
(2011) 05 AHC CK 0057
In the Allahabad High Court
Case No : Second Appeal No. 371 of 1991

U.P. State Sugar Corporation Ltd.

APPELLANT

Vs

Ram Niranjana and Others

RESPONDENT

Date of Decision : 31-05-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 47

Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971 — Section 2, 3, 3B, 4, 5

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 143

Citation : (2011) 6 ADJ 363 : (2011) 5 AWC 4520 : (2011) 8 RCR(Civil) 518

Hon'ble Judges : Shishir Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shishir Kumar, J.—This is a Defendant's second appeal arising out of suit filed by Plaintiff Respondents for injunction with an allegation that there was some land to the south of Kundan Sugar Mill Amroha which was agriculture land and same did not vest in the U.P. State Sugar Corporation under the provision of U.P. Sugar Undertaking Acquisition Act 1971 (U.P. Act No. 22 of 1971).

2. Defendant-Appellant contested the suit on the ground that Plaintiff did not give Khasra number and he has not complied with the provision of Order 7 that the land claimed by Plaintiff was not agriculture land but was a part of the mill which was acquired under the provision of Act No. 23 of 1971. Plaintiff being not in possession, suit itself is not maintainable and barred by limitation. Learned trial court vide its judgment and order dated 22.5.1989 decreed the suit and appeal filed by Appellant has been dismissed vide its order dated 28.11.1992.

3. Sri Anil Sharma, learned Counsel appearing for Appellant has submitted that land in question was not agriculture and vested in U.P. State Sugar Corporation, therefore, in view of provision of undertaking, land is recorded as "Abadi" in the Khatuni of 1372 fasli and 1380 fasli and in the Khatuni, land in question is recorded as Kundan Sugar Mill, therefore, suit itself is not maintainable. Learned

Counsel for Appellant has submitted that suit for injunction is not maintainable unless and until identity of the property in dispute is disclosed. From the allegation made in the plaint, he has simply given the boundary in the plaint and has not described that which is the property in dispute for which he sought injunction, therefore, no injunction could have been granted. Plaintiff's case was that it is an agriculture land and did not vest in the State Sugar Corporation but in the plaint it does not disclose or in the statement that plots which were claimed are as agriculture. Plaintiff Respondent filed an extract of Khasra of 1378 fasli which was purported to have issued by Lekhpal in the year 1981. The original Khasra was in the record room. He did not file any certified copy of the Khasra of 1378 fasli corresponding to the year 1971. Only on the basis of this Khasra, the Appellate Court has held that Khasra indicates that it is an agriculture land. Appellant has filed certified copy of Khasra which is the most material evidence which goes to the root of the case that land in question which is being claimed by Plaintiff-Respondent was recorded as abadi and it was not an agriculture land and in view of Section 3-B and 2 (h) of Act No. 23 of 1971, land in question was a part of "schedule undertaking" and it vested in the sugar corporation. Learned Counsel for Appellant has brought to the notice of the Court Section 2(h)(vi) which provides as under:

all lands (other than lands held or occupied for purposes of cultivation and grove lands) and buildings held or occupied for purposes of that factory (including buildings pertaining to any of the properties and assets hereinbefore specified, and guest houses and residences of directors, managerial personnel, staff and workmen or of any other person as lessee or licensee, and any store houses, molasses, tanks, roads, bridges, drains, culverts, tube-wells, water storage or distribution system and other civil engineering works) including any leasehold interest therein;

4. In support of aforesaid contention, Appellant submits that all lands other than lands held or occupied for the purposes of cultivation and grove lands will vest in the sugar corporation in view of Act No. 23 of 1971. Section 3 talks regarding vesting on the appointed day, every schedule undertaking shall, by virtue of the Act, stand and be deemed to have stood transferred to and vest and be deemed to have vested in the Corporation free from any debt, mortgage, charge or other encumbrance or lien trust or similar obligation attaching to the undertaking.

5. Section 5 talks regarding delivery of possession. Where any scheduled undertaking has vested in the Corporation u/s 3, every person in whose possession or custody under whose control any property or asset book of account, register or other document comprised in that undertaking may be, shall forthwith deliver the same to the Collector and Sub-Section 3 of Section 5 talks regarding inventory of all things to be prepared by the Collector.

6. Section 7 talks regarding mode of payment of compensation.

7. In such circumstances, Appellant submits that immediately from the date of

notification, on the appointed date, i.e. the date of notification dated 22nd August, 1971, property including machinery plant, residences and other land pertinent has vested in the Appellant. Further submission has been made that for the purposes of grant of injunction, it is the duty of the Plaintiff to claim by describing the plot number. Admittedly, Plaintiff-Respondent has not claimed the property by describing the plot number. Only boundary wall was mentioned. Appellant has brought to the notice of the court the allegations made in the plaint. Relevant paras 4, 7 and 8 are being quoted below:

4. That to the South of Kundan Sugar Mill here-in-after referred to as mill has contained unit transacting of bungalows, gardens firm lands, outhouses, guest houses garages, temple and servant quarters belonging to said Hindu Undivided family is situated.

7. That through the portion effected in the above manner, Plaintiff is full and absolute owner of the property as per Khasra No. 3 delineated in the side plan annexed with the arbitration award referred above on 26.8.1968. The properties allotted to Plaintiff comprise of residential bungalow and firm land adjacent thereto and a copy of the side plan allotted to Plaintiff, is annexed thereto with the plaint, boundaries of which are given at the foot of the plaint.

8. That Plaintiff has been exclusively showing, reaping and harvesting different corps through his servant in the firm land adjacent to the bungalow ever since 26.8.1968. Detailed of the land shown has also been mentioned. North plot is of Ravi Kumar, South is the boundary wall, East metal road, west- boundary wall. Only this has been mentioned. No plot number has been mentioned that which plot belongs to Plaintiff-Respondent and in view of arbitration proceeding it is the agriculture property which is being harvested by Plaintiff-Respondent. Appellant has also brought to the notice of the Court the order sheet which shows that a map was filed though the said map is not on record but a copy of the same was produced before the court and Appellant submits that from the map annexed to plaint it clearly shows that all four corners have been mentioned regarding wall of the factory. Meaning thereby property which is being claimed by Plaintiff-Respondent is within the boundary wall of the mill. The Amin report which was numbered as Ga-79/1 also states the description of the property and has stated that in North there is no plot of Ravi Kumar and towards east there is no metal road. Further a report has been submitted that land is not agriculture. The report is dated 28.4.1985. Unless and until plot number is mentioned and property for which injunction is claimed is identified, court below has no jurisdiction to grant injunction order. Admittedly, in view of the acquisition, Kundan Sugar Mill was taken and in view of provision of Section 2(h)(vi), property including bungalows, gardens, farm lands and out houses have been vested in the Appellant in pursuance of the provisions of the Act.

8. Appellant has submitted that from the statement of PW-1, it is also clear that in cross examination he has clearly states that he does not know that there is a boundary in the mill or not and whether the disputed land is outside the

boundary of the mill or not. He has stated in his examination that there are bungalows towards east of the disputed plot and employees of the mill are living there. Further in cross-examination he has admitted that he does not know the Arazi number of the disputed land. In his cross examination he has also admitted this fact that he does not know the Khasra number. Further "he has stated that he is doing cultivation but whether earlier cultivation was being made or not, he do not know. He further states the he does not know regarding any proceeding which commenced before Tehsildar dated 8.10.1969.

9. Appellant submits that it is settled in law that in such circumstances, no injunction can be granted. Further in the written statement, a specific denial has been made that the land in dispute is within the four walls of the sugar mill which was taken over by U.P. State Sugar Corporation Ltd. and is a part of the scheduled undertaking as defined u/s 2(h) of the U.P. Act No. 13 of 1972 . In the written statement a specific mentioned was there that as Plaintiff-Respondent has not shown any khasra number or specific boundary of the disputed plot, therefore, the plaint itself is vague and liable to be rejected on that ground. There is no agriculture land within with in four walls of the Kundan Sugar Mill now vested in the U.P. State Sugar Corporation Ltd. Plaintiff is not the owner of the land situated within the four walls of Kundan Sugar Mill. The basis of arbitration award is an after-thought being the fact that it is not registered and, therefore, is not valid in law. From 8.10.1969, the Collector put over as receiver of Kundan Sugar Mill and Plaintiff remain out of possession of any part of the building of the Kundan Sugar Mill. Plaintiff was never been in possession over the disputed property within 12 years from the date of filing suit, therefore, suit is time barred. From perusal of the order dated 8.1.1988, which was the objection u/s 47 of the CPC in Case No. 207 of 1980, claim of Plaintiff-Appellant was not accepted.

10. Sri Anil Sharma, learned Counsel has also placed reliance upon a copy of the Khasra which was the part of the record and has submitted that filing of Khasra is not sufficient for the purposes of prove of his claim. As he has failed to prove the boundary of the property, therefore, no injunction can be granted to Plaintiff-Respondent but the trial court as well as the lower appellate court has shifted burden upon Defendant-Appellant and only on the basis of Khasra filed and on the basis that as in case possession of this property is taken by the reviver or by the Corporation, in the inventory it should have been mentioned and as regards compensation, it should have been determined accordingly. As in the list this property is not mentioned and as no compensation has been given, therefore, this land has not been taken by the Sugar Corporation-Appellant. According to Appellant this finding in view of provision of the act is totally illegal in view of Sections 5 and 7 of the Act of 1971. Sub-Section 3 of Section 5 of the Act states that Collector shall prepare an inventory of all the properties and assets immediately after the acquisition and Section 7 says regarding the mode of compensation. Admittedly, total property of Kundan Sugar Mill situated in the four corners of the wall has been acquired. Plaintiff has failed to prove from the

record or from any document that this property is exempted or has not been taken over under the Act as it was being cultivated by Plaintiff-Respondent and in view of Section 2(h) (vi), it cannot be taken under the Acquisition Act. Unless and until it is proved from the record that this was an agriculture property in possession of the Plaintiff-Respondent and what is the area, plot number and boundary, is determined, no injunction can be granted. He has placed reliance upon a judgment of the Apex Court reported in 2006 (5) Supreme 372, Subhaga and Ors. v. Sobha and Ors. and has placed reliance upon Para 5 of the said judgment. The same is being quoted below:

5. We find that a commission was issued for demarcating the suit plot No. 1301/1 Bag and the Commissioner showed the disputed area in the map prepared by him. The lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the Defendants as DW1 and the report and plan submitted by the Commissioner. That Court also noticed that the Plaintiff had given specific boundaries of the suit land and it was clear from the sketch prepared by the Commissioner that the disputed constructions lay in the suit land and that it belonged to the Plaintiff. This was the basis of the affordance of the decree in favor of the Plaintiff by the lower appellate court. In Second Appeal, the learned Judge of the High Court, after referring to the description of the boundaries in the plaint, simply discarded the sketch prepared by the Commissioner in the presence of the parties after ascertaining the plots lying as boundaries of the suit property. It also appears to have taken the view that without a survey of the adjoining plots, it cannot definitely be said that the disputed structure lies in the plot belonging to the Plaintiff, namely plot No. 1301/1 Bag. We think that the High Court was not justified in interfering with the finding of the lower appellate court and in discarding the identification made by the Commissioner. It must be noticed that the suit had been remanded twice for the purpose of identifying the suit property and such identification had been done by the Commissioner and such identification had been accepted by the trial court and the first appellate court in the light of the admissions of DW1. The vague and general reasons given by the High Court for interfering with the decision of the first appellate court are clearly insufficient to upset the finding on identification. There was nothing to show that Commissioner had not properly identified the suit property.

11. Further reliance has been placed upon a judgment of the Apex Court reported in Shreepat Vs. Rajendra Prasad and Others, and has placed reliance upon Para 4 of the said judgment. The same is being quoted below:

4. In our opinion, this contention is correct. Since there was a serious dispute with regard to the area and boundaries of the land in question, especially with regard to its identity, the courts below, before decreeing the suit should have got the identity established by issuing a survey commission to locate the plot in dispute and find out whether it formed part of Kharsa No. 257/3 or Khasra No. 257/1. This having not been done has resulted in serious miscarriage of justice.

We consequently allow the appeal, set aside the order passed by the courts below as affirmed by the High Court and remand the case to the trial court to dispose of the suit afresh in the light of the observations made above and in accordance with law.

12. Taking support of aforesaid judgments, learned Counsel for Appellant submits that unless and until property is identified and description of the boundary in the plaint is made, no injunction can be granted. The Apex Court has taken view that survey of adjoining plots, it cannot definitely be said that disputed structure lies in the plot belonging to the Plaintiff.

13. In view of aforesaid fact, it has been submitted that both the courts have committed an error apparent on the face of record.

14. On the other hand, Sri M.A. Qadeer, learned Senior Advocate on behalf of Respondents has submitted that "Waive Industries" which have been implemented as of Appellant have no right to contest the proceeding. He has submitted that in view of various provisions of U.P. Sugar Undertaking Acquisition Act 1971, as Sections 2 (h)(vi) clearly provides that all lands (other than lands held or occupied for the purposes of cultivation and grove lands), meaning thereby the land which is being used for the purposes of cultivation and grove are exempted from such acquisition. He has submitted that in view of various sections like 2, 3 4, 5 and 6 unless and until they are complied with it cannot be said that this agriculture property which admittedly belongs to Plaintiff-Respondent has been acquired. Trial court as well as the Appellate Court have recorded a specific finding that in the inventory made regarding property as provided u/s 5, Sub-section (3) property in dispute has not been mentioned. Therefore, it is implied that this property has not been taken over under the Acquisition Act. Further finding has been recorded that in view of Khasra submitted on behalf of Plaintiff-Respondent, it is clear that this property has never been taken over by receiver and corporation. As it is not mentioned in the inventory, therefore, presumption is that it has not been taken over. Further in view of Section 7 no compensation has been paid, therefore, it cannot be said that this land has been acquired. From the description of the property mentioned in the plaint, it is clear that proper description was made, therefore, the courts below have rightly granted injunction order in favor of Respondent. Further submission has been made that there is a clear presumption that as the said land has not been converted by the competent authority u/s 143 of the Zamindari Abolition Act, therefore, it will be treated to be an agriculture land and the order of tehsildar dated 10.7.1981 being an order not passed by the competent authority, cannot be treated to be a valid order.

15. I have considered the submissions of Sri Anil Sharma, learned Counsel appearing for Appellant as well as Sri R.K. Srivastava, appeared for the Corporation and Sri M.A. Quadeer, learned Senior Advocate for the Respondents.

16. It is not in dispute from the record that Plaintiff has come with a case that

this property i.e. Mill belongs to Plaintiff's father i.e. Seth Pooran Chand and it was a joint Hindu family. The name of Sugar mill was Kundan Sugar Mill, Amroha which includes bungalows, grove lands, agriculture lands and various other buildings. There was some dispute, therefore, an arbitration took place which decided on 10.7.1968. According to Plaintiff they became an exclusive owner of the property in dispute on the basis of award. By enforcement of U.P. Sugar Undertaking (Acquisition) Act, 1971, on 3.7.1971, it was acquired by the State Sugar Corporation. According to Plaintiff it was not acquired, being fact that u/s 2-(h), agriculture land is exempted and from that date he is in possession of the property in dispute. Defendant interfered in cutting the crop, then suit for injunction was filed. From the allegation made in the plaint, it has been averred in Para 4 that it is a self-contained unit consisting of Bungalows, gardens, firm lands, out houses, guest houses, garages, servant quarters belonging to Hindu Undivided Family. From the description of property mentioned in the plaint, it has been mentioned that land on which the disputed crop is standing is towards south of Kundan Sugar Mill Amroha having boundary, towards north plot of Ravi Kumar, towards south boundary wall, towards east metal road and towards west boundary wall. In the written statement a specific denial was made that Plaintiff has not brought on record any khasra number or specified boundary of the disputed plot. Therefore, plaint is completely vague. A denial has also been made in the written statement that there is no agriculture land within the four walls of the Kundan Sugar Mill vested in the Sugar Corporation. A specific averment has also been made in Para 8 of the written statement that from 1969, receiver was appointed and subsequently it has been taken over and admittedly Plaintiff-Respondent remain out of possession of the property in dispute.

17. From perusal of provision of the Act, it is clear that due to sickness of these private mills, the State Government vide its assent of the Governor dated 24.8.1971 and vide gazette notification dated 22nd August, 1971 has acquired various private sugar factories where there were certain disputes or they were declared sick industries. In Schedule 1, name of Kundan Sugar Mill has been mentioned. From perusal of Section 2 (h)(vi) it is clear that all lands except the lands which are being cultivated and grove lands were exempted from acquisition. Section 3 provides that immediately on the appointed day, the undertaking shall by virtue of this Act, stand and to be deemed to have been transferred to the Corporation and possession immediately has been taken by the collector. In case, this was an agriculture land in possession of Plaintiff-Respondent, description of the property should have been mentioned properly to get a permanent injunction against Defendant-Appellant. From perusal of statement of PW-1 it is clear that he is not in a position to tell description of the property even he was not able to state before the Court in the cross examination that whether the property in dispute is situated in the vicinity of the boundary wall or not. In his cross examination he has stated that various bungalows are there towards east of the disputed plot but he was not able to state or show that any wall is there or not. If he was in possession of the property in dispute from

1968 immediately after the arbitration award as stated and he was doing cultivation work in the said property, he should have stated the number of said Arazi but he was not able to state the number. Even he was not able to state the Khasra number of the said property. Admittedly he was one of the party of the proceeding pending before the Tehsildar but he has stated that he was not aware regarding the order dated 8.10.1969.

18. Further from the map submitted which is part of the record as Ga 79-2 which clearly describes that there is a boundary wall of four corners of the mill. It is not the case of Plaintiff-Respondent that this property is outside of the vicinity of the boundary wall.

19. Further Amin report also dismantle the case of Plaintiff-Respondent that there is no plot towards north of Ravi Kumar as stated and there is no metal road as stated by Plaintiff-Respondent towards east. Further Amin has given a report that it is not an agriculture land. Admittedly, this report was part of the record and Amin has visited in presence of both the parties, therefore, if such report was filed, objection should have been filed but it is not the case of Respondent that any objection was ever filed by Plaintiff-Respondent.

20. From perusal of the provisions of U.P. Act No. 23 of 1971, it is clear that property vest in the sugar mill including the land pertinent except the agriculture land will vest in the corporation. Courts below have committed an error apparent on the face of record to have placed reliance upon the photo copy of the Khasra. Admittedly, no certified copy was ever filed. The ground taken that this property does not appear to be taken under the Acquisition Act that it is not mentioned in the inventory by the Collector in view of provisions of the Act. It appear that aforesaid finding is misreading of the provisions in view of fact that only agriculture and grove land has been exempted. Unless and until Plaintiff is able to prove that it is an agriculture land and cultivation is being made and identity of the land is identified, no injunction can be granted. Further the Apex Court in case of Shreepat (Supra) has clearly held that as there was a serious dispute with regard to the areas and boundaries of the land in question specifically with regard to its identity, courts below should have got identity established by issuing a survey commission to locate the plot in dispute and find out the exact boundary and location of the property in dispute. Further it has also to be verified that it is an agriculture land and exempted from provisions of the Act.

21. The Apex Court has further held that if that has not been done, it resulted in serious miss-carriage of justice. The Apex Court in Subhaga's case (supra) has also held that if on the basis of report of Commissioner, on the basis of admission of Defendant, trial court has decreed the suit in favor of Plaintiff then the High Court was not justified in interfering with the findings and discarding identification made by the Commissioner. Meaning thereby if on the basis of inspection by the court Commissioner, property has been identified then Plaintiff is entitled to get a relief but in the present case admittedly from the record it clearly appears that Plaintiff-Respondent was not able to prove the identification

of the property in dispute as well as whether it was an agriculture land or not and the boundaries of the property in dispute.

22. In such circumstances, I am of opinion that courts below were not justified in granting injunction in favor of Plaintiff-Respondent. In case, there was no identification of land it was the duty of the court to have identification through issuance of commission but admittedly, from the record, it clearly appears that courts below has not taken this Endeavour to get the property identified, therefore, in my opinion the judgment and order passed by the courts below dated 28.11.1990 passed by Vth Additional District Judge, Moradabad in Civil Appeal No. 139 of 1989 and decree dated 22.5.1989 passed by Munsif Amroha, District Moradabad are not sustainable in law and are hereby quashed. The appeal is allowed.

23. No order as to costs.