

(1961) 08 AHC CK 0028

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 665 of 1960

Raghubir and others

APPELLANT

Vs

The Sub Divisional Officer, Harriya, District Basti, and others

RESPONDENT

Date of Decision : 08-08-1961

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 212A

Citation : (1961) 31 AWR 624

Hon'ble Judges : V.G. Oak, J

Bench : Single Bench

Advocate : Yashoda Nandans, for the Appellant; L. Chandra for Respondents, for the Respondent

Final Decision : Allowed

Judgement

V.G. Oak, J.—This petition under Article 226 of the Constitution is directed against an order passed by the learned sub-Divisional Officer, Harraiya, District Basti u/s 212A, UP ZA and LR Act (hereafter referred to as the Act).

2. On the 9th June 1959 the Gram Sabha, Harraiya moved an application before the Sub Divisional Officer complaining that, Raghubir and others were interfering with certain land, which belonged to the Gram Sabha. The land in question was being used as common grazing ground for the village, public way and threshing ground. The Gram Sabha, therefore, requested for the ejectment of Raghubir and others. Raghubir and others filed an objection on the ground that the land in dispute was not of public utility and the objectors were in possession for mote than 20 years. The objection of Raghubir and others was ever-ruled by the learned Sub Divisional Officer by his order dated 8th February, 1960. He ordered that the objectors should be ejected from the land. The present writ petition by Raghubir and six others is directed against the order dated 8th February, 1960.

3. The main contention of Mr. Yashoda Nandan appearing for the Petitioners is that, the learned Sub Divisional Officer had no jurisdiction to proceed against the

Petitioners u/s 212A of the Act. Section 212 A runs thus:

(1) Without prejudice to the provisions of Section 212. the Chairman, Member of Secretary of a Land Managing Committee may make an application to the Collector for ejectment from the land of the person in possession of the land referred to in Section 212...

4. It will thus be seen that, in order to justify summary procedure u/s 212A of the Act, it is necessary to establish that the land in dispute is land referred to in Section 212. It, therefore, becomes necessary to examine the question whether the land in dispute in the present case was of the description given in Section 212 of the Act.

5. S. 212 runs thus:

Any person who on or after the eighth day of August, 1946 has been admitted as a tenure or grove holder of, or being an intermediary has brought under his own cultivation or has own cultivation or has planted a grove upon, land which was recorded as or was customary common pasture land... shall be liable ... on the suit of Gaon Sabha to ejectment from the land....

6. S. 212 of the Act contemplates land of three kinds:

(1) land to which a person has been admitted as a tenant;

(2) land to which a person has been admitted as a grove holder; and

(3) land occupied by a person who being an intermediary has brought under his own cultivation or has planted a grove upon the land. Mr. L. Chandra for the Gramsabha conceded that the present case does not fall under the first two categories contemplated by Section 212 of the Act. But he contended that the case does fall under the third category. He relied upon the fact that the Petitioners are ex zamindars of the village. It is, however, not sufficient that the person complained against was an ex-zamindar. In order to bring the case under the third category of Section 212 of the Act, it has to be proved that the person being an intermediary has brought under his own cultivation, or has planted a grove upon the land. It is not the case of the Gramsabha that the Petitioners actually brought the land in dispute under their cultivation. In fact in paragraph 3 of the counter affidavit it is expressly stated that, the Petitioners were never in actual possession of the plots accept for a few months proceeding the filing of the application. Nor is there any suggestion that the Petitioners have planted a grove upon this land. So, the land in dispute does not fall under any of the categories contemplated by Section 212 of the Act. So it was not permissible for the Gram Sabha either to file a suit u/s 212 of the Act or to initiate summary proceedings for ejectment u/s 212A of the Act. I agree with Mr. Yashoda Nandan that, the learned sub Divisional Officer had no jurisdiction to proceed u/s 212A of the Act.

7. In the application dated 9th June, 1959. the Gaon Samaj complained that, it

was in April 1959 that the Petitioners started interfering with the public rights in the land, Mr. Yashoda Nandan contended that such recent interference is not covered by Section 212 of the Act. This contention finds some support from the rules framed under the Act. Appendix III to the rules lays down limitation for various proceedings under the Act. Serial No. 32 of Appendix III deals with a suit for ejectment u/s 212 of the Act. Serial No 32A of Appendix III deals with summary procedure u/s 212A of the Act. In each of these two cases the period of limitation is ten years. The starting point for limitation is the date of vesting.

8. It, therefore, appears that it would be impossible to take any action under either of these two provisions of the Act more than ten years after the date of vesting. This provision about limitation suggests that the provisions under Sections 212 and 212A of the Act were meant to cover cases where a person occupied land belonging to Gaon Samaj at some time between 1946 and the date of vesting. It appears that unlawful interference in 1959 was not contemplated by Sections 212 and 212A of the Act. It is however, not necessary to give a definite opinion on this point. This petition can be allowed on the short point that, Section 212A of the Act does not apply to the land in dispute between the parties.

9. Mr. L. Chandra contended that the Petitioners have an alternative remedy under sub S. (7) of Section 212A of the Act. They may bring a regular suit to establish their title to the land in spite of the adverse finding in the summary proceeding. It is true that the Petitioners are entitled to bring a regular suit. But the Petitioners should not be compelled to file a regular suit, when it is found that the learned Sub Divisional Officer has acted without jurisdiction. In such a case the Plaintiffs are entitled to the issue of a writ of certiorari.

10. The petition is allowed. The order of the learned Sub Divisional Officer, dated 8th February, 1960 is quashed. The Petitioners shall get their costs from opposite party No. 2. The stay order dated 7th March, 1960 is vacated.