
(1961) 07 AHC CK 0003

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2034 of 1961

Langra

APPELLANT

Vs

The Board of Revenue, UP, Alld. and others

RESPONDENT

Date of Decision : 24-07-1961

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240H

Citation : (1961) 31 AWR 602

Hon'ble Judges : Srivastava, J;B. Dayal, J

Bench : Division Bench

Advocate : G.P. Khare, for the Appellant; SC for Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—This is a petition u/Art. 226 of the Constitution and the prayer is that an order of the Board of Revenue dated 12-4-61 be quashed by a Writ of certiorari.

2. The Petitioner claimed to be the tenant of the land in dispute and filed a suit u/s 59 of the UP. T Act for a declaration that he was the tenant and the predecessor of the present Respondents Nos. 6 to 9 had no right or interest in the land. The suit was decreed but somehow the decree was not put into effect and no Amaldaramad was made on its basis. The result was that after the coming into force of the UP ZA and LR Act the Petitioner had to file another sun u/s 229 of the Act claiming a declaration that he was the Sirdar of the land and the Defendants had no rights therein. This suit was again contested mainly on the ground that the Defendants had been in possession all along, that they were recorded as occupants in 1356F and that they were in cultivatory possession in 1359F. The Defendants on these grounds claimed Adhivasi rights and contended that they had subsequently become Sirdars of the land. They denied the Plaintiff's title. During the pendency of the suit proceedings u/Ch. IXA of the UP ZA and LR Act started because a notification issued u/s 240A of the Act. After the publication of the preliminary statement in which the Petitioner was shown as the

Sirdar and the Respondents Nos. 6 to 9 as Adhivasis the Petitioner did not file any objection in time. The objection he filed being beyond time was rejected by the Compensation Officer himself and his order became final. On this basis when the declaration suit filed by the Petitioner was being considered in second appeal by the Board of Revenue it was contended that the rights of the Petitioner had got extinguished and that he could not, therefore, claim a declaration that he was a Sirdar. This plea found favour with the Board of Revenue and it allowed the appeal and dismissed the Petitioner's suit. That order of the Board of Revenue is being questioned by the present writ petition.

3. Two grounds have been urged in support of the petition by the Petitioner's Learned Counsel. The first is that though the objection filed against the preliminary statement by the Petitioner had been filed beyond time it was not open to the Compensation Officer to reject it on the ground. He was bound u/s 240H of the UP ZA and LR Act to frame an issue on the point of limitation and to refer the whole objection for decision to the Court. The other ground is that even if the Defendants were entered as occupants in 1356F., as both the trial Court and the first appellate Court had found, they had not been in possession. As they had lost possession and had never recovered the same they could not claim that they contained to be Adhivasis of the land and if they were not the Adhivasis the provisions of Ch. IXA did not apply.

4. S. 240H of the UP ZA and LR Act reads as follows:

240H. Disposal of objections-(1) Except as provided in sub S. (2), the Compensation Officer shall after hearing the parties, if necessary, on the objections filed u/s 240G, dispose of the objections in the manner prescribed.

(2) Where the objection filed under sub S. (1):

(a) is that the land is not land referred to in sub S. (1) of Section 240A, the Compensation Officer shall frame an issue to that effect and refer it for disposal to the Court which would have jurisdiction to decide a suit u/s 229D read with Section 234A in respect of the land and thereupon all the provisions relating to the hearing and disposal of such suits shall apply to the reference as if it were suit;

(b) involves a question of title and such question has not already been determined by a competent Court, the Compensation Officer shall except in cases in which Section 240HH applies refer the question for determination to the District Judge.

Explanation-Whether a person is or is not an Adhivasi shall not be deemed to raise a question of title within the meaning of this clause.

(3) The District Judge shall determine the question referred to him u/Cl. (b) of sub S. (2) in the manner prescribed and his decision thereupon shall be final.

The first sub S. shows that it is the Compensation Officer who is to dispose of the

objection filed u/s 240G. The second Sub-section, however, engrafts an exception and provides that in certain specified circumstances for the decision of specified questions the case will have to be referred to the Court. According to the first clause of the second Sub-section if the question raised is that the land in dispute is not land referred to in sub S. (1) of Section 240-A an issue will have to be referred to the Court, The second clause of the Sub-section provides that if the question raised is a question of title and the question has not been decided earlier the reference will have to be made to the District Judge.

5. The objection filed by the Petitioner was in the present case rejected on the ground of limitation. There is nothing in Section 240H requiring the Compensation Officer to frame an issue on the question of limitation and to refer the same to any Court or to the District Judge for decision. The question of limitation has to be decided by the Compensation Officer himself and on the ground of limitation he can reject the objection. If the objection is rejected in limine on the ground of limitation even if it sought to raise one of the questions mentioned in Clause (a) and (b) of Sub-section (2) those questions cannot be raised and no issue can be referred to the court or the District Judge under those provisions. Those questions will arise and issues on those points can be referred only if the objection is within time and is entertained by the Compensation Officer. The contention urged on behalf of the Petitioner that the Compensation Officer was wrong in not framing an issue on the basis of limitation and referring the same to the Court is, therefore, not correct.

6. The Petitioner claimed a declaration that he was a Sirdar. It was for him to establish that claim and also to satisfy the Court that his right of Sirdari continued up to the date of the decree that is the date on which the declaration was to be granted. If on some grounds he lost his right before that date the declaration prayed for could not be granted to him. Once the compensation proceedings became final and compensation was awarded to him by the Compensation Officer whatever rights he had or could claim in the land got extinguished and got vested in the State. In that view it is unnecessary to consider what rights the Defendants could claim in the land Even if they could not claim any right the petitioner could not get the declaration that he was claiming. The allegation that the Defendants had been out of possession thus became immaterial.

7. We, therefore, find nothing wrong or illegal in the impugned decision of the Board of Revenue. The petition must, in our opinion, fail and is dismissed.