
(2004) 01 AHC CK 0120
In the Allahabad High Court
Case No : C.M.W.P. No. 4229 of 1978

Vishwanath

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Citation : (2004) 1 AWC 351

Hon'ble Judges : Yatindra Singh, J

Bench : Single Bench

Advocate : R.N. Singh, S.N. Singh, Rajendra Kumar and A.K. Rai, for the Appellant; R.S. Misra, S.K. Lal and Manu Vardhana and Ashish Srivastava, S.C., for the Respondent

Final Decision : Partly Allowed

Judgement

1. Yatindra Singh, J

1. The main question in this writ petition is, whether the compensation statement prepared under Chapter IX-A (Conferment of Sirdari Rights on Adhivasi) under U. P. Zamindari Abolition and Land Reforms Act, 1950 (the Act) can be challenged in separate proceedings, namely, the suit as in this case.

THE FACTS

2. Respondent Nos. 3 to 5 (the contesting respondents) filed a suit on 11.10.1955 against the petitioner u/s 202 of the Act for his ejectment. The allegations in substance are that :

? The property in dispute came in the share of their father Gopal Das in private partition and he was a person falling in one or more classes of Section 157 of the Act (that is a disabled person).

? The property in dispute was let out to the petitioner in 1353 F. and on that date the petitioners were minors consequently disabled persons.

? After abolition of Zamindari, the petitioner became asami of the property in dispute u/s 21 (1) (h) of the Act.

? The petitioner is wrongly recorded as sirdar, the record may be corrected and he may be evicted from the property in dispute.

3. The petitioner filed his written statement on 15.12.1955. In substance the allegations are that :

? Gopal Das, Pursottom and Gaya Prasad (the landholders) were the chief tenants of the property in dispute and the petitioner was their subtenant.

? There was neither any partition amongst the landholders nor were they disabled persons.

? Suraj Prasad (respondent No. 3) was not a minor and not disabled person.

? The petitioner being subtenant became adhivasi and sirdar u/s 20 (1) (a) of the Act and Section 21 (1) (h) was not applicable.

? The property in dispute was not identifiable on the spot and suit was liable to be dismissed on this ground also.

4. The petitioner filed an additional written statement on 22.11.1960. Leave to file it was allowed on the same date. The petitioner alleged that :

? The compensation statement has been prepared under Chapter IX-A of the Act and the contesting respondents have lifted the compensation.

? The decision in those proceedings was res judicata.

? The contesting respondents have lost all rights and title over property in dispute and the suit is liable to be dismissed.

5. During pendency of the suit, the proceeding for preparation of compensation statement under Chapter IX-A of the Act was undertaken. A compensation statement was prepared u/s 240D and was published u/s 240F in the official Gazette on 8.9.1956. No objection was filed and it was finalised on 10.4.1957. There was a clerical error in the official Gazette dated 8.9.1956, relating to name of the Pargana where the village was situate and a correction was published on 5.4.1958. The contesting respondents filed an objection u/s 240G of the Act on 7.12.1960 on the ground that :

? No notice was given to them.

? They had no knowledge about the compensation statement.

? They came to know about the same on 22.11.1960 when additional written statement was filed in the suit.

The contesting respondents sought condonation of delay and decision on merits.

6. The compensation officer rejected the objection of the contesting respondents

on 3.6.1964 as barred by time. The contesting respondents filed an appeal on 4.9.1964. This appeal was allowed on 9.10.1964 and the case was remanded for decision on merits. The appellate court recorded the following findings :

? The contesting respondents had no notice of compensation statement.

? They came to know about compensation statement on 22.11.1960, and their application was within time.

7. The petitioner filed a revision before the Board of Revenue. This revision was allowed on 31.1.1969 on the finding that objection was to be filed within one month of the date of publication of the compensation statement and as it was not filed within time, the objection was barred by time. The petitioner did not file any writ petition against the order however, the proceeding in the suit continued.

8. In the suit, the trial court framed following issues :

I. Whether the plaintiffs alone are bhumidhar of the land in suit by private partition?

II. Whether Gopal Das was a disabled person at the time of the settlement of the land in suit?

III. Whether the plaintiffs were disabled person at the time of sub-letting and on 9.4.1946?

IV. Whether the defendant is asami of the land in suit?

V. Whether the suit is bad for non-Joinder of necessary parties?

VI. To what relief, if any, are the plaintiffs entitled?

VII. Whether the land in suit is identifiable on the spot and if not its effect?

VIII. Whether the suit is within time?

IX. Whether the suit is barred by Section 11, C.P.C.?

X. Whether the suit is within limitation?

9. The suit was dismissed on 15.1.1973. The contesting respondents filed an appeal, which was allowed on 4.9.1973 and the case was remanded for redecision after making Gaon Sabha and State of U. P. also as a party. The trial court, after remand, dismissed the suit on 17.6.1974 on the following findings :

? The suit is not barred by Section 11 of C.P.C., as there is no finality attached with Chapter IX-A proceedings.

? The property was not identifiable on the spot.

? Even if it is taken that property was sub-let in 1353 F., there was no partition amongst the landholders by that year and they were not disabled persons.

? Suraj Prasad (respondent No. 3) was the eldest son of Gopal Das and was born

on 25.3.1931 and he was not minor on the date of vesting.

? The petitioner is not asami but was adhivasi/sirdar.

10. The contesting respondents filed an appeal. The appellate court allowed the appeal and decreed the suit on 17.12.1976. The first appellate court held that :

? The property was sub-let in 1353 F.

? The contesting respondents were minors (disabled persons) in 1353 F.

? The petitioner became asami u/s 21 (1) (h) of the Act and liable for ejectment.

However, the first appellate court neither upset the finding regarding partition amongst landlords nor regarding unidentifiability of the property recorded by the trial court. It assumed that the property was partitioned before 1353 F. The Court also did not record any finding whether the proceedings under Chapter IX-A were res judicata or not.

11. The petitioner filed a second appeal. The second appellate court held that :

? The property in dispute was let out in 1353 F, when Gopal Das father of the contesting respondents was not alive.

? The contesting respondents were minors in 1353 F.

? The proceedings for preparation of compensation under Chapter IX-A do not terminate the rights of the contesting respondents.

The present writ petition is against the order of the first and second appellate courts.

POINTS FOR DETERMINATION

12. I have heard counsel for the parties. The following points arise for consideration.

(i) Whether the proceeding under Chapter IX-A of the Act is final and the contesting respondents have lost all rights and title over the property in dispute (Issue No. 9).

(ii) Whether there was partition amongst the landholders and in case there was no partition, whether the landlords were disabled persons or not (Issue Nos. 1 and 4).

(iii) Whether the property in dispute is not identifiable and the suit is liable to be dismissed on this ground (Issue No. 7).

1ST POINT : THE CASE IS LIABLE TO BE REMANDED

13. The counsel for the petitioner submitted that :

(i) The Board of Revenue rejected the objections of the contesting respondents in Chapter IX-A on 31.1.1969. This proceeding has become final and the contesting

respondents have lost their all rights and title.

(ii) If the decision in the proceeding under Chapter IX-A of the Act was incorrect, then the contesting respondents ought to have filed writ petition against the same.

(iii) A wrong decision is res judicata as much as a right decision.

(iv) Chapter IX-A of the Act prescribes a procedure for filing of objection and for their decision. The landholder can challenge the finality of compensation statement in that proceeding only and not in any independent proceeding or suit.

The First Three Submissions--Finding Lacking

14. There is no dispute with the proposition that a wrong decision is also res judicata but this principle has no application here.

15. There was some debate whether the proceedings under Chapter IX-A of the Act preclude raising of dispute in separate proceeding by the landholder or not. This question was referred to a Full Bench, in Avdhesh Singh and Another Vs. Bikarma Ahir and Others, . The Full Bench has recorded its conclusion in the last paragraph of the decision. Conclusion Nos. (1) and (4) that are relevant here are as follows :

(1) Finality of compensation statement u/s 240J, U. P. Zamindari Abolition and Land Reforms Act extinguishes the rights and title of the landholder and the landholder is debarred from showing in collateral or separate proceedings that the land is not held by an adhivasi, except in cases where the * provisions of the Act have not been followed or where the compensation statement has been prepared in disregard of the fundamental principles of judicial procedure (Katikara Chintamani Dora and Others Vs. Guntreddi Annamaniaidu and Others, . If the requirements of the Act have not been complied with or the fundamental principles of judicial procedure have been disregarded, the compensation statement signed and sealed by the compensation officer u/s 240J (2) of the Act can be assailed in collateral proceedings.

.....
..... (4) The landholder against whom compensation statement has become final and who has received compensation has no locus standi to re-agitate his rights in respect of the land in question.

16. The Full Bench in the Avadhesh Singh case has held that compensation statement u/s 240G is final and extinguishes the rights of a landholder, Nevertheless it also clarifies in conclusion No. 1 that compensation statement can be challenged in collateral or separate proceeding where provision of the Act are not followed or where compensation statement was prepared in disregard of principles of judicial procedure. The present suit is undoubtedly a separate proceeding. The compensation statement can be challenged in this suit in case conditions mentioned in the first conclusion of the Avadhesh Singh case are not

fulfilled.

17. The counsel for the petitioner also cited *Rajendra Pratap v. D.D.C.* 1980 (6) ALR 452 (the *Rajendra Pratap* case) and submitted that finality of compensation statement under Chapter IX-A will nullify even a civil decree and will bind the revenue court in this case, He also relied upon following observations of this case :

"In view of the decision of the Full Bench in *Avdhesh Singh and Anr. v. Bikram Ahir and Ors.* (supra), there is no escape from the conclusion that if the petitioners did not raise any objection before the compensation officer or raised an objection but failed, in either case, the compensation statement which has become final could, be taken into consideration while adjudicating on the rights of the parties and the effect of the civil court decree would be nullified."

18. The *Rajendra Pratap* case is distinguishable ; the landholder had lifted the compensation awarded. This is clear from the following finding recorded by the Court in the *Rajendra Pratap* case :

"One thing is quite certain that the compensation amount has been received by the petitioners in the year 1961 when the civil suit was filed in the year 1954. Obviously, therefore, the receipt of the amount of the compensation took place much after the filing of the civil suit".

Once the landholder receives the compensation then according to the 4th conclusion of the *Avadhesh Singh* case, he is debarred from challenging the finality of the compensation statement. In this case there is no finding that the compensation has been taken by the contesting respondents.

19. The counsel for the contesting respondents has brought to my notice Section 240F and Rule 193E (ii) and submitted that :

? Service of the preliminary compensation statement was mandatory on the landholders under the Act and is so clarified under the Rule 193E.

? There is neither any service of the preliminary compensation statement on the contesting respondents nor they had any knowledge of the same.

? The Commissioner (in Chapter IX-A proceeding) had held that no notice was served and had allowed the objection to be decided on merits, however, it was set aside on the technical ground. There is no decision on merit of the case.

? The contesting respondent had filed a suit much before proceeding under Chapter IX-A and some Court or authority has to decide the controversy on merits.

20. There is no finding on merit in Chapter IX-A proceeding. A landholder can be estopped from raising any dispute in separate proceeding provided he had knowledge of the proceeding under Chapter IX-A of the Act : it has been so held in the *Avdhesh Singh*. case. Knowledge of proceeding would be presumed if

preliminary compensation statement u/s 240F of the Act (read with Rule 193E (ii) of the Rules) is served on the landholder. These provisions make it clear that compensation statement should be served on the landholder. There is no finding that the contesting respondents had knowledge about the proceeding under Chapter IX-A of the Act or notice was served on them. In absence of such findings, it cannot be held that compensation statement has become final and the case has to be remanded for recording necessary findings.

Observations in The First Conclusion--Not Passing Remarks

21. The counsel for the petitioner submitted that the observations in conclusion No. (1) in the Avadhesh Singh case regarding challenging the compensation statement in collateral or separate proceeding are merely passing remarks, (obiter dictum) and are not reasons for decision (ratio decidendi). They are not binding on me.

22. It is not correct to say that observations regarding collateral or separate proceeding in conclusion No. (1) are merely passing remarks. They are reasons for the decision of the Full Bench and are binding upon me. This Full Bench and the conclusion has also been upheld by the Supreme Court in Ram Autar v. D.D.C. 1991 AWC 196 (the Ram Autar case) and Abdul Qadir (dead) by L.Rs. v. Smt. Maimoona Khatoon (dead) by L.Rs. Abdul Quadir (dead) by LRs. Vs. Smt. Maimoona Khatoon (dead) by LRs. and others, .

23. In the Ram Autar case an objection was raised before the consolidation authorities regarding finality of compensation statement under Chapter IX-A of the Act. The consolidation proceedings are proceedings separate than the proceeding for compensation under Chapter IX-A of the Act and are akin to a suit. The Supreme Court after considering the Avadhesh Singh case remanded the case to the consolidation authorities to consider if the landholder in that case had any knowledge of the proceeding under Chapter IX-A of the Act or not. This shows that, even according to the Supreme Court, the finality of the compensation statement can be challenged in separate proceeding in case the landholder had no knowledge of the same or notice was not served.

24. In view of above, the decisions given by the first and second appellate court dated 9.5.1978 and 17.12.1976 are illegal. The case is remanded to the first appellate court to record its finding on issue No. 9, after recording finding necessary to decide the case in light of conclusions Nos. 1 and 4 recorded in the Avadhesh Singh case. It would be open to the parties to lead their evidence in this light. The first appellate court may do it itself or remand this issue to the trial court for recording its finding on this issue after recording evidence.

2ND AND 3RD POINTS : FINDING REGARDING PARTITION AND IDENTITY OF LAND--MAY BE RECORDED AGAIN

25. The petitioner claims that the case is covered by Section 20 (a) of the Act whereas the contesting respondents claim that it is covered by Section 21 (h) of

the Act. Section 21 (h) of the Act overrides Section 20 (a) of the Act. A sub-tenant (the petitioner is a sub-tenant) from persons who belong to any class mentioned in Section 157 (disabled persons) on the relevant date becomes asami. The trial court had recorded a finding that there was no partition amongst the landholders and they were not disabled persons. The first and second appellate court without any reasoning assumed that there was partition and property had come to the share of Gopal Das. The finding regarding partition should be recorded before deciding issue Nos. 1 and 4.

26. The case is being remanded to the first appellate court for recording finding. In view of this, I would like to point out a mistake committed by the trial court. The trial court wrongly assumed that the relevant date for disability u/s 21 (h) is the date of vesting under Sub-section (a) of Section 21 (h) [21 (h) (a) of the Act], the relevant dates are the date of subletting and 9th April, 1946. Under Sub-section (b) of Section 21 (h) [21 (h) (b) of the Act], it is the date of subletting. The date of vesting is not relevant. The courts below will keep it in mind while recording their finding.

27. The courts below have recorded a finding that the subletting took place in 1353 F. when Gopal Das was not alive. There is no illegality in this finding. It is upheld and will not be reopened again.

28. All courts have recorded a finding that Suraj Prasad (respondent No. 3) was the eldest son of Gopal Das and was born on 25.3.1931 ; the other sons of Gopal Das, namely, Shyam Kartik and Gajanand (respondent Nos. 4 and 5) were born after him. This means that all of them were minors and disabled persons in 1353 F. (when subletting took place) and 9th of April, 1946. There is no illegality in this finding. This finding will also not be reopened again.

29. The trial court, while considering issue No. 9, had recorded a finding that the property in dispute is not identifiable. This finding is neither upset by the first appellate court and the second appellate court nor its effect has been seen. The Court may record a finding on this issue.

CONCLUSION

30. My conclusions are as follows :

(i) The observations in conclusion No. 1 of the Avadhesh Singh case are not obiter and are binding on me.

(ii) The compensation statement can be challenged in separate or collateral proceeding on the conditions mentioned therein.

(iii) The courts below have not recorded necessary finding to apply the Avadhesh Singh case.

(iv) The first and second appellate courts have illegally decreed the suit without reversing the findings on partition and identification of the property.

31. In view of my conclusions, the writ petition is partly allowed. The case is remanded back to the first appellate court. The first appellate court may record finding again as indicated in this judgment. The findings that have been made final in the judgment will not be reopened. The appeal may be decided in accordance with law. The parties may appear before the first appellate court on 23.2.2003. With these observations the writ petition is partly allowed.