

Ramchandra Kesheo Uttarwar and Others1

Vs

Commissioner Of Nagpur Division, Nagpur and Others

Civil Appeal No. 1284 of 1967

(C. A. Vaidialingam, H. R. Khanna, Y. V. Chandrachud JJ)

27.10.1972

JUDGMENT

KHANNA, J. -

1. This appeal on certificate is directed against the judgment of Nagpur bench of the Bombay High Court whereby petition under Article 227 of the Constitution of India filed by the appellants for quashing order made by the Claims Officer and the appellate authority under the provisions of the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (Act No. 1 of 1951) (hereinafter referred to as the Act) was dismissed.

2. The appellants are the legal representatives of Kesheorao deceased who mortgaged, as per mortgage deed, dated May 10, 1927, property situated in two Taluks Yeotmal and Kalapur for Rs. 42,000 in favour of Hirachand Ratanchand Munot respondent No. 3 and his predecessors. After the mortgages had made attempt to secure payment of the mortgaged money, the proprietary interest of the mortgagor in the mortgaged property was extinguished under the Act. Provision was made in the Act for ensuring the payments of debts incurred by the proprietor whose proprietary right was extinguished under the Act.

3. On August 18, 1951, an application was made by the mortgagor under Section 19 of the Act of determining the amount payable under the abovementioned mortgage. The file of the case was subsequently found to be missing and thereupon Sub-Divisional Officer Yeotmal, who was one of the Claims Officers competent to deal with the matter, was directed to determine the amount due under the mortgage. On August 31, 1962, the Sub-Divisional Officer passed an order holding that an amount of Rs. 79,192 was due and payable by the mortgagor to the mortgagees. An appeal was filed against the above order and the appellate authority, Commissioner of Nagpur Division, as a per order, dated August 13, 1963, affirmed the finding of the Sub-Divisional Officer with regard to the principle debt. As regards interest, the appellate authority held that the order made by a Claims Officer was not in accordance with law. The matter was accordingly remanded. On November 4, 1973, the Sub-Divisional Officer Yeotmal in his capacity a Claims Officer, held that an amount of Rs. 65,719.09 paise was due under the mortgage. On the same day, i.e., November 4, 1963, the appellants filed petition under Article 227 of the Constitution for quashing order, dated August 31, 1962, made by the Claims Officer as well as order, dated August 13, 1963, made by the appellate authority. It may be mentioned that appeal filed by the appellants is already pending against the order, dated November 4, 1963, of the Claims Officer.

4. The following six contentions were raised on behalf of the appellants before the High Court -

"(1) that the Claims Officers, who passed this case had no jurisdiction to entertain this claims petition, because he was not appointed by the proper officer;

(2) that even if it be held that his appointment was properly made, he had no jurisdiction to reconstruct the record in order to enable him to give findings on the reconstructed record;

(3) that there was an order passed by the Debt Conciliation Board some time before 1940 by which it was held that the debt was fully discharged and that order having been passed by an authority which had the jurisdiction to do so was effective and should have been given effect to by the Claims Officer;

(4) that the proper material which was required to be produced by the creditors under the provisions of Section 22(2) of the M. P. Abolition of Proprietary Act No. 1 of 1951 was not produced by the creditors and that, therefore, no order could be passed as the debt had remained not proved;

(5) that the total amount due should have been directed to be recovered from out of the compensation money and restricted to that amount; and

(6) that the Sub-Divisional Officer had committed an error apparent on the face of the record in making the calculations of principal as well as interest."

The first five contentions did not find favour with the High Court and were accordingly repelled. The sixth contention was not pressed because it was conceded that the same was the subject-matter of the appeal against the order passed by the Sub-Divisional Officer on November 4, 1963. In the result the petition was dismissed.

5. Before us, Dr. Barlingay on behalf of the appellants has argued that the Claims Officer who made the impugned order, dated August 31, 1962, had no jurisdiction to deal with the matter as there was no proper assignment of this case to him by the Settlement Commissioner as required by Section 20 of the Act. Reference in this connection is made to sub-sections (2) and (3) of the aforesaid section which read as under :

"(2) Where the Claims Officer finds that the properties vesting in the State under Section 3 of a debtors extend over areas within the jurisdiction of more than one Claims Officer, he shall refer the case of such debtor to the Settlement Commissioner for orders as to the Claims Officer who shall deal with the case of such debtor.

(3) On receipt of such reference, the Settlement Commissioner may, after hearing the debtor, if necessary, pass an order specifying the Claims Officers who shall deal with the case and send a copy of his order to all Claims Officers concerned directing them to forward all papers of the case of the debtor to the Claims Officer specified by him."

According to Dr. Barlingay, there were more than one Claims Officer who had jurisdiction in the matter and, as such, it was necessary for the Settlement Commissioner to specify the Claims Officer who should deal with the case. The order in this respect, it is submitted, was made not by the Settlement Commissioner but by the Revenue Commissioner. The Claims Officer as such, according to the learned counsel, could not deal with the case. In this respect we find that in the petition under

Article 227 of the Constitution filed by the appellants before the High Court, no ground was taken that the order under Section 20(3) of the Act specifying the Claims Officer who would deal with the case had been made by the Revenue Commissioner and not by Settlement Commissioner. No objection on that score was also taken in the proceedings before the Claims Officer or in appeal before the appellate authority. When this matter was raised during the course of arguments before the High Court, the learned Judge pointed out that it was a question of fact as to whether the order under Section 20(3) had been made by the Settlement Commissioner or by the Revenue Commissioner. As the appellants had not raised that point at the earliest opportunity, the respondents, it was observed, were not in a position to meet the point. The learned Judges, in the circumstances, came to the conclusion that it would not be proper to permit the appellants to raise the said question of fact. We can find no infirmity in the above conclusion of the High Court. If the appellants wanted to build an argument on the score that the order under sub-section (3) of Section 20 had been made not by the Settlement Commissioner but by the Revenue Commissioner, a precise allegation to that effect should have been made in the petition so that the respondents could file a reply in respect of that allegation. In the absence of such allegation, no proper material was brought before the Court for recording a finding that the order under sub-section (3) of Section 20 had been made by the Revenue Commissioner and not by the Settlement Commissioner. It is also significant to observe in the above context that no copy of the order under sub-section (3) of Section 20 was produced by the appellants in support of the contention that the said order had not been made by the Settlement Commissioner. The entire argument of the appellants was built upon a sentence in the order of the Claims Officer wherein there was a reference to sanction accorded by the Commissioner for the trial of the case. There is, however, nothing in that order to indicate that the Commissioner referred to in the sentence was the Revenue Commissioner and not the Settlement Commissioner. We are, therefore, unable to accede to the contention advanced on behalf of the appellants that the impugned orders are liable to be set aside on the ground that the order under sub-section (3) of Section 20 had been made by a Revenue Commissioner and not by a Settlement Commissioner.

6. It has next been argued that original documents were not produced on behalf of the mortgages in proof of the amount due to them. In this respect we find that certified copies were produced on behalf of the mortgagees. Some of the documents which were lost were reconstructed by the Claims Officer. The High Court found that the documents of which certified copies had been produced were properly proved. In view of the above facts, the High Court came to the conclusion that there was no substance in appellants contention about the lack of proper proof. Nothing cogent has been brought to our notice as may induce us to take a different view.

7. Lastly, it has been argued on behalf of the appellants that they paid back an amount of Rs. 2,750 and the same has not been given credit in determining the amount found due to respondent No. 3. There is, however, nothing in the judgment of the High Court as may show that such an argument was advanced before it on behalf of the appellants. On the contrary, it was conceded that the method employed for calculating the principal and interest in order, dated November 4, 1963, of the Claims Officer was the subject-matter of the appeal. As such, no contention on that score was pressed before the High Court. In view of the stand taken by the appellants in the High Court, they, cannot be allowed to agitate the point regarding the payment of Rs. 2,750 in this Court.

8. The appeal consequently fails and is dismissed with costs.

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