

(1982) 05 AHC CK 0048

In the Allahabad High Court

Case No : Second Appeal No. 1747 and 1741 of 1980

State of Uttar Pradesh

APPELLANT

Vs

Jagdish Saran Singh and others

RESPONDENT

Date of Decision : 28-05-1982

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Transfer of Property Act, 1882 — Section 106, 111(g), 117

Uttar Pradesh Tenancy Act, 1939 — Section 172

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 2(2), 315, 6, 8

Citation : (1982) 05 AHC CK 0048

Hon'ble Judges : R.M.Sahai, J

Final Decision : Dismissed

Judgement

R. M. Sahai, J.

Fate of these defendant's second appeals arising out of suit for possession, arrears of rent and damages hinges on extent of finality of notification issued under Section 8 vesting land in dispute in State and scope of rectification under Section 6 under U. P. Urban Area Zamindari Abolition Act (hereinafter referred to as Act). As Mr. Advocate General has confined his attack on these only and on necessity and validity of notice terminating tenancy under Section 106 of the Transfer of Property Act the necessity to mention pleadings in detail is obviated. But before taking up these some facts which emerge out of pleadings and evidence and are not disputed or have been found but not challenged may be noticed as they shall assist in resolving controversy in issue.

Allegation in paragraph 1 of the plaint filed on 27.1.1972 that land in dispute was situated in Mohal Madan Mohan in village Meerapur Danda, Pargana, Tehsil and District Hamirpur was not disputed. Nor was it disputed that Lala Madan Mohan Lal was the sole proprietor and owner of land in dispute whose heirs are respondents and plots situated in west of Kothi Narain Rao along with Kothi were let out to State of Uttar Pradesh more than a century ago at an yearly rent of Rs.

12.25 p. who were its occupancy tenant. Suit was mainly contested on jurisdiction and limitation. Proprietary interest by adverse possession was also claimed apart from estoppel, acquiescence etc. On 17.9.1973 trial Court decided question of jurisdiction against appellant. In revision against this order argument of appellant that provisions of the Act were inapplicable and suit should have been filed under Section 172 of U. P. Tenancy Act was repelled and it was held, the aforesaid documents thus go to show demarcation of the agricultural and nonagricultural area as provided in Section 315 of U P. Urban Area Zamindari Abolition Act has been made in the town of Hamirpur and according to this demarcation plots in dispute lay in nonagricultural area. This position is admitted to the learned counsel for the opposite party. On limitation, adverse possession and estoppel etc. the trial Court decided against appellant on 19.11.1977. Before first appellate Court no argument appears to have been advanced on these. On some other issues which were subjectmatter of discussion before appellate Court have not been pressed before this Court.

During pendency of these appeals, in this Court, applications under Order XLI Rule 27 of C. P. C. for admission of additional evidence were filed. By separate order dated 29th September, 1981 the application was rejected because it was, "complete change over from the original stand taken by the State, which was not only contrary to pleadings but amounted to setting up a new case in second appeal without seeking amendment of pleadings. Further, on the questions on which the appeals were admitted the documents were of no help or assistance. On 8th May, 1982 when these appeals were taken up for hearing the learned counsel for State presented two separate applications for addition of grounds which was allowed without affording any opportunity to other side. On next day respondents filed counteraffidavit in both these applications on which also the arguments were heard. It is true that after amendment in Civil Procedure Code the Court permitting additional ground should record reasons first but after considering the matter it is not necessary to recall the order as for reasons stated hereinafter it does not in any manner help the appellant. It is however, surprising that despite these applications filed on behalf of State raising as many as nine additional grounds, argument has not been advanced on any except No. 1 and 2 that is, relating to scope of rectification under Section 6 and whether terms of lease could be proved by oral evidence.

Coming to the main controversy namely, whether land is dispute has been demarcated as agricultural area under the Act and the effect of notification issued under Section 8 of the Act it may be mentioned that these grounds were never taken in the written statement. As pointed above till the decision on question of jurisdiction by revising authority and even before trial Court decided the suit on merits the case of appellant was that land was nonagricultural area and provisions of the Act were not applicable to it. Respondents were, therefore, precluded from producing relevant evidence in this regard. Fortunately for them, however, appellant took certain steps which forced them to file a writ petition in this Court which is pending, the file of which was sent for as it contain certain

letters and orders passed by State Government and its functionary, which is relevant for deciding the controversy. At one stage respondents were inclined to file supplementary affidavit to bring on record all those orders and letters but as they were in writ petition and its authenticity had not been challenged in counteraffidavit it filed in writ petition it was not considered necessary to file it. Circumstances in which the petition had been filed may also be noted as it shall give the background of demarcation proceedings under Z. A. and L. R. Act which is the foundation of argument both under Sections 8 and 6 of the Act,

What appears that in 1957 after enforcement of the Act land in dispute was demarcated as "agricultural area and a notification under Section 8 was also published in Government Gazette on 1.7.1961. On 4th May, 1962 a letter No. 189/Demar/79 was issued from Secretary Board of Revenue to all District Magistrates except District Magistrates of Kumaon and Uttar Kashi, Dehradun and Rampur on subject of correction of mistake in the demarcation records of the Urban areas in which vesting under Sections of U.P. Z.A. and L. R. Act has taken place with effect from July 1,1961, pointing out, "as a result of scrutiny by District Officer themselves or by the officers of the board mistakes were found to exist in the demarcated records of a large number of Urban areas in the State. These Urban areas include some in which vesting notification under Section 8 had been issued by the State Government and as these demarcation mistakes could be corrected under Section 6 of the Act and where there were other material irregularities not in the nature of clerical or arithmetical error matter may be referred to Board of Revenue who may correct them under Section 333, therefore, "immediate steps may be taken to correct the mistakes under direction of the Board". In pursuance of this letter the record appears to have been scrutinised and a proposal was made that plots in dispute comprising of bungalow of Collector along with adjoining land which is in his compound had been demarcated as agricultural area may be corrected and recorded, as nonagricultural area. On 15.8.1964 the Supervisor Qanoongo submitted the report, checked and certified that mistakes mentioned are of accidental nature which falls in column No. I of Board order No. 189/Demarca 79 dated 4.5.1962. On the same day it was submitted by Tehsildar to the Demarcation Officer, "for correction of the mistakes as proposed by both. It was approved on 5.9.1964. These endorsements are on the extract of khatauni which was admitted in evidence by lower appellate Court. They have also been filed in the writ petition.

In this background it may first be examined if land in dispute could be declared agricultural area under the Act. This expression has been used in the Act in technical and not in popular sense. Subsection (1) of Section 2 of the Act runs as under;

1. "agricultural area as respects any urban area means an area which, with reference to such date as the State Government may notify in this behalf is

(a)

- (b)
- (c) included in the holding of
 - (i)
 - (ii)
 - (iii) occupancy tenant.
 - (iv)
 - (v) to (X).....

and is used by the holder thereof for the purposes of agriculture or horticulture.

Provided always that land which on the date aforesaid is occupied by buildings Act being "improvement as defined in Section 8 of the U. P. Tenancy Act, and land appurtenant to such building shall not be deemed to be agricultural area.

- (d)
- (e)

Explanation.

For purposes of the Act land held by various classes of persons as tenants is declared as agricultural area. An exception, however, has been created in respect of building and land appurtenant to it standing over land of such tenant.

It has been found and is not disputed that State Government was the occupancy tenant of Kothi Narian Rao which has a big compound in which the land in dispute is situated on which also the State Government was occupancy tenant and which is in occupation of Collector Hamirpur since long and was in occupation when the Act was enforced. Both Courts below have found that plaintiff was the Zamindar and owner and respondent was lessee and occupancy tenant Apart from evidence the finding is based on admission in the written statement. Further the respondent contravened the terms of lease by cutting trees and raising constructions over occupancy tenancy. And these constructions could not be considered improvement within U. P. Tenancy Act. Finding as stated earlier has not been challenged. If the construction over land in dispute is not an improvement then the proviso is fully applicable. Kothi Narain Rao known as Collector's bungalow of which State Government was occupancy tenant could not, therefore, be declared agricultural area. Nor could the land of compound be considered to be agricultural area within meaning of the Act, because what is excepted in the proviso is not only building but land appurtenant to it. In Babu Lal v. Ram Prasad (1938 A, L. J. 1088 (FB.)) "appurtenant to an agricultural holding" means something which is adjunct to or an integral part of the holding. Land in dispute being adjunct or integral part of the holding which was and is occupancy tenancy of State Government over which the building, namely Collector's bungalow stands is land appurtenant thereto, therefore, the building

and the land could not be agricultural area.

Having examined the legal position it may now be considered if the submission of Mr. Advocate General that land having vested in the State in consequence of notification issued under Section 8 the State could not be divested by exercising power under Section 6. According to him rectification order under Section 6 could not nullify the vesting unless something more was done for instance notification was withdrawn. The learned counsel maintained that Section 6 contemplated only clerical or arithmetical error but the demarcation of land as agricultural area could not be deemed to be covered in it. Learned counsel urged that Section 6 did not apply to accidental omission and even if it was assumed to be accidental omission then omission would not include inclusion. Reliance was placed on 1921 KB 336 (34) in support of the submission that accidental omission would apply in a case where something is left out and not in case where some positive action has been taken erroneously. And according to learned counsel if that be so then Section 6 did not apply and the suit was not maintainable. In alternative the learned Advocate General submitted that demarcation was done in 1961, vesting took place in same year the time during which rectification could take place was before issuance of notification and once notification was issued then whatever the mistake of error it could not be corrected under Section 6 and the order dated 5.5.1964 was lifeless, ineffective and without jurisdiction. Expression, "at any time maintained the learned counsel in Section 6 has to be understood reasonably. What would be reasonable is clear by combined reading of Sections 6 and 8. According to the learned counsel Section 8 fixes the outer limit and jurisdiction to rectify at any time could be exercised before notification under Section 8 was issued.

Although effect of notification under Section 8 and scope of Section 6 have been argued together but they are taken up separately. Sections 3, 4, and 5 of Chapter II of the Act lay down the procedure for demarcation of area within Urban area, subsection (1) of Section 5 empowers commissioner to decide objections filed against proposal under Section 4 (3) after expiry of three months, subsection (2) provides for publication of notice after final demarcation by commissioner and subsection (3) makes the order appealable to Board of Revenue. Section 6 reads as under:

"Clerical or arithmetical mistakes in the proposals as regards the demarcation of agricultural areas or in the details of the agricultural areas finally demarcated or in any order or proceeding under Sections 3, 4 and 5 or errors arising therein from any accidental omission may at any time be corrected by the Demarcation officer or the Commissioner, as the case maybe, either of its own motion or on the application of any person interested."

By this section Demarcation officer and commissioner have been empowered to rectify arithmetical or clerical error with such expression as apparent on the face of record a normal statutory feature. Rectification is a term of wider import than review both dictionary and statutorily. Review is a statutory remedy for

reconsidering the order due to error apparent on the face of record or due to discovery of some new and important evidence or any sufficient cause but rectification is correction of any error. An error committed by Court or authority may not be amenable to review jurisdiction and the Court may have to set it aside under inherent power. Rectification is not faced with this difficulty. It is available to correct the mistake. Argument founded on kings Bench decision explaining the meaning of omission is not very helpful, What is included by mistake may also be due to accidental omission. While examining the meaning of expression "accidental slip or omission in Rule 83 of Orissa Sales Tax Act the Supreme Court in *Master Constructions Co. v. State of Orissa* (A. I. R. 1966 S.C. 1947) held, "but the slip of omission be attributed to the Judge himself. He may say something or omit to say something which he did not intend to say or omit. This is described as a slip or omission in the judgment itself. Therefore, if something is said or included but it should not have been then also it is accidental omission. If a building standing on a tenancy land could not be demarcated as agricultural area but by mistake it was then in law it has to be assumed that the authority never intended to include it as a Court or authority does not act contrary to law. Such inclusion was accidental omission.

Further a Court or an authority exercising judicial or quasijudicial duties has apart from statutory provision inherent power to review or rectify its order if it is manifest unjust or is palpably erroneous. Restrictions on power of review or rectification are associated with person aggrieved not where it is fundamental mistake or error of the Court or authority itself. Jurisdiction to declare land in dispute appurtenant to the building was exercised on assumption of facts which did not exist. In correcting the error the authority only set at naught which it should not have done. It was an error of the authority concerned.

Could this be done even after notification under Section 8 was issued is the next question. Answer depends on construction of both Sections 6 and 8. Use of expression, "at any time is significant. Period during which an error can be rectified is normally regulated by the statute itself. In absence of any period or indication of it express or implied the occasion may arise to ascertain legislative intention about reasonable time, but where Legislature deliberately did not consider it proper to put restriction rather widened it with discovery of error and its consequent rectification at any time the suggestion of learned advocate General to limit it till issuance of notification under Section 8 cannot be accepted. Nor does the language of Section 8 justify such interpretation, Notification vesting agricultural area in Urban area is contemplated after demarcation of agricultural area. But it relates to entire area of a town or municipality as is clear by various notifications issued from time to time. It is not in relation to a tenureholder. Purpose of notification under this section appears to be like Section 4 of U. P. Z. A. & L. R. Act I of 1951 declaring the date from which right, title and interest of intermediary come to an end as is clear by Section 10 which lays down consequence of vesting. By this notification determination of claim of a tenureholder either before Demarcation officer or Commissioner or in appeal to

Board of Revenue is not effected. Nor it affects the power to rectify the error at any time. The notification issued under Section 8 therefore, cannot be construed as putting down final curtain on demarcation proceedings. It is further strengthened by Section 9 which makes publication of notification as due proof of notification but not of demarcation. Not only this as pointed out above even the State Government did not treat the notifications issued under section as final as is clear by the order issued by Secretary to Board of Revenue in which it has been quoted in extenso. Then Board has overriding power under Section 333 of U. P. Z. A. & L. R. Act I of 1951 applied to proceedings under the Act by Section 82 to revise any order passed by any authority subordinate to it. If the contention of learned Advocate General is accepted then the power shall stand frustrated by Section 8 of the Act. If the base of demarcation is itself missing then the entire structure founded on it is bound to collapse and no vesting can be said to have taken place by mere issuance of notification issued under Section 8.

Learned counsel for respondent pointed out that entire argument of vesting is built on hollow foundation. According to him as late as 1978 State Government itself acquired part of the land in dispute by land Acquisition proceedings. Compensation for it was paid to respondent and delivery of possession was taken by Government. According to learned counsel if the land had vested in State Government or the title of respondent was affected in any manner there could be no question of paying entire compensation to respondent. In fact claim of State for compensation was repelled. Argument is supported by paper No. 58/3/C2 and 58/4/C2. These facts speak for themselves and cut across the argument advanced on behalf of State.

Reliance was placed on L. I, Gori v. Avinash Sharma(A. I. R. 1976 S. C. 1576) and it was urged that after vesting State could not be divested unless some step was taken to withdraw the notification or nullify the effect of notification issued under Section 8. Vesting under Section 8 has been explained earlier. Moreover, the decision is wholly inapplicable, It was held in this case that once possession under land Acquisition Act is taken then it cannot be deemed to have been delivered or state divested of it by mere cancellation of notification.

Now the second attack of maintainability of suit, namely, absence of notice under Section 1.06 of Transfer of Property Act may be taken up. Learned Advocate General urged that Courts below have found that Section 106 of the Transfer of Property Act did not apply as provisions of the Act did not apply to agricultural leases. If that be so then how have the Courts defended respondents action under Section 111 (g) as it is also one of the sections falling in Chapter V. According to learned counsel Courts below in recording contradictory findings have committed error of law. As a part of the same argument it was urged that Section 80 C. P. C. notice and Section 106 of Transfer of Property Act notice were sent simultaneously. That was incorrect as without terminating tenancy in accordance with law notice under Section 80 C. P. C. could not have been issued. Learned Advocate General urged that if it was agricultural area then provisions of

Act applied whereas if it was non agricultural area then tenancy Act continued and suit should have been filed under Section 142 of that Act. It was also urged that lease is not on record and respondents have failed to prove its term. It could not be proved by oral evidence. According to learned counsel from allegations in plaint it was obvious that lease was for agricultural purposes therefore, Section 111 of Transfer of Property Act applied. On the other hand learned counsel for respondent countered these arguments and urged that provisions of Sections 106 and 111 of Transfer of Property Act were not applicable as Section 117 of the Transfer of Property Act excludes agricultural leases from purview of the Act. Reliance was placed on Section 111 in the alternative only. Learned counsel urged that respondents never set up any written lease. Moreover respondents having admitted occupancy tenancy cannot now urge that respondent should have proved terms of tenancy.

As pointed out earlier appellant admitted not only that respondent was son and heir of Ram Swarup who was the proprietor and Zamindar of Mohal Madan Mohan but occupancy tenancy of appellant as well. Construction of building or canal by an occupancy tenant resulted in his ejection under Section 172 of U. P. Tenancy Act. In *Sita Ram Jaiswal v. J. R.A. Agarwal*, (A. I. R. 1972 S. C. 2389) it was held, if land had been let for an agricultural purpose and the defendants had sought to use it for totally different purposes namely, construction of a building to house or bank, such a purpose was clearly inconsistent with the purpose for which it was let out. Under Section 172, therefore, the suit for ejection was clearly maintainable. Same is the situation in Transfer of Property Act or general law. A tenant cannot act in contravention of the purpose for which lease is granted. In case appellant claimed right to construct building it should have proved on agreement express or implied.

Argument of learned State counsel that if land in dispute was not agricultural area then provisions of U. P. Tenancy Act continued to apply and as the limitation to file suit under Section 142 was only one year the suit was barred by time cannot be countenanced for reasons more than one. Plea of limitation is not a question of law only. Appellant did not press it before lower appellate Court. Then on merits also it has no legs to stand. Under Section 84 of the Act U. P. Tenancy Act stood repealed with effect from the date of vesting. Admittedly vesting of the right and interest of intermediaries in the Urban area of Hamirpur town has taken place and notification abolishing zamindari was issued in year 1961. Demarcation of agricultural area is one thing but vesting is another. Although the latter takes place because of former but once it takes place Tenancy Act stands abolished.

For the reasons stated above these second appeals fail and are dismissed with costs.