Nibaran Chandra Bag Etc.

Vs

Mahendra Nath Ghughu

Civil Appeals Nos. 105 & 106 of 1960

(Syed Jafar Imam, N. Rajgopala Ayyangar, J. R. Mudholkar JJ)

28.11.1962

JUDGMENT

AYYANGAR, J. –

These two appeals by special leave arise out of a single judgment of the High Court at Calcutta. That judgment was rendered in a petition under Art. 227 filed by the appellant in Civil Appeal No. 105 of 1960.

The proceeding out of which the appeals arise was an application made by Mahendra Nath Ghughu (whom we shall refer to as the respondent) before the Assistant Settlement Officer, 24, parganas, objecting to certain entries in a draft Record-of-rights prepared and published under the West Bengal Estates Acquisition Act, 1953 (W.B.I of 1954) relating to Nibaran Chandra Bag (to be referred to as the appellant). Section 44(1) of that Act enacts :-

> 44. (1) When a record-of-rights has been prepared or revised, the Revenue Officer shall publish a draft of the record so prepared or revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication.
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> (2) When all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally frame the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.
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> (3) Any person aggrieved by an order passed by a Revenue Officer on any objection made under Sub-Section (1) may appeal in the prescribed manner to a Tribunal appointed for the purpose of this section, and within such period and on payment of such court fees as may be prescribed.

A draft record-of-rights had been prepared in respect of lands in the village of Howramari and it was left for public inspection as prescribed by the rules.

The application of the respondent was concerned with the entries in relation Khaitan No. 52. In the draft as published the name of the appellant had been recorded as "a raiyat" in respect of

approximately 1500 bighas of land most of which consisted of a fishery. On August 29, 1955, within the time limited for receiving objections under s. 44(1) of the Act, the respondent filed an objection by which he prayed that in place of the appellant his own name may be entered as the "raiyat" on the ground that he himself had been in enjoyment and possession of 1200 bighas of this land as a fishery and the rest of the 300 bighas by cultivating it with paddy etc. This objection was registered by the Assistant Settlement Officer. Subsequent thereto and before the petition of objection was disposed of, the respondent filed an amendment to the petition and in this he prayed for a modified relief that the name of the appellant should be recorded as a tenure holder and his own as a lessee under him. The appellant raised no objections to this amendment being allowed and the enquiry in regard to the respondent's petition proceeded before the Assistant Settlement Officer. We shall have occasion to refer to the details of the enquiry before this Officer as well as of the order that he passed but to this we shall turn after narrating the history of the proceedings which have led to the appeals before us.

On the material placed before him, the Assistant Settlement Officer recorded two findings :-

> (1) That the status of the appellant was not that of a raiyat but of a permanent Mokarari tenure holder and accordingly directed such an entry in Khatian No. 52 being recorded.
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> (2) He found that the respondent was a temporary lessee under the appellant and accordingly directed a subordinate Khatian to be opened in which it would be recorded that the respondent was a temporary lessee for a period of two years during the period January 1954 to January 1956 at a rental of Rs. 25,000/- per year.

Under the powers contained in s. 44(3) the District Judge having jurisdiction of the area was the authority to whom appeals could be preferred. The appellant availed himself of this remedy. The learned District Judge dismissed the appeal affirming both the above findings of the Assistant Settlement Officer. The appellant thereafter invoked the jurisdiction of the High Court under Art. 227 of the Constitution. The learned Judges by their judgment now under appeal upheld the order of the Assistant Settlement Officer in so far as it altered the entry relating to the status of the appellant from a raiyat to that of a tenure holder, but they reversed the order of the Assistant Settlement Officer in so far as he directed the opening of a sub-khatian and the entry therein of the name of the respondent as a temporary lessee. The learned Judges held that there was no material on the basis of which it could be held that the respondent was a temporary lessee. Appeal 105 of 1960 is by the appellant and it seeks to question the correctness of the judgment of the High Court affirming the direction to record the name of the appellant as a tenure holder, while appeal 106 of 1960 is by the respondent and calls in question the jurisdiction and propriety of the High Court's interference with the concurrent findings of the Revenue Tribunals, which had held that the respondent was a temporary lessee for a period of two years on the rent stated earlier.

Mr. Chatterjee, learned Counsel for the appellant, submitted that the learned Judges of the High Court should have set aside the entry recording the appellant as a tenure holder, and dismissed in its entirety the objections filed by the respondent. The status of the appellant as a raiyat, he urged, lost all meaning and significance after the amendment of the objection petition filed by the respondent. The objection originally filed by the respondent sought the entry of respondent's name in place of the appellant. The appellant's name had been entered as a raiyat under one Bhudeb Sarkar, a tenure holder since he was in possession under a registered patta dated February 2, 1944, and his name had continued as a raiyat from that date and this was repeated in the published draft record of rights. By

the amendment filed in September 1955, the respondent abandoned the original objection and was content to have his name recorded as a lessee. The argument was that the only party who was interested in challenging the status of the appellant was the Government of West Bengal, since if the appellant was an intermediary as a tenure holder, his interest would vest in them under the Abolition of Estates Act, but the Government not having evinced any interest in disturbing his title the entry should not have been interfered with.

He further submitted that the orders passed by the High Court allowing the appellant's petition in part was not logical and that the High Court having held that the respondent had not established his claim as a lessee, not therefore deriving any benefit of the objections that he filed, should have set aside the order entering the appellant's name as a tenure holder.

We are not disposed to agree with these submission. In the petition of amendment which he filed on September 17, 1955, the respondent had pleaded : "The status of the opposite party should have been recorded as that of a tenure holder in accordance with the documents on which the opposite party relies and in accordance with the Khatian of the last district settlement survey.

> "This objector, having been fully aware of the aforesaid matter during the hearing of the case on the previous date, raised objection to the status of the opposite party and the same is indeed a legal objection."

In his order dated November 25, 1955, allowing this amendment, the Assistant Settlement Officer specifically noted that "the opposite party (the appellant) also gives his consent, i.e., to the amendment being allowed. It would therefore be seen that one of the items of objection to the record of rights raised by the respondent related to an error in the description of the status of the appellant as a raiyat. It would further appear that the appellant then raised no objection to the examination by the officer to the correctness of that entry. This apart the Assistant Settlement Officer, the District Judge and the learned judges in the High Court have adduced several cogent and convincing reasons for the finding that the appellant was a tenure holder and not a raiyat. Mr. Chatterjee made no attempt to attack this conclusion or the reasoning on which it was based. His only submission was that the order of the learned Judges in the High Court in this respect was illogical since their order in regard to the status of the respondent as a lessee they had deprived him of all benefit arising from his objections under s. 44(1) of the Act. This last argument about the illogicality in the order of the High Court has little merit and such as it has, would depend on the respondent's appeal (C.A. 106/60) being dismissed. In view however of the order we propose to pass in that appeal, the submission would have no force. We are satisfied that the Assistant Settlement Officer had jurisdiction to decide the objections raised by the respondent to the draft record-of-rights in so far as it related to the status of the appellant. In these circumstance, we do not consider that there is any substance in the appeal of 105/60 questioning the correctness of the entry by which the appellant was shown as a tenure holder instead of as a raiyat.

What remains to be dealt with is Appeal 106 of 1960 which raises for consideration the propriety and correctness of the interference by the learned Judges with the concurrent findings of the Assistant Settlement Officer and the District Judge that the respondent Ghughu was a temporary lessee for two years at a rental of 25,000 rupees a year.

Before proceeding further it is necessary to notice that the matter was brought up before the High Court by Petition under Art. 227 of the Constitution. The jurisdiction conferred by that Article is not by any means appellate in its nature for correcting errors in the decisions of Subordinate Courts or

Tribunals but is merely a power of superintendence to be used to keep them within the bounds of their authority, vide Nagendra Nath Bora v. Commissioner, Hills Division, Assam [[1958] S.C.R. 1240.]. It was the submission of the learned counsel for the respondent (Appellant in C. A. 105/60) that the High Court exceeded its jurisdiction in interfering what at the worst was a mere error in the appreciation of evidence and that in fact there was enough material for the finding which the Revenue Tribunals had reached, as regards the lease.

The case of the respondent was that he was a lessee under the appellant, in respect of the entire 1500 bighas of land from January 1954. He alleged that he had paid Rs. 95,000/ as Salami and that the rent had been fixed at Rs. 18,500/- per year. He further alleged that after he obtained possession under the lease, he had been using 1200 bighas of land as a fishery and the rest of the 300 bighas for growing paddy and it was on the basis of these facts that he claimed the status of a raiyat. That the respondent was in possession of this area from January 1954 was not disputed by the appellant but his case was that the respondent was his manager on a monthly salary of Rs. 100/-. Thus, the point of difference between the appellant and the respondent was only as regards the title under which the respondent was in possession. In support of the respondent's case he examined the President and the Vice-President of Sarangabad, U.P. to prove payment of tax in his name, and he produced the records of certain criminal proceedings between him and third parties in which he had been described as a lessee both by the other parties as well as in the reports submitted by police officers. Besides, he produced copies of proceeding under s. 144 Criminal Procedure Code, between himself and the appellant in which there had been a compromise which according to him resulted in or confirmed his possession as a lessee. It also appears that both the appellant and the respondent examined themselves before the Settlement Officer.

The reasoning upon which the Assistant Settlement Officer proceeded to arrive at his finding was shortly this :

That possession of the land with the respondent from 1954 being admitted the only question for consideration was whether he was a lessee as was sought to be proved by him or whether he was merely a manager and caretaker in the employ of the appellant in receipt of a monthly salary. The appellant produced his accounts for a period anterior to 1954 disclosing payments of salary to one Dhirandra Nath Pramanik his then Manager but he produced no accounts covering the period when the respondent was in possession, which would establish, if the appellant's case was true, that the respondent was his manager. From the non-production of these accounts, the Assistant Settlement Officer drew an inference adverse to the appellant. This conduct of the appellant was certainly a relevant material which the officer could have taken into account. Secondly, in a criminal case between these very parties under s. 144 Code of Criminal Procedure (Case No. P.T. 1925), a joint statement was made that the respondent had some time anterior thereto paid the appellant a sum of Rs. 3000/- "as advance". The receipt of this sum was admitted. It was the case of the respondent that this was a payment towards rent under a lease, but this was denied by the appellant, who urged that this was in part the damages or means profits due to him. The production of the appellant's accounts which recited the receipt of this sum might have cleared the matter, but he chose not to produce them. From this again the Officer drew an inference adverse to the appellant. Besides these pieces of evidence there were descriptions of the respondent as lessee in several criminal proceedings between the respondent and third parties. Lastly, there were criminal proceedings between the appellant and the respondent in regard to the possession of these very lands and this dispute was agreed to be referred to the arbitration of the Sub-Divisional Officer. We do not have the award, but the two parties agreed to it and embodied the terms thereof in a signed memorandum of compromise and this provided inter alia, "that the respondent would pay the appellant Rs. 50,000/- in four

instalments ending with January 1956" specifying the dates on which these instalments had to be paid, and it added : "The men of the first party (Appellant) will be entitled to inspect the two granaries containing paddy belonging to the first party standing on the said Bhori for the purpose of looking after them," and finally wound up saying : "the second party (Respondent) will no longer have title and concern of any sort in respect of the said Bhori."

The Assistant Settlement Officer construed this compromise as meaning that the respondent was to be in possession for two years as lessee, i.e., during the period during which the four instalments were to be paid and to relinquish possession after January 1956 when the last instalment would have been due and paid, and it was on this basis that he held that the transaction amounted to a temporary lease for 2 years on an annual rental of Rs. 25,000/-. The learned District Judge upheld these findings and considered that all the above pieces of evidence justified the conclusion reached by the Assistant Settlement Officer. When the matter was before the High Court, the learned Judges analysed the evidence and held that the statements in the criminal proceedings in which the respondent had been described by third parties as lessee were inadmissible in evidence and irrelevant for the purpose of proving his status and also that the Assistant Settlement Officer and the District Judge had misconstrued the compromise. The learned Judge further pointed out :

> (1) that the respondent had set up a case of a lease on a rental of Rs. 18,500/- per year and that the temporary lease for two years found by the officer was inconsistent with such a pleading, and (2) that the compromise on its proper construction did not constitute the respondent a lessee temporary or otherwise and the courts below had misinterpreted the terms of that document. On reaching these conclusions the learned Judges set aside the entry of the respondent's name in the sub-Khatian as a temporary lessee. We consider that the learned Judges were not justified in the course they took in interfering with findings of the Revenue authorities. They were not sitting as a court of appeal and had merely to consider, firstly, whether the tribunals had out-stepped the limits or their jurisdiction, or secondly, whether the findings recorded were based on no material, or were otherwise perverse. We are clearly of the opinion that the orders of the Revenue authorities did not suffer from any of these infirmities. In the first place no significance can be attached to the fact that the finding recorded is not in line with the pleading or the case set up by the respondent. It is true that the respondent had prayed for a more favourable relief, namely, a longer tenure and on a lesser rental but if the evidence placed before the tribunal justified the granting of a lesser relief, there was no reason why such relief should be denied. Nothing therefore turns on the fact than the relief granted was different from that claimed by the respondent. The more substantial point is whether the learned Judges were right in holding that there was no material on which the authorities could find that the respondent was a temporary lessee. The respondent having admittedly been in actual possession of the property, the only controversy related the character in which he was in possession. Even if the description of the respondent as lessee by third parties in the several criminal proceedings be discarded as res inter alios acta, it was certainly within the jurisdiction of a Settlement Officer to appraise the truth of the story of the appellant who claimed that the respondent was his Manager on a salary of Rs. 100/- a month. No just exception would be taken to the action of the Officer in drawing an inference adverse to the appellant from the non-production of his accounts to prove the payment of salary to the respondent, or that relating to the receipt of Rs. 3000/- referred to as "an advance". If so, the Officer could legally accept the respondent's case that he was a lessee and not a Paid Manager and that his possession was

attributable to that character.

The next question would be as to the terms of that lease - as regards the duration and rent. The evidence disclosed by the compromise and the criminal proceedings between the parties militated against the complete acceptance of the respondent's case. The criminal proceedings arose because of the dispute raised by the respondent that he was a lessee, but under the compromise following the award by the S.D.O. he agreed to give up possession at the end of 2 years and to have nothing more to do with the property after that date. From these circumstances, the Settlement Officer inferred that the title as lessee which was put forward by the respondent had been conceded to a limited extent, namely, that he was to remain in possession only till January 1956. Taken in conjunction with the antecedent history, it would not be an unreasonable inference to draw that the character in which the respondent was to remain in possession till he undertook to quit was as a lessee. It would therefore be not correct to say that there was no material to support the finding. If the order could be sustained to that extent, the fixation of the rent at Rs. 25,000 a year is not of much significance, because that was arrived at merely on the basis of the figure mentioned in the memo of compromise.

Even assuming that the Revenue Tribunals erred in their interpretation of the compromise, it could not be a ground on which their finding could be set aside under Art. 227, in view of the fact that the compromise was but one of the several items of evidence on which the finding was based. If thus their was material, the order could not be characterised as perverse to permit of interference. We, therefore, consider that there was no justification to interfere with this concurrent finding of the revenue Tribunal.

Before concluding it is necessary to deal with one matter which has also been adverted to by the learned Judges of the High Court. It concerns the method adopted by the Assistant Settlement Officer in the conduct of this enquiry. From his order it would appear that the two parties before him adduced oral evidence by examining witnesses. He however made no record of this evidence, so that one is not in a position to ascertain with exactness what each witness deposed - except in so far as any reference is made to it in the order. The learned Judges an inadverted on this feature and we concur with them that this is far from satisfactory. Learned Counsel for the respondent drew to our attention the rules which have been framed under s. 59 of the Act which lay down the procedure to be followed by Revenue Officers conducting these inquiries, (Rule 30(2) read with Rule 17(2) and pointed out that these rules did not require any record being kept of the evidence adduced and that in the absence of any such statutory provision there was no need for these tribunals to follow the procedure adopted by regular courts and that it could not be said that any principle of natural justice was violated by such a record not being kept. We agree that the maintenance of a record of the oral evidence adduced is not the requirement of any specific rule. It should not however be forgotten that the order passed in an enquiry into an objection filed under s. 44(1) of the Act is subject to an appeal under s. 44(3) to a prescribed Tribunal as authority. That appeal lies both on the facts as well as on any legal questions which might arise and be decided and is not confined to any particular grounds. It is therefore, manifest that the appeal is intended to be a real remedy, affording full relief to the party aggrieved. For such an appeal to be effective, the party aggrieved must be in a position to canvass the propriety and correctness of the reasoning of the tribunal of first instance before the appellate authority and it would be obvious that it could not be done satisfactorily unless the party is in possession of the materials on which the conclusions of the first tribunal are based and reasons are recorded for the order. In fact the order of the tribunal cannot normally be successfully impugned unless the materials on which that order is based is placed before the appellate authority. It is therefore apparent that a record of the evidence would be as necessary as a reasoned order - for a statutory right of appeal to be of any real value. We therefore consider that it

is implicit in the provision granting an appeal from the order of the revenue officer that even if the rules do not so provide, he should so conduct it that the right of appeal granted by the statute is not nullified. In saying this we should not be understood to mean that he is bound to follow the procedure prescribed for civil courts for the recording of evidence. Only he should maintain some record from which the appellate authority would be able to gather the materials which the officer had before him in arriving at the decision which is the subject of the appeal.

The result is that Civil Appeal 105/60 fails and is dismissed, while Civil Appeal 106/60 succeeds and is allowed. As a result of the orders passed in these two appeals the revision under Art. 227 preferred by the appellant to the High Court will stand dismissed.

The respondent will be entitled to his costs in this Court (one hearing fee).

C.A. No. 105 of 1960 dismissed.

C.A. No. 106 of 1960 allowed.

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