

(1956) 12 AHC CK 0041

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No's. 1498 to 1501 of 1956

Raghubar

APPELLANT

Vs

Ganga Prasad

RESPONDENT

Date of Decision : 21-12-1956

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 32, 33
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27, 27(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 16, 165, 171, 18(2), 180
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 32, 33
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27, 27(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 16, 165, 171, 18(2), 180
Constitution of India, 1950 — Article 226
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 32, 33
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27, 27(1)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 16, 165, 171, 18(2), 180

Citation : (1957) 27 AWR 163

Hon'ble Judges : Mootham, C.J.;Srivastava, J

Bench : Division Bench

Advocate : K.C. Saxsena, for the Appellant; V.K.S. Chowdhry and S.C., for the Respondent

Final Decision : Disposed Off

Judgement

Srivastava, J.—This is a petition under Article 226 of the Constitution for the issue of a writ of certiorari or some other suitable writ quashing the judgment of the Board of Revenue in Petition No. 12 of 1955-56 dated 23-6-1956. The applicant further prayed for the issue of a writ of mandamus or other suitable writ or direction to the Board to readmit the applicant's petition in revision and to decide it according to law.

2. The applicant claims to be the adhivasi of plots Nos. 446, 983, 1093, 1384 and 1131 of village Mahlai, Paragana Shamsabad East, District Farrukhabad on the ground that he was an occupant of the plots and had been recorded as being in possession in 1356 F in the khatauni. He alleged that he had been forcibly dispossessed by the opposite parties Nos. 1 and 2 in the year 1358F. He, therefore, applied u/s 232 of the UP ZA and LR Act (hereinafter referred to as the Act) for being put back in possession of the plots. The application was treated as a suit (Case No. 12 of 1954) and was contested by the opposite parties on the ground that the applicant could not claim to be the adhivasi of the plots because he had not been in possession in 1356F and had somehow got his name recorded in the papers as a result of collusion with the patwari. The opposite parties raised a preliminary objection also. That objection was that on his own showing the applicant had been dispossessed out of a Court and therefore, he could not take any advantage of Section 232 of the ZA and LR Act. That section, it was contended, could apply only to a person who had been ejected through Court.

3. The trial court rejected the preliminary objection and held in favour of the applicant on the questions that he was in possession in 1356F and that he could claim to be the adhivasi of the plots. That Court, therefore, allowed the application of the applicant. The opposite parties went up in appeal to the Commissioner (Appeal No. 12 of 1954-55). The Commissioner did not go into the question of possession or dispossession. It was urged before him that as the opposite parties had become bhumidhars and had a right superior to that of the applicant even if he was held to be the adhivasi, the applicant could not dispossess the opposite parties. This plea found favour with the Commissioner and without going into the other questions or recording any findings in respect of them he allowed the appeal and dismissed the applicant's application. The applicant then filed a Second Appeal in the Board of Revenue. Taking the view that no Second Appeal lay, the appeal filed by the applicant was treated as an application in revision. The Board of Revenue too did not record any findings in respect of the questions of fact that were involved in the case. It also did not record any definite finding on the question whether the rights of the opposite parties as boumidhars were to prevail over the adhivasi rights claimed by the applicant. The preliminary objection raised by the opposite parties in the trial court which had been rejected by the trial court found favour with the Board of Revenue and it held that u/s 232 of the Act an application could be filed only by an adhivasi who had been ejected through court. As the applicant had not been ejected through court but had been ejected from the plots without the intervention of the court, he could not maintain the application u/s 232 of the Act. The Board, therefore, dismissed the application in revision of the applicant.

4. The simple question that has thus been raised for decision in this petition is whether the remedy provided by Section 232 of the Act is available only to those adhivasis who have been ejected through court or whether it is available also to those who have not been ejected through court but have been ejected otherwise.

Clause (1) of Section 232 of the Act provides.

An adhvasi to whom Clause (b) of Section 20 applies may within thirty months from the date of vesting apply to the Assistant Collector in charge of the sub division for putting him in possession of the land of which he is the adhvasi.

5. Clause (2) then provides that:

The application shall contain such particulars as may be prescribed.

6. The particulars have been prescribed under Clause (1) of Rule 183 of the rule framed under the Act. Clause (2) of that rules, however, lays down that an application u/s 232 of the Act shall be accompanied by the certified copy of the decree or order, if any, in pursuance of which the applicant was evicted from the land.

7. Clause (b) of Section 20 of the Act, leaving out the unnecessary words, stands like this:

Every person, who ...

(b) was recorded as occupant,

(i) of any land (other than grove land or land to which Section 16 applies or land referred to in the proviso to Sub-section (3) of Section 27 of the UP Tenancy (Amendment) Act, 1947) in the khasra or khatauni of 1356F prepared u/s Section 28 and 33 respectively of the UP Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under Clause (c) of Sub-section (1) of Section 27 of the UP Tenancy (Amendment) Act, 1947, or (ii) of any land to which Section 16 applies, in the khasra or khatauni of 1356F prepared under Sections. 28 and 32 respectively of the UP Land Revenue Act, 1901, but who was not in possession in the year 1359F shall, unless he has become a bhumidher of the land under Sub-section (2) of Section 18 or an asami under Clause (h) of Section 21, be called adhvasi 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, 1948, he shall notwithstanding anything in any order or decree, be deemed to be a person entitled to regain possession of the land.

8. It is contended that the Board had no justification in law for limiting the benefit of Section 232 to those adhivasis falling under Clause (b) of Section 20 only who had been ejected through court. It is pointed out that the applicant is an adhvasi to whom Clause (b) of Section 20 was applicable because he had been entered in the khasra and khatauni of 1356F in respect of the land in dispute, and as such he having been dispossessed was entitled to apply for being put back in possession u/s 232.

9. Learned Counsel for the opposite parties sought to support the view taken in

respect of the applicant's application by the Board of Revenue mainly on four grounds, namely.

(1) It is necessary under Clause (2) of Rule 183 that an application filed u/s 232 should be accompanied by a copy of an order or decree by which the applicant was ejected. This means that the applicant should have been ejected through court.

(2) Section 232 appears to be analogous to Section 27 of the U.P. Tenancy (Amendment) Act, 1947. The provisions are almost similar. Section 27 of that Act applies only to persons ejected through court. Section 232 should, therefore, be similarly interpreted.

(3) The two sub-clauses of Clause (b) of Section 20 contemplate three sorts of occupants of land who can claim to be adhvasis. Clause (b) defines the rights of all the three classes. At the end of that clause two terms "take" or "retain possession" have been used. The word "take" must be held to refer to two of the three sorts of persons who can fall under Clause (b) while the term "retain possession" appears to be applicable to the persons of the third sort. The persons belonging to the other two sorts cannot, therefore, get possession u/s 232 if they somehow lose it.

(4) u/s 234-A the provisions of Section 212-B have been extended to adhvasis. Similarly, u/s 232-A, Section 209 has been made applicable to adhvasis. Adhvasis who have been wrongfully ejected have, therefore, been given a separate remedy by the Act. From this it follows that Section 232 could not apply to all adhvasis. Its operation was limited to those adhvasis who had been ejected through court. If the adhvasis are held to be entitled to the advantage of Section 232 as well as Section 212-B and 209, certain anomalies will arise which will make the applicant's interpretation of the section to be illogical.

10. There can be no doubt that Section 20 as well as Section 232 of the Act has not been very happily worded, but an analysis of Clause (b) of Section 20 clearly shows that three kinds of persons are intended to fall under that clause. The first group consists of those persons who are recorded as occupants of any land in the khasra or khatauni of 1356F prepared under Sections 28 and 33 respectively of the UP Land Revenue Act, 1901. The second group consists of those persons who were on the date immediately preceding the date of vesting entitled to regain possession thereof under Clause (c) of Sub-section (1) of Section 27 of the UP Tenancy (Amendment) Act, 1947. The third group includes those persons who were recorded as occupants of any land, to which Section 16 of the Act applied, in the khasra or khatauni, of 1356F prepared u/s 28 and 32 respectively of the UP Land Revenue Act, but who were not in possession in the year 1359F.

11. Section 20 declares that all the persons falling in the three groups unless they have become the bhumidhars of the land or asamis shall be known as adhvasis of the land. It further provides that subject to the other provisions of the Act such persons shall be entitled to take or retain possession thereof.

12. If Clause (1) of Section 232 is analysed it will be found that three things are necessary before that provision can apply. In the first place, the person applying under the provision must be an adhivasi to whom Clause (b) of Section 20 applies. Secondly, the application must be made within thirty months of the date of vesting. Thirdly, the application must be preferred to the Assistant Collector in charge of the Sub-Division and the prayer must be that the applicant be put in possession of the land of which he is the adhivasi. If these three essentials are present, the person who fulfills them can take advantage of the section.

13. The applicant in the present case claimed to be an adhivasi falling under Clause (b) of Section 20 because he was recorded as an occupant in respect of the land in the khasra and khatauni of 1356F. His application had been filed within thirty months of the date of vesting and the prayer which he had made was for being out in possession of the land of which he was an adhivasi. Prima facie, therefore, there is nothing in Section 232 itself on the basis of which it can be said that the applicant was not entitled to the remedy provided by that section. What it urged on behalf of the opposite parties is that in spite of the opening words of the first clause of Section 232 being wide enough to cover all the three groups of persons contemplated by Clause (b) of Section 20, the provision should be so interpreted as to exclude the persons falling within the first group of those persons (the group in which the applicant claims to fall) and should be held to be applicable only to the persons falling within the second and third group.

14. In the absence of strong and compelling reasons we feel that the interpretation of Clause (1) of Section 232 of the Act put forward on behalf of the opposite parties is too narrow to be accepted. There appears to be no justification for excluding the persons belonging to any of the three groups contemplated by Clause (b) of Section 20 from the advantage of Section 232 when there is nothing in the section itself to show that the Legislature intended to exclude them. Had it been the intention of the Legislature to limit the advantage of the remedy provided by Section 232 to only two of the three groups covered by Clause (b) of Section 20, we think, the section would have been differently worded.

15. That Clause (2) of Rule 183 requires the filing of a copy of a decree order in case the applicant has been ejected by the decree or order of a court appears to us to be entirely immaterial. The words "if any" used in that clause show clearly that the clause was not intended to apply to those cases only in which a decree or order of eviction had been passed. If there is no decree or order which has resulted in the eviction of the applicant there can be no question of his filing a copy of such a decree or order along with his application. It is therefore not possible on the basis of this Clause (Rule 183(2)) to say that an application u/s 232 cannot be filed by a person who has not been ejected by a decree or order of a court. Had that been the case the words "if any" would not have found place in Clause (2) of Rule 183. Moreover, it is conceded by the learned Counsel for the

opposite parties himself that the remedy u/s 232 is available for persons falling within the third group of persons contemplated by Clause (b) of Section 20 of the Act. Those persons too are not persons ejected through court and it is not possible for them also, if they apply u/s 232, to file any copy of decree or order along with their applications. If they can apply u/s 232 without such a copy why cannot a person falling under the first group make a similar application.

16. The provisions of Section 232 may be similar to the provisions of Section 27 of the U.P. Tenancy (Amendment) Act, 1947. But that section by its very terms applies only to persons who have been ejected on or after the 1-1-1940 u/s 165 or u/s 171 or Section 180 of the Act. It does not apply to persons who have been ejected otherwise. The application for reinstatement made under that section has to be made within six months of the date of the commencement of the Act X of 1947. Some of the other provisions of the section are also similar to some of the provisions of Section 232 but on that account it does not appear to us to be permissible to introduce in Section 232 what the Legislature has not put in itself, and to say that because u/s 27 the persons who can apply for re-instatement are persons ejected through court, the persons who can take advantage of Section 232 also must belong to the same class.

17. It is true, as has been pointed out above, that Clause (b) of Section 20 of the Act contemplates three groups of persons. Two of these groups are of persons who are deemed to be out of possession. Persons belonging to the third group may or may not be in possession. There, however, appears to be no justification for the contention that the word "take" used at the end of Clause (b) was intended to apply to only one of the groups or that the term "retain possession" was intended to apply to the remaining two groups. The right to be called *adhivasis* has been granted to the persons belonging to all the three groups. It also appears to be obvious that if a person falling under any of the groups is entitled to take possession he also becomes entitled to retain possession. Both the words "take" and "retain", therefore, appear to be applicable to all the three groups of persons equally. If they are in possession they can retain possession and if they are not in possession they can take possession as well and retain it.

18. In the Act, as it was originally passed, the remedies of Sections 209 and 212 of the Act were not available to *adhivasis*. By the UP Land Reforms (Amendment) Act, 1954 (Act No. XX of 1954) these sections were made applicable to *adhivasis* also. These sections are, however, general sections and in order to claim possession under them regular suits have to be filed. The remedy provided in Section 232 of the Act, however, appears to be a special and more speedy remedy. It was made available only for a limited period of thirty months from the date of vesting and only an application had to be put in in order to avail of it. Some of the incidents attached to the two remedies are certainly different. But we find it difficult to accept the contention that because the general remedy was subsequently made available to *adhivasis* also, the special remedy originally intended or the entire class of *adhivasis* falling under Clause (b) of Section 20

must be limited only to two of the three groups falling under that clause and not to all the three groups. If a dispossessed adhivasi seeks advantage of the remedy provided u/s 232 he will have to fulfil the essentials of that provision and will be governed by it. If, however, for some reason he does not or cannot take advantage of that section it will be open to him to follow the general remedy provided for u/s 209 or 212 and in that case he will be governed by the provisions of these sections. That the incidents attached to these different remedies should be different is but natural. The Legislature must be presumed to have been alive to the differences when it extended the benefits of Section 209 or 212 to adhivasis in spite of the fact that Section 232 was already applicable to them. There is therefore no question of the interpretation of Section 232 being affected by the existence of these differences. The law has to be interpreted as it stands and if Section 232 is wide enough to apply to all the adhivasis falling under Clause (b) of Section 20 its application cannot be limited to some of the persons falling under that clause simply on the ground that if instead of taking action u/s 232 action is taken under another provision of the Act, different considerations will arise.

19. We are, therefore, of opinion that the view taken by the Board of Revenue that the application was not maintainable u/s 232 of the Act because the applicant had not been ejected though court is erroneous.

20. The application, therefore, succeeds and a writ of certiorari will issue quashing the order of the Board of Revenue dated 23-6-1956. The Board will now proceed to readmit the Petitioner's application in revision and decide it according to law.

21. The applicant will get his costs from the opposite parties Nos. 1 to 4.