(2002) 02 SC CK 0049

In the Supreme Court Of India

Case No : Civil Appeals No. 6647 Of 1983 With No. 6648 Of 1983

Smt. Tejana (Dead) and Others APPELLANT

Vs

Abdul Hasan Zaidi and Others RESPONDENT

Date of Decision : 12-02-2002

Acts Referred:

Uttar Pradesh Encumbered Estates Act, 1934 — Section 4
Uttar Pradesh Zamindari Debt Reduction (Amendment) Act, 1962 — Section 19A, 4

Citation : (2002) 2 JT 407 : (2003) 10 SCC 217

Hon'ble Judges : V. N. Khare, J;Ashok Bhan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The appellants are the creditor-decree holders and the respondents are the judgment debtors. The predecessors of the respondents borrowed money from the predecessor of the appellants and as a security, executed two mortgage deeds dated 12.3.1927 and 15.3.1931 mortgaging landed property consisting of zamindari property situated within the limits of Unnao Municipality as well as the property outside those limits besides Sir, khudkast, Groves and houses in favour of Manni Lal Shah, predecessor of the appellants. In the year 1934, the state Legislature of the then United provinces enacted U.P. Encumbered Estates Act, 1934, hereinafter referred to as "the Act", to provide a speedy remedy to liquidate the debts of the then zamindars and to ensure that repayment is made to the creditors at the reduced amount. Predecessor of the respondents made an application on 20.10.1936 u/s 4 of the said Act and the decision on the liabilities between the parties was entrusted to the special judge appointed under the said Act. The special judge, on 29.6.1939, passed two decrees in favour of the predecessor of the appellants. The first decree was for Rs. 1,76,747.05 with interest @ 4% p.a. The second decree was for Rs. 21,595/- with interest @ 4% p.a.

2. The said decrees were transferred to the collector, Unnao for execution. The

collector dealt with the decrees u/s 28 of the said Act and gave an award on 24.4.1942 u/s 31 of the Act whereby Manni Lal Shah, predecessor-in-interest of the appellants got encumbered estate bonds of the value of Rs. 26,9007-and share in unprotected properties.

3. U.P. Zamindari Debt Reduction Act, 1952 (hereinafter referred to as "the Reduction Act") came into force. Section 19-A was enacted by the U.P. Act No. XIII of 1954 to give effect to the provisions of the Reduction Act. The respondents moved an application u/s 19-A of the Encumbered Act in the court of special judge, first class, Unnao on 28.1.1956 which was numbered as EE case No. 1/1956. The applications were listed before the special judge who framed eight issues. The two issues which were tried as preliminary issues are as follows :

"1. Whether the debt sought to be reduced is secured debt within the meaning of Section 4 of the U.P. Zamindari Debt Reduction Act, 1952 (Act XV of 1953) or it ceased to be secured debt after passing the decree in the Encumbered Estates case by the special judge?

2. Whether the decree should be deemed to have been satisfied after the preparation of the final liquidation award by collector and if so, is this application not maintainable for reduction of the debt?"

4. The special judge recorded findings on issue No. 1 only. It was held that the application was not maintainable under the Reduction Act as the decrees in favour of the appellants were simple money decrees, not charged on immovable property. No finding was recorded on issue No. 2.

5. The respondents preferred C.R. No. 1207 1958 before the High Court against the said judgment of the special judge. The same was allowed by the High Court. During the pendency of the revision petition before the High Court, the U.P. Zamindari Debt Reduction (Amendment) Act, 1962 (U.P Act No. XX of 1962) was passed. The amending Act deleted the words "charged on the property" and made the reduction applicable to simple money decrees as well with retrospective effect. The proviso to this Amendment Act provided that "nothing in this section shall apply to a debt which has been discharged prior to the date of the amendment of the Act." The High Court on a concession made by the parties, in view of the amendment of Section 4 of the U.P. Zamindari Debt Reduction (Amendment) Act, 1962 deleting the words "charged on the property" from Section 4 held that the view taken by the special judge stood displayed and the respondents were to be given advantage of Section 4 of the U.P. Zamindars Debt Reduction (Amendment) Act, 1962. The order impugned in the revision petition was set aside and the case was remitted to the special judge for disposal in accordance with law after giving the benefits of the amending provisions of the U.P. Zamindari Debt Reduction (Amending) Act, 1962 to the applicants therein.

6. The special judge before whom the case was posted after the remand by the High Court framed the following five points for determination.

"1. Whether the decrees that were passed u/s 14 of the U.P. Encumbered Estates Act merged in the award u/s 31 read with section 33 of the Act and there were no subsisting decrees required to be amended?

2. If the decrees subsist, what was the reduced amount in respect of such decree?

3. Whether the question No. 1 could be decided by this Court after the order of remand passed by the Hon'ble High Court?

4. What would be the effect of the fact that a portion of the area under mortgage lies in the municipal limits of Unnao.

5. What would be the basis to determine the value of the area which is within the municipal limits."

7. Point Nos. 4 & 5 were decided in favour of the respondents. On point Nos. 1-3, the special judge did not record any specific finding. It was held that these questions already stood decided by the High Court in its order of remand, and a direction had been issued by the High Court to the special judge to the effect that the application be decided after giving benefits of the Reduction Act.

8. Aggrieved against the order passed by the special judge on remand, the appellants preferred revision petitions in the High Court. The learned single judge noted that the counsel for the appellants raised two points namely, 1 that there being no evidence to show the market value as on the date of mortgage and the application was liable to be dismissed and; 2 that the special judge erred in not making provisions for future interest after the reduction and amendment of the decrees.

9. The point as to whether the decree should be taken to have been satisfied after the preparation of the liquidation award by the collector on 24.4.1942 was neither adverted to nor decided.

10. The appellants have filed an affidavit of the lawyer who had appeared before the learned single judge stating therein that he had argued the second point in the first order of the special judge (which were converted to point Nos. 1, 2 & 3) in the remand order. This affidavit has been countered by the respondents by filing an affidavit of one of the parties stating therein that these points were not argued before the special judge.

11. We have heard learned counsel for the parties. Issue No. 2 is of vital importance which goes to the root of the matter. From the facts narrated above, it is evident that issue No. 2 was neither decided by the special judge in the first order nor by the High Court in the order of remand in C.R. No. 120 of 1958 decided on 6.4.1965 nor by the special judge after remand. The point is of vital importance in view of the proviso added to Section 4 by the U.P. Zamindari Debt Reduction (Amendment) Act, 1962. The same goes to the root of the matter and is required to be decided to do complete justice between the parties.

12. For the reasons stated above, the impugned order of the High Court as well as of the special judge after remand are set aside. The case is remitted to the special judge constituted under the Act (or to the competent court of jurisdiction who may have been appointed in place of special judge) for fresh decision in accordance with law. The special judge is directed to record a fresh finding on the issue as to whether the debts stood discharged after the passing of the award by the collector, and the effect of proviso to Section 4, without influencing itself of any of the observations made by the High Court in its earlier two orders and the two orders of the special judges. Anything said in this order be not taken as an expression of the opinion on merits.

13. Since these matters are pending for the last four decades, we direct the special judge to decide the matters within a period of six months from the date of the receipt/production of the certified copy of this order. Office is directed to immediately send a copy of this order to the High Court for onward transmission to the special judge for adjudication. Record, if any, received in this Court should also be remitted to the High Court forthwith. Parties through their counsel are directed to appear before the special judge on 18.3.2002. No fresh notices shall be sent to the parties by the special judge.

14. Accordingly, the appeals are allowed.

