

Jagdeo Singh and Others

Vs

Mihi Lal Others

Civil Appeal No. 1294(N) of 1969

(A.C. Gupta, E.S. Venkataramiah JJ)

04.09.1979

JUDGMENT

GUPTA, J. -

1. This appeal by special leave is from a judgment of a Division Bench of the Allahabad High Court affirming a decision of a learned single Judge of that Court allowing a writ petition made by the first respondent.

2. These are the facts of the case. There is no dispute that in 1356 Fasli (July 1, 1948 to June 30, 1949) first respondent Mihi Lal's name was recorded as the person in possession of the disputed plots. It appears that earlier, in 1945, the revenue court had passed an order for his eviction from the land in a proceeding under Section 175 of the U.P. Tenancy Act, 1939 initiated by the appellants. Mihi Lal's name, however, continued to be recorded against these plots as occupant for several years; either Mihi Lal continued to be in possession of the plots or somehow got back into possession as would appear from the fact that on June 27, 1952, another proceeding was instituted under Section 180 of the said Act for his eviction. Before this proceeding was concluded, the village come under consolidation operations. The appellants filed an objection saying that Mihi Lal had no right to the land. This objection was allowed by the Consolidation Officer and was upheld by the Additional Settlement Officer and also by the Deputy Director of Consolidation. Mihi Lal then filed the writ petition in the High Court out of which this appeal arises challenging the order of the consolidation authorities.

3. Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, so far as it is relevant for the present purpose, provides that every person who was recorded as occupant of any land in the Khasra or Khatauni of 1356 Fasli prepared under the U.P. Land Revenue Act, 1901 shall be entitled to retain possession thereof. There is no dispute that Mihi Lal's name was recorded as occupant of the disputed land in 1356 Fasli. On behalf of the appellants before us, it was argued in the High Court that in view of explanation III to Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950, the erroneous entry in the name of Mihi Lal should be deemed to have been corrected. Section 20 has four explanations of which the second and the third are relevant. The second explanation provides that where an entry has been corrected before the date of vesting of the estates in the State which was on July 1, 1952, the corrected entry shall prevail. Explanation III lays down that for the purposes of the second explanation, "an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the records". It was pointed out that on September 7, 1949, the Tehsildar had corrected the entry and removed the name of Mihi Lal in a proceeding

under Section 39 of the U.P. Land Revenue Act, 1901 (Act No. 3 of 1901). This was also what weighed with the consolidation authorities in upholding the objection preferred by the appellants. The High Court overruled this contention on the view that as the law stood at the time when the Tehsildar had made the order he had no jurisdiction to correct the entry. It does appear that the appellants before us applied to the Tehsildar under Section 39(1) of the Act for correction of the entry. Sub-section (2) of Section 39 empowered the Tehsildar to "make such inquiry as appears necessary and then refer the case to the Collector" who was to dispose of the case in accordance with the other provisions of the Act. It is clear, therefore, that Tehsildar had no jurisdiction to make an order correcting the entry. Counsel for the appellants contended that if the Tehsildar's order was wrong, Mihi Lal could have preferred an appeal to the appellate authority which he did not do. But, as the High Court points out, "if the Tehsildar's order was without jurisdiction and was not given effect to, there was no need for Mihi Lal to file an appeal against the order. He could rest content with the existing entries in the village papers." It has been held by this Court in *Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman* ((1961) 1 SCR 564 : AIR 1961 SC 143 : (1961) 1 SCJ 387) and *Amba Prasad v. Abdul Noor Khan* ((1964) 7 SCR 800 : AIR 1965 SC 54 : (1965) 1 SCJ 559) that in order that a person can take the benefit of Section 20 what is required is that he should have been recorded in occupation of the land in dispute in the year 1356 Fasli. Thus, Mihi Lal could and did rely upon that entry for purposes of Section 20 of the U.P. Zamindari Abolition and Land Reforms Act, 1950.

4. We find no reason to interfere with the order passed by the High Court. The appeal is dismissed, but in the circumstances of the case without any order as to costs.

5. We are grateful to Mr. O. P. Rana who at our request assisted us *amicus curiae* in this case.

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