

(1967) 09 AHC CK 0006

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1176 of 1963

Khubi Singh

APPELLANT

Vs

Joint Director of Consolidation, Meerut and others

RESPONDENT

Date of Decision : 29-09-1967

Acts Referred:

Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 204

Citation : (1968) 38 AWR 242

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.D. Khare, J.—This is a petition Under Article 226 of the Constitution, and the prayer is that the order passed by the Deputy Director of Consolidation in second appeal on 11-9-1961 and the order passed by the Joint Director of Consolidation in revision on 5-12-1962 be quashed by means of a writ in the nature of certiorari.

2. The undisputed facts leading to this petition briefly stated are that the dispute between the parties relates to plot No. 392, area 2 bighas 19 biswas, situate in village Siana, district Bulandshahr. Originally Respondents Nos. 5 to 8 were the tenants of the plot in dispute but they were ejected by the zamindar by a suit u/s 171 of the UP Tenancy Act, and after their ejectment the zamindar let out the plot to the Petitioner. Thereafter UP Act No. 10 of 1947 was passed and Respondents Nos. 5 to 8 by virtue of the provisions of Section 27 of that Act became entitled to regain possession over the aforesaid plot. A suit was filed by them, and it was decreed on 17-8-1948. Respondents Nos. 5 to 8 were declared to be tenants-in-chief and the Petitioner was declared as their sub-tenant entitled to retain possession of the plot for three years, with effect from 17-8-1948. After the expiry of three years Respondents Nos. 5 to 8 filed a suit u/s 202 of the UPZA and LR Act (hereinafter referred to as the Act) against the Petitioner in the

year 1953, but due to some mistake the decree which they obtained was in respect of plot No. 292 instead of plot No. 392. When they discovered that mistake they moved an application for amendment but the same was dismissed by an order of the court passed on 31-1-1905. When the consolidation operations started in the village the name of the Petitioner was entered as sirdar against the plot in dispute and an application was filed by Respondents Nos. 5 to 8 that their names be entered as sirdars and the name of the Petitioner be entered as an asami. The Consolidation Officer dismissed the aforesaid application by his order dated 6-9-1960. Respondents Nos. 5 to 8 went up in appeal before the Settlement Officer, Consolidation, but were unsuccessful. They filed a second appeal before the Deputy Director of Consolidation and the same was allowed on 11-9-1961. The revision application filed by the Petitioner was dismissed under the order of the Joint Director of Consolidation passed on 5-12-1962.

3. The contention of the Petitioner is that by virtue of Section 204 of the Act he had become sirdar of the plot in dispute, and, therefore, the subsequent change in law according to which no limitation is now prescribed for a suit u/s 202 of the Act will not affect his rights and will not make him an asami. It is, therefore, contended that there is an error of law apparent on the face of the record which sought to be corrected and the impugned orders quashed.

4. On the other hand the contention of the Respondents is that the status of the Petitioner is that of an asami only because under the decree which was passed against him in the month of August 1948, his status had been declared to be that of an asami and he was allowed to retain possession till 17-8-1951. The Act came into force from 1st of July, 1952, and the Petitioner's status remained that of an asami under the provisions of Clause (c) of sub-section (sic) of Section 21, which reads as follows:

Notwithstanding anything contained, in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as--

(c) sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of the UP Tenancy (Amendment) Act, 1947, shall be deemed to be asami thereof.

5. It is contended that the status of the Petitioner being that of an asami at the time the Act came into force, he is bound to continue as an asami for the simple reason that no period of limitation is now prescribed u/s 202 of the Act. It is further contended that Section 204 of the Act will confer no right on the Petitioner for the simple reason that no limitation is now prescribed for instituting a suit for the ejectment of an asami u/s 202 of the Act.

Section 204 of the Act reads as follows:

If a suit for ejectment of an asami, to whom any of the Clauses (a), (b), (c), (d) or (h) of Sub-section (1) of Section 21 or Section 11 or Clause (b) of Section 133 applies, is not instituted, or a decree obtained in such suit is not executed within

the period of limitation prescribed therefor, the asami shall, on the expiry of the period become a sirdar of the land held by him.

6. The case of the Petitioner would be governed by Clause (c) of Sub-section (1) of Section 21, and, therefore, the provisions of Section 204 of the Act should apply to him. The question for consideration is whether at the time the dispute arose between the parties the Petitioner could be deemed to be a sirdar of the land in dispute by virtue of the provisions of Section 204 of the Act.

7. I might mention at the outset that the question of not executing the decree obtained u/s 202 of the Act within time will not arise in the present case because the decree which was obtained was in respect of plot No. 292 and not 392. The case may, therefore, have to be considered from the point of view that no suit was instituted in respect of the plot in dispute till the dispute arose between the parties during the consolidation proceedings.

8. Originally the period prescribed for a suit against an asami u/s 202 of the Act was one year. Subsequently by means of notification No. 4943/I-A-1059-1954 dated 16-11-1954, it was provided that there shall be no period, of limitation in a suit u/s 202 of the Act instituted against an asami to whom the provisions of Clause (c) of Sub-section (1) of, Section 21 of the Act applied. The result of the amendment in the law of limitation for instituting a suit u/s 202 of the Act was that at the time the consolidation proceedings started in the village there was no period of limitation prescribed for instituting a suit for ejectment of the Petitioner from the land in dispute which he held as an asami. Both the Deputy Director and the Joint Director of Consolidation have, therefore, taken the view that the Respondents Nos. 5 to 8 have not lost their rights as sirdars and the Petitioner continues to be the asami of the land in dispute against whom a suit for ejectment may be filed by Respondents Nos. 5 to 8. For that proposition of law they have placed reliance on *Ram Singh v. Laxmi Narain* 1957 AWR (Rev) 170.

9. The same view was taken by the Board of Revenue in the case of *Basantu and Anr. v. Jhingai* 1959 RWR (Rev) 76 and it was held that the amendment affecting the period of limitation for filing suits u/s 202B read with Clauses (a), (b) and (c) of Sub-section (1) of Section 21 of the Act has retrospective effect from 1-7-1952, when the UP ZA and LR Act came into force and that the notification dated 16-11-1954, making the period of limitation as "none" is not ultra vires of the Constitution. It was also held that there is no conflict between Section 204 of the Act and the ZA and LR Rules prescribing that the period of limitation is "none" for the simple reason that Section 204 of the Act only says that if a suit for ejectment of an asami to whom Clause (a), (b) or (c) of Sub-section (1) of Section 21 applies is not instituted or a decree obtained in such suit is not executed within the limitation prescribed therefor the asami shall, on the expiry of the period, become sirdar of the land held by him. It is, therefore, obvious that the bar will not operate if no limitation is prescribed for the institution of such a suit.

10. There appears to be no error of law committed by the consolidation authorities. Opposite parties Nos. 5 to 8 had first become sirdars of the plot in dispute under the provisions of the Act on the date of vesting.. At that time the position was that the Petitioner, who had been declared to be asami and entitled to hold possession for these years, was holding over after those three years, had expired, though the suit for ejectment which could be filed against him u/s 202 of the Act had not till then become barred by time. When limitation was provided for suits u/s 202 of the Act it had to be considered what rights the asami would have over the land in his possession after the sirdar could no longer bring a suit against him because of the bar of limitation. The Legislature, by enacting Section 204 of the Act, accepted the position that in such a contingency the asami would, become sidar of the land. However, after the bar of limitation for suits u/s 202 of the Act was removed such a contingency could not arise. After the removal of the bar of limitation Section 204 of the Act can confer no benefit on the asami against whom a suit for ejectment can still be filed by the original sirdar.

11. Even if two views were possible on the question, it will not be correct to say that because the consolidation authorities had taken the other view in the matter over which they had full jurisdiction, they had committed an error of law manifest on the face of the record.

12. The petition fails and is dismissed. I make no order as to costs.