
(1960) 02 AHC CK 0005

In the Allahabad High Court

Case No : Civ. Miscellaneous Writ No. 986 of 1957

Swami Prasad and Others

APPELLANT

Vs

Board of Revenue and Another

RESPONDENT

Date of Decision : 13-02-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1960) 30 AWR 175

Hon'ble Judges : Mootham, C.J;Srivastava, J;R. Dayal, J

Bench : Full Bench

Advocate : S.C. Khare, for the Appellant; Jagdish Swarup and K.P. Agarwal, for the Respondent

Final Decision : Dismissed

Judgement

Srivastava, J.—This is a petition Under Article 226 of the Constitution. The facts which have given rise to it are not much in dispute. 1 here is a plot of land bearing No. 135/4 situate in village Mohammadabad tahsil Orai, district Jalaun. The Petitioners, Swami Prasad and Triloki Nath were the sir-holders of the plot. On 1-6-1933 they executed a registered lease in respect of the plot in favour of one Harish Chandra. The lease was for a period of twenty years and permitted the lessee to sub-let the land to any one he liked. As the plot was a sir plot the lessee Harish Chandra was entered in the papers as shikmi of it. The word "shikmi" is ordinarily employed to mean a subtenant but in respect of sir land the tenant is called a shikmi though he is a tenant and not a subtenant. Harish Chandra died and his son Krishna Prasad succeeded him as the shikmi of the plot. According to the Petitioners either Harish Chandra or Krishna Prasad had sublet the plot to the opposite parties Nos. 2 and 3, Baij Nath and Prabhu Dayal, at some time. The exact date on which the plot was sub-let to them is not known. As a result of the sub-letting these opposite parties Nos. 2 and 3 were recorded in the village papers in the remarks column as dar shikmis. On 15-7-1950 Krishna Prasad surrendered his rights as a tenant in favour of the

Petitioners. The fact of surrender was entered in the patwari's roznamcha and the Petitioners claimed that they were actually put in possession as a result of the surrender. In the year 1951 the Petitioners filed a suit u/s 60 read with Section 180 of the U.P. Tenancy Act of 1959 against the opposite parties Nos. 2 and 3. In that suit they alleged that though they were in possession the opposite parties Nos. 2 and 3 who claimed to be the tenants of the plot had started interfering with their possession. They therefore claimed a declaration that the opposite parties Nos. 2 and 3 were not the tenants of the plot in suit, were not in possession thereof and had no rights therein. In the alternative they claimed the ejectment of the opposite parties Nos. 2 and 3 from the plot in case they were found to be in actual possession. The opposite parties Nos. 2 and 3 contested the suit and said that they had been in possession of the plot, for about fifteen or sixteen years as hereditary tenants. They denied that Krishna Prasad had surrendered the plot in favour of the Petitioners or that the Petitioners had at any time been in possession of it. The suit remained stayed for some time but was taken up for decision after the enforcement of the ZA and LR Act. At the trial of the suit therefore the opposite parties Nos. 2 and 3 relied on the provisions of Section 20(c) of the ZA and LR Act and claimed that as they were recorded as occupants of the plots in the year 1356F, they had acquired adhivasi rights in respect of it and could not on that account be ejected from it. The trial Court held that the surrender alleged by (he Petitioners was not valid, that the opposite parties had been in undisturbed possession for a long time and they had become adhivasis of the plot (sic) they were recorded as occupants thereof in 1356F. On these findings the Petitioners suit was dismissed. An appeal was preferred by the Petitioners against the decision and was heard by the Additional Commr. of Jhansi. He took the view that the surrender in favour of the Petitioners was a valid one and in view of it whatever rights the opposite parties Nos. 2 and 3 had in the plots came to an end and they became trespassers. He was also of opinion that the opposite parties Nos. 2 and 3 could not claim adhivasi rights in the plot on the ground that they were recorded in the papers of 1356F as dar shikmis because that entry made them only licensees. He therefore found them liable to be ejected from the plot in question u/s 180 of the U.P. Tenancy Act. The appeal of the Petitioners was consequently allowed and their suit was decreed. The opposite parties Nos. 2 and 3 then filed a second appeal before the Board of Revenue and the main contention which they pressed there was that the learned Addl. Commr. was nor justified in his view that because they (opposite parties Nos. 2 and 3) were recorded in the year 1356F as dar shikmis they were mere licensees. They urged that on the basis of that entry they could claim to be recorded as occupants of the plot and had therefore by operation of law become adhivasis. This plea found favour with the oard of Revenue. It reversed the decision of the Additional Commissioner and restored that of the trial Court. The Petitioners now want this order of the Board of Revenue to be quashed by a writ of certiorari.

2. The only ground urged in support of the petition is that the Board of Revenue

has committed a manifest error of law in holding that the opposite parties Nos. 2 and 3 had become adhivasis of the plot because they were entered in the year 1356F as dar shikmis of it.

3. It is pointed out that in the year 1356F the Petitioners were entered as sir-holders of the plot in question. Krishna Prasad was entered as shikmi and the opposite parties Nos. 2 and 3 were entered in the remarks column as dar shikmis. It is urged that Section 39 of the U.P. Tenancy Act of 1939 expressly prohibited sub-letting by a tenant of sir. Section 44 of that Act provided that a sub-lease made by a tenant of a sir was void. Harish Chandra and his son Krishna Prasad being only tenants of sir had no right to sub-let the plot to the opposite parties Nos. 2 and 3. If they did sub-let it to them the sub-lease was void. The position of the opposite parties Nos. 2 and 3 under the void sub-lease was analogous to the position of a person in whose favour tenancy plots had been mortgaged in contravention of the provisions of the Tenancy Act. In the case of Sri Ram Sukh Oubey v. Board of Revenue 1957 AWR 487 such a mortgagee had claimed adhivasi rights on the ground that being entered as a mortgagee he could claim to be recorded as an occupant. That contention had, however, been rejected. It was held that he had no right in the land at all and he could only be considered to be a licensee of the tenant and not an occupant in his own right. It is argued that the position of the opposite parties Nos. 2 and 3 being similar on the same principle they too could not claim to have acquired adhivasi rights on ground of being recorded as dar shikmis of the plot.

4. The argument cannot, in our opinion, bear close scrutiny. It involves an assumption which appears to be clearly unjustified. It assumes that the sub-lease in favour of the opposite parties Nos. 2 and 3 was made after the coming into force of the U.P. Tenancy Act of 1939 and was on that account void being prohibited by law. The lease of the plot in favour of Harish Chandra was made in 1933 when the Agra Tenancy Act of 1926 was in force. The lease expressly permitted the tenant to sublet. Under the provisions of the Tenancy Act of 1926 a tenant of Sir was not prohibited from sub-letting his holding. The prohibition was introduced for the first time in the U.P. T Act of 1939. There is nothing to show that the sub-lease in question was made after 1939 and not while the Tenancy Act of 1926 was in force. The sub-lease was therefore not necessarily void. If the Petitioners wanted to contend that the opposite parties Nos. 2 and 3 could not claim any rights in the plot on the basis of the sub-lease they ought to have proved positively that the sub-lease was made after the Act of 1939 had come in force. They have not done this.

5. It is also not correct to say that before a person can claim to be an adhivasi on the ground that he is recorded as an occupant in the year 1356F, he must have some rightful claim to the land. The terms of the statute do not support the assumption. The only thing required is that the person concerned must be "recorded as an occupant." Keeping in view the context in which the word "occupant" is used in Section 20 of the ZA and LR Act it appears to us that the

word does not mean a person entitled to occupy. It only means a person who occupies or has the actual user of the land on his own behalf. He may or may not have any interest in the land. Even a trespasser having no legal title can be an occupant provided, of course, that he claims an exclusive right to occupy the land on his own behalf and is not the representative of some one else. This is the interpretation which was put on the word in the case of Jagdish Prasad v. Board of Revenue 1956 AWR 32 (J) : ALJ 317 and we respectfully agree with that interpretation. The claim of the mortgagee under a void mortgage to adhivasi right was negatived in Sri Ram Sukh Dubey's case (supra) mainly on the ground that he was not recorded as an occupant of the land on his own account. He was only a projected personality. He was nothing apart from his mortgagor. His position was therefore no better than that of an agent or marfatdar whose occupation was really that of his principal. The position of the opposite parties Nos. 2 and 3 in the present case is quite different. They are occupying the land on their own behalf and not on that of Krishna Prasad or anyone else. They are recorded in actual occupation as dar shikmis. In their case therefore it cannot be said that they are occupying the plot on behalf of some other person.

6. It was also urged that as in the papers of 1356F the Petitioners also were entered as sir-holders they could on that account claim to be entered as occupants. The obvious answer to this argument is that the persons who are really entered as occupants are the opposite parties Nos. 2 and 3. The Petitioners may be entered as sir-holders in whom the title to the plot vested but could not on that account claim to be entitled as occupants. Section 20 of the ZA and LR Act does not appear to contemplate several grades of occupants. The Petitioners cannot therefore claim that they too were recorded as occupants.

7. We are therefore not satisfied that the Board of Revenue committed any apparent error of law on account of which the impugned order was amenable to a writ of certiorari.

8. The petition has no force and is dismissed with costs.