

Firdosh Fatima (since dead)

Vs

Firdosh Begum (dead) and others

Civil Appeal Nos. 2194 and 1657 of 1977

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

06.02.1996

### JUDGMENT

1. These two appeals arise from a Full Bench judgment of the High Court of Allahabad in Hakim Sigh v. Shiv Sagar, AIR 1973 All 596. The U.P. State Legislature enacted U.p. Amendment Act 33 of 1972 amending U.P. High Court ( Abolition of Letters Patent Appeals ) Act, 1962 and enacted Section 4 thereof which reads as under:-

"Abolition of appeals from the judgment or order of one Judge of the High court made in the exercise of writ jurisdiction in certain cases. -(1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the commencement of this section, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution, in respect of a judgment, decree or order made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901, or the U.P.Tenancy Act, 1939, or the Uttar Pradesh Urban Area Zamindari Abolition and Land Reforms Act, 1956, or the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of Director Consolidation ) under the U.P.Consolidation of Holdings Act, 1953, anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated March 17, 1866, read with Clauses 7 and 17 of the U.P. High Court's (Amalgamation) Order, 1918, or in any other law notwithstanding.

(2) Notwithstanding anything contained in sub-section (1) all appeals pending before the High Court on the date immediately preceding the date of commencement of this section shall be heard and disposed of as if this Section has not been enacted."

2. By operation of this enactment, the power to entertain Letters Patent Appeal under Clause (10) of the Letter Patent dated March 17, 1866 read with Clause (17) of U.P.High Court's (Amalgamation) Order, 1948, in respect of the enumerated subjects mentioned therein stands taken away. The controversy is no longer res integra. This Court in Hasinuddin Khan v.Dy.Director of Consolidation, (1980) 3 SCC 285 by a Constitution Bench has already upheld the validity of the Act, following the ratio of this Court in State of Bombay v. Narottamdas Jethabhai, 1951 SCR 51 : (AIR 1951 SC 69), Ram Adher Sigh v. Ramroop Sigh, (1968) 2 SCR 95: (AIR 1968 SC 714 ) and Union of India v., Mohindra Supply Co. (1962) 3 SCR497: (AIR 1962 SC 256). As a fact, this court has upheld the validity of Section 3 of 1962 Act in Mohindra Supply Co's case. It was held thus:

" The challenge to these Acts on the ground of the unconstitutionality is, therefore, rejected."

3. In view of the decision of the Constitution Bench, the controversy no longer survives. the legislative competence in abolishing Letters Patent Appeals in respect of revenue and tenancy matters is covered under Section 4 of the said Act. They are under respective legative entries in State List II in VIIfth Schedule to the Constitution relating to jurisdiction and powers of all Courts of administration of justice in the State of Uttar Pradesh with respect to the matters in List II. Therefore, the Act stands upheld.

4. The appeals are accordingly dismissed. No costs. Appeals dismissed.