

(2010) 12 UK CK 0011

In the Uttarakhand High Court

Case No : Review Application No. 462 of 2010 and Delay Condonation
Application No. 4790 of 2010 in Writ petition No. 553 (M/S) of 2002

Nazakat Hussain and others

APPELLANT

Vs

Prabhu Dayal and others

RESPONDENT

Date of Decision : 30-12-2010

Acts Referred:

Banaras State Tenancy Act, 1949 — Section 30(2)
Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Limitation Act, 1963 — Section 5
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 33, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 130, 131,
133, 20, 229B

Citation : (2011) 1 UD 231

Hon'ble Judges : Tarun Agarwala, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hon"ble Tarun Agarwala, J.—Heard Sri S.R. Singh, the learned senior counsel assisted by Sri Chetan Joshi, the teamed counsel for the Petitioners and Sri Jaideep Mathur, the learned senior counsel assisted by Sri Rahul consul, the Learned Counsel for the Respondents.

2. The present review application has been filed along with an application u/s 5 of the Limitation Act for review of the judgment of the learned Single Judge dated 3rd September, 2004, whereby the writ petition of the Petitioners was dismissed being devoid of merit. It transpires that pursuant to the dismissal of the writ petition, a Civil Appeal was filed before the Supreme Court which was entertained and, during the course of the hearing of the Civil Appeal, it is urged before the Supreme Court that the High Court had relied upon a provision of law which was not applicable, namely, Section 230-A of the U.P.Z.A & LR. Act (for short "the Act") which has no application to the area in question and consequently, on that basis, the Supreme Court granted a liberty to the

Petitioners to withdraw their appeal and file a review petition before the High Court. The Supreme Court also observed that the review petition would be taken on board subject to the condition that the Petitioners would deposit a sum of Rs. 7 lacs towards the mesne profits.

3. Based on the aforesaid direction of the Supreme Court vide its order dated 28th April, 2010, the present review application was filed on 18th June, 2010. The Stamp Reporter submitted a report that there was a delay of 2083 days. Consequently, the review application was accompanied by an application u/s 5 of the Limitation Act.

4. The Learned Counsel for the Petitioners submitted that a sum of Rs. 7 lacs has been deposited. Consequently, in view of the observation made by the Supreme Court, this Court consequently condones the delay in filing the review application. The application u/s 5 of the Limitation Act is allowed and the review application has been heard on merits.

5. The brief facts involved in the writ petition are that, Amjad Ali Khan, Najakat Ali Khan and Sajjad Ali Khan were the hereditary tenants of the land in dispute measuring 2.696 hectares and executed a lease deed and a general power of attorney in the year 1967 in favour of Prabhu Dayal and Deena Nath to manage the property for a period of 5 years. The said property eventually devolved on Sajjad Ali Khan. The U.P.Z.A. & L. R. Act became applicable to the land in question w.e.f. 1st July, 1969 pursuant to the notification dated 30th June, 1969.

6. It is alleged that Prabhu Dayal and Deena Nath i.e. Respondent Nos. 1 and 2 to the writ petition filed an application in the year 1993 under Sections 33 and 39 of the Land Revenue Act praying that they should be recorded as Bhumidhars. This application was rejected by an order dated 15th September, 1994. Subsequently, the said Respondents filed a suit u/s 229-B of the U.P.Z. A. & L R. Act for declaration and possession claiming that they had planted a grove from the very inception since 1967 and consequently, acquired Adhivasi rights. In the alternative, the Respondents claimed to have acquired Bhumidhari rights by adverse possession. The said suit was contested by the Petitioners alleging themselves to be the bonafide purchasers for value. The said suit was dismissed by the trial court by a judgment dated 22nd August, 1997, against which, the Respondents filed an appeal, which was allowed. The Additional Commissioner held that the Respondents became Adhivasi u/s 230-A of the Act and then became Sirdars and later on, became Bhumidhars. The Petitioners, being aggrieved, preferred a Second Appeal before the Assistant Chief Revenue Commissioner, which was dismissed by a judgment dated 17th July, 2002. The Assistant Chief Revenue Commissioner relied upon Section 20 of the Act and held that the Respondents became Adhivasi from the date of the operation of the Act and subsequently became Sirdars and that the Respondents had also matured their rights u/s 210 of the Act. The Petitioners, being aggrieved by the aforesaid orders, preferred the writ petition which was dismissed by the learned Single Judge vide judgment dated 3rd September, 2004. The Petitioners have now filed

the present review application.

7. The contention of the Petitioners is that, the learned Single Judge had relied upon Section 230-A of the Act, which was applicable to the former State of Banaras and was not applicable to the area in question coupled with the fact that the second appellate court had taken into consideration the provision of Section 20 of the Act which stood deleted by a notification dated 30th June, 1969 and consequently, the second appellate court as well as the learned Single Judge, relying upon wrong provision of law, had erred in coming to a conclusion that the Respondents had acquired Adhivasi rights.

8. The Learned Counsel submitted that this fatal error was an error apparent on the face of the record and on this short ground, on the basis of the principles evolved under Order 47 of the Code of Civil Procedure, the impugned judgment was liable to be reviewed. The Learned Counsel further submitted that the Court in its judgment failed to appreciate the distinction between a "grove holder" and a "grove land" and ignored the admission contained by the Respondents in their plaint that the land in dispute was a "grove land" and consequently, the Court wrongly relied upon the provision of Section 205 of the UP. Tenancy Act which defined a "grove holder", whereas Section 3(6) of the said Act defined a "grove land" which was not considered.

9. On the other hand, the Learned Counsel for the Respondents contended that the Supreme Court directed the Petitioners to file a review petition only on a limited ground, namely, whether Section 230-A of the Act had been rightly applied or not, and that the Petitioners were not entitled to raise other grounds. The Learned Counsel further submitted, that even otherwise, without admitting, but assuming that a wrong finding had been given by the learned Single Judge, would not entitle the Petitioners to file a review petition unless there was an error apparent on the face of the record and that the review petition was not an appeal in disguise and that a review petition could only be filed if there was an error apparent on the face of the record. In support of his submission, the Learned Counsel placed reliance upon a decision of the Supreme Court in *Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh*, wherein the Supreme Court held as under:

(11) What, however, we are now concerned with is whether the statement in the order of September 1959 that the case did not involve any substantial question of law is an "error apparent on the face of the record". The fact that on the earlier occasion the court held on an identical state of facts that a substantial question of law arose would not per se be conclusive for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent

error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T.R. Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of R. 18(1) of the Turnover and Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956; nor could it be doubted or disputed that these were substantial questions of law. In the circumstances, therefore, the submission of the Appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by O.XLVII, R. 1, CPC when it stated that "no substantial question of law arose appears to us to be clearly well founded. Indeed, Learned Counsel for the Respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error.

10. Having heard the Learned Counsel for the parties, the Court finds that the learned Single Judge in his judgment had quoted Section 230-A of U.P.Z.A. & L.R. Act. For facility, the said provision is quoted hereunder again:

230-A Adhivasi- Every person who on the date immediately preceding the date of commencement of the Act- (a) was or has been deemed to be, in accordance with the provisions of this Act except as provided in Clause (b), a sub-tenant other than a sub-tenant referred in Sub-section (2) of Section 30 of the Banaras State Tenancy Act, 1949 of any land other than grove land.

(b) was recorded as occupant of any land (other than grove land vacant land) in the Khasra or Khatauni of 1956 fasli prepared u/s 28 and 33 respectively of U. P. Land Revenue Act. shall, unless he become an asami under Sub-clause (iv) of Clause (2) of Section 133 be called adhivasi of the land and shall, subject to the provisions of this Act entitled to take or retain possession thereof.

11. This provision apparently relates to the State of Banaras and was not applicable to the area in question which now falls in the State of Uttarakhand. Further, the Court finds that Section 230-A of the Act, as quoted in the judgment was deleted by a notification dated 30th June, 1969. Consequently, on this short ground, a prima facie case is made out that there exists an error apparent on the face of the record in the judgment of the learned Single Judge, but the Court finds that by a notification dated 30th June, 1969 the aforesaid Section 230-A which related to the State of Banaras, was substituted by a new Section 230-A, which was inserted by a notification dated 30th June, 1969. For ready reference, the said Section is quoted hereunder:

230-A. Every person who on the date immediately preceding the appointed day- (a) was or has been deemed to be, in accordance with the provisions of this Act except as provided in Clause (b), a sub-tenant of any land other than grove land.

(b) was recorded as occupant of any land (other than grove land or vacant land referred to in the proviso to Sub-section (3) of Section 27 of the UP. Tenancy (Amendment) Act, 1947 held by a tenant or lessee referred to in Sub-clauses (i) to (iii) of Clause (a) of Section 130 or by a tenant or lessee referred to in Sub-clause (Hi) of Clause (a) and Clause (c) of Section 131 in the Khasra or Khatauni of 1374 fasli prepared u/s 28 and 33 respectively of UP. Land Revenue Act. 1901, shall, unless he has become an Asami, under Sub-clause (vi) of Clause (a) of Section 133 be called Adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

Explanation I- Where a person referred to in Clause (b) was evicted from the land after June 30, 1966, he shall, notwithstanding anything in the order or decree, be deemed to be a person entitled to retain possession of the land.

Explanation II- Where any entry in the records referred to in Clause (b) has been corrected under or in accordance with provisions of U.P. Land Revenue Act, 1901, the entry so corrected, shall for the purposes of the said clause prevail.

Explanation III- For the purposes of Explanation II an entry shall be deemed to have been corrected before the appointed day if an order or decree of a competent court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the records.

12. A perusal of the aforesaid provision indicates that the same is, more or less, *pari materia* with the earlier provision which related to the State of Banaras. Section 230-A, as inserted by notification dated 30th June, 1969, also contained the provision of Section 20 of the Act, more or less, in the same format which stood deleted by the same notification and which has been substituted as Section 230-A (b).

13. The Court finds from a reading of the judgment of the High Court that even though a wrong provision was quoted in paragraph 6 of the judgment, but the discussion relating to the said Section 230-A of the Act in paragraph 7 of the judgment relates to Section 230-A which became applicable to the State of Uttarakhand vide notification dated 30th June, 1969. Consequently, the Court is of the opinion that there was a typographical error in quoting Section 230-A which related to the State of Banaras and for such typographical error the same cannot be said that there is an error apparent on the face of the record. The Court further finds that the finding arrived at by the learned Single Judge was based on the provision which in fact related to the area in question. Consequently, the Court is of the opinion that there is no error apparent on the face of the record, which requires review of the order of the learned Single Judge.

14. Similarly, even though the second appellate court had quoted Section 20 of the U.P.Z.A. & L.R. Act which stood deleted by notification dated 30th June, 1969, the same stood added, more or less, in the same manner as Section 230-A(b) of the said Act. Consequently, mere reference of a wrong section does not

entail that the judgment has to be set aside or is required to be reconsidered in a review application.

15. The submission of the Learned Counsel for the Petitioners that the Court committed an error in failing to distinguish between "grove land" and "grove holder" and on the ground that the Respondents failed to prove their adverse possession, the Court is of the opinion that merely because the judgment of the learned Single Judge could be erroneous on these counts, cannot be a ground to review the order. The principle envisaged under Order 47 of the C. PC. is limited and a review could be considered on limited grounds. Since the Court finds that there is no error apparent on the face of the record and a review petition could not be treated as an appeal in disguise, consequently, even assuming that a finding of the learned Single Judge could be erroneous on some counts, the same cannot be a ground to rehear or correct the said decision. The Court is of the opinion that since there is no patent error or manifest error, the Court is not inclined to interfere in the impugned order.

16. Consequently, the review application fails and is dismissed.