Sita Ram Jaiswal and Another

Vs

Rai Amarnath Agarwala and Others

Civil Appeal No. 1764 of 1969

(K.S. Hegde, A.N. Grover JJ)

22.11.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Allahabad High Court dismissing a second appeal affirming the decree granted by first appellate Court.

2. The facts may be stated. A suit was filed under Section 172 of the U.P. Tenancy Act 1939, hereinafter called the 'Act', by the plaintiff against four defendants for ejectment. It was alleged in the plaint that defendants 3 and 4 were previously the original tenants of the plots in dispute which were situate within the limits of the town area of Phulpur in the district of Allahabad. The original tenants relinquished their tenancy rights and gave up possession. After this a patta for agricultural purposes was executed in the year 1368 Fasli in favour of defendants 1 and 2 Whereunder they got rights of agricultural tenants. Defendants 1 and 2 in violation of the provisions of the patta and the Act constructed a building on the plots in dispute and let that out to the State Bank of India, Phulpur. It was alleged that for the aforesaid reason the tenants namely defendants 1 and 2 were liable to be ejected. Defendants 3 and 4 were impleaded as pro-forma defendants. In the written statement it was pleaded inter alia, by defendants 1 and 2 that the building had been constructed by them with the sanction of the District Collector on April 4, 1960 when the Collector was the Receiver of the Phulpur Estate in which the demised plot was situate. The suit was dismissed by the Judicial Officer (City) Allahabad on the ground that the Collector who was acting as Receiver of the disputed land had given his consent for the construction of the building by the defendants which amounted to consent by the land-holder for an improvement within Section 65 of the Act. The Additional Civil Judge on appeal, however, held that there was nothing on the record to show that the Collector gave his permission in his capacity as Receiver for construction of the building. The appeal was allowed by him and the suit for ejectment was decreed.

3. The following points were agitated before the High Court on behalf of the defendant-appellant :

1. The suit was liable to be dismissed because the disputed plots were no longer agricultural land having been demarcated as non-agricultural area under Section 3 of the U.P. Urban Area Zamindari Abolition and Land Reforms Act.

2. The lease was not confined to agricultural purposes only.

3. The Collector had given his sanction for the construction of the building for the State Bank. On the first point the High Court held that the provisions of the aforesaid Land Reforms Act did not

affect the suit. The lease was found to have been given for agricultural purposes. The letters on which the defendants relied for the purpose of showing the permission of the Collector could not be construed in such a way as to infer any sanction or permission having been granted by him to construct the building for the purpose of a bank. The building was also not constructed for the purpose for which the plots had been let.

4. By an order made on September 25, 1970 we called for a report on the question whether the notification issued by the U.P. Government dated July 25, 1964 applied to the land in dispute. If the notification was applicable then it would have been necessary to determine whether the suit was liable to abate under Section 5(2) of the U.P. Consolidation of Holdings Act 1954 as amended by U.P. Act 21 of 1966. As the parties were in dispute on the question whether the notification applied we called for a finding from the High Court in the matter. This course had to be adopted as a point had been raised about the suit having abated by virtue of the aforesaid notification. The High Court submitted a report dated January 4, 1971 expressing the opinion that the notification in question did not apply to the land in dispute. That conclusion was not challenged before us.

5. The only question which survives is whether the permission of the Collector had been obtained in his capacity as Receiver for constructing the building which was subsequently leased out to the State Bank of India by the contesting defendants. Our attention has been invited to a letter dated January 30, 1960 from the District Magistrate, Allahabad to the Agent, State Bank of India. This letter may be reproduce :

> "With reference to your letter dated 30-1-60, I confirm that in view of the fact that you propose to get a building constructed according to your specification and also to the fact that you have already taken a building of similar specification on Rs. 400 per month in Naini, the rent of Rs. 250 per month and Rs. 350 per month mentioned in your letter under reply, is reasonable. I also confirm that the sites are suitable."

Another document on which reliance was placed is the memorandum dated September 11, 1961 issued by Mr. B. K. Chatterjee, Agent, State Bank of India, Allahabad. In this memorandum it was stated that from certain letters it was apparent that the Collector had given his consent to the construction of the bank building on the plots concerned. It was further mentioned that in the course of the interview which he had with the collector on January 30, 1960 the Collector had made the entire position clear and "the question of obtaining the land for agricultural purposes did not at all arise." Another letter was sent by the Agent of the State Bank of India, Allahabad, to the defendants confirming that the proposed site for the branch of the State Bank at Phulpur had been approved by the Collector. Now all these letters do not establish that the Collector had given any permission in his capacity as Receiver of the Phulpur Estate. What appears to have happened is that his approval was sought by the Agent, State Bank for having a building for the branch of that bank in the area in dispute. Neither the Collector nor the Agent of the State bank was examined to show that what was intended was the consent or permission of the Collector as Receiver of the Estate. On this point there is also a finding of fact of the first appellate court that the Collector never gave his consent or permission in his capacity as Receiver. That finding was binding on the High Court and the High Court also did not come to any different conclusion. We do not find any force or substance in the argument addressed to us on this point.

6. Mr. A. K. Sen has referred to Section 65 of the Act and has pointed out that the written consent of the land holder is required only if the matter falls within clauses (d) and (e) of Section 3(8) of the Act. It is apparent that the building of a house for a bank could not fall within these clauses. No

consent was, therefore, necessary in terms of Section 65. The case, however, as pleaded and sought to be proved on behalf of the defendants in the courts below throughout was based on the assumption that a written consent of the land owner would have been sufficient compliance with the provisions of the Act for non-suiting the plaintiff. We do not consider that Mr. Sen can derive any help from the provisions of Section 65 read with clauses (d) and (e) of Section 3(8). On his own contention even a written consent would have been of no avail to the defendant. Section 172 which relates to ejectment provides, inter alia, that a tenant shall be liable to ejectment on the ground of any act or omission detrimental to the land in that holding, or inconsistent with the purpose for which it was let. In the present case it is obvious and it has been so found by the appellate court and the High Court that the land has been let for an agricultural purpose and the defendants had sought to use it for a totally different purpose, namely, construction of a building to house a bank. Such a purpose was clearly inconsistent with the purpose for which it was let. Under Section 172, therefore, the suit for ejectment was clearly maintainable.

7. For all the above reasons we find no merit in this appeal which is dismissed with costs.

</html