

(1957) 02 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 86 of 1956

Rai Krishan Saran and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-02-1957

Acts Referred:

Constitution of India, 1950 — Article 294

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 6

Citation : AIR 1957 All 455 : (1957) 27 AWR 425

Hon'ble Judges : Mukerji, J

Bench : Single Bench

Advocate : P.N. Varma, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mukerji, J.—This is a petition by six persons under Article 226 of the Constitution against five named respondents; the respondents to the petition are (1) The State of Uttar Pradesh, (2) The Sub-Divisional Officer, Chunar, District Mirzapur, (3) Gram Samaj, Jalalpur, District Mirzapur, (4) Gram Samaj, Arazi Sultanpur, District Mirzapur, and (5) Gram Samaj, Aibakpur Muhana, District Mirzapur. The prayers that have been made by the petitioners are these:

(a) that a writ of certiorari or other direction or order may be issued quashing the order dated the 24th of November 1955, passed by respondent No. 2; and

(b) that a writ of prohibition, or other direction or order as the Court may deem fit be issued restraining the respondents from interfering in any way with the rights of the petitioners to the ferry situate at village Arazi Lain, Sultanpur, District Mirzapur. The petitioners also claimed an ad interim injunction, which, it may be pointed out, was granted to the petitioners by an order of this Court dated the 18th of January, 1956.

2. The facts on which this petition has been founded briefly stated were these:

The petitioners owned a private ferry which operated across the river Ganges at village Arazi Lain Sultanpur in the district of Mirzapur. The petitioners derived their rights to this ferry under a Sanad granted by Warren Hastings sometimes in the year 1781. The petitioners contended that they had been operating this ferry without let or hindrance ever since that day. After the abolition of zamindaris on the passing of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, and after the making of the Vesting Order the respondents considered that the rights which the petitioners enjoyed in the ferry got vested in the three Gram Samaj respondents, namely, respondents Nos. 3 to 5.

A Notification No. 241/1-A-1730-53, dated 13th February 1954, was issued by respondent No. 1 under which all private ferries, other than those mentioned in Schedule I attaching to that Notification were made to vest in the State because of an earlier Notification, No. 4094/1-A-450-51, dated 1st July 1952, which Notification had been issued under Sub-section (1) of Section 4 of the U. P. Zamindari Abolition and Land Reforms Act (Act I of 1951). On the 24th of November 1955, an order was made by the Sub-Divisional Officer of Chunar, Mirzapur, in the following terms:--

""Tahsildar Chunar, Please inform the President, Land Management Committee, to take over possession of the ferry service and report if it has been done. Sd/- S. N. Pandey."

The aforementioned order had the effect, if not set aside, of depriving the petitioners of the right which they claimed in respect of the ferry in dispute.

3. Before coming to notice the respective contentions advanced by the parties before me, I should like to state some of the uncontroverted facts, which have appeared either on the affidavits or on the documents filed as Annexures to those affidavits. The rights which the petitioners claimed in this ferry originated in a grant which appears to have been made by Warren Hastings as far back as the 5th of Zilhij in the 26th Year of the reign pf Shah Alam: according to one computation this date would fall sometime between April and June, 1788 of the Georgian Calendar. A copy of the original grant is to be found at p. 211 of Vol. VIII of Duncan Records for the year 1788. This Record was produced before me by the Standing Counsel after obtaining it from the Keeper of Government Records.

The grant was described as "Ultaghma Jageer" and the properties covered by that grant were mentioned in a schedule appended at the end of the grant. Four villages, namely, Sultanpur, Majidpur, Kusapur and Mujeeear, were granted and the fifth item granted was "Mahal of the Sultanpur Ferry". The grant was to take effect from Khris of 1189 Fasli. It appears that during the troublous times of the Mutiny military officers stationed at Sultanpur or near about that place interfered with the right of the predecessor-in-interest of the petitioners to this ferry: they even for a time ousted the predecessor-in-interest of the petitioners and farmed this ferry to some others. The predecessors-in-interest of the petitioners,

therefore, filed a suit for the declaration of their rights and for possession of the ferry. The suit was numbered as 42 of 1856 and was filed in the Court of the Principal Sadar Amin.

This suit culminated in an appeal in the Court of the Sadar Dewani Adalatat Agra on the 7th April 1866. Roberts and Pearson, JJ., who formed the Bench that heard the appeal, held that the plaintiffs of that suit had proved their title to the ferry on the Sanad granted to them by Warren Hastings and that, therefore, they were entitled to be restored to possession until they were evicted by Government under some law. By the decision of this appeal the decision, of the Principal Sadar Amin in the suit was reversed.

4. What was granted under the Sanad in respect of the ferry of village Arazi Lain Sultanpur was apparently the right to run the ferry alone. No land, either adjoining to or in which the ferry operated, was granted to the recipient of the grant, namely, Bundoo Khan, by the grant of Warren Hastings. From the affidavits it is perfectly clear that no right in any land attaching to the ferry was in any way conferred on Bundoo Khan, the predecessor-in-interest of the petitioners. It was merely the right to run the ferry that was conferred.

It was contended by Mr. Dhawan that the use of the word "mahal" in respect of this ferry indicated that some lands also must have been granted along with the ferry. This contention of Mr. Dhawan, to my mind, is not borne out by anything that I have been able to see in the words of the grant. It may be pointed out that the use of the word "mahal" in respect of this ferry did not necessarily connote the grant of any lands, for it is a well-known fact that ferry rights were often described as "Jalkar Mahal", and income arising out of ferries was described as "Sayar income".

5. In the case of Dhanpat Pandey and Others Vs. Raja Pasput Pratap Singh and Others, , it would be found that certain ferries situate in the Parganas of Bansi and Rasulpur were made into a Jalkar Mahal, although no rights in land attaching to those ferries vested in the Raja of Bansi.

6. If the right of the petitioners to this ferry was independent of any lands which vested in the State by virtue of the Notification under the U. P. Zamindari Abolition and Land Reforms Act, then the petitioners' right could not be termed "the right of an intermediary" and, therefore, it would not be hit by the provisions of Section 6 (a) (i) of the Act. This view of mine finds support from the decision in Kunwar Sri Tri Vikram Narain Singh Vs. The Government of the State of Uttar Pradesh and Others, .

7. Mr. Dhavan, appearing on behalf of the State, raised three questions. The first question that he raised was that the nature of the right that was conferred on the petitioners was not clear from the grant. The second argument, which was in a sense connected with his first argument, was that even if the grant conferred a right to own and maintain a ferry on the petitioners, the East India Company could not make such a grant. The contention of Mr. Dhavan was that only a

sovereign can make the grant of a right of ferry and that in the year 1781 the East India Company was riot the sovereign authority in this area.

Mr. Dhavan supported his contention with no materials either on the record or from any historical document to be found printed in some standard text. I have already stated that on my reading of the grant I found that the only right that was conferred on the petitioners in respect of this ferry was the right to run the ferry in village Arazi Lain Sultanpur across the river Ganges: the petitioners were given no rights in any lands attaching to or appertaining to the ferry in question. The East India Company in the year 1781 had undoubtedly the right under a Sanad from Shah Alam, the then titular head of India, to recover land revenue from that tract of the country wherein this ferry was situate.

The East India Company, assuming that they had at that time not all the sovereign rights that the ruler of a country possesses or that a (sovereign State possesses, certainly had the right to farm revenues and they in fact did so. The right to obtain toll from persons using a ferry is of the same genus as the right to receive revenue from land on farming land to people for cultivatory purposes. Therefore, prima facie it appears to me that there was no inherent want of right in Warren Hastings or the East India Company to make a grant of the right to maintain a ferry to any one in the area which was under the management of the East India Company under its own Sanad from Shah Alam.

I may further point out that this question was not raised at any of the earlier stages of the litigation that took place in respect of this ferry. The obligations and engagements made by the East India Company became the obligations and engagements of the Government of India under the Government of India Act of 1858 (21 and 22 Victoria, Ch. 106) and the obligations and engagements of Her Majesty or His Majesty became the obligations of the Republic of India under the provisions of Art. 294 of the Constitution. So that, the Sanad granted by Warren Hastings in respect of this ferry must be upheld even today unless it is taken away or destroyed by some, valid law.

Counsel for the respondents have not drawn my attention to any other enactment, save the U. P. Zamindari Abolition and Land Reforms Act, Section 6, on which they could contend that the right claimed by the petitioners had ceased to be effective. From the affidavits it is clear that this right of the petitioners had been noted in the village papers throughout all these years. There had never been any serious contest as to the petitioners" exercising the right of running this ferry. The right to a ferry can be exercised irrespective of any rights in land. That was so-held in Dhanpat Pandey"s case (A), already referred to by me.

8. It was pointed out in Nityhari Roy v. Dunne, ILR Cal 652 (C), that "the franchise of a ferry is not necessarily an appurtenant to a land."

9. This right "is wholly unconnected with the, ownership or occupation of the land and it is not necessary that a ferry owner should have any property in the soil of the river over which he has a right of ferry, nor again is it necessary that he

should be the owner of the landing places of the ferry, it being sufficient that they are in a public highway, or that otherwise he has a right to land upon them. The ferry owner does not occupy the highway over the river, but has merely a right to make a special use of it." This is how the law has been stated in Halsbury's Laws of England, Vol. .15 (Hailsham Edn.), at p. 23, para. 31.

10. The position, therefore, is that the petitioners maintained and operated the ferry. They had no interests in any of the lands and their right, in my opinion, could not be classed as a right of an intermediary, which alone could vest in the State u/s 6 of the U. P. Zarihindari Abolition and Land Reforms Act.

11. For the reasons given above, I am of the Opinion that this petition must be allowed and that the order of respondent No. 2 dated the 24th of November 1955, should be quashed and do so accordingly. I also issue a direction to the respondents not to interfere with the petitioners' right of maintaining and operating the ferry in village Arazi Lain Sultanpur, in the district of Mirzapur, under the guise of the Notification dated the 13th of February 1954, No. 241/1-A-1730-53, The petitioners will have their costs of this petition, which I assess at Rs. 150 from the respondents.