
(1960) 07 AHC CK 0006

In the Allahabad High Court

Case No : Special Appeal No. 21 of 1956

Ram Deo Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 08-07-1960

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Uttar Pradesh Tenancy Act, 1939 — Section 180

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20

Citation : AIR 1961 All 278 : (1960) 30 AWR 466

Hon'ble Judges : O.H. Mootham, C.J;S.S. Dhavan, J

Bench : Division Bench

Advocate : G.P. Singh, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mootham, C.J.—This is an appeal from an order of Mr. Justice M. L. Chaturvedi, dated the 2nd December, 1955.

2. The appellants had filed eight suits u/s 180 of the U. P. Tenancy Act, 1939, for the ejectment of a number of persons from various plots of land. These suits were heard together and were decreed by the trial court, but on appeal the Commissioner, by a judgment dated the 25th April, 1950, set aside the decrees and dismissed the suits. The appellants then filed eight second appeals before the Board of Revenue. Those appeals were filed in May 1950, but before they could be heard the U. P. Zamindari Abolition and Land Reforms Act, 1950, came into force.

The eight appeals came before a member of the Board (Sri S. S. Hasan) on the 22nd January, 1953 when a preliminary objection was taken that the respondents had acquired Adhivasi rights u/s 20(c) (ii) of the new Act and they could not therefore be ejected. Sri S. S. Hasan was of opinion that this preliminary objection raised a question of considerable importance affecting a large number of cases then pending before the revenue courts, and that in the

circumstances that question should be decided by a Division Bench.

The appeals then came on for hearing before Sarvsri S. S. Hasan and S. N. Mitra who, by a judgment dated the 19th February, 1953, held that a person could not acquire Adhivasi rights u/s 20 (c) (ii) of the Act unless he were recorded in the year 1356F as an occupant of the land in dispute in the "record of rights" prepared by a Record Officer u/s 53 of the Land Revenue Act, 1901. The Bench was further of opinion that the expression "record of rights" did not include the annual khataunis maintained by the patwaris, and that as the respondents were only recorded as occupants in these records, they had not acquired Adhivasi rights.

The Board accordingly overruled the preliminary objection. For some reason which is not immediately apparent the appeals did not again come before the Board until June 1955. In the meantime and no doubt as a consequence of the earlier decision of the Board Section 20 of the U. P. Zamindari Abolition and Land Reforms Act had been amended by U. P Act XVI of 1953, and under the amended section a person acquired Adhivasi rights if he were recorded as an occupant of the land in the khasra or khatauni of 1356 F. By Section 1(2) of the Act this amendment was deemed to have come into force from the first day of July, 1952. The appeals came on for further hearing before Sri A. N. Saprú who held that in view of the amendment the respondents had acquired Adhivasi rights. He accordingly dismissed the appeals.

3. The appellants then filed a petition in this Court under Article 226 of the Constitution against the decision of the Board in one of the appeals, No. 394 of 1949-50 (District Jaunpur) challenging the validity of the order of Sri A. N. Saprú dated the 14th June 1955 and prayed that it be quashed by writ of certiorari. That petition was dismissed by the learned Judge by the order subject of the present appeal.

4. The contention of the appellants is that the question whether the respondents had acquired adhivasi rights had been directly and substantially in issue between the parties and that the earlier judgment of the Board dated the 19th February, 1953 operated as *res judicata*. The same question, it was argued, could not therefore be again considered by the Board at a subsequent stage of the hearing of the appeal; and reliance was placed on *Hook G. H. v. Administrator General, Bengal* 48 Jnd App 187 : (AIR 1921 PC 11) as explained and applied by this Court in *Pandit Kalyan Das Vs. Babu Kashi Prasad and Others*, .

5. In our opinion this argument is not well founded and the question of *res judicata* does not arise. The flaw in the argument we think is this, that it assumes that the question decided by Sri A. N. Saprú in favour of the respondents is the same question that had earlier been decided by the Board in favour of the appellants. In our opinion that is not the case. It is true that on both occasions the question in general terms was whether the respondents had acquired adhivasi rights; but the law governing the acquisition of those rights

had changed in the meantime.

In 1953 the real question before the Board was whether the respondents were recorded as occupants of the land in dispute in the record of rights for the year 1356 F. In 1955 the question before the Board was whether the respondents were recorded as occupants of the land in the khasra or khatauni of 1356 F. The question on each occasion was primarily one of fact, for it is common ground that the respondents' right to the status of adhivasi depended on the existence of the appropriate entry, in 1953 in the record of rights, and in 1955 in the khasra or khatauni.

Immediately on the amendment of the law effected by U. P. Act XVI of 1953 the earlier finding of the Board that the respondents were not recorded as occupants of the land in dispute in the record of rights ceased to be of any relevance for determining whether they had acquired the status of adhivasi that now depended on a different consideration. The appeals before the Board had not been finally decided and when they were again taken up it was, in our opinion, open to the respondents to take (as they did) a new point, namely that notwithstanding the earlier finding that they were not adhivasi as their names were not entered in the record of rights, the fact that they were entered as occupants of the land in dispute in the khatauni of 1356 F conferred on them the status of adhivasi.

6. No case has been cited to us which is directly in point. In *Lakshmi Bibi v. Atal Bihary* ILR Cal 534 the respondent had in 1909 obtained a preliminary mortgage decree against the appellant in respect of certain property in the district of Manbhum. A final decree was obtained in 1910 and in 1911 the mortgaged property was put up to sale and was purchased by the respondent, the sale being subsequently confirmed by the Court. Between the passing of the preliminary and final decrees the provisions of the Chhota Nagpur Tenancy Act had however been extended to the district of Manbhum, and by Section 47 of that Act the right of ryots in his holding could not be sold in execution of any decree or order.

The respondent contended that the sale having been confirmed it could not subsequently be questioned. The Court however allowed the appeal, holding that the sale was in direct contravention of the provisions of Section 47 and that the appellant cannot "be estopped from bringing to the notice of the Court what the Court must be taken to know of itself, that there is a distinct provision of the law which prevents the sale of the property". Similarly, it appears to us that the respondents were entitled to bring to the notice of the Board of Revenue in 1955 the fact that there was then a distinct provision of the law under which they were entitled to retain possession of the land in dispute.

7. In our opinion the conclusion arrived at by the learned Judge was right, and this appeal must fail. It is accordingly dismissed with costs.