(1983) 03 AHC CK 0031

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 4856 of 1970

Ram Piari and Others — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 10-03-1983

Acts Referred:

Constitution of India, 1950 — Article 13, 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19, 209, 23, 24, 246

Citation : (1983) 03 AHC CK 0031

Hon'ble Judges : R.S. Singh, J;K.P. Singh, J

Bench : Division Bench

Advocate : K.N. Saxena, for the Appellant; N.B. Nigam, V.K.S. Chaudhary and SC, for the Respondent

Final Decision : Allowed

Judgement

1. This writ petition arises out of two suits filed by the Petitioners Nos. 1, 3 and 4 and the original Petitioner No. 2 who is dead and now represented by his heirs mentioned in the present writ petition against Sardari Lal and Sikandari Lal (opposite parties Nos. 3 and 4) now represented by their heirs mentioned in the writ petition, u/s 209 of the U.P. Zamindari Abolition and Land Reforms Act, hereinafter referred to as "the Act".

2. The disputed plots in the present writ petition are 1131, 1132, 1133, 1134, 1135 and 1136. The Petitioners claimed Bhumidhari right in the aforesaid plots and asserted that the Defendants had taken illegal possession, hence the suits for ejectment of the Defendants under Sections 209 of the Act. It had been alleged by the Plaintiffs-Petitioners that Smt. Ram Pyari was a hereditary tenant of the disputed plots and she had sold 4/5th share in the disputed plots to other Plaintiffs, hence all claimed Bhumidhari right in the disputed plots and prayed for ejectment of the Defendants from the same.

3. The Defendants, in both the suits, denied the claim of the Plaintiffs. They

asserted that they had been in possession over the plots in their possession since long; hence the Plaintiffs'' suit was barred by time and also on the principle of estoppel. Sardari Lai claimed Sirdari right in the plots in his occupation on the basis of a lease from other co-sharers whereas Sikandari Lai claimed sirdari right on the basis of a lease with regard to the plots in his occupation, executed by Ganesh Prasad, Lumbardar. Defendants in each suit also raised a plea that the lease executed by Bhagwan Das in favour of the Plaintiff Smt. Ram Pyari was against the provisions of Section 24 of the Act, hence it did not confer any right upon Smt. Ram Pyari and the other Plaintiffs also did not derive any title to the disputed plots on the basis of the sale deed executed by Smt. Ram Pyari, their favour. It was alleged by the Defendants that Smt. Ram Pyari was a close relation of Bhagwan Das, hence the lease in her favour was not a genuine lease and Plaintiffs were not Bhumidhars of the disputed plots, hence the suits were not maintainable against them.

4. It is noteworthy that the disputed plots Nos. 1131, 1132, 1133 and 1134 were in possession of Sikandari Lai and plots Nos.1135 and 1136 were in possession of Sardari Lai.

5. The trial Court through its judgment dated 12-10-1965 decreed the Plaintiffs'' suits. Aggrieved by the judgment of the trial Court, the Defendants preferred appeals which were allowed by the lower appellate Court through its judgment dated 31-1-1966. Thereafter the Plaintiffs-Petitioners preferred two second appeals which were dismissed by the 2nd appellate Court through its judgment dated 15-6-1970. A certified copy of the judgment of the second appellate Court has been attached with the writ petition. Annexures I and II are the judgment of the trial Court and that of the first appellate Court.

6. Against the judgment of the second appellate Court the Plaintiffs Petitioners have approached this Court under Article 226 of the Constitution.

7. The writ petition was heard by Hon''ble K.B. Asthana, J. on 12-1-1973 as he then was and he felt difficulty in agreeing with the decision of Hon''ble B. Dayal, J. reported in Ranjeet Singh v. Ram Singh 1963 ALJ 21(summary of cases), hence he directed that the papers of the writ petition be placed before Hon''ble the Chief Justice for constituting a Division Bench to hear the petition. This is now the petition has come up before us for consideration.

8. Brother Asthana, J. in referring order has expressed himself as below:

... The learned Counsel for the opposite parties placed before me an uncertified copy of the complete decision of B. Dayal, J. in the said case wherein it has been held that by leasing out Banjar land after July 1, 1948, the gross assets of the intermediary would increase from the rental income thereof affecting increase in the net assests and consequent effect would be the increase in the rehabilitation grant and such a lease would be struck down by Section 24. In the case of Malik Singh v. Lakshmi Rani 1952 R.D. 273 the Board of Revenue has held that Section 24 of the U.P. Zamindari Abolition and Land Reforms Act does not apply to new leases executed by the Zamindars after July I, 1948. The reasons which impelled the Members of the Board of Revenue to come to that conclusion deserve serious consideration. Unfortunately this decision of the Board of Revenue was not brought to the notice of the learned Single Judge of this Court in Ranjit Singh v. Ram Singh.

We have heard the learned Counsel for the parties at a great length. The learned Counsel for the Petitioner has contended before us that the lease in favour of the Petitioner Smt. Ram Pyari executed by Bhagwan Das was a good lease as it was executed in her favour by Bhagwan Das after 1-7-1948 and it was a new lease in her favour and it did not vary the terms of any existing lease, hence the provisions of Section 24 of the Act were not at all attracted to the facts and circumstances of the case. He placed reliance upon the rulings reported in Malik Singh v. Lakshmi Rani 1952 RD 273 and tioram v. Bhabhuti Singh 1961 RD 23.

9. Second contention raised on behalf of the Petitioner is that the provisions of U.P. Zamindari Abolition and Land Reforms Act contemplate the existence of a valid lease executed by the Zamindar after 1st day of July, 1948 and in this connection the learned Counsel for the Petitioner drew our attention to the provisions of Section 247 of the Act as well as to the ruling reported in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, and he has stressed that the revenue Courts have patently erred in not recognizing the validity of lease in favour of Petitioner Smt. Ram Pyari. The learned Counsel referred to the provisions of Section 24(a) and 24(b) of the U.P. Z.A. and L.R. Act and has contended that both the clauses should be read and construed in such a manner that they relate to leases varying the terms of the existing lease on 1st day of July, 1948 and not to new leases executed by the Zamindar after the aforesaid date. In this connection also he has referred to the Board rulings reported in 1952 RD 273 and 1961 RD 23.

10. Third contention raised on behalf of the Petitioners is that "lease" is a transfer of interest in Immovable property and Section 23 of the Act deals with the transfer of specific nature, hence the provisions of Section 24 of the Act would not at all be attracted to the facts and circumstances of the present case and the revenue Courts have patently erred in applying the provisions of Section 24 of Act I of 1951 to the facts and circumstances of the present case. In this connection the learned Counsel for the Petitioner has invited our attention to the ruling reported in Dip Narain Singh Vs. Nageshar Prasad and Others and has emphasized that there is a difference between "transfer" and "contract" hence the provisions of Section 24 of Act I of 1951 should not be taken into consideration while determining the validity of lease in favour of the Petitioner Smt. Ram Pyari.

11. The fourth contention raised on behalf of the Petitioners is that the Defendants should not be permitted to raise a plea of justertii. The learned Counsel has emphasized that the Defendants had not claimed any right from Gaon Sabha in the present case; hence they cannot be permitted to plead the

title of Goan Sabha in the disputed land. In this connection he referred to Brooms Legal Maxims X th Edition page 229, 1904-7 of England Reports Reprint page 203 and 1968 SCC 1165, Nair Service Society v. K.C. Alexander.

12. Last contention raised on behalf of the Petitioners is that the disputed plots were Khudkasht in 1350 F. When the disputed plots were let out to Petitioner Smt. Ram Pyari, she became hereditary tenant thereof in law. The appellate Courts have patently erred in ignoring the lease in favour of Petitioner Smt. Ram Pyari with regard to Ban jar land and the appellate Courts have failed to record categorical finding whether in the circumstances of the present case by granting lease in favour of Smt. Ram Pyari. rehabilitation grant to the Zamindar increased. It has also been suggested that the trial Court had decreed the Plaintiffs'' suit holding some of the Plaintiffs as heirs of Khudkasht holders and this aspect of the matter has escaped notice of the appellate Courts altogether, hence the impugned judgments of the appellate Courts should be quashed.

13. The learned Counsel for the contesting opposite parties has tried to refute the contentions raised on behalf of the Petitioners. He has placed reliance upon the ruling of Hon''ble B. Dayal, J. reported inRameet Singh v. Ram Singh 1963 ALJ 21 (summary of cases). He has stressed that the provisions of Section 24(b) of Act I of 1951 would be attracted to the facts and circumstances of the present case and the lease in favour of Smt. Ram Pyari would be void in the eye of law and her transferees would also get right in the disputed plots. Thus all the Plaintiffs would have no right in the disputed plots and the two suits giving rise to the present writ petition have been rightly dismissed by the appellate Courts. It has been emphasized by him the that according to the revenue records the disputed plots were recorded as Ban jar when lease in favour of Smt. Ram Pyari was executed, hence it is clear that the Zamindars would be entitled to a larger amount of rehabilitation grant and the Ruling of Hon''ble B. Dayal, J. would apply to the facts and circumstances of the present case on all fours. According to him the claims of the Plaintiffs have been rightly negatived. He has also contended that no doubt the disputed plots were recorded as Khudkasht in the year 1350 F., but later on it became Ban jar and the appellate Courts have not erred in appreciating the nature of the disputed plots in the circumstances of the present case. He has also pointed out that no question of pleading jus tertii arises. It is well known that if both the parties failed to establish their claim to the disputed plots, the net result would be that the disputed plots would belong to Gaon Sabha or the State of U.P. whether any plea had been raised or not. His main exphasis during the course of arguments was that the decision inRanjeet Singh v. Ram Singh 1963 ALJ 21 (Summary of cases) lays down good law and in view of the provisions of Section 24 of Act No. I of 1951 neither Smt. Ram Pyari would get valid title to the disputed plots through lease in her favour nor her transferees would be Bhumidhar of the disputed plots, hence their suits were rightly dismissed by the appellate Courts.

14. We have examined the case cited at the bar on the scope of the provisions of

Section 24 of U.P. Act 1 of 1951. Section 24 of the U.P. Act I of 1951 reads as below:

Contract or agreement to defeat the provisions of this Act, to be void-

24. Any contract or agreement made between an intermediary and any person on or after the first day of July, 1948, which has the effect, directly or indirectly,

(a) of relieving, whether in whole or part, a Bhumidhar or sirdar from the liability for the land revenue, to be paid by him for any land comprised in his holding, or

(b) of entitling an intermediary to receive, on account of rehabilitation grant an amount higher than what he would, but for the contract or agreement be entitled to under this Act

shall be and is hereby declared null and void.

15. A perusal of the ruling reported in 1952 RD 273 indicates that the learned Members of the Board of Revenue were interpreting the provisions of Section 24(a) of U.P. Act No. I of 1951 and in that connection they have observed that Section 24 would not be applicable to new leases executed after 1st July, 1948 but would be applicable to leases varying the terms of old existing leases.

16. In Second Appeal No. 1038 of 1956Ranjeet Singh v. Ram Singh 1963 ALJ 21 (summary of cases), Hon''ble B. Dayal, J. appears to have interpreted the provisions of Section 24(b) of U.P. Act I of 1951. To us it appears that the Members, Board of Revenue, in Malik Singh v. Lakshmi Rani 1952 RD 273 were faced with a different situation than the situation dealt with by Hon''ble B. Dayal, J. in the second appeal mentioned supra. As the whole writ petition has been referred to us for decision, we find that the observations regarding the scope of Section 24 of U.P. Act No. I of 1951 in both the cases are not wholly correct and in consonance with the letter of the aforesaid Section. In Horam v. Bhabhuti Singh 1961 RD 23 a learned Member, Board of Revenue, referring the case of Malik Singh v. Lakshmi Rani 1952 RD 273 has held that the provisions of Section 24(b) of the U.P. Act No. I of 1951 would apply only to those leases which stipulate higher amount of rent so that the intermediary may be entitled to a higher amount of rehabilitation grant and thereby varied the existing lease on 1st July, 1948 in respect of the land which is also subject matter of the lease executed after 1st day of July, 1948. The bare perusal of Section 24(b) of U.P. Act No. I of 1951 does not justify the conclusion arrived at by the learned Member in the ruling reported in 1961 RD 23. The aforesaid Section would read thus:

24. Any contract or agreement made between an intermediary and any person on or after the first day of July, 1948, which has the effect, directly or indirectiy,-

(b) of entitling an intermediary to receive, on account of rehabilitation grant an amount higher than what he would, but for the contract or agreement, be entitled to under this Act, shall be and is hereby declared null and void.

There is nothing in the above Section to limit its application to only those leases which were executed after the first day of July, 1948 with a view to enhance the rent under the existing lease. The words used in the aforesaid Section are very wide whereby even any new lease executed after the first day of July, 1948, entitling an intermediary to receive a higher amount of rehabilitation grant would also be covered by the aforesaid Section. To our mind, the interpretation putforth by Hon''ble B. Dayal, J. in Ranjeet Singh v. Ram Singh, is correct to this extent but the learned Judge in his judgment dated 6-4-1962 (an uncertified copy of the judgment is on the record) has observed as below:

It has not been said in that Section that they will be considered as void only for the purposes of calculating rehabilitation grant. Since the Section declares them null and void it must be assumed that this declaration is for all purposes. The lease, therefore, in favour of the Plaintiff was null and void and no suit could be based on such a lease

17. We think that the above extract from the judgment of brother B. Dayal, J. does not lay down correct position. The heading of the aforesaid Section 24 of U.P. Act No. I of 1951 indicates that contract or agreement to defeat the provisions of this Act to be void. It Is noteworthy that letting out of even Banjar land by the Zamindar before the date of vesting was not prohibited under the provisions of U.P. Tenancy Act. In view of the provisions of Section 19 of the U.P. Z.A. and L.R. Act all land held by a hereditary tenant shall be deemed to have been settled by the State Government with the. Hereditary tenant and the hereditary tenant would become Sirdar of the land and would be entitled to retain possession there of, hence we think that the lease executed by the Zamindar after 1st July, 1948 in favour of a tenant whereby his rehabilitation grant would be increased would be void only for the purposes of determining rehabilitation grant. In short, by executing such leases the Zamindars would not be entitled to claim higher amount of rehabilitation grant. The right of such lessee would not be nullified due to the provisions of Section 24 of U.P. Act No I of 1951 especially when Section 19 and other Sections, namely, 246 and 247 of the Act as well as the observations by their Lordships of the Supreme Court in Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, ., do contemplate existence of valid leases executed by the Zamindar between 1st July, 1948 and 30th June, 1952.

18. Ordinarily, the heading of Section or marginal notes to Sections do not control unambiguous provisions but where any ambiguity exists, that can be removed by taking help from the heading of the Section or marginal notes thereto. No doubt, the provisions of Section 24 of Act I of 1951 do not clearly indicate that the contract or agreement would be void only for the purposes of determining rehabilitation grant but if the aforesaid provision is read along with its heading or marginal notes, it is clear to us that the leases covered by the provisions of Sections 24(a) and 24(b) of the Act would be void only for the

purposes of determining rehabilitation grant. In Bhinka and Others Vs. Charan Singh, their Lordships of the Supreme Court have observed in paragraph 15 of their judgment as below:

The headings prefixed to Sections or sets of Sections in some modern statute are regarded as preambles to those Sections. They cannot control the plain words of the Statute but they may explain ambiguous words, if there is any doubt in the interpretation of words in the Section, the heading certainly helps us to resolve that doubt....

19. In the present case we have a feeling that Hon''ble B. Dayal, J. has failed to give due weight to the heading or marginal note to Section 24, hence he held that the lease was void for all purposes and not only for the purpose of calculating rehabilitation grant. To this extent, the decision in Ranjeet Singh v. Ram Singh 1963 ALJ 21 does not lay down correct law.

20. While construing Article 13 of the Constitution of India, their Lordships of the Supreme Court have interpreted the word "void" and have emphasized that the laws inconsistent with the fundamental rights would be void to the extent of inconsistency only (see Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, . Similarly the leases executed by the Zamindar after 1st day of July, 1948 entitling him to get higher amount of rehabilitation grant would be void to that extent only. The provisions of U.P. Z.A. and L.R. Act do not premit an intermediary to receive higher amount of rehabilitation grant by entering into any agreement or contract after 1st day of July, 1948. Hence the leases executed by the intermediary would be void for the purposes of determining rehabilitation grant only. There is nothing in the U.P. Tenancy Act to prohibit an intermediary to let out land after 1st day of July, 1948, hence the letting during the continuance of the provisions of the U.P. Tenancy Act being valid, would become invalid only to the extent indicated by the provisions of the U.P. Z.A. and L.R. Act. Viewed from this angle, we are of the opinion that the leases executed by an intermediary after 1st day of July, 1948 shall not be void for all purposes so as to deprive the lessee of the right accrued to him during the continuance of the provisions of the U.P. Tenancy Act because there was no bar on the part of an intermediary to let out the land and there is no specific provision under the U.P. Zamindari Abolition and Land Reforms Act divesting the lessee of the right accrued before the enforcement of Act I of 1951. In the present case the revenue Courts have patently erred in ignoring the lease in favour of the Petitioner Smt. Ram Pyari only in view of the provisions of Section 24 of the Act, hence their judgments deserve to be quashed. We think that the provisions of Section 24(b) of the Act would be attracted to the lease executed by the Zamindar in favour of Smt. Ram Pyari but the lease would be void for the purpose of determining the rehabilitation grant to the intermediary and would not be treated void so as to divest the lessee of the right, if any, which accrued under the provisions of the U.P. Tenancy Act. Since the ruling reported in 1961 RD 23 Horam v. Bhabhuti Singhis wholly incorrect in view of our above discussion

and the ruling reported in 1952 RD 273 Malik Singh v. Lakshmi Ranionly applies to the cases covered by the provisions of Section 24(a) of the Act, we think that the Petitioner cannot derive any benefit out of the above rulings of the Board of Revenue in the present case. Thus, the first contention raised on behalf of the Petitioner stands answered.

21. Regarding the second contention of the learned Counsel for the Petitioner, it is sufficient to indicate that Section 24(b) of the U.P. Z.A. and L.R. Act cannot be limited to leases whereby the term of the existing lease on 1st day of July, 1948 is varied so as to entitle an intermediary to get higher amount of rehabilitation grant. Under the aforesaid provisions of Section 24(b) if an intermediary is entitled to a higher amount of rehabilitation grant on the basis of a new contract or agreement entered into by the intermediary after 1st day of July, 1948, the same would be void while determining the rehabilitation grant. We are of the opinion that the Board of Revenue does not correctly hold that new leases executed after 1st day of July, 1948 by an intermediary entitling him to a higher amount of rehabilitation grant would not be covered by the provisions of Section 24. The contention of the learned Counsel for the Petitioner to the effect that the provisions of Section 24(i) should be construed in such a manner that they relate to only those leases whereby the terms of existing leases on 1st day of July, 194S are varied is not acceptable to us.

22. So far as the third contention of the learned Counsel for the Petitioners is concerned, no doubt "lease" is a transfer of interest in Immovable property, hence the provisions of Section 23 of Act 1 of 1951 would not be attracted to leases but the term "contract" connotes wider meaning and gives birth to transactions in nature of transfer, such as lease, sale, gift etc. The word "contract" or "agreement" referred to in the provisions of Section 24 of the Act does cover cases of leases. We are unable to accept the contention of the learned Counsel for the Petitioner to the effect that lease, being a kind of transfer would not be covered by the provisions of Section 24 of the Act. In this connection, the learned Counsel for the Petitioners has relied upon the ruling reported in Dip Narain Singh Vs. Nageshar Prasad and Others . The discussion in that case is in relation to sale and agreement to sell and that case has no relevancy or applicability to the facts and circumstances under our consideration. In this way, we think that the third contention raised on behalf of the Petitioners has no merits.

23. The fourth contention on behalf of the Petitioners is also devoid of merits. The contesting opposite parties have not raised a plea of jus tertii in the present case. If the Petitioners and the contesting opposite parties fail to prove their claim in the disputed plots, the net result would be that the property would vest in the Gaon Sabha in accordance with law, whether the plea was raised on behalf of the opposite parties or not. If the parties to litigation fail to establish their claims to the disputed land, the disputed land would be the property of the Gaon Sabha or the State under the provisions of the U.P. Z.A. and L.R. Act.

24. To answer the last contention raised on behalf of the Petitioners, it is note-worthy that the disputed plots were recorded as Khudkasht of the Zamindar In the year 1350 F. The appellate Courts have not indicated in their judgments how the Khudkasht land became Banjar on the date when the leases were executed by the Zamindar. The learned Counsel for the contesting opposite parties has emphasized that in the revenue record the disputed plots were recorded as Banjar, hence the appellate Courts rightly inferred that the disputed plots were Banjar and they rightly held that the provisions of Section 24(b) of U.P. Act I of 1951 would not apply as the lease in favour of Smt. Ram Pyari was a new lease. We have already indicated that the revenue Courts have erred in holding that the provisions of Section 24(b) would not apply to new leases, hence we think that the claim of the Petitioner regarding the Khudkasht nature of the disputed plots should be reexamined in the light of the ruling reported in Darshan v. Board af Revenue 1967 RD 426.

25. It is also note-worthy that the lease in favour of Sikandar Lai was also ignored by the Board of Revenue in view of the provisions of Section 24 of the U.P. Z.A. and L.R. Act. The lease in favour of Sikandar Lai was of prior date to the lease in favour of Smt. Ram Pyari, hence it has become necessary that the Board of Revenue be asked to re-examine the claims of the parties in the light of the observations made above.

26. Parties in the present writ petition are at issue about the genuineness of lease in favour of Smt. Ram Pyari on the ground that she was closely related with the intermediary of the disputed plots. In this connection the parties have referred to the rulings reported in Aditya Narayan Singh v. Jangi 1939 RD 3, Ram Ratan v. Lachman 1942 RD 219, Bashir Husain v. Dhani 1944 RD 339. As the case is going back to the Board of Revenue for re-examination of the claims of the parties in the light of the observations made above, we think it proper that we may permit the parties to canvass the aforesaid point before the second appellate Court again in the light of their pleadings and evidence on record and the second appellate Court shall decide their claims afresh in relation to the recent rulings on the point.

27. In the result, for the foregoing discussions, we think that the impugned judgment of the second appellate Court be quashed and the second appellate Court be asked to re-examine the claims of the parties in the light of our observations above and strictly in accordance with law. Accordingly, we allow the writ petition and quash the impugned judgment of the second appellate Court and direct the second appellate Court to re-examine the claims of the parties. Parties are directed to bear their own costs.

