
(1956) 01 AHC CK 0012

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 893 and 974 of 1955

Ram Anand Murao

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 05-01-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 232

Hon'ble Judges : M.L. Chaturvedi, J

Bench : Single Bench

Advocate : Choudhri Kedarnath, for the Appellant;

Final Decision : Allowed

Judgement

M.L. Chaturvedi, J.—These are two petitions filed under Article 226 of the Constitution.

2. The Petitioners in the two petitions filed suits in the revenue court for abatement of rent which had been settled by means of agreements between the Petitioners and the Government of the State of Uttar Pradesh. The leases were first executed in 1936 for a period of seven years and the rent payable by the Petitioner in writ case No. 893 of 1955 was fixed at Rs. 73/8/-. After the expiry of seven years, another lease was executed in his favour and the annual rent payable this lime was Rs. 150/. The Petitioners have stated in their affidavits that they have been cultivating these lands for more than twenty years. In any case, there can be no doubt that the leases were first granted in their favour before the U.P. Tenancy Act of 1939 came into force. Soon after obtaining the new leases in 1943 or 1944, the Petitioners filed suits for abatement of rent u/s 114 of the U.P. Tenancy Act. Their case was that the rent was substantially greater than the rent calculated at the sanctioned rates appropriate to them. Both the suits were tried together and they were decreed by the trial court on 10-11-1945 and it substantially reduced the rents agreed upon. The State or the Province of Uttar Pradesh filed appeals against the said decrees before the Commissioner

and the Commissioner remanded these cases on the 8th of June 1946 with a direction that the Petitioners should file copies of the Mahalwar Assessment statement with regard to the villages, wherein the lands in suits were situate and then the rent be fixed accordingly. After the remand of the cases, the trial court again decreed them on the 26th July 1949 substantially reducing the rents agreed upon. The State again filed appeals before the Commissioner and the Commissioner dismissed them on the 6th October 1952. The State then went up in second appeal to the Board of Revenue. One learned Member of the Board heard the appeals and passed an order on the 11th August 1955 saying that in his opinion the appeals should be allowed and the decrees of the courts below be set aside. It was then sent for concurrence to a second learned Member and he gave his concurrence on the 23rd August 1955. Petition No. 893 of 1955 was filed on the 26th September 1955 and petition No 974 was filed on the 12th October 1955. The prayer contained in these petitions is that writ in the nature of certiorari be issued quashing the judgments and decrees of the Board of Revenue.

3. The main defence taken before the revenue courts on behalf of the State was that the term of the leases would have preference over the provisions of U.P. Tenancy Act because of Section 3 of the Crown Grants Act. The provisions of Section 3 are in the following words:

All provisions, restrictions, conditions and limitations over contained in any such grant or transfer as aforesaid shall be valid and taken effect according to their tenor, any rule of law, statute or enactment of the Legislature to the contrary notwithstanding.

4. Copies of the judgments of the trial court and of the learned Deputy Commissioner have not been filed but I understand that the point was argued before them and they decided it in favour of the Petitioners. The Board of Revenue has taken a different view and it has held that one of the terms of the leases is that the amounts of rent mentioned in the leases shall be payable by the Petitioners and this term in the leases should have preference over the provisions of the U.P. Tenancy Act, which permit abatement of rent in case the rent is found to be substantially greater than the rent calculated at the sanctioned rates. The Board of Revenue relied upon a decision of a Division Bench of this Court referred to in *Gaya Prasad v. The Secretary of State for India* 1939 A.W.R. (H.C.) 155. The decision in this case does appear to support the view taken by the Board of Revenue. The learned Judges held:

But even if the land was to be used as a grove, the tenant would not get the rights of a grove-holder since the law in regard to groves could not override Section 3 of the Crown Grants Act.

5. But I think this decision should be taken to have been overruled by a subsequent decision of the Privy Council in the case of *Thakur Jagannath Baksh Singh v. United Provinces* 1946 A.W.R. (P.C.) 124. This was a case where one of the talukdars of Avadh brought a suit challenging the validity of certain

provisions of the U.P. Tenancy Act on the ground that these provisions were inconsistent with the sanads granted to the taluqdars of Avadh and in view of the provisions of Section 3 of the Crown Grants Act, the provisions of the sanads of the taluqdars would have preference over the provisions of the U.P. Tenancy Act and the legislature of Uttar Pradesh had no jurisdiction to interfere with the rights of the taluqdars reserved to them by the sanads granted by the Crown. The Federal Court of India decided the point against the taluqdar and he went up in appeal to the Privy Council. Their Lordships of the Privy Council have clearly held that the Provincial Legislatures have been given exclusive power to make laws for the provinces or any part thereof with respect to the matters enumerated in list 2 in Schedule 7 of the Government of India Act of 1935. The U.P. Tenancy Act was held to be within the express powers of the Legislature which passed it. Even though some provisions of the Act purported to infringe some of the rights of the taluqdars, their Lordships held that no Court can annul the enactment of a legislative body acting within the legitimate scope of its sovereign competence. As regards the interpretation of Section 3 of the Crown Grants Act now called the Government Grants Act, their Lordships observed that the general words contained in the section could not be read in their apparent generality. The Crown Grants Act was intended to settle doubts which had arisen as to the effect of the Transfer of Property Act, 1882 and it must be read with reference to the context and could not be construed to extend to the relations between a sanad holder and his tenants. "Still less could they be construed to limit the statutory competence of the Provincial Legislature under the Constitution." This case in my opinion fully supports the point raised by the learned Counsel for the Petitioners and in view of this decision it must be held that the U.P. Legislature was competent to enact U.P. Tenancy Act and to lay down the rights which the zamindars and the tenants would enjoy against each other. The power in the Legislature was clearly there to do so and the power having been exercised, the Act could not be held to be invalid because of the general provisions of Section 3 of the Crown Grants Act.

6. The learned Counsel for the Respondents contended that there is no clear provision in the U.P. Tenancy Act saying that the provisions of the Act would have preference over the terms of the leases granted by the Government in respect of the land belonging to it. I do not think it was necessary for the Legislature to specifically mention the Crown Grants Act or the nazul lands. The Legislature clearly says in Section 1(2) of the U. P. Tenancy Act that this Act extends to the whole of the United Provinces excepting the areas specified therein. The land in dispute is situate in the United Provinces and I do not think it makes any difference whether the land is owned by a zamindar or a taluqdar or the Government itself. The Petitioners were leases for the purpose of cultivation of land and the Petitioners would be entitled to the rights conferred upon them by the U.P. Tenancy Act.

7. I further think that the provisions of Section 3 of the Crown Grants Act were not intended to apply to leases like this and their object really was that the terms

of the sanads granted to the taluqdars should have effect notwithstanding certain provisions of the Transfer of Property Act. This I think is the decision of the Privy Council in the case of Th. Jagannath Baksh Singh.

8. For the above reasons I think the judgments of the Board of Revenue in both the Cases are liable to be quashed with the result that the judgments and decrees passed by the Additional Commissioner will be restored.

9. Both these petitions are allowed and writs of certiorari shall issue quashing the judgments of the Board of Revenue dated 11/23 August 1955 passed in second appeals Nos. 74 and 75 of 1952-53. The Petitioners will be entitled to their costs of these petitions from the Respondent No. 1.