Bhagwan Das and Another

Vs

Sardar Atma Singh

Civil Appeal No. 11068 of 1995

(K. Ramaswamy, B. L. Hansaria JJ)

23.11.1995

JUDGMENT

HANSARIA, J. –

1. Leave granted.

2. Appellants are tillers of the land. They are pitched against the respondent (a retired Garrison Engineer), who is an absentee landlord. Their grievance is that the land, which is the subject-matter of this appeal, which has been in their possession for long, has been ordered to be delivered wrongfully to the respondent on his seeking the same by filing the present suit, after he had failed to get possession in a proceeding under the Madhya Pradesh Land Revenue Code, 1959 (hereinafter 'the Code').

3. The case of the respondent is that the agricultural land in question was provisionally allotted to one Idnani under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 by issuing a temporary sanad on 27-4-1954. Admitted case of the parties is that father of Appellant 1, Ramnath was put into possession of the land by Idnani. According to the respondent, this had been so done because Ramnath was employed as a servant by Idnani, whereas the case of the appellant is that Ramnath was a lessee. There is no dispute that on 10-8-1965, Idnani was given permanent sanad under the aforesaid Act. There is also no dispute that the land was sold to the respondent by Idnani on 9-11-1966. It is after the purchase that the respondent invoked Section 250 of the Code seeking delivery of possession, which petition came to be allowed by Naib Tahsildar. The appeal by the first appellant's mother was allowed by Sub-Divisional Officer. The respondent appealed against that order to Additional Commissioner, but unsuccessfully. Revision to the Board of Revenue by the respondent was also dismissed; so too the review. The led the respondent to invoke the writ jurisdiction of the High Court which came to be dismissed. This is the end of the first round of litigation.

4. The second bout begins by filing the suit by the respondent claiming possession, which came to be dismissed by the Civil Judge. The appeal against this order was also dismissed. It is in the second appeal by the respondent that the appellants lose because of the view of the High Court that the appellant had not acquired the Bhumiswami right which he had claimed in the suit on the strength of certain provisions of the Code, as Section 264 of the Code states : "Nothing contained in this Code shall apply to a person who holds land from the Central Government." Feeling aggrieved with the order of the High Court, this appeal has been filed by the appellant under Article 136 of the Constitution.

5. Two questions call for our decision. The first is whether Section 264 could be pressed into service by the respondent ? Secondly, whether the appellants acquired Bhumiswami rights under the Code ?

6. Both the questions are interrelated. It may be pointed out that the Code came into force in 1959, whereas Idnani had been given sanad, to start with temporary, in 1954, which sanad admittedly was made permanent subsequently in 1965. Now, if under the law Idnani had become Bhumiswami, appellants have to be conceded that status because of what has been stated in Section 190 of the Code, as there is no dispute that the ingredients of this section are satisfied. And if the appellants had come to be clothed with Bhumiswami rights, there is again no dispute that the respondent could not have sought for possession.

7. Shri Sanghi, appearing for the respondent, has submitted that Idnani could not have become Bhumiswami because of what has been stated in Section 264 of the Code. According to the learned counsel, the land which was allotted to Idnani being an evacuee property had vested in the Central Government and it is because of this that Section 264 would not permit application of any provision of the Code to the land in question. But then if Idnani had acquired Bhumiswami right, the land had ceased to belong to the Central Government. Shri Sanghi urges that as permanent sanad was given to Idnani in 1965 and as the Code had come into force by 1959, Idnani could not have acquired Bhumiswami right under the Code because of what has been stated in Section 260. Shri Subba Rao, appearing for the appellants, joins issue with Shri Sanghi and contended that though Idnani was given permanent sanad in 1965, that has to relate back to 1954 when temporary sanad had been given. There being continuity of possession and of right, it is urged that Idnani for all purpose must be deemed to have become Bhumiswami in 1954. We find this submission well-founded.

8. Finding the ground slipping under the feet, Shri Sanghi submits that though the Code had come into force in 1959, its predecessor statute, namely Madhya Pradesh Land Revenue Code was in existence in 1954. That Code, however, having received assent of the President on 5-2-1955 was also not in operation when temporary sanad had been given to Idnani on 7-4-1954.

9. The aforesaid legal and factual spectrum would permit us, indeed require us, to accept the case of the appellants. We, therefore, hold that possession of the land could not have been demanded by the respondent, because the first appellant's father Ramnath had been accepted as a lessee and not an employee, in the first round of litigation noted above. As to the finding in that proceeding, the submission of Shri Sanghi is that that cannot operate as res judicata, to which the reply of Shri Subba Rao is that that would so operate, in view of what has been held by this Court in Sulochana Amma v. Narayanan Nair [(1994) 2 SCC 14] (at SCC page 18) in which it has been observed that Explanation VIII to Section 11 of CPC would apply to the findings of court of either limited pecuniary jurisdiction or of special jurisdiction like the Revenue Tribunal.

10. The result of the aforesaid discussion is that the ground given by the High Court to defeat the claim of the appellants is not sustainable. So, the land would remain in the possession of the appellants, who are tillers of the land. Social justice itself would have required so.

11. The appeal, therefore, stands allowed with cost by setting aside the order of the High Court and by stating that the suit filed by the respondent shall stand dismissed. We quantify the cost at Rs 10,000.