
(2007) 04 AHC CK 0101
In the Allahabad High Court

Rakshpal Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 06-04-2007

Acts Referred:

Limitation Act, 1963 — Section 10, 11, 12, 13, 14

Citation : (2007) 5 ADJ 330 : (2007) 3 AWC 2789 : (2007) 103 RD 49

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard Sri Abhishek Kumar holding brief of Sri Girish Kumar Singh, learned Counsel for the petitioner and learned Standing Counsel.

2. Though the case has been taken up in the revised list no one has appeared on behalf of the respondents.

3. The facts giving rise to the present dispute lie in a very narrow compass. Petitioner filed a suit u/s 229-B of U.P.Z.A. & L.R. Act (for short "the Act") against the Gaon Sabha and State of U.P. seeking a declaration that he being an unauthorized occupant of the land in dispute since 15.6.1959 has perfected rights u/s 210 of the Act. The trial court dismissed the suit on the ground that in view of the amendment made in Section 210 of the Act by U.P. Land Laws Amendment Act, 1976 being U.P. Act 35 of 1976 with retrospective effect, the petitioner cannot perfect his right over the Gaon Sabha land. Appeal filed by the petitioner was also dismissed by the appellate court on the ground that the petitioner has failed to prove that he has remained in unauthorized possession for the period prescribed by law to perfect rights by adverse possession. Second appeal filed by the petitioner before the Board of Revenue was again dismissed on the ground that due to amendment brought in the Statute with retrospective effect the petitioner cannot perfect his right by adverse possession over the Gaon Sabha land.

4. It has been urged by learned Counsel for the petitioner that the amendment was brought in 1976 but however, since by the said time he perfected his rights by adverse possession and no suit for ejectment was filed within the prescribed period of limitation, he is entitled for declaration and the courts below have wrongly dismissed the suit. Relying upon the provision of Section 341 of the Act read with Section 29 of Indian Limitation Act, it has been urged that the suit for ejectment having not been filed within the prescribed period of limitation, he has perfected his right u/s 210 as it then stood and once he cannot be ejected he is entitled to a declaration of his right as claimed in the suit and the same ought to have been decreed. In support of the contention, he has placed reliance on full bench judgment of this court in the case of Shitala Prasad and Ors. v. Bans Bahore and Ors. 1974 RD 84.

5. I have considered the argument advanced by learned Counsel for the petitioner and perused the records.

6. It may be relevant to trace legislative history of Section 210. Prior to amendment in 1976, the said Section read as under:

Section 210. Failure to file suit u/s 209 or to execute decree obtained thereunder. - If a suit is not brought u/s 209 or a decree obtained in any such suit is not executed within the period of limitation provided for the filing of the suit or the execution of the decree, the person taking or retaining possession shall -

(i) where the land forms part of holding of a bhumidhar, or sirdar, become a sirdar thereof and the rights, title and interest of an asami, if any, on such land shall be extinguished,

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha becomes an asami thereof holding from year to year,

(iii) In any case to which the provisions of Clause (b) of Section 209, apply, become a sirdar or asami holding from year to year as if he had been admitted to the possession of the land by the Gaon Sabha.

7. Vide Section 15 of U.P. Land Laws (Amendment) Act, 1976 (U.P. Act No. 35 of 1976) Section 210 was amended and substituted by following:

15. Amendment of Section 210 - For Section 210 of the principal Act, the following section shall be substituted and be deemed always to have been substituted, namely:

210. If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar, sirdar or asami, or a decree for eviction obtained in any such suit is not executed by him, within the period of limitation provided for the institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall-

(i) where the land forms part of the holding of a bhumidhar, or sirdar, become a sirdar of such land, and the rights, title and interest of an asami, if any, in such

land shall be extinguished;

(ii) where the land forms part of the holding of an asami, on behalf of the Gaon Sabha, become an asami thereof holding from year to year.

8. Section 210 as it stood after amendment of 1976 did not contain any such provision as was contained in Clause (iii) of Section 210 of the Principal Act. It was only under Sub-clause (iii) of the unamended Section 210 the petitioner could have acquired sirdari rights by adverse possession. The use of words "substituted and be deemed always to have been substituted" by the legislature goes to show that amendment in Section 210 was made with retrospective effect. Since the amendment has been made with retrospective effect by a legal fiction the provision though subsequently enacted on account of its retrospective operation would be deemed to form part of the statute from the very date of commencement of the Act i.e. 1.7.1952. Section 210 was again amended by U.P. Land Laws Amendment Act 1977 (U.P. Act No. 8 of 1977) and substituted by following:

49. Substitution of Section 210 - For Section 210 of the principal Act, the following section shall be substituted, namely:

210. Consequence of failure to file suit u/s 209. - If a suit for eviction from any land u/s 209 is not instituted by a bhumidhar or asami, or a decree for eviction obtained in any such suit is not executed within the period of limitation provided for institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall -

(a) where the land forms part of the holding of a bhumidhar with transferable rights, become a bhumidhar with transferable rights of such land and the right, title and interest of an asami, if any, in such land shall be extinguished;

(b) where the land forms part of the holding of a bhumidhar with nontransferable rights, become a bhumidhar with non-transferable rights and the right, title and interest of an asami, if any, in such land shall be extinguished;

(c) where the land forms part of the holding of an asami on behalf of the Gaon Sabha, become an asami of the holding from year to year.

9. A plain reading of the aforesaid provision goes to show that even after the subsequent amendment/substitution of new Section 210 by Amendment Act of 1977 petitioner cannot get sirdari rights over Gaon Sabha land by adverse possession.

10. Provisions of Section 341 of the Act read with the provisions of the Indian Limitation Act, as suggested by learned Counsel for the petitioner are also of no help. Section 341 only prescribes for application of certain Act including the Limitation Act to the proceedings of this Act. Said section reads as under:

341. Application of certain Acts to the proceedings of this Act. -Unless otherwise expressly provided by or under this Act, the provisions of the Indian Court Fees

Act, 1870, the Code of Civil Procedure, 1908 and the [Limitation Act, 1963] [including Section 5 thereof] shall apply to the proceedings under this Act.

Section 29(2) relevant for the purposes reads as under:

29(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only insofar as, and to the extent to which, they are not expressly excluded by such special or local law.

11. Placing reliance on the above quoted provisions it has been urged that provisions of Limitation Act having been made applicable to the proceedings under the Z. A. Act by virtue of Section 341 and no suit for ejectment having been filed within the period of limitation prescribed under Z.A. Act, his ejectment by way of suit by Gaon Sabha would be barred in view of Section 3 of the Limitation Act and as such he is entitled for a declaration as a sirdar having perfected his rights by adverse possession. The argument has been advanced in total ignorance of the fact that by 1976 amendment Section 210 brought on Statute book was made retrospective i.e. as if it was there right from the enforcement of the Act itself. The effect of retrospective operation is that at no point of time Statute conferred any right on the petitioner to perfect rights over the Gaon Sabha land by prescription or adverse possession. That being the position any right, even if created in the petitioner under the unamended Act stood wiped out by operation of law brought on statute book with retrospective operation.

12. The effect of retrospective operation of amendment is there never existed any provision under the U.P.Z.A. & L.R Act under which a person over unauthorized occupation over Gaon Sabha land could perfect rights by adverse possession i.e. to say there was no provision under the Act recognizing or creating any right in any person by virtue of his being in possession over the Gaon Sabha land. That being the position, the suit for ejectment of an unauthorized occupant u/s 209 of the Act could be filed by Gaon Sabha at any point of time, and limitation would not come in way.

13. Reliance by the learned Counsel for the petitioner on the full bench decision of this court in the case of Shitala Prasad and Ors. (Supra) is also misfounded. The question referred for answer by the full bench was whether u/s 341 of the U.P.Z.A. & L.R. Act, Section 6 of the Limitation Act, 1908 would be applicable to a suit u/s 209 in absence of any express provision in Section 341 making Section 6 applicable, which was answered in affirmative. However, the point in issue here was not the subject matter before the before the full bench nor the same has even been remotely considered. Thus the arguments advanced by learned

Counsel for the petitioner have no force and are not liable to be accepted.

14. For the aforesaid discussions and reasons, the writ petition is totally devoid of merits and is, accordingly, dismissed.

15. However, in the facts and circumstances, there shall be no order as to costs.