
(1956) 03 AHC CK 0030

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 1067 of 1955

Sri Ram Pathak and Others

APPELLANT

Vs

The Hon"ble Board of Revenue and Another

RESPONDENT

Date of Decision : 08-03-1956

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1956) 26 AWR 382

Hon'ble Judges : Chaturvedi, J;Agarwala, J

Bench : Division Bench

Advocate : J.N. Chatterji, for the Appellant; S.C. and B.L. Jaiswal and Ranjit Singh, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is an application Under Article 226 of the Constitution praying that the order of the Board of Revenue dated 27-9-1955 be quashed. The facts briefly stated are as follows:

The opposite party No. 2 Ram Autar was in possession of the plots in dispute as a trespasser. A suit for his ejectment was filed by the Petitioners u/s 180 of the U.P. Tenancy Act sometime in 1943. The suit was decreed and Ram Autar was ejected. Delivery of possession was taken by the Petitioners on 11th December 1943. Then came Act No. X of 1947 u/s 27 of which not only tenants, who had been ejected u/s 171 of the U.P. Tenancy Act, but also trespassers, who had been ejected u/s 180 of the U.P. Tenancy Act, were to be reinstated. Under Sub-section (5) of Section 27 of the Act it was provided that there persons were to regain the same rights and liabilities as they had on the date on which they were ejected or dispossessed. In this way, the opposite party Ram Autar was reinstated to the holding on the 6th June, 1950. A week later the present Petitioners filed a second suit for Ram Autar's ejectment u/s 180 of the Act on the plea that under Sub-section (5) of Section 27 of Act X of 1947. Ram Autar had merely got the rights which he had previously possessed, that is to say the

rights of a trespasser. It may be mentioned that when Ram Autar was reinstated to his holding in 1950, the entry, which was ordered to be made, was that of a "trespasser."

2. The trial court dismissed the suit on two grounds, first, that the suit was barred by time and, second, that Ram Autar had obtained rights of a sub-tenant under Act No. X of 1947. On appeal the learned Addl. Commr. decreed the suit on the ground that under Sub-section (5) of Section 27 of Act No. X of 1947 Ram Autar did not improve his previous status and did not become a tenant but remained a trespasser and was liable to be ejected. On the question of limitation the Addl. Commr. was of opinion that limitation should be counted from the date of reinstatement. This order was reversed by the Board of Revenue, which held that, although Ram Autar did not gain the status of a tenant and was a trespasser yet, since he was reinstated u/s 27 of Act No. X of 1947, he should not be deemed to be in possession contrary to the provisions of the U.P. Tenancy Act. As to the effect of Sub-section (5), the Board of Revenue held that that would have to be worked in some way but that did not affect the nature of possession of Ram Autar.

3. In the present implication, the learned Counsel for the applicants has contended that the Board's decision is manifestly erroneous, because it has not given effect to the provisions of Sub-Section 27 of Act No. X of 1947. He has contended that, since Ram Autar was restored to his original status of a trespasser, he was liable to be ejected. On the other hand, learned Counsel for Ram Autar has urged that if this contention were to be accepted the provisions of Section 27 by which he was restored to possession would be nullified. At first sight there appears to be an anomaly in the provisions of Section 27 of Act X of 1947. If the trespasser was to be reinstated to the land, what was the use of reinstating him if he was again to be ejected immediately after the order of reinstatement was passed? It may be noted, however, that by Section 32 of Act No. X of 1947 the period of limitation for the ejectment of a trespasser was reduced from three to two years and this may provide the key for understanding the anomaly created by Section 27. It appears to us that the effect of Sub-section (5) of Section 27 is that if a suit for the ejectment of the trespasser, who has been reinstated to his land u/s 27, is filed, the period of limitation, that will now be calculated, is not three years, as it was when the earlier suit for ejectment was filed, but two years as it has been laid down in Act No. X of 1947. Therefore those trespassers, who had completed two years of possession before they were ejected under the law as it prevailed before the commencement of Act No. X of 1947, would be entitled to retain possession after their reinstatement; but those trespassers, who had not completed even two years at the time when they were previously ejected, would be liable to be ejected upon a suit being filed within two years of their reinstatement. It appears that the Board of Revenue has not considered this aspect of the question.

4. We have not considered in this case the question whether Ram Autar has now

obtained adhivasi rights under the provisions of the U.P.Z.A. and L.R. Act.

5. We, therefore, quash the order of the Board of Revenue and direct it to readmit the appeal to its original number and to decide it in accordance with law.

6. Costs here and hitherto will be at the discretion of the Board of Revenue.