Sukhram Singh and Another

Vs

Smt. Harbheji

Civil Appeal No. 666 of 1966

(CJI M. Hidayatullah, G.K. Mitter JJ)

19.02.1969

JUDGMENT

HIDAYATULLAH, C.J. -

1. The parties in this appeal are the same as in Civil Appeal No. 286 of 1966 which we declared to have become infructuous because of the operation of Section 5 of the Uttar Pradesh Consolidation Act. The judgment in that appeal was delivered by us on February 7, 1969. For the narration of facts in this appeal we have, however, referred to certain orders which were passed by the High Court from the sister appeal. The parties to this appeal as in the other appeal are Sukhram Singh and Laiq Singh of the one part and Smt. Harbheji of the second part. These two parties have been fighting a long drawn litigation over khata No. 271 of village Shahgarh. Two separate proceedings took place before the Revenue Courts and reached this Court by way of special leave, one of which has been disposed of and the other is now before us. The points involved in this appeal are short but in view of the length of litigation a long narration is necessary.

2. On March 10, 1954 Smt. Harbheji as bhumidar filed a suit (No. 38 of 1954), under Section 202 of the U.P. Zamindari Abolition and Land Reforms Act, 1955, against the other party in the court of the Assistant Collector, 1st Class, Aligarh. The allegation in the suit was that Sukhram Singh and Laiq Singh were asamis who were leased the khata in 1947 from year to year. Smt. Harbheji asked for their ejectment from the khata. The defence of the other side was that occupants were adhivasis. The Land Reforms Act was passed in 1951. Under the Act the intermediaries were abolished and their rights and title vested in the State from July 1, 1952. The Act was later amended from time to time and we are concerned with one such amendment made by the U.P. Land Reforms Act XI of 1954 which came into force on October 10, 1954.

3. Reverting to the facts, the Suit No. 38 of 1954 was dismissed by the Assistant Collector, 1st Class, Aligarh on April 20, 1956, and it was held that Sukhram Singh and Laiq Singh were not asamis and therefore not liable to ejectment. On appeal the Civil Judge of Aligarh allowed it on February 1, 1957 and declared Sukhram and Laiq Singh to be asamis. A second appeal in the High Court before a single Judge succeeded on February 19, 1958. Sukhram Singh and Laiq Singh were again declared to be adhivasis. A Letters Patent Appeal was filed in the High Court. Meanwhile the Consolipation of Holdings Act was brought into force in this area and a notification under Section 4 of the consolidation of Holdings Act declaring village Shahgarh area to be under consolidation was published on November 11, 1961. The appeal in the High Court was decided on February 8, 1962. It appears that the arguments were already heard and the case was reserved for judgment when the notification came into force. The learned Judges did not apply Section 5 of the Consolidation of Holdings Act which provides that on notification issuing, any suit, proceeding or appeal must be

taken to have abated. The Division Bench gave its decision reversing the judgment of the single Judge. As a result Sukhram Singh and Laiq Singh were again declared to be asamis. An appeal was then brought to this Court by special leave and it is that appeal which we declared had become infructuous by reason of the abatement of the suit. This was the end of the proceedings under Section 202 of the Land Reforms Act.

4. Meanwhile Smt. Harbheji as bhumidhar was entitled to compensation for the extinguishment of her rights. The Compensation Officer prepared a preliminary statement under Section 240-F and showed Sukhram Singh and Laiq Singh a adhivasis. Smt. Harbheji filed an objection under Section 240-G, but on the date of hearing (October 25, 1956), she did not appear before the Compensation Officer who dismissed her objection holding that Laiq Singh and Sukhram Singh had adhivasi rights and the objector had no interest in the land. The statement of compensation was also confirmed on the same date. In the consolidation proceedings Smt. Harbheji applied for correction of the records under Section 10(1) of the Consolidation of Holdings Act. This matter was decided by the Consolidation Officer, III, Khera Narainsingh on March 7, 1963. The objection filed by Smt. Harbheji was dismissed. On appeal the Settlement Officer (Consolidation), reversed the above decision on June 14, 1963, holding that Sukhram Singh and Laiq Singh were asamis. The Deputy Director of Consolidation, exercising the powers of the Director of Consolidation, Uttar Pradesh, dismissed the revision petition on September 20, 1963, filed by Sukhram Singh and Laiq Singh. The present appeal is from the last decision by special leave.

5. Two points were argued before us, namely, that Smt. Harbheji was not entitled to the benefit of Section 21 as amended by Act XX of 1954 and secondly that the order of the compensation Officer made on October 25, 1956, had finally decided the status of Sukhram Singh and Laiq Singh as adhivasis and not having been appealed against, the question cannot now be reopened. We shall take these points one by one.

6. The U.P. Zamindari Abolition and Land Reforms Act was amended in 1954 by the above amending Act in several respects. We are only concerned with the amendment of Sections 21 and 157 and the addition of Chapter IX-A. Section 21 leaving out portions not necessary for our purposes provides after the amendment as follows :

> "Section 21. - Non-occupancy tenants, sub-tenants of grove-lands and tenant's mortgagees to be asamis.
>
> (1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as -
>
> # X X X X##
>
> (h) A tenant of sir land referred to in sub-clause (a) of clause (i) of the Explanation under Section 16, a sub-tenant referred to in sub-clause (ii) of clause (a) of Section 20 or an occupant referred to in sub-clause (i) of clause (b) of the said section where the landholders or if there are more than one landholder, all of them were person or persons belonging -
>
> # X X X X##
>
> (b) if the land was let out or occupied on or after the ninth day of April, 1946, on the date of letting or occupation,

to any one or more of the clauses mentioned in sub-section (1) of Section 157,

shall be deemed to be an asami thereof."

Before the amendment the corresponding part of the section read as follows :

"Section 1. - (1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as -

X X X X##

(h) a tenant of sir or land referred to in sub-clause (a) of clause (i) of the Explanation under Section 16, a sub-tenant or an occupant referred to in Section 20, where the landholder or if there are more than one landholder all of them were person or persons belonging, both on the date of letting and on the date immediately preceding the date of vesting, to any one or more of the classes mentioned in sub-section (2) of Section 10 or clause (e) of sub-section (1) of Section 157,

shall be deemed to be an asami thereof."

7. The difference between the two sections material for our purposes lies in the mention of all clauses of Section 157, sub-section (1) after the amendment whereas before the amendment only clause (e) of sub-section (1) of Section 157 was mentioned. Section 157 also was amended. Again for the purposes of this case it is not necessary to reproduce the whole of the section. It read before the amendment as follows :

"Section 157. - (1) A bhumidhar or a sirdar or an asami holding the land in lieu of maintenance allowance under Section 11, who is -

(a) an unmarried woman, or if married, divorced or separated from her husband, or a widow;

(b) a minor whose father has died;

(c) a lunatic or an idiot;

(d) a person incapable of cultivating by reason of blindness or other physical infirmity;

(e) prosecuting studies in a recognised institution and does not exceed 25 years in age;

(f) in the Military, Naval or Air Service of the Indian Dominion; or

(g) under detention or imprisonment,

may let the whole or any part of his holding."

After the amendment it reads as follows :

"Section 157. - Lease by a disabled person. - (1) A bhumidhar or a sirdar or an asami holding the land in lieu of maintenance allowance under Section 11 who is -

(a) an unmarried woman, or if married, divorced or separated from her husband or whose

husband suffers, from any of the disqualifications mentioned in clause (c) or (d) or a widow;

(b) a minor whose father suffers from any of the disqualifications mentioned in clause (c) or (d) or has died; and

(c) a lunatic or an idiot;

(d) a person incapable of cultivating by reason of blindness, or other physical infirmity;

(e) prosecuting studies in a recognised institution and does not exceed 25 years in age and whose father suffers from any of the disqualifications mentioned in clause (c) or (d) or has died;

(f) in the Military, Naval or Air Service of the Indian Dominion; or

(g) under detention or imprisonment,

may let the whole or any part of his holding."

8. The difference here is that a lease by a woman although married was possible if here husband was suffering from insanity or idiocy or was a person incapable of cultivating by reason of blindness or other physical infirmity. Smt. Harbheji in her applications wished to take advantage of the amendments of Section 21 and 157 on the ground that her husband was suffering from sinus and helcoid from physical infirmity and was incapable of cultivating the land. The difficulty arises because the Legislature while making the amendment made the amendment in clause (h) of Section 21 restrospective from the date of the passing of the Abolition Act but in Section 157 it did not expressly state that the amendments were restrospective. The short question that arises is whether Section 157 when read with Section 27 also becomes retrospective notwithstanding that there are no express words of retrospectivity.

9. The second point is concerned with the addition of Chapter IX-A which is headed Conferment of Sirdari Rights on Adhivasis. The grounds on which the ejectment of an adhivasi could be made were contained in Section 234 of the Land Reforms Act but none of the grounds applies here. Thus if Sukhram Singh and Laiq Singh were adhivasis they could not be ejected by Smt. Harbheji, but if they were only asamis then the ejectment could take place because they were only tenants from year to year. Chapter IX-A added Sections 240-A to 240-N. It provides that the Government may by a notification declare that the rights, title and interest of the landholders in the land held by adhivasis shall cease and vest in the State and also provides for payment of compensation to the landlord whose rights, title or interest in the land are acquired. The compensation statement is required to be published under Section 240-F and Section 240-G gives a right to any person interested to file objections. Section 240-H deals with the procedure for disposal of the objections under Section 240-G. It provides that the Compensation Officer shall frame an issue regarding it and refer it for disposal to the Court which has jurisdiction to decide a suit under Section 229-B, read with Section 234-A, and that thereupon all the provisions relating to the hearing and disposal of such suit shall apply to his reference as if it were a suit. Section 229-B provides that any person claiming to be an asami of the whole or a part of it may sue the landlord for a declaration of his rights as asami. Sub-section (3) of the same section provided that the provisions are to apply mutatis mutandis to a suit by a person claiming to be sirdar (adhivasi). Section 234-A then provides that the provisions of Section 229-B mentioned above shall apply to an adhivasi as if he were an asami. Schedule II to the Land Reforms Act in Item 34 appoints the Assistant Collector, 1st Class, as competent court for the

trial of suits for declaration of rights under Section 229-B. The Schedule also provides for an appeal to the Commissioner from the order and to the Board of Revenue by a second appeal.

10. In the present case the Compensation Officer who passed the order on October 25, 1956, was also Assistant Collector, 1st Class, but he did not refer the case to himself after framing an issue and hence his order has been treated to have been passed by him in his capacity as a Compensation Officer.

11. We will now come to the question whether Section 157 also operates retrospectively with Section 21. The latter was made restrospective expressly. The High Court in the Division Bench decision held that Section 157 was also retrospective by implication. The contention of the appellants is that Smt. Harbheji was not entitled to take the benefit of the amendment and to plead that she could let out her sir land because her husband was suffering from an infirmity and was not able to look after the cultivation. If Smt. Harbheji is entitled to plead the amended section then under Section 21 Sukhram Singh and Laiq Singh must be treated as asamis because that is what Section 21 enacts. If the unamended section is to be read with Section 21 then the contrary result is reached.

12. Now a law is undoubtedly retrospective if the law says so expressly but it is not always necessary to say so expressly to make the law retrospective. There are occasions when a law may be held to be retrospective in operation. Retrospection is not to be presumed for the presumption is the other way but many statutes have been regarded as retrospective without a declaration. Thus it is that remedial statutes are always regarded as prospective but declaratory statutes are considered retrospective. Similarly sometimes statutes have a restrospective effect when the declared intention is clearly and unequivocally manifest from the language employed in the particular law or in the context of connected provisions. It is always a question whether the Legislature has sufficiently expressed itself. To find this one must look at the general scope and purview of the Act and the remedy the Legislature intends to apply in the former state of the law and then determine what the Legislature intended to do. This line of investigation is, of course, only open if it is necessary. In the words of Lord Selborne in Main v. Stark ((1890) 15 AC 384 at p. 388) there might be something in the context of an Act or be collected from its language, which might give to words prima facie prospective a larger operation. More retrospectivity is not to be given than what can be gathered from expressed or clearly implied intention of the Legislature.

13. Applying these tests to the statute we have in hand, we are clear that Section 157(1)(a) must be read to apply retrospectively. It is clear that Section 21(b) mentioned only one of the clauses, viz. clause (e) as furnishing a ground for declaration. After the amendment of clause (b) one or more of the clauses of Section 157(1) are to be taken into account. Now there would be no point in making the amendment of Section 21(b) retrospective if the other clauses were to apply prospectively for then the force of the retrospectivity of clause (h) of Section 21 is made neutral. Therefore, if the new Section 21(b) is to be read retrospectively from the commencement of Land Reforms Act, the amendment of Section 157(1) which was made simultaneously must also be clearly intended to operate with retrospection. The Legislature intended that at any given moment of time from the commencement of the Land Reforms Act all the clauses or one or more of them and not clause (e) alone were to be taken note of. The amendment of clause (h) speaks of one or more clauses and when we read the clauses of Section 157(1) we find them altered also. Therefore, the new clauses must be read and not the old clauses. The High Court was thus right in its conclusion that the clauses of Section 157(1) as amended also operate retrospectively. This disposes of the first point.

14. The next point is about the finality of the order of October 25, 1956, passed by the Compensation Officer. We cannot refer that order to his capacity as the Assistant Collector. An Act would, no doubt be referrable to a capacity which would give it validity. But the law required the Compensation Officer to frame an issue and refer it to the competent court. He could not decide the matter without doing so. One of the parties was before it and he ought to have asked that party to prove its case. He did nothing. It is, therefore, not wrong for the Settlement Officer and the Deputy Director to treat the order as proceeding from the Compensation Officer. Further since proceedings under Section 202 of the Land Reforms Act were already pending for the decision of the identical question the Compensation Officer ought to have stayed his hands. In our opinion, the order of the Compensation Officer did not have that finality which is claimed for it. That finality attaches only to the order of the Assistant Collector on a reference of an issue from the Compensation Officer. There was thus no finality.

15. The order of the Deputy Director cannot, therefore, be assailed. The appeal must fail and is dismissed but in view of the fact that an amendment of the law deprives the present appellants of a valid plea we make no order about costs.

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