

Ram Autar and Others

Vs

Deputy Director of Consolidation and Others

Civil Appeal No.2722 of 1977

(L.M. Sharma, Smt. M.S. Fathima Beevi JJ)

13.11.1990

JUDGMENT

SHARMA J

1. The respondents Nos, 3 and 4 filed an objection u/ S. 9-A of the U.P, Consolidation of Holdings Act, contending that the names of the appellants were wrongly recorded in place of their names as sirdars with respect to the land in question. In view of the subsequent amendment in the law the respondents claimed the rights of Bhumidhars. The Consolidation Officer rejected the objection and the respondents filed an appeal. The Assistant Settlement Officer, Consolidation agreed with the respondents and allowed the objection. The appellants after unsuccessfully moving the Deputy Director of Consolidation in revision filed a writ petition in the High Court, which was dismissed by a learned single Judge. An appeal under Chapter VIII, R. 5 of the High Court Rules was also dismissed by a Division Bench by the judgment which is the subject matter of the present civil appeal by special leave.

2. According to the case of the respondents they were the tenants and the appellants were sub-tenants under them when the Zamindari was abolished in Uttar Pradesh. As the respondent No. 3, Ram Narain, was a paralytic patient and respondent No. 4, Sheo Narain, a minor, whose father was suffering from a disqualification within the meaning of clause (d) of S. 157(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, (hereinafter referred to as the Act), they were covered by S. 157 and consequently the provisions of S. 21(1)(h) were attracted. On that basis it is claimed that the appellants who were their sub-tenants acquired the status of asamis and not that of adhivasis.

3. The appellants denied the allegations and prayed for dismissal of the objection. The question as to whether the respondents Nos. 3 and 4 were entitled to the benefit arising out of the provisions of S. 21(1)(h) read with S. 157 was decided against the appellants and the High Court rightly refused to re-examine the controversy which was set at rest by findings of fact. An attempt was made by the learned counsel for the appellants before us to re-open the issue but we declined to go into that question which is dependent on evidence. The appellants have further contended that in view of the final publication of the compensation statement made u/ S. 240-J in Chapter IX-A of the Act, the claim of the respondents must be held to be concluded against them, and their objection was not maintainable.

4. A reference has been made by the learned counsel for the parties to the two Full Bench decisions of the Allahabad Court in Maqbool Raza Ghaggar Hussain v. Joint Director of Consolidation AIR

1969 Allahabad 26, and Avdhesh Singh v. Bikarama Ahir : AIR 1975 Allahabad 324. In Maqbool Raza's case the Full Bench of three Judges held that by enacting Chapter IX-A it was never the intention of the legislature to provide for a machinery to decide the question as to who is the adhvasi of a particular land. This decision was confirmed later by the Full Bench of five Judges Avdhesh Singh's case. Mr. V. K. S. Choudhary, the learned counsel for the appellants contended that in view of the categorical answer given by the Full Bench in Avdhesh Singh's case to the questions 1, 2 and 4, the objection of the respondent is liable to be rejected without going into any controversy on facts and in spite of findings recorded in their favour with respect to the disabilities claimed. As it appears from the last paragraph of the judgment, the Full Bench held that the finality of compensation Statement u/ S. 240-J extinguishes the rights and title of the landholder and the landholder is debarred from showing in collateral or separate proceedings that the land is not held by an adhvasi except in cases where the provisions of the Act have not been followed or where the compensation statement has been prepared in disregard of the fundamental principles of judicial procedure. The Court also said that the compensation statement is final between the landholder and the State alone and that a landholder who has received compensation has no locus standi to reagitate his rights. The argument is that once the final compensation statement has shown the respondents as the landholders entitled to the compensation, they are debarred from urging that the land is not held by an adhvasi. Although the appellants have not been mentioned in the Statement as adhvasis and it may not, therefore, be open to them to claim the right of adhvasi on the basis of the final Statement, so far the respondents are concerned, their objection must be rejected. If any other person claims the right of adhvasi as against the appellants, the position may be different. But so far the respondents who have been shown as landholders are concerned, they being entitled to get the compensation cannot be permitted to claim the land as well. The learned counsel for the respondents has placed great reliance on the latter part of the answer framed by the Full Bench in reply to the first question, whereby the main proposition has been subjected to certain exceptions. If the provisions of the Act have not been followed or the compensation statement has been prepared in disregard of the fundamental principles of 'judicial procedure in a given case, it was held that the right and title of the landholder shall not be extinguished. The case of the respondents is that they had no knowledge whatsoever of the proceeding for preparation of the compensation and no notice was served on them. Unfortunately no finding has been recorded on this issue.

5. The procedure for preparation of compensation statement has been detailed in Chapter IX-A and S. 240-D requires the Compensation Officer to prepare a statement in regard to the matters enumerated therein and S. 240-F enjoins a copy thereof to be sent to the landholder concerned. If the allegation of the respondents that no notice was ever sent to them is correct, they are, according to the decision in Avdhesh Singh's case (AIR 1975 Allahabad 324) (FB) relied upon by the appellants, not debarred from pressing their claim. This issue has to be decided on the basis of relevant materials. The case, therefore, deserves to be remanded. It has been suggested by the learned counsel for the parties that the case may be remanded to the Deputy Director of Consolidation and not to the Consolidation Officer as that would save the parties from fighting at three stages before the revenue officers and would expedite the final disposal of the case. We agree.

6. The learned counsel for the respondents advanced another argument on the basis of the observations in Sukhram Singh v. Smt. Harbheji (1969) 3 SCR 752: (AIR 1969 SC 1114). It was argued that in view of what has been stated in that case specially at pages 757G and 759G, the present controversy between the parties cannot be held to be concluded on the basis of the compensation Statement. The learned counsel for the appellants has attempted to distinguish the case on the ground that there an objection was actually raised in accordance with the provisions of Chapter IX-A and the Compensation Officer was, therefore, under a duty to frame an issue and refer

it. to the competent court which was not done. It is said that since in the present case there was no objection filed at all on behalf of the respondents or anybody else, there was no occasion for framing an issue and referring it to the competent court However, since the matter is being remanded for determination of disputed issues of facts, we refrain from expressing any opinion on this point.

7. For the reasons mentioned above, the judgments of the Deputy Director of Consolidation, of the learned single Judge and of the Division Bench of the High Court are set aside. The matter is remanded to the Deputy Director of Consolidation for fresh decision in the light of the observations made above. The parties shall be permitted to lead further evidence on the aforesaid disputed questions of fact. This appeal is accordingly allowed, but in the circumstances without costs.

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