(1968) 02 AHC CK 0025

In the Allahabad High Court

Case No : Civil Revision No. 7 of 1965 and Civil Revisions No''s. 226 to 236 of 1965

Sahu Ram Kishan APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 08-02-1968

Acts Referred:
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 102

Citation : (1968) 38 AWR 311

Hon'ble Judges : S.K. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.K. Verma, J.—These are 12 connected applications in revision u/s 102 of the UPZA and LR Act (hereinafter referred to as the Act).

2. It appears that Sahu Ram Kishan formed a joint Hindu family with his sons and the family owned substantial zamindari property. The following genealogical table will be of assistance in following the facts of the case:

Janak Nandini Sahu Ram Kishan Ram Dulari Devi

Niranjan Prakash

Om Prakash Shree Prakash Prem Prakash Chandra Prakash Vinod Prakash Pramod Prakash Jai Prakash Savitri Devi Prem Bala Devi

According to the case of the Applicants a partition in the family took place in April, 1946. It appears that there was some dispute with regard to this partition and Om Prakash filed suit No. 2 of 1948 on 15-1-1948 in the Court of the Civil Judge, Bareilly for a declaration that a partition in the family had taken place in April, 1946. This suit was decreed on 17-3-1948. The UP Agricultural Income Tax Act came into force some time in the year 1948 and a notice u/s 15(3) of this Act was served upon Sahu Ram Kishan treating him as Karta of the Joint family.

Sahu Ram Kishan filed a return on the basis that a partition had taken place in the family. The assessing authority rejected Sahu Ram Kishan''s contention and held that the family was still joint and made an assessment on that basis. Sahu Ram Kishan filed a revision in the Board of Revenue which was also rejected. Eventually a reference was made to this Court and on 18-2-1957 this Court decided it in favour of Sahu Ram Kishan and his sons. The decision is reported: Sahu Ram Kishan v. The State of UP 1957 AWR 429. this Court held that there was a partition in the family of Sahu Ram Kishan as alleged by him and that thereafter he managed the property in the capacity of a Lambardar. After this decision the agricultural income tax levied on Sahu Ram Kishan and his family was considerably reduced.

3. The UP ZA and LR Act having come into force draft compensation as assessment rolls were prepared between January and April, 1953, and notices in respect of them were served between March and May, 1953. It is important to note that these rolls were prepared in the name of each member of the family of Sahu Kishan separately, excepting of course, the two daughters. Eventually final compensation assessment rolls were prepared u/s 52 some time in the year 1955. Although no objections u/s 46 of the Act had been filed against the draft compensation assessment rolls, by an oversight or on a wrong view of the law the final compensation assessment roll was prepared only in the name of Sahu Ram Kishan. On 28-10-1958 Sahu Ram Kishan filed an application in the Board of Revenue praying that the Rehabilitation Grants Officer be directed to expunge the name of Sahu Ram Kishan and entertain the application of each member of the family. This application was also signed by the sons of Sahu Ram Kishan as well. No orders were passed on this application. It was simply ordered to be filed. On 12-12-1959, Sahu Ram Kishan filed an application before the Compensation Officer praying that separate rolls be prepared for each member of the family for the payment of rehabilitation grants. As no orders on this application were passed, he made another application on 28-12-1959 containing the same prayer. On 11-4-1960 the Compensation Officer rejected the application. Appeals were filed to the District Judge who dismissed them on 30-9-1961, but observed that proper applications should be made for rehabilitation grants as the limitation for such applications had not expired. On 3-11-1961 applications were filed by Sahu Ram Kishan and his sons separately for payment of rehabilitation grants. On 11-2-1963, the Rehabilitation Grants Officer dismissed the applications. Appeals, which were heard by the learned Civil Judge of Pilibhit, were dismissed on 30-9-1964, by the order sought to be revised.

4. The Rehabilitation Grants Officer rejected the applications filed by the Applicants on the ground that under the final compensation assessment roll compensation was payable, and was actually paid, to Sahu Ram Kishan alone and as under the law rehabilitation grant was payable only to the person entitled to receive compensation the sons of Sahu Ram Kishan were not entitled to receive the same. He also was of the view that the judgment of this Court had no relevancy.

5. The learned Civil Judge did not agree with the view of the Rehabilitation Grants Officer with regard to the judgment of this Court. The learned Civil Judge held that the judgment operated as res judicata between the parties and that the family of Sahu Ram Kishan must be treated as having separated. He, however, endorsed the view of the Rehabilitation Grants Officer on the other points. I entirely agree with the learned Civil Judge on this point. The learned Civil Judge referred to various sections of the Act and held that the final compensation assessment roll once prepared, right or wrong, was final. He then referred to Section 78 of the Act, which is as follows:

Subject to the decree or order of any court of competent jurisdiction, the intermediary to whom compensation is payable or has been paid in respect of any estate under Chs. III and IV shall, for purposes of payment of rehabilitation grant, be deemed to be entitled to such estate.

He was of the view that as Sahu Ram Kishan alone was paid compensation he alone must be deemed to be entitled to the estate for purposes of payment of rehabilitation grant. He was further of the view that even if the final compensation assessment rolls were not prepared in the manner required by law it would nevertheless be final and must be acted upon. I find it very difficult to accept the view of the learned Civil Judge. It may be that the final compensation assessment roll once prepared must be deemed to Be final but this fact alone is not conclusive of the matter. Section 27 of the Act reads as follows:

Every intermediary whose rights, title or interest in any estate are acquired under the provisions of this Act shall be entitled to receive and be paid compensation as hereinafter provided.

Section 37 of the Act as follows:

For the purposes of assessment of compensation and rehabilitation grant under this Act, every intermediary shall be treated as a separate unit:

Provided that, in the case of a joint Hindu family--

(a) a father with his male lineal descendants in the male line of descent shall, as respects joint family property, be deemed to be one unit where the father was alive on the date of vesting;

(b) all the members thereof shall, except as provided in Clause (a), be treated as separate units.

After the judgment of this Court it is not possible to say that the family of Sahu Ram Kishan consisted of the father and his male lineal descendants in the male line of descent on the date of vesting. The partition took place before August, 1946, and, therefore, it has to be taken into consideration. For purposes of Section 78 of the Act Sahu Ram Kishan was not the only intermediary but his sons were also intermediaries and the section does not only say "to whom compensation has been paid" but it also says "to whom compensation is payable." Now, at the relevant date compensation was payable not only to Sahu Ram Kishan but to his sons also. It may be that it was actually paid only to Sahu Ram Kishan but the fact remains that it was payable to his sons also. Furthermore, if the right to receive compensation was the only deciding factor I fail to see why both compensation and rehabilitation grant are mentioned in Section 37 of the Act. That section provides "For the purposes of assessment of compensation and rehabilitation grant under this Act....

(the italicising is mine).

Section 90 of the Act reads as follows:

In deciding the application filed u/s 79 and the objection filed u/s 86, the Rehabilitation Grants Officer shall inquire into the validity of any transfer or partition in respect of any estate made in favour of or by or on behalf of the Applicant in contravention of the provisions of Sections 23 and 37 and in declaring the amount due to the Applicant on account of the rehabilitation grant, he shall not take into account such transfer or partition.

It logically follows that if there has been no contravention of Sections 23 and 37 of the Act the Rehabilitation Grants Officer must take into consideration such transfer or partition. The partition in the present case was not in contravention of Section 37 of the Act and the Rehabilitation Grants Officer was, therefore, bound to consider it and give effect to it for the purposes of paying rehabilitation grant.

6. I, therefore, allow these applications in revision, set aside the orders passed by the learned Civil Judge and the Rehabilitation Grants Officer and direct the latter to treat Sahu Ram Kishan, his wife, sons and daughters as separate units for the purpose of determining the amount of rehabilitation grant. The Applicants will get their costs from the Respondent.