.—The petitioners who are defendants in the suit, filed this writ petition against the order dated 22nd September, 2005 passed by the Board of Revenue whereby the second appeal filed by the respondent-plaintiff has been allowed and the orders passed by the trial court dated 10th September, 1991 and the order passed by the lower appellate court, i. e. Commissioner dated 2nd March, 1998 were set aside and suit filed by the plaintiff, who are respondents, in this writ petition, has been decreed.

2. The facts are not in dispute. The plaintiff-respondents filed a suit u/s 209 of U.P.Z.A. & L. R. Act against the petitioners for the eviction of the petitioner on the ground that the petitioners are trace passers therefore, they are liable to be evicted. The petitioner, defendant in the suit, took up the plea that their houses are in existence over the land in dispute for the last more than 20 years and that their houses are in existence before 15th March, 1974 and also before 30th June, 1985 when Section 123 of U.P.Z.A. & L. R. Act was amended by the amending Act of 1974 (U.P. Act No. 34 of 1974) and amending Act of 1986 (U.P. Act No. 24 of 1986) which is reproduced below:

Amendment of Section 123.—Section 123 of the principal Act shall be re-numbered as Sub-section (1) thereof, and after Sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:

(42) Where any person referred to in Sub-section (3) of Section 122-C has built a house on any land held by a tenure-holder (not being a Government lessee) and such house exists on the fifteenth day of March, 1974, the site of such house shall, notwithstanding anything contained in this Act, be deemed to be settled with the owner of such house by the tenure-holder on such terms and conditions as may be prescribed.

Explanation._For the purposes of Sub-section (2), a house existing on the fifteenth day of March, 1974 on any land held by a tenure-holder shall, unless the contrary is proved, be presumed to have been built by the occupant thereof, and where the occupants are members of one family, by the head of that family.

6. Amendment of Section 123_In Section 123 of the principal Act,_ (1) in Sub-section (1), for the words and figures "24th day of may, 1971" the words and figures "30th day of June, 1985" shall be substituted;

(2) in Sub-section (2) and explanation thereto, for the words and figures "fifteenth day of March, 1974" the words and figures "30th day of June, 1985" shall be substituted.

3. On the strength of these amended provisions the petitioner-defendant claimed that since the petitioner belongs to Scheduled Caste category, namely they are Banjar by caste which is one of Scheduled Caste therefore, the land covered by their houses stood settled in their favour and they cannot be evicted as prayed for by the plaintiff. The trial court by the order dated 10th September, 1991 has dismissed the suit filed by the plaintiff-respondents. Aggrieved thereby the plaintiff-respondents preferred an appeal before the lower appellate court, i. e. Additional Commissioner. Before the Additional commissioner same arguments were advanced as were advanced before the trial court and the Commissioner has maintained the order passed by the trial court by the order dated 2th March, 1998 and dismissed the appeal filed by plaintiff. The plaintiff, respondents in this writ petition, filed second appeal before the Board of Revenue. The Board of Revenue after exchange of the pleadings has framed the following substantial question of law arising out of facts and circumstances of the case.

The substantial question of law in this second appeal is whether the defendants get any right u/s 123 of the U.P.Z.A. & L. R. Act on the basis of their possession over the land in dispute for the last 20 years and whether their possession is from before 15.3.74 or not?

4. The Board of Revenue found that the petitioner-defendant were in possession over the land in dispute since before 1974 i. e. when Section 123 was amended and found to be not correct and contrary to the record therefore, second appellate court after giving reasons has upset the findings and found that the petitioner entered into possession sometime in the year 1979-80. The suit was filed on 16th April, 1982, therefore the case set up by the petitioner that they were in possession on the relevant date namely 15th March, 1974 when the Act was amended, is not correct. Having faced with the aforesaid finding the

defendant's counsel argued before the Board of Revenue that in any view of the matter when the Act was amended in the year, 1985, the petitioner was in possession therefore, he is entitled to benefit of 1985 amendment. It is admitted that on the date when 1985 amendment was enforced, suit was already pending therefore, the Board of Revenue found that the benefit of 1985 amendment cannot be given to the petitioner and the view of the trial court and first appellate court was reversed by the Board of Revenue. The second appeal was allowed thus, this writ petition.

5. Before this Court, counsel for the petitioner has not laid much stress on petitioner's being in possession on the date of 1974 amendment, i. e. 15th March, 1974 and has not challenged the finding recorded by the Board of Revenue with regard to this aspect of the matter. Learned Counsel for the petitioner has strenuously argued that on the date when the Act was amended in the year, 1985, the suit was pending and submitted that the phraseology used in the 1985 amendment that the benefit of 1985 amendment is available to the petitioner as 1985 amendment being the beneficial legislature and view to the contrary taken by the Board of Revenue is not correct. Learned Counsel for the appellant further submitted relying upon a Division Bench decision of this Court reported in 2005 (4) AWC 3863 in the case of Smt. Srikanti Nishad v. State of U.P. and Ors. and submitted in view of the law laid down by the aforesaid case, since the suit was pending in the year 1985 when 1985 amendment came into force, the law as laid down by 1985 amendment will apply and benefit should be given to the petitioner. A careful reading of facts of the case of Smt. Srikanti Nishad (supra) demonstrates that the aforesaid case relates to an application for grant of mining lease and was not of a suit, it is settled law that every renewal of lease or license is a fresh grant. In this view of the matter, in my opinion, the law laid down by the Division Bench of Smt. Srikanti Nishad (supra) is not applicable to the facts of present case. Apart from above, learned Counsel for the respondent has contended that by 1985 amendment a substantive right of the plaintiff-respondent not to be evicted except in accordance with law, counsel further submitted that this right of plaintiff have been taken away whereas a bare reading of 1985 amendment discloses that the amending Act is not retrospective therefore it will have to be prospective namely, from the date of enforcement of the amendment because the substantive right of the plaintiff cannot be taken away by 1985 amendment unless legislature makes it retrospective in nature. Learned Counsel for the respondent relied upon a decision of the Apex Court reported in Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, wherein the Apex court was considering the amendment of Bihar Land Reforms Act, 1950 with regard to rates of compensation as contemplated u/s 24 of the Bihar Act. The Apex court in para 23 of the Maharaja Chintamani case (supra) has held relying upon earlier decision of the Apex court in the case of Garikapatti Veeraya Vs. N. Subbiah Choudhury, wherein the Apex Court held in para 23 of the report as under:

23. The golden rule of construction is that, in the absence of anything in the

enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." The Apex court further relying upon the interpretation given by Francis Bennion's Statutory Interpretation 2th Edn. page 214 and in the case of Hitendra Vishnu Thakur and Others Vs. State of Maharashtra and Others, wherein the Apex Court has held as under:

25 This Court in Hitendra Vishnu Thakur v. State of Maharashtra has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows:

(i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affect procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such rights exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication.

6. The Apex Court in para 26 and 27 which are reproduced below finally observed:

26. We are unable to accept the contention of the respondent State that Section 6 of the amending Act of 1974 is retrospective. In Sub-section (2) of Section 1 of the legislature clearly stated that the Act would come into force at once i. e. from the date of publication in the Gazette. Neither in Section 6 nor in any other section of the amending Act was it mentioned that the Act would have retrospective effect. If we hold that the Act would have retrospective effect, it would be go against the intention of the legislation.

27. Applying the golden rule of construction as stated by this Court in Garikapati Veeraya in the amending Act there was nothing to show that the Act would have retrospective effect. As "the essential idea of a legal system is that current law should govern current activities." We hold that rate of compensation shall have to be determined in accordance with the provisions of the Act which was in force at

the time compensation was payable i.e. the unamended Sub-section (4) of Section 25 of the Act would apply. Moreover, the amending Act affects the substantive right of the appellant, therefore, it would have prospective operation. There is also no express or implied provision in the amending Act to indicate that the Act will have retrospective effect. We, therefore, hold that the amending Act would apply prospectively.

7. In view of the law laid down in the case of Maharaja Chintamani (*supra*), I am of the view that in the absence of anything in the amending Act 1985, the said amendment cannot be said to be retrospective and will not apply to the suits pending on the date when the Act was amended in the year 1985. There is yet another reason that the petitioner-defendant has categorically stated in para 12 of the written statement before the trial court, i.e. S.D.O. wherein they have taken a categorical case that the defendants were in possession over the land in dispute since before 15th March, 1974 when the Act was amended and they remained in possession in 1985. The finding recorded by the Board of Revenue from the statement of the defendant wherein he has categorically stated that he is in possession since 7-8 years before the statement was recorded, it relates back to the year, 1979-80, the benefit of 1974 amendment cannot be given to the petitioner as according to the petitioners' own admission he entered into possession after 1974 amendment and 1985 amendment cannot be given because the same is not retrospective and on the date when 1985 amendment of the Act was enforced, the suit was already pending. It is then submitted by counsel for the petitioner that the appellate court should not have upset the findings recorded by the trial court as well as lower appellate court and even it had come to the conclusion that the finding requires to be upset, it should have been remanded back to the trial court. This argument of counsel for the petitioner cannot be accepted in view of the categorical finding recorded by the Board of Revenue relying upon the evidence on record that the petitioners' possession go back to 1979-80 in my opinion, the Board of Revenue had no option but to decree the suit and that having done by the Board of Revenue, I do not find any error committed by the Board of Revenue which may warrant any interference by this Court under Article 226 of the Constitution of India. No other argument is advanced.

8. In view of what has been stated above, this writ petition is dismissed.