
(2017) 03 UK CK 0008
In the Uttarakhand High Court
Case No : Second Appeal No. 101 of 2016

Union of India

APPELLANT

Vs

Sri Ram

RESPONDENT

Date of Decision : 08-03-2017

Acts Referred:

Requisitioning and Acquisition of Immovable Property Act, 1952 — Section 19, Section 9

Citation : (2017) 122 ALR 241

Hon'ble Judges : Servesh Kumar Gupta, J.

Bench : Single Bench

Advocate : Mr. Rajesh Sharma, Advocate, for the Appellants; Mr. Neeraj Garg, Advocate, for the Respondents; Mr. I.P. Kohli, Brief Holder, for the Appellant; Mr. Neeraj Garg, Advocate, for the Respondent Nos. 1, 4, 6, 7, 8, 9, 19 and 11; Mr. Devesh Ghildiyal, Advocate, for the Respondent Nos. 12 and 13

Final Decision : Dismissed

Judgement

Servesh Kumar Gupta, J.—Both these appeals have arisen out of the judgment and order dated 31.3.2016 rendered by the Additional District Judge Vth, Dehradun and the same substantial questions of law are to be considered, hence are being taken up together for adjudication by this Court.

2. An Original Suit 323/1988 was instituted by the plaintiffs Sri Ram and Harinand, who were the predecessors in-interest of all the respondents in both these second appeals, wherein a prohibitory injunction was sought by them on the ground that they were owners in possession of the land, in question, for more than 40 years and their names were recorded in the revenue papers, but the defendants, since were interfering and trying to take forcible possession of such land, hence they should be restrained from doing such illegal acts. Such suit could be adjudicated by the learned Civil Judge (Senior Division), Dehradun on 28.5.2001 in dismissal.

3. It appears that during the pendency of the suit, an interim injunction was in

force and that order continued after institution of the First Appeal No. 67/2001 by the plaintiffs, hence the possession of the plaintiffs or their successors persisted on this vast agricultural land, which, now, with the passage of time, has been almost in the city area of Dehradun. The First Appellate Court allowed the appeal vide impugned judgment and order as indicated above and after setting aside the judgment of the lower court, decreed the suit. Respondents (appellants herein) were directed not to interfere in the possession and ownership of the plaintiffs over the property in suit.

4. It can be said that by rendering this judgment, the First Appellate Court declared the land, in question, to be under the ownership of the plaintiffs. Feeling aggrieved, the Union of India & In-charge Station Cell, Clement Town, Dehradun have come up before this Court by way of filing these second appeals. Following substantial questions of law were formulated:

(a) Whether the learned Appellate Court has rightly decided the appeal under the provision of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, while the land had been acquired under the provision of Requisitioning and Acquisition of Immovable Property Act, 1952 (Act No. 30 of 1952) in the year 1958?

(b) Whether after the acquisition of land (if any) the possession of the disputed land had been obtained by the defendants/appellants herein and the compensation in lieu of such acquisition was paid to the plaintiffs as required under the law?

(c) Whether the initiation of the suit seeking injunction by the plaintiff was barred by Section 19 of the Requisitioning and Acquisition of Immovable Property Act, 1952?

5. Before proceeding ahead, it would be relevant to have in mind certain facts qua the controversy between the parties. The land, in question, as mentioned in the schedule of the plaint, Khasra No. 1 Minjumla ad measuring 3 acres and Khasra No. 235/2 ad measuring 5.62 acres, total 8.62 acres, which is the part of Khasra No. 1M (Minjumla) admeasuring 61 acres and Khasra No. 235/2 having area of 93.82 acres situated in the village Mothurwala, District Dehdraun. These Khasra numbers 1 and 235 Minjumla were basically under the zamindari and ownership of Mahant Indresh Charan Das and the land, in question, which was part of the land of Mahant Indresh's zamindari was under the hereditary tenancy of the plaintiff's ancestors Harinand and Sri Ram.

6. It is not disputed that after the abolition of zamindari, the hereditary tenants acquired the sirdari rights and after the deposit of some revenue though they acquired bhumidhari rights from sirdari rights over the land in their possession, but here the background of all the disputes is otherwise.

7. Even before the zamindari abolition, there happened the Second World War and the need arose to find out the place for detention of the prisoners of that

War. So, on the initiation of the Central Government, vast land of villages Bharuwala, Bharuwala Grant, Telupur Grant, Mazra and Mothrawala was acquired under the Defence of India Act, 1939 and the rules made thereunder and such property continued to be subject to requisition under the Acquisition of Land (Continuance of Powers) Act, 1947 (Act No. 17 of 1947). Since this Act was due to expire on 31.3.1952 and as the Government of India had no powers to requisition any property outside Delhi, hence in this backdrop, the Requisitioning and Acquisition of Immovable Property Act, 1952 (hereinafter called as the 'Act of 1952') was passed by the Indian Parliament and the provisions thereof were different from the Land Acquisition Act, 1894 in order to meet out the immediate need and to avoid the long complicated procedure. So, after requisitioning the land, the details of Khasra Nos. and their area as have been indicated in a big sized map prepared and a notification no. 725/VIII-233(54-57) dated 29.5.1958 was passed and published in the U.P. Gazette dated 7.6.1958, page 926, Part I, and under Section 7 of this Act of 1952, the notices were issued to all those persons who were in possession of the land, in question, either as bhumidhari, sirdari, zamindar or hereditary tenants or any other kind of tenant. After completion of the procedure, as envisaged under the Act, such land was acquired and the award of competent authority was announced on 28.3.1963. This award was so announced after the compensation was determined by the Land Acquisition Officer. Determination of the quantum of compensation was objected by the predecessors of the plaintiffs and one of such kind of application dated 14.2.1959, moved by Harinand to the Land Acquisition Officer, is available in the paper book wherein he had requested to enhance the compensation from Rs. 858.43 (as determined by the LAO) to Rs. 73660.00 (as claimed). However, such compensation could not be enhanced, as was prayed by the plaintiffs. Since the amount of compensation was not received, therefore, it was deposited in the revenue deposit, as contemplated by the Act.

8. The property, in question, along with other vast land, as has been enumerated herein above, was taken in possession by the Defence Estate Officer, who at that time was stationed at Meerut, i.e. at the distance of around more than 200 kilometres, and it appears that this land was used for accommodation of the prisoners of war (POW). With the passage of time, when the Second World War was over and the prisoners were either released or were sent somewhere else, this requisitioned land was acquired for the defence purposes under the Act of 1952 and after determining the compensation, the award was passed. Almost all the persons, whose lands were acquired, including Mahant Indresh Charan Das received the compensation, but some of them including the plaintiffs did not receive such compensation. So, it was deposited in the civil deposit, as envisaged under Section 9 of the Act of 1952.

9. It transpires that the predecessors of the respondents herein began to make endeavour to reoccupy (illegally) their land (which became vacant on account of release of prisoners of war) some time in 1986 or so, as is being manifested by the formidable evidence (documentary as well as oral). So, their attempts were

resisted by the army personnel. In this backdrop, the plaintiffs instituted the Original Suit No. 323/1988 seeking the prohibitory injunction with the indirect relief of declaration of their ownership over the land. Since they could prima facie show to the learned Trial Judge that they are in possession (although unauthorized or illegal), hence they succeeded in getting an interim injunction to the effect that they shall not be evicted without following the due course of law. This injunction is continuing till date and on the strength of such orders, they are enjoying the land with all agricultural produce and usufructs.

10. It may be noted here that since interim injunction had been passed in their favour, hence they dragged the suit and permitted the learned Trial Court to adjudicate the same on merits, but only after passing of almost 13 years. Further they also prolonged the pendency of First Appeal, so the same could be decided after almost 15 years of its institution.

11. As has been highlighted above, the dismissal of the suit was challenged by way of preferring First Appeal No. 67/2001, which has been allowed by the impugned judgment and order of the Additional District Judge. Feeling aggrieved, the Union of India and the In-charge Station Cell, Clement Town, Dehradun have preferred these appeals before this Court.

12. It appears that the defence office for the purpose, which was previously in Meerut town, now has been established in Dehradun city.

Substantial question no. (a)

13. It is evident that the First Appellate Court in paragraph 22 of its judgment has based his finding considering the provisions of Act No. 30 of 2013 and has held that since the land in question was never taken in possession nor the compensation thereof has ever been paid to the predecessors of the plaintiffs, hence plaintiffs are still the owners of such land because the proceedings of the land acquisition were never completed. Therefore, the defendants have no right over such property.

14. I feel that the learned First Appellate Court has completely been misconceived and misled over the controversy, in question, because the proceedings initiated by the Central Government/Union of India were not simply directly for acquisition under the Land Acquisition Act, 1894, but these proceedings were under the Act of 1952, which envisages the requisitioning of the land before acquisition and such land was requisitioned and thereafter acquisitioned by way of passing the notifications, as has been indicated above and which are available in the record of the Collectorate; otherwise, there was no reason for Harinand to move an application dated 14.2.1959 to the Land Acquisition Officer claiming that the compensation of the acquired land ought to have been Rs. 73660.00, instead of Rs. 858.43.

15. Learned Counsel on behalf of the respondents herein has marshalled the provisions of Section 3 to 8 of the Act of 1952 word by word before this Second

Appellate Court, but I am of the view that the scrutiny regarding every minuscule compliance of these provisions could have been seen and analysed only during the course of writ petition, had it been presented by the plaintiffs.

16. It would be pertinent to take a note of Section 10 of this Act of 1952 under the heading Appeals from orders of acquisition. It contemplates that if any person is aggrieved by the order of acquisition made by the competent authority, then the person aggrieved may prefer an appeal to the Central Government and such Government after calling for a report from the competent authority and giving an opportunity to the parties of being heard and after making such further inquiry, if any, as may be necessary, may pass such orders as it thinks fit and the order of the Central Government shall be final.

17. It has not been disputed that no such appeal was ever filed. It shall be quite ridiculous to argue that this land was neither acquisitioned nor acquired because such contention is against the evidence, which is so comprehensively available in the record of the Collectorate summoned by this Court.

18. No writ petition was ever filed by these aggrieved persons. In a case decided by Allahabad High Court, which has been reported in 1996 (14) LCD 327, three writ petitions were presented in a similar matter challenging a notification under Section 4 and 6 of the Act of 1952 and such notification was issued in 1976, but the writ petitions were filed in 1985 challenging the same. It was held that there was delay of about 9 years, which was highly excessive. There is no plausible explanation given by the petitioners for challenging those notifications after such a long gap of time. Case of Hari Singh v. State of U.P. (AIR 1984 SC 1020), was also discussed, wherein it was held by the Hon'ble Apex Court that the writ petition challenging the notification under the Act filed after the delay of nearly two and a half years is liable to be dismissed on the ground of laches.

19. So, I can see that where the writ petition challenging the notification was dismissed even by the Hon'ble Supreme Court only on the ground of delay and three writ petitions were also dismissed by the Allahabad High Court on the ground that these were delayed by nine years, then how this Civil Court of appeal can delve into the whole controversy marshalling the minuscule compliance and their scrutinization, as contemplated under Sections 3 to 8 of the Act, and that too after passing of decades together.

20. It is evident that the notification was issued in 1958 and suit was brought in 1988. So, how the Court of a Civil Judge or Additional District Judge could have been asked to take over the functions of a Writ Court, but the Additional District Judge has usurped the powers of a Writ Court and discussed the minute compliance and that too on the wrong footing, of these provisions of the Act. I think that he remained in oblivion of the provisions contained under Section 19 of the Act of 1952, which reads as under:

"Bar of jurisdiction of civil courts.-Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the

competent authority or arbitrator is empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act"

21. It is unfortunate that the plaintiffs could succeed in securing an interim injunction despite such bar, as has been enacted by the provisions of Section 19 of the said Act. So, by misleading all the courts below, they could succeed and are using the agricultural produces of this vast land and are enjoying the usufructs thereof since several decades. Therefore, I decide this substantial question of law in favour of the appellants and against the respondents herein.

Substantial question no. (b) :

22. It is manifested by a number of documents, which are available in the file summoned from the Collectorate, that this requisitioned land was in possession of the Army and later on it was acquired, but it is also true that after the Second World War was over, the prisoners of war left or were accommodated somewhere else or were released. So, the land became vacant, but it does not mean that it was not in the possession of the Army. Possession of an individual or particularly a government institution does not mean the physical possession every time. Even for a private personnel, that concept of possession has also been accepted if it is constructive in nature. The army officers/personnel are not expected to keep a close surveillance and vigilance every moment and on every inch of the land, which though is under their ownership but lying in another city. So, in this background, it can never be accepted that this land was not in the possession of the appellants herein.

23. As regards the payment of compensation is concerned, it was deposited in the civil deposit and as envisaged under Section 9 of the Act of 1952, there is no bar on any such deposit because this provision envisages that the amount of compensation payable under an award shall, subject to any rules made under this Act, be paid by the competent authority to the person or persons entitled thereto in such manner and within such time as may be specified in the award.

24. In the award passed by the Collector on 28.3.1963, plaintiffs were requested to take the payment of compensation from the Land Acquisition Officer on 10.5.1963 and since they did not receive such compensation, as requested by the Collector, Dehradun, hence there was no option but to deposit the same in the revenue account and it was specified in the award and specially a letter was sent to the ancestors of the plaintiffs requesting them to receive the compensation, but since they were not satisfied with the quantum, hence they did not receive it and preferred to move the applications for enhancement of compensation. Therefore, I decide this substantial question as well in favour of the appellants herein and against the respondents/plaintiffs.

Substantial question no. (c)

25. The question of bar, as contemplated in Section 19 of the Act of 1952, has already been discussed by me while deciding and manifesting my findings on the substantial question no. (a). Therefore, I decide it in favour of the appellants/defendants and against the respondents/plaintiffs.

26. Since all the three substantial questions of law have been decided in favour of the appellants/defendants, hence I allow these appeals and set aside the impugned judgment and order passed by the First Appellate Court and sustain the judgment and order dated 28.5.2001 rendered by the Civil Judge (Senior Division), Dehradun.

27. As all these respondents/plaintiffs are in possession and are cultivating the agricultural produces on the land since a long time, therefore, they shall vacate the land, in question, forthwith because their possession is totally illegal in the form of encroachment and thus without any authority of law. It is enough that despite having no authority, they enjoyed the property since almost more than last 30 years by misleading all the Courts and by procuring the interim injunction in their favour.

28. Let the LCR be sent back. Record summoned from the Collectorate, Dehradun shall also be returned.