

(1972) 12 AHC CK 0045

In the Allahabad High Court

Case No : Sp. A. No. 14 of 1970 connected with Sp. A. No. 36 of 1970

Subedar Dalip Singh Karki

APPELLANT

Vs

State of U.P. and others

RESPONDENT

Date of Decision : 15-12-1972

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 29, 3(10)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19

Citation : (1973) 43 AWR 221

Hon'ble Judges : Gopi Nath, J;A.K. Kitty, J

Bench : Division Bench

Advocate : V.N. Khare, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Kitty, J.—These connected special appeals arise out of a common judgment of a learned Single Judge of this Court Dismissing writ petitions numbered 2528 of 1968 and 2529 of 1968 which were filed by the Appellants of the two appeals.

2. The material facts briefly are as follows:

According to the Appellants, Th. Dan Singh Bisht was the Zamindar of an estate in the District of Bijnor. Two lease deeds dt. 4-12-1951 and 21-12-1951 were executed in favour of the Appellants by Shiv Shanker Lal, attorney of Th. Dan Singh Bisht. The said lease-deeds were duly registered on the two dates noted above. Under the first lease-deed dt. 4-12-1951, land measuring 301 bighas in village Jaspur and under the lease-deed dt. 21-12-1951, land measuring 648 bighas and 18 biswas in village Makranpur Garhi were leased out to the Appellants for agricultural purposes and under the lease-deeds the Appellants claimed to have become hereditary tenants. The Appellants entered into possession over the leased land in both the villages and according to them, on the vesting of estates in the State of U.P. under the provisions of UP ZA and LR Act, they became sirdars u/s 19 of the said Act. Subsequently, they made

applications under the provisions of U.P. Agricultural Tenants (Acquisition of Privileges) Act, 1949 and under the said Act, they were granted Bhumidhari Sanads in respect of the leased land in the two villages on payment of the requisite amounts. Further, according to the Appellants, they were in cultivatory possession of the leased land in both the villages both before and after the vesting of estates in the State of U.P. On 8-7-1961, a notification u/s 4 of the Indian Forest Act was issued followed later on by a notification u/s 6 of the Act wherein the land leased out to the Appellants under the two aforesaid lease deeds was treated as and declared to be part of a reserve forest. The Appellants filed objections to the notification u/s 6 of the Indian Forest Act. The objections were considered by the Forest Settlement Officer and decided in favour of the Appellants by an order dt. 6-3-1962 against this order of the Forest Settlement Officer, two appeals were preferred by the State Govt. These appeals were heard and dismissed by the Addl. Commr., Rohilkhand Division, Bareilly by an order dt. 17-8-1963. Thereafter, according to the contesting Respondents, namely, Respondents Nos. 1 and 4, two revisions were tiled before the State Govt. against the order of the learned Addl. Commr. Subsequently, these revisions were transferred by the State Govt. to the learned District Judge, Bijnor in accordance with the provisions of U.P. Act XXIII of 1965. The learned District Judge allowed the revisions by a common order dt. 6-5-1968. He dismissed the objections of the Appellants. Aggrieved by the order of the learned District Judge, the Appellants, as mentioned earlier, filed two writ petitions Under Article 226 of the Constitution. These petitions were dismissed by the learned Single Judge of this Court.

3. When the special appeals were heard earlier, a question arose as to whether any revision legally lay against the order of the Addl. Commr. dt. 17-8-1963. This question was referred to a Full Bench. The Full Bench has answered this question (reported in 1973 AWR 132) and has held that the two revisions which were filed by the State Govt. u/s 1(4) of the Indian Forest Act, were legally maintainable and could be heard u/s 16(5) of the U.P. Act XXIII of 1965. In view of the decision of the Full Bench, the learned Counsel for the Appellants has confined his arguments other points.

4. In support of these appeals, it was urged that in view of the two lease deeds mentioned hereinabove, the Appellants had-acquired the lights of hereditary tenants in accordance with the provisions of the U.P. Tenant Act, 1939. Therefore, on the vesting of estates in the State of UP, the Applicants became Sirdars u/s 19 of U.P. Act No. 1 of 1951. This being so, the State Govt. had no jurisdiction or power to issue any notification either u/s 4 or u/s 16 of the Indian Forest Act declaring or treating the land leased out to the Appellants under the said lease-deeds to be part of the reserve forest concerned. It was contended that both the learned District Judge as well as the learned Single Judge of this Court arrived at erroneous decision by committing errors of law which are manifest. This contention was sought to be substantiated by the submission that under the provisions of the U.P. Tenancy Act, 1939, there was no legal bar against

granting of leases in respect of Banjar land for agricultural purpose to persons willing to take such leases. It was also submitted that in the absence of any provision in the UP ZA and LR Act prohibiting grant of such lease or nullifying any such lease executed prior to the coming into force of the latter Act the legal rights acquired by the Appellants could not be denied to them nor could they be deprived of the possession and enjoyment of the land in respect of which, they had initially acquired rights of a hereditary tenant and subsequently sirdari rights as also Bhumidhari rights under the provisions of the U.P. Agricultural Tenants. (Acquisition of Privileges) Act, 1949. Sri V.N. Khare further submitted that in the absence of and relevant and cogent evidence no finding could be given against the Appellants holding the leases to be fictitious and that the said leases being registered documents, it must be presumed that they were Registered after the sub-registrar was satisfied, as required by the provision of the Registration Act, in regard to the duet execution of the leases and the presentation thereof by a person or persons legally competent to do so. It was not denied that the leases were not actually executed by Th. Dan Singh Bisht. It was admitted that the leases were executed by Shi. Shanker Lal purporting to act as attorney of Th. Dan Singh Bisht but, it was submitted, whether Shiv Shanker Lal, the attorney, had any legal power as attorney to grant leases conferring hereditary tenancy rights is a matter which concerned Th. Dan Singh Bisht, Shiv Shanker Lal and the Appellants and that there being not even the slightest suggestion that Th. Dan Singh Bisht had any time repudiated or denied the transaction, it must be deemed firstly that Th. Dan Singh Bisht had empowered Shiv Shanker Lal as his duly constituted attorney to execute leases or to grant leases conferring hereditary tenancy rights also. It was also submitted that the Appellants not only paid rent to Th. Dan Singh Bisht but paid rent to the State Govt. as Sirdars when u/s 19 of the ZA Act, the Appellants became sirdars. The argument was further sought to be supported on the ground that Bhumidhari Saaads in respect of the same land were also duly granted.

5. In our opinion, the submissions made by the learned Counsel for the Appellants and noted above are apparently well founded. The question whether the lease deeds were genuine or fictitious might appear to be a question of fact, put upon a perusal of the affidavits, counter-affidavits and; rejoinder affidavits on the record including ; supplementary affidavits and the orders of the Forest Settlement Officer, Addl. Commr. and die District Judge as also the judgment of the learned Single Judge of this Court, we are satisfied that there was indeed the material upon which a legal; finding could have been given that the leases in question were fictitious.

6. The factum of the execution and registration, of the lease-deeds is not denied. What was contended against the Appellants was that Shiv Shanker Lal, the attorney of Th. Dan Singh Bisht, had no power as an attorney; to execute leases granting hereditary tenancy rights. It does not appear to us that it was ever disputed that Shiv Shanker Lal was not the attorney of Th. Dan Singh Bisht or that no power of attorney was executed by the latter in favour of the former. The

objection dearly was that even though Shiv Shanker Lal was an attorney, no specific power as such was shown to have been given to him by Th Dan Singh Bisht empowering Shiv Shanker Lal as attorney to grant or execute leases conferring hereditary tenancy rights. It is true that the Appellants did not file or produce before the authorities concerned the original power of attorney itself or a certified copy thereof, but that is not a circumstance, in our opinion, upon which a finding can be founded that Shiv Shanker Lal had no such power at all. It was not legally necessary for them to do so Besides, the point, in our opinion, need to be perused further because certain provisions of the Contract Act would support the claim of the Appellants. It is not the case of the contesting Respondents that Shiv Shanker Lal was not the attorney or agent of Th. Dan Singh Bisht. The contention raised by them was that he had acted in excess of the powers given to or conferred on him. Assuming this to be correct, the case, in our opinion, would be covered by Section 196 and 197 of the Indian Contract Act. Section 196 provides as under:

Where acts are done by one person on behalf of another, but without his knowledge or authority he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority.

Section 197 reads:

Ratification may be expressed or may be implied in the conduct of the person on whose behalf the acts are done.

7. Here as already mentioned, there is no evidence or material even to suggest that Th. Dan Singh Bisht ever repudiated or questioned the lease-deeds which were executed by his attorney Shiv Shanker Lal. From the material before us, it is established that, at any rate, the Appellants' names were mutated in the revenue records and their names were entered as sirdars. From the material on record, it is also established prima facie at any rate that the Appellants were in possession and also in oultivatory possession in the year 1361 F. and some subsequent years although they might not have been utilising the entire land in the two villages for agricultural purposes. Although the evidence given by the Appellants in regard to payment of rent to Th. Dan Singh Bisht might have been considered to be not sufficient, yet the Appellants' statement that they were paying land revenue to the State Govt. as Sirdars initially and as Bhumidhars later on for the land demised to them under the two lease deeds remained uncontroverted. This being so, there is no reason to hold that, at any rate, as far as the Revenue Deptt. of the State Govt. is concerned, the Appellants' rights as sirdars or as Bhumidhars had ever been questioned. If for the purposes of and under the ZA and LR Act, the Appellants were recognised and treated as Sirdars and Bhumidhars it is difficult to accept the contention that for purposes of the Indian Forest Act, the Appellants must be deemed to have no legal rights in the land in question as tenants or to hold that the land legally belongs to or must be deemed to belong to the State. The position of the State under the two Acts in

regard to the disputed land does appear to be anomalous and inconsistent to a large extent. This is a circumstance, to our mind, in favour of the Appellants.

8. The next question for consideration is whether the land concerned in the two villages being Banjar, no hereditary tenancy in respect thereof could be created. For considering this question, it will be necessary to refer to some provisions of the U.P. Tenancy Act, 1939. The relevant part of Section 29 of this Act reads thus:

Every person belonging to one or another of the following classes shall be a hereditary tenant and subject to any contract which is not contrary to the provisions of Section 4 shall be entitled to all the rights conferred and be subject to all by this Act, namely,

(a)... ..

(b) every person who is, after the commencement of this Act, admitted as a tenant otherwise than as a tenant of Sir or as a sub-tenant;

(c)... ..

9. In the instant case, in the two lease-deeds in question there is no term or condition which could be derogatory to acquisition of hereditary tenancy rights by the Appellants u/s 29 of the Act. It was, however, contended that the land in respect of which hereditary tenancy could accrue or be acquired must have been land as defined in Sub-section (10) of Section 3 of the Tenancy Act. The relevant part of the definition reads:

"Land" mean and Which is let or held for growing of or ops, or as grove land or for pasturage.

10. Again, it may be mentioned here, it has not been contended before us nor was it contended before the learned Civil Judge or even the cither authorities concerned that the leave deeds did contain any recital that the; land which was the subject-matter of the leases was being given not for growing of crops, that is, or agricultural purposes but for purposes other than cultivation or agriculture. Neither in the definition of word "land" nor in Section 29 referring to above is there anything which excluded Banjar land from the ambit either of them. The fact that the land was not or might not have been fit for immediate cultivation would not mean that it was not land as defined by Section 3(10) of the Act. Again in the absence of any statuary provision in that respect, the fact that the land in question was not actually cultivated or might not have been cultivated for some time or even for some years after the leases were granted to the Appellants could not necessarily deprive them of their rights as lessees if initially under the lease-deeds they had acquired the rights of hereditary tenants. No suit provision has been pointed out to us in the U.P. Tenancy Act, 1939.

11. It was also contended by the learned Counsel for the contesting Respondents that because of non-production of the power of attorney in favour of Shiv Shanker Lal by the Appellants, a presumption legally ought to be drawn that had

the document in question been produced, it would have supported the contention of the Respondents that under the power of attorney, Shiv Shanker Lal had not been given any power to settle land with any person or to execute any lease so as to confer hereditary tenancy rights. In support of this argument, the learned Counsel also relied on the decision of the Supreme Court in Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, . In our opinion, however, this question does not arise at all. There was no controversy, as already mentioned, that Shiv Shanker Lal was not the attorney of Th. Dan Singh Bisht. As indicated earlier, even if it is assumed that Shiv Shanker Lal under the power of attorney or as the attorney of Th. Din Singh Bisht had no power as such given to him to confer hereditary tenancy rights, yet in the circumstances of the case, it must be deemed that the grant of hereditary tenancy rights by Shiv Shanker Lal as attorney was ratified by the Principal, namely Th. Dan Singh Bisht. Therefore, the argument noted above cannot be accepted.

12. Sri V.D. Singh, learned Counsel for the contesting Respondents, however, ultimately urged that in view of Section 24 of the U.P. Act No. 1 of 1951, the leases in question stand declared null and void and that, therefore, even if the lapses conferred or purported to confer hereditary tenancy rights on the Appellants such rights could not avail them nor subsist in consequence of the clear and mandatory provisions contained in Section 24 of the said Act. Section 24 reads as following:

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 this 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.

13. Now upon a reading of Section 24, the wording of which is clear, no touch argument would be needed to hold that the leases in question stood declared null and void provided the provisions contained either in Clause (a) or in Clause (b) were attracted. To determine whether Clause (a) or Clause (b) or even both of them would apply to the case, it would be necessary to investigate into certain questions of fact and to record a finding as to the existence of the conditions mentioned in either of the clauses. If Section 24 applies to the case, as has been urged by the learned Counsel for the contesting Respondents, then it may be that without anything more, the validity of the notifications under Sections 4 and 6 of the Indian Forest Act would have to be upheld. The learned Counsel for the Appellants contended that there are certain other sections in U.P. Act 1 of 1951, e.g., Sections 98 and 247, as also there are certain rules framed under the ZA Act which would protect the rights acquired by the Appellants under the two leases in spite of the provisions contained in Section 24. Prima facie, at any rate,

there does appear to exist some force in the contention of the learned Counsel for the Appellants. Now In order to find out whether the Appellants would be entitled to any benefit or protection under any of the provisions of law upon which reliance has been sought to be placed, it would again be necessary to investigate into certain questions which are primarily questions of fact. It would neither be possible nor even desirable to go into the questions of fact which may be material to decide whether Section 24 of the Act will apply to the case or whether inspite of Section 24, the Appellants would be entitled to the benefit or protection under some other provision Or provisions of U.P. Act 1 of 1951 itself or rules made thereunder. In the circumstances in our opinion, it would be appropriate to send back the case to the Forest Settlement Officer concerned so that proper investigation into question of fact as may be necessary to determine the legal rights or contentions of the parties may be made and for that purpose, the parties may also have reasonable opportunity of adducing evidence. Here it may also be mentioned that the learned Counsel for the Appellants urged that even if Section 24 is ultimately held to be applicable, the Appellants would still be protected because no suit or proceeding was taken" against them for evicting them from the leased land in either of the two villages with the consequence that the Appellants acquired tenancy rights by prescription under the provisions of UP. Act I of 1951. This submission again requires going into certain questions of fact which for the same reason noted above cannot be decided by us. The Forest Settlement Officer to whom the cases are being sent back would be entitled to go into the above mentioned question also, if properly raised before him by the Appellants. If necessary, the Appellants may be given an opportunity to supplement the objections already filed by them by filing additional or supplementary objections. The parties shall also be afforded a reasonable opportunity of adducing evidence or furnishing material in support of their respective contentions before Forest Settlement Officer.

14. For the reasons and in the circumstances stated above, the appeals are allowed. The judgment and orders of the learned Single Judge, learned District Judge, learned Addl. Commr. and the Forest Settlement Officer are set aside. The cases are sent back to the Forest Settlement Officer who shall decide the cases in accordance with law and in the light of the directions contained herein above. The parties shall bear their own costs in these appeals as also in the writ-petitions.