Rani Ratnesh Kumari

Vs

State of U. P. and Others

Civil Appeal No. 1424 of 1968

(Syed M. Fazal Ali P. N. Shinghal, A. D. Koshal JJ)

02.08.1978

JUDGMENT

SHINGHAL, J. -

1. This appeal by certificate is directed against the judgment of the Allahabad High Court dated May 6, 1966, by which the special appeal filed by the present respondents was allowed and the judgment of a learned Single Judge of that Court dated January 2, 1964, allowing the writ petition of the present appellant Rani Ratnesh Kumari was set aside.

2. It is not in controversy that Manchhanna taluqa, or Mainpuri Raj, was a part of the Mainpuri district in Uttar Pradesh. The district originally belonged to the Nawab Wazir of Oudh, who ceded it to the East India Company in 1801. Raja Dalal Singh was then the owner of the Manchhanna taluqa. A part of his estate was taken over by the British Government. Raja Dalal Singh died in 1829, and was succeeded by Raja Ganga Singh. Settlement operations of the taluqa lands were carried out from time to time. It came to notice during the settlement operations of 1840 that there were under-proprietors or 'biswadars' in 133 villages of the taluqa. It was decided by the government that while the 133 biswadari villages would be settled with biswadars, the other villages would remain under the direct engagement of the Raja and he would receive an allowance or "malikana" for the 133 villages at 18 per cent of the assets leaving 60 per cent of the realisation with the government as land revenue and 32 per cent with the biswadars as their share. The settlement was revised thereafter and the assets of the biswadars were redistributed so as to give 55 per cent of the realization to the Government as revenue, 20-1/4 to the Raja as 'malikana' and 24-3/4 to the biswadars as their share. Then came the settlement of 1872 when Raja Ram Pratap Singh tried to reopen the question of his direct engagement with the Government even in regard to the biswadari villages. It was ultimately agreed that the Raja would receive, in respect of each village, the same amount as before by way of 'malikana' and that the settlement would be made directly with the biswadars who would bear the burden of the arrangement. The 'malikana' thus worked out to Rs. 22,502 per year. It was however stipulated that it would be reduced to 1/11 of the biswadari payment on the death of Raja Ram Pratap Singh. An order was issued in 1873 by which the Raja was held entitled to 'malikana' at the rate of 5 per cent of the annual rental. It was reaffirmed during the settlement of 1904-1905 that the estate would get 5 per cent of the assets or 1/10 of the land revenue assessed in the 133 villages. That arrangement continued up to the settlement of 1940. Raja Sheo Mangal Singh, who was the last male descendant of Raja Dalal Singh, thus received an annual payment of Rs. 8946/9/4 as annual rental of the 133 biswadari villages. He died in 1938 and thereafter the 'malikana' was received by his widow Rani Prabhuraj Kumari. She died in 1951, and then the 'malikana' was paid to her daughter Rani Ratnesh Kumari, the present appellant, up to March 1953. The payment was stopped thereafter because of the vesting of the estate in the State under the provisions of the U.P.

Zamindari Abolition and Land Reforms Act, 1950, hereinafter referred to as the Act. As the efforts of Rani Ratnesh Kumari for its restoration did not bear fruit, she filed a writ petition in the Allahabad High Court on September 16, 1958 for quashing the State Government's order refusing the payment of the 'malikana' and for a direction that it should continue to be paid to her along with the arrears. She based her claim mainly on the ground that the 'malikana' was in the nature or a pension or allowance "in lieu of the taking over, forfeiture or acquisition" of the perpetual hereditary rights of the Raja in the 133 villages and was "in no sense of the term rent or revenue derived from land or any benefit arising out of land". She pleaded that the name of the Raja was never entered in the record of rights of the 133 villages and that she was "neither intermediary with respect to (those) village nor (those) villages are included in the estate as defined in the Zamindari Abolition Act". So, according to her, the 'malikana' being a pension could not have vested in the State on the issue of the notification under Section 4 of the Act and was not determined under Section 6(b).

3. The State traversed the petitioner's claim on the ground that the 'malikana' was paid to the Raja in his capacity as the superior proprietor of the 133 villages in question, and that it was really in the nature of "a share in the profits of a 'mahal' allowed to the superior proprietor at the various settlements." It was pleaded that even though the Raja was not responsible or liable for the payment of the land revenue as the settlement was with the inferior proprietors or 'biswadars', the 'malikana' was directly connected with the land revenue and the assets of the land of the 133 villages of which the Raja was the superior proprietor. It was also pleaded that the 'malikana' represented "a share of the profits of each 'mahal' allowed to the superior proprietor in accordance with Section 19(1) of Regulation VII of 1822, Section 56 of the Land Revenue Act XIX of 1873, and Sections 75 and 77 of the U.P. Land Revenue Act, 1901". It was pointed out in the quadrennial 'khewat' for the years immediately proceeding the date of vesting of the estate under the Act, the name of Rani Prabhuraj Kumari was recorded as the proprietor of the 'mahal' of the 133 villages and the names of the inferior proprietors were recorded in the subsequent columns. Reference was made to similar 'khewat' entries of earlier periods and it was pleaded that the 133 villages were an estate of the petitioner as defined in the Act and she was an "intermediary" in her capacity as the superior proprietor of the 'mahal' on the date immediately preceding the date of vesting of the estate under the Act. In other words, the State Government took the plea that the 'malikana' allowance represented a share of the profits of each 'mahal' and the payment of the 'malikana' was stopped when the estate vested in the State under the provisions of the Act. It was contended that the writ petitioner was entitled to compensation under the provisions of the Act but not the 'malikana' allowance which could not be equated with pension.

4. A Single Judge of the High Court upheld the petitioner's contentions and allowed the writ petition. He quashed the orders of the State Government against her and directed the payment of the arrears of the 'malikana' as well as its future payment. As has been stated, a special appeal was taken against that judgment and has been allowed by the impugned judgment of the High Court dated May 6, 1966.

5. Thus the point for consideration in this case is whether the appellant's claim to the 'malikana' has rightly been disallowed under the Act which provides, mainly, for the abolition of the zamindari system, involving intermediaries between the tiller of the soil and the State, and for the acquisition of their rights, title and interest, and to reform the law relating to land tenure consequent upon such abolition and acquisition. It is not in controversy that the Manchhanna taluqa was an estate within the meaning of Section 3(8) of the Act, and the controversy centers around the question whether the appellant was an intermediary in respect of the aforesaid 133 biswadari villages for which she used to receive the 'malikana' until her estate vested in the State on the issue of the notification under

Section 4.

6. The expression "intermediary" has been defined in Section 3(12) of the Act as follows :

> (12) "intermediary" with reference to any estate means a proprietor, under-proprietor, sub-proprietor, Thekedar, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof.

"Estate" has been defined in Section 3(8) of the Act but, as has been stated, it is not in dispute that Manchhanna was one such estate in Uttar Pradesh. The petitioner categorically asserted in paragraph 1 of the writ petition that her father Sheo Mangal Singh was the last male descendant of the family of Raja Ganga Singh, who was taluqudar of Manchhanna taluqa, and that fact was not controverted in the respondents' reply. It was further pleaded in paragraph 2 of the writ petition that the Raja had a vast estate spreading over 18 parganas in the Mainpuri district, and the respondents did not controvert that assertion also. It has therefore to be examined whether the Raja was an intermediary in respect of the 133 biswadari villages. In other words, it has to be examined whether the appellant was a "proprietor" of those biswadari villages so as to fall within the definition of "intermediary". Clause (21) of Section 3 defines a "proprietor" to mean "as respects an estate", a person "owing" the estate and includes the heirs and successors-in-interest of the proprietor. But even though the appellant was the proprietor of the villages of her estate, the question is whether she could be said to be the "proprietor" of the 1333 biswadari villages ?

7. In order to arrive at a decision it is necessary to examine whether the Rajas of Manchhanna taluqa could be said to have an interest in the land of the 133 biswadari villages even after the fixation of the allowance or 'malikana' under the settlements to which reference has been made above. It has been admitted in paragraph 3 of the writ petition that they by the settlement of 1840 the Raja was allowed an allowance (malikana) at the rate of 18 per cent of the assets or 222-1/2 per cent of the amount realised from the biswadars. Mention in that connection has been made of the division of the "assets of the Raja's estate in respect of the malikana villages" leaving him 18 per cent thereof as his 'malikana'. Then it has been stated in paragraph 6 that the Raja was to receive the same "biswadari allowance" as before "from each village", and that the settlement was made directly, with the biswadars who were to "bear the burden" of that concession. We have made a reference to the subsequent developments in that respect leading to the fixation of the 'malikana' at 5 per cent of the assets (annual rental) or 1/10 of land revenue assessed for the 133 villages. The respondents have stated in their reply that the payment was made as "haq taluqadari" by virtue of the superior proprietary right of the Raja and that it was varied from settlement to settlement as a consequence of the variation in the amount of the land revenue and the assets of the villages. This shows that taluqadar's interest in the land of the 133 biswadari villages was not extinguished even after the fixation of the 'malikana', which was really in the nature of an allowance for the purpose of excluding him from their management and their settlement with the under-proprietors.

8. Then there is the further fact that, as has been stated in paragraph 13(a) of the respondents' reply affidavit, in the quadrennial 'khewat' for the years immediately preceding the date of vesting under the Act, in respect of the 'mahals' of the 133 villages, the name of Rani Prabhuraj Kumari, mother of the appellant, was recorded on the first page in column 6 meant for the entry of the name of the proprietor, and the names of the inferior proprietors paying land revenue were recorded on the subsequent pages. Copies of the 'khewat' of several years have been placed on the record. The appellant was therefore the proprietor of the 133 villages also, as they were her villages even though her interest in them was limited on account of the settlements with under-proprietors or biswadars.

In other words, she had an interest in the biswadari villages, and they undoubtedly formed part of her estate as its proprietor. The appellant's contention that her interest in those villages was extinguished has not been substantiated by the evidence on record and cannot be accepted.

9. This aspect of the controversy can in fact be examined with reference to the ancillary question whether the allowance or 'malikana' was allowed on account of Raja's right or privilege in the land of the 133 villages or its revenue. In other words, the question is whether there was a direct connection between the two. It will be recalled that the petitioner has herself admitted that the assets of the Raja's estate in those villages were divided so as to leave him a sizable fraction thereof, and that the Raja's 'malikana' allowance came from each village and the biswadars had to bear that burden. The respondents have also stated in their counter affidavit that the 'malikana' was varied from settlement to settlement as a consequence of the variation in the land revenue and that it was always by way of "a share of the profits of a mahal". At any rate, the 'malikana' was allowed on account of the Raja's interest in the land or its revenue, and was therefore a right or privilege in the biswadari lands. It is true that an interest in land or land revenue will not be created merely by measuring the quantum of the allowance or by equating it with a portion of his share in the net revenue of a part of the land, but this was not really so in the present case because the allowance was not determined once for all and was not dissociated from the revenue or the assets of the land.

10. It follows that the Raja was an "intermediary" within the meaning of Section 3(12) of the Act, and by virtue of Section 6 of the Act his right, title and interest in the biswadari land ceased and vested in the State on the publication of the notification under Section 4 of the Act. He could therefore lay a claim for compensation under Section 27, and the High Court cannot be said to have erred in rejecting his claim to 'malikana' as a pensionary benefit outside the purview of the Act.

11. We have gone through the decision in State of Uttar Pradesh v. Kunwar Sri Trivikram Narain Singh ((1962) 3 SCR 213 : AIR 1963 SC 799 : (1962) 2 SCJ 613), but there the settlement was by way of a "pension" which was neither land not an estate within the meaning of the Act. The pension was in the nature of a mere compensation payable in lieu of the ancestral rights over the estates comprised in the pargana. It was in fact granted as a consideration for the settlement of the claim which was litigated in a civil court relating to that land and was granted in consideration of the extinction of the right in the land or the land revenue. That was why it was held that the person receiving an allowance from the State in consideration of extinction of a right in the land or land revenue was not a proprietor within the meaning of the Act - the more so when it was found that his name had not been entered in the revenue record under clauses (a) to that his name had not been entered in the revenue record under clauses (a) to (d) of Section 32 of the Land Revenue Act. There was thus no direct connection between the right or privilege which was claimed in that case and the land in the estate or its revenue. The appellant cannot therefore take any benefit out of that judgment, and the High Court was right in distinguishing it from the facts of the present case.

12. As we find no merit in this appeal, it is dismissed with one set of costs to the respondents.

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