Kaviraj Basudevanand

Vs

Mahant Harihar Gir (Dead) and Others

Civil Appeal No. 1709 of 1967

(A. Alagiriswami, P. Jagmohan Reddy, M. B. Beg JJ)

01.08.1974

JUDGMENT

ALAGIRISWAMI, J. -

1. This litigation which began in the year 1937 has come up for consideration before us in this appeal and we are not sure that this is the end. In that year one Dhirendra Nath Banerjee filed a suit for partition and allotment of this three annas three pies share out of 16 annas in 32 village and a four annas share in another village in the Hazaribagh district of Bihar. A preliminary decree for partition was passed in 1939. Appeals against the preliminary decree were dismissed in 1943 and in 1945 the present appellant (he is now dead and his heir has been added as party) purchased Banerjee's share and he was added as a co-plaintiff in 1947. In 1950 the Bihar Land Reforms Act came into force and all these villages vested in the State of Bihar on came into force and all these villages vested in the State of Bihar on September 8, 1952 in pursuance of a notification issued under that Act. In consequence the State of Bihar was added as a party some time in 1952. A Commissioner was appointed to effect a division of proper ties and he submitted his report in March 1952. In May 1952 a compromise was entered into among the various parties in the suit. To this consent order the State of Bihar, in whom the properties had vested, was not a party. A final decree was, however, passed in terms of the consent between the parties. There was in these proceedings an application for appointment or Receiver. The order appointing a Receiver led to an appeal being filed before the Patna High Court wherein that Court observed that "the plaintiff's suit for partition must be held infructuous as he had no right in law now to the properties, including the mines, which were the subject matter of the partition suit, which have all vested in the State". The present appeal is, however, against the judgment of the High Court of Patna in the appeals filed by the various defendants against the final decrees passed in the suit.

2. Along with the appeal, appeals against the orders in certain other petitions were also disposed of by the High Court. It is only necessary to refer to Civil Revision Petition No. 891 of 1958 which the plaintiff filed against the order of the Subordinate Judge rejecting his prayer for amendment of the plaint. In the petition for amendment he had prayed :

> (a) That a separate takhta to the extent of the plaintiff's share be prepared with respect to the lands and minerals in possession of the parties to the suit as had been shown in Schedules A, B, C and D of the amendment petition and also the tenancy right in zirat, bakhast and horticultural lands which had remained in possession of the outgoing proprietors after the vesting of the estate as had been mentioned in Schedule B.

(b) That a decree for mesne profits from the date of the suit till the date of realisation with interest might be allowed; and

(c) That any other relief to which the plaintiff was entitled might also be granted.

In Schedule A the plaintiff gave a description of all the mines which, according to him, had been opened and worked by him up to the date of the report of the Commissioner, Sri Kalia, i.e. March 6, 1952. Schedule B contained a list of the mines which according to the plaintiff had been worked by him after the date of the Commissioner's report and before the date of vesting of the estate under the Land Reforms Act, i.e. between March and October, 1952. In Schedule C the plaintiff mentioned a list of the mines which were in possession of the proprietors of one anna share of the Gaddi Masnodih and who had not compromised with the plaintiff. In Schedule D he mentioned the mines in possession of the other co-sharers. In Schedule E he referred to all zirat, bakhast and horticultural and homestead lands situated in some village in touzi No. 32 which, according to him, had not vested in the State of Bihar and in which new rights under the Land Reforms Act had been created in favour of the ex-proprietors. The learned subordinate Judge after hearing the parties disallowed the amendment. The High Court rejected that Civil Revision Petition against that order.

3. In the main appeal the Court held that the final decree passed by the Court below could not be maintained and must be set aside. The main reason was that the plaintiff's suit for partition had become infructuous, that he had no right in law now to the properties, including the mines, which were the subject matter of the partition suit, as they have all vested in the State, that from the date of vesting the original title of the proprietor completely vanished and new title had come into existence. The contention of the plaintiff that the working mines and the bakhast and zirat lands were not taken over by the State and the suit at least with respect to such properties must succeed was also rejected by the Court. As to working mines, it was held that they also vested in the State, thereby extinguishing the old title, and the intermediary, who had been working the mines directly at the time of vesting was entitled to retain possession of those mines as lessee under the State, and it was restricted to the person, i.e. the intermediary directly working the mines. The consequence of that provision was held to be that the co-sharer intermediaries who were not concerned in the operation of the mines will have no interest therein.

4. Before this Court only Respondent No. 1 and the State of Bihar have appeared. In view of a later decision by a Full Bench of the Patna High Court in Ramrudhar Singh v. Dileshwar Singh (AIR 1965 Pat 117) and of this Court in Bhubaneshwar v. Sidheswar ((1971) 3 SCR 639) Respondent No. 1 and the State of Bihar have rightly conceded that the plaintiff would be entitled to his share in the bakhast and zirat lands. On behalf of the State of Bihar the learned Solicitor General has, however, urged that this is without prejudice to the provisions of any law regarding ceilings on land which might have been enacted in Bihar. This submission is undoubtedly well-founded. Any decree which the plaintiff might get in respect of bakhast and zirat lands in this suit will not enable him to avoid the provisions of any law regarding ceiling on land in force in the State of Bihar.

5. As regards the mines, however, there are certain difficulties. The Patna High Court was in error in holding that the benefit of Section 9 of the Bihar Land Reforms Act is not available to all persons jointly interested therein before the date of vesting and that it is restricted to the intermediary directly working the mines. In Mahanath Sukhdeo Das v. Kashi Prasad Tewari & Shrideo Misra v. Ramsewak Singh (ILR 37 Pat 913) the Full Bench of the Patna High Court held that the provisions of the Bihar Land Reforms Act have to be construed in the light of the existing law and in the light of the history behind the legislation, and therefore, a tenure-holder as defined in Section 2(r) does

not mean a person who is actually in possession of the tenure and consequently the expression "khas possession of an intermediary" on the date of such vesting in Section 6 of the Act.

..... does not mean the possession of the intermediary who was actually in possession on the date of the vesting to the exclusion of the co-intermediaries. Khas possession of the intermediary means the possession of the intermediary who was cultivating land either for his own benefit or in trust for others. If this be the position of an intermediary under the Act, then obviously the words "khas possession" occurring in Section 6 of the Act do not exclude constructive possession.

6. Another Full Bench of the Patna High Court in Ramrudhar Singh v. Dileshwar Singh (supra) took the view that the decision under appeal in the present case that when the estate vested in the State of Bihar, a co-sharer, who was not in possession of lands used for agricultural or horticultural purposes was not entitled to any interest in it, was wrong and must be overruled.

7. The matter has been finally settled by a decision of this Court in Bhubaneshwar v. Sidheswar (supra) in a case that had arisen under the Bihar Land Reforms Act itself. In that case it was observed :

Even if the appellants were in actual khas possession within the meaning of Section 2(k) of the Act, it must be held that the plaintiff respondent. Who was a co-sharer, was in constructive possession through the appellants, as, under the law possession of one co-sharer is possession of all co-sharers ... The deeming provision of Section 6 must, therefore, enure for the benefit of all, who in the eyes of law would be regarded as in actual possession.

It was, therefore, held that the plaintiff had not lost his share in the bakhast lands and had a right to them though not as a tenure-holder or proprietor but certainly as raiyat under the provision of the Act. This Court also observed that there was no reason to hold that the observations of this Court that in law possession of one co-sharer is possession of all the co-sharers, as was held in P. L. Reddy v. L. L. Reddy (1957 SCR 195, 202) were not applicable to the case before this Court. If that is so with regards to bakhast and zirat lands and a co-sharer is entitled to his share even though the might be only in constructive possession, there is no reason why the same principle should not apply to mines also either on principle or on authority. The definition of the expression 'khas possession in the Bihar Land Reforms Act, if any thing, is stronger from the point of view of the person who is actually cultivating the lands than that of a person who is working directly (the mines) under Section 9 of the Act. Therefore, the appellant would be entitled to his share in mines which had been worked directly by any co-sharer.

8. Though the view of the Patna High Court on this point is wrong, there are a number of other difficulties which the plaintiff has to face. Under Section 9 of the Bihar Land Reforms Act though all mines which were in operation at the commencement of the Act and were being worked directly by the intermediary shall be deemed to have been leased by the State Government to the intermediary and he shall be entitled to retain possession of those mines as a lessee thereof, there are a number of conditions which are to be satisfied. Under sub-section (2) of that section the terms and conditions of the said lease by the state government shall be such as may be agreed upon between the State Government and the intermediary or in the absence of agreement, as may be settled by a Mines Tribunal appointed under Section 12. Furthermore, all such terms and conditions shall be in accordance with the provisions of any Central Act for the time being in force regulating the grant of new mining leases. Under Section 12(2) in settling the terms and conditions of a lease by the State Government under Section 9, the Mines Tribunal shall have power to determine the extent of the

property deemed to have been leased by the State and in so doing shall have regard to the reasonable requirements for the future development of lessee's mining concern. In this case there is no averment in the plaint of anywhere on record as to what mines were in operation on the date of vesting of the estate in the State. Quite obviously, if any of the intermediaries had begun operating a mines. Even though the mines shall be deemed to have been leased by the State Government to the intermediary and he shall be entitled to take possession of those mines as a lease, it could be only in accordance with the terms and conditions should be agreed upon between the State Government and the intermediary or be settled by the Mines Tribunal. The appellant would be entitled to a share only in such mines. We have no means of knowing what those mines are.

9. There is again the question of the area of the mine. For instance, in an area of 100 sq. miles a mine might have been opened by the intermediary in one corner and might be working on the date of the vesting; but it does not mean that he would be entitled to a mining lease in respect of all the 100 sq. miles. The area to be covered by the lease would be decided under Section 12. The words in the section regarding mines being in operation should be interpreted in the light of the provision of Mines and Minerals (Regulation & Development) Act, 1957. The mining lease will have to confirm to the provisions of section 6 of the Mines and Minerals (Regulation & Development) Act regarding the maximum area for which the mining lease will have effect. Furthermore, under Section 10 of the Bihar Land Reforms Act, where immediately before the date of vesting of the estate or tenure there is a subsisting lease of mines or minerals comprised in the estate or tenure or any part thereof, the whole or that part of the estate or tenure comprised in such lease shall, with effect from the date of vesting, be deemed to have been leased by the State Government to the holder of the said subsisting lease for the remainder of the term of that lease, and such holder shall be entitled to retain possession of the lease-hold property. The appellant will have no right in such mines.

10. There is no allegation and no evidence in the plaint or any where else on record as to who among the co-sharers of the plaintiff were working the mines, and if so to what extent on the date of the vesting in the State. Even if they had been so working the normal term of a lease is 20 years and that term would have come to an end even in 1972.

11. It would not, therefore, be possible to give effect to the consent decree passed by the trial Court in respect of the mines. Nor is it possible, as contended on behalf of the appellant to pass a final decree in respect of bakhast and zirat lands in favour of the plaintiff and then leave the preliminary decree in respect of the mines untouched leaving the plaintiff to put in a fresh application for final decree in respect of the mines. The subject is too complicated to be dealt with in the final decree proceedings in the suit. The plaintiff would have to make proper allegations as to which among his co-sharers were operating the mines in 1952. If they have been operating any mines it may be that the appellant would be entitled to a share. But if the term of the mining lease has come to an end it would be a matter of accounting between the co-sharers who had actually worked the mines and the appellant. Respondent No. 1 has disclaimed all interest in the mines. If all the mines are being worked by lessees no question of the appellant being entitled to any rights would arise at all. If there had been a renewal of the mining leases a further question whether the plaintiff would be entitled to a share in them would arise.

12. The best thing that could be done in the circumstances is, therefore, to uphold the judgment and decree of the High Court in respect of the mines leaving it to the plaintiff to file a suit, if he is so advised for such relief as he may consider available to him. The judgment of the High Court would be modified to the extent that there will be a final decree in favour of the appellant in respect of the bakhast and zirat lands subject to laws regarding ceiling on lands in force in Bihar State. Though we

have held that the High Court was in error in holding that the plaintiff was not entitled to any share in the mines unless he was himself directly working those mines he will have to work out his remedies in respect of the mines by a separate suit. In the circumstances the parties would bear their own costs.

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