

State of U.P.

Vs

Deputy Director of Consolidation and Others

Civil Appeals Nos. 744-759 of 1977

(Kuldip Singh, B. L. Hansaria, S. B. Majmudar JJ)

08.07.1996

JUDGEMENT

KULDIP SINGH, J.:-

1. The land in dispute measuring 22.11 acres was notified as reserved forest under Section 20 of the Indian Forest Act, 1927 (the Act) by the notification dated August 19, 1963. Respondents, in the appeals herein, claimed before the authorities under the U.P. Consolidation of Holdings Act, 1953 (the Consolidation Act) that they were in possession of the land and had acquired Sirdari rights. They further claimed that the land was illegally subjected to the proceedings under the Act because they had become owners of the land. Since the land was not property of the Government - according to them - the notification declaring the land as reserved forest was illegal. The Consolidation Authorities accepted the objections of the respondents. The writ petitions under Article 226 of the Constitution of India filed by the State of U.P. - challenging the orders of the Consolidation Authorities were dismissed by the High Court. These appeals are against the judgment of the High Court upholding the orders of the Consolidation Authorities.

2. We may briefly notice the facts of the case. The State Government issued a notification dated March 29, 1954 declaring its intention to constitute the land in dispute a reserved forest. After disposal of the objections filed under Section 6 read with Section 9 of the Act and the finalisation of the appeals under Section 17 of the Act, a notification dated August 19, 1963 declaring the land in dispute to be reserved for forest was issued. In the revenue records the respondents were recorded as Sirdari holders of the land. The land was also recorded as a part of the forest department khata.

3. Learned Counsel for the appellants has contended that the respondents did not raise any objection/claim before the Forest Settlement Officer under the Act. There is nothing on the record to show that any objection or claim was ever made by the respondents before the authorities under the Act. Consolidation operations commenced in the area on April 3, 1966. The respondents claimed before the Consolidation Authorities that they had acquired Sirdari rights in the land on the basis of their long possession. It was also claimed that the land in dispute was neither forest land nor waste land and as such in terms of Section 3 of the Act it could not be notified as reserve forests. Before the authorities under the Consolidation Act, the State of U.P. pleaded that the land in dispute stood vested in the State by the notification dated October 11, 1952 issued under the U.P. Zamindari Abolition and Land Reforms Act, 1951 (the Abolition Act). In the writ petition before the High Court the State Government averred as under :

"That in the objections filed by opposite party No.4 the question that the land in dispute did not vest in the State Government, was not raised, nor was it pleaded that the State Government had no authority to issue a notification under Section 4 of the Act as the land in dispute was not covered by Section 3 of the Act. No issue on these points was framed by the Consolidation Officer:-

4. The Consolidation Officer allowed the claim of the respondents and came to the conclusion that the notification under Section 4 and 20 of the Act did not affect the rights of the respondents in the land in dispute. He, however, dismissed the claim of respondent Husain. The Settlement Officer upheld the claims of the respondents and dismissed the appeals filed by the State. He also dismissed the appeal filed by Husain. The revision petitions filed by the State Government were dismissed by the Dy. Director, Consolidation. However, the revision petition filed by Hussain was allowed and he was also given relief in similar terms as the other respondents were given by the Consolidation Authorities. The High Court dismissed the writ petitions filed by the State of U.P. on the following reasonings :

"Para 2 of the writ petition states that 0.53 acres of land in village Asauwa, tehsil and district Kheri was vested in the State at the time of abolition of the Zamindari through notification No.617/XIV dated 11-10-1952. The allegation is a picture of vagueness. It has not been stated as to under which provision of law did this vesting take place. The U.P. Zamindari Abolition and Land Reforms Act came into operation on 1st July, 1952. Apparently the notification mentioned in this paragraph was not issued under the U. P. Zamindari Abolition and Land Reforms Act. A copy of the notification has not been annexed to the writ petition. In my opinion no reliance can be placed on paragraph 2 of the writ petition to sustain the plea that the land in dispute was the property of the Government or that the Government had proprietary rights in it. The counter-affidavit filed on behalf of the respondent disputes that the posts of which he was in cultivatory possession had vested in the State. In the circumstances the finding that the land in dispute was not covered by Section 3, Forest Act could not be characterised as erroneous in law. The consequential proceedings emanating on the notification under Section 4 and culminating in the notification under Section 20 were without jurisdiction and void because the land did not fall within the purview of Section 3 of the Act. Section 4 of the Act authorises the State Government to constitute a reserved forest only on land which is covered by Section 3 and no other. If in any particular case the land is not covered by Section 3, under Section 4 and subsequent provisions would confer no jurisdiction to validly constitute it as reserved forest. A tenure-holder need not waste his time and money in participating in such void proceedings. It is not a case where the Consolidation Authorities have gone behind the orders passed in proceedings consequent to the issue of notification under Section 4. This is a case where the Consolidation Authorities have examined the title of tenure-holders. They have further examined, in my opinion rightly, whether the title of these persons was established or defeated. The State Government asserted that their title had extinguished by virtue of Section 20 of the Act. In order to test this the Consolidation Authorities could validly go into the question whether the proceedings under the Indian Forest Act were totally without jurisdiction. They were not testing the correctness of the order passed disposing of the objections. They were trying to find whether the proceedings were at all recognizable. The proceedings being totally void, the Consolidation Authorities were bound to hold that the title of the objections were not extinguished thereby".

5. We are of the view that the High Court fell into patent error in appreciating the provisions of the Act and the Abolition Act. It is not disputed that the Abolition Act applied to the land in dispute and, therefore, the State was the proprietor of the land and the respondents, even if they were Sirdars, would still be tenure-holders.

6. This Court in Mahendra Lal Jaini v. State of U.P., AIR 1962 SC 1019, dealt with an identical question, Mahendra Lal Jaini, in a petition under Article 32 of the Constitution of India, contended before this Court that he being a Bhumidar in possession, the provisions of the Act. (The Forest Act, 1927) would not apply to the said land. Repelling the contention this Court held, that though Bhumidars have higher rights than Sirdars and Assamis, they were still tenure-holders under the State which was proprietor of the land in the areas to which the Abolition Act applied. It was further held that, even if it was presumed that the petitioner Mahendra Lal Jaini was a Bhumidar, he could not claim to be the proprietor of the land. It was held that the provisions of the Act would be applicable to the land in dispute. It would be useful to reproduce the relevant part from the judgment of this Court (AIR 1963 SC 1919) in Mahendra Lal's case :

"It is, however, urged on behalf of the petitioner that he claims to be the proprietor of this land as a bhumidar because of certain provisions in the Act. There was no such proprietary right as bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by S.129; blumidar, Sirdar and Assami, which were unknown before. The bhumidhar, Sirdar and Assami are all tenure-holders under the Abolition Act and they hold their tenure under the State in which the proprietary right vested under S.6. It is true that bhumidhars have certain wider rights in their tenures as compared to Sirdars; similarly Sirdars have wider rights as compared to Assamis, but nonetheless all the three are mere tenure-holders - with varying rights - under the State which is the proprietor of the entire land in the State to which the Abolition Act applied. It is not disputed that the Abolition Act applies to the land in dispute and therefore the State is the proprietor of the land in dispute and the petitioner even if he were a bhumidar would still be a tenure-holder.....The petitioner therefore even if he is presumed to be a bhumidhar cannot claim to be a proprietor to whom Chap.II of the Forest Act does not apply, and therefore Chap. V-A, as originally enacted, would not apply (See in this connection, Mst. Govindi v. State of U.P., AIR 1952 All 88). As we have already pointed out Ss.4 and 11 give power for determination of all rights subordinate to those of a proprietor, and as the right of the bhumidhar is that of a tenureholder, subordinate to the State, which is the proprietor of the land in dispute, it will be open to the Forest Settlement Officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a bhumidhar".

7. It is thus obvious that a person who was holding the land as Sirdar was not vested with proprietary rights under the Abolition Act. He was a tenure-holder and the proprietary right vested with the State. The High Court, therefore, fell into patent error in assuming that by virtue of their status as Sirdars the respondents were proprietors of the land. The State being the proprietor of the land under the Abolition Act it was justified in issuing the notification under Section 4 of the Act.

8. The nature of the land - whether covered by Section 3 of the Act or not - could only be determined on the date of the notification under Section 4 of the Act which was issued on March 29, 1954. Neither the Consolidation Authorities nor the High Court have gone into the question as to what was the nature of the land on the relevant date. The Consolidation Authorities recorded their

findings in the year 1968-69. They were wholly oblivious of the nature of the land 14-15 years back in the year 1954.

9. The crucial question for consideration, however, is whether the Consolidation Authorities have the jurisdiction to go behind the notification under Section 20 of the Act and deal with the land which has been declared and notified as a reserve forest under the Act. It is necessary, therefore, to examine the scheme of Chapter II of the Act. Section 3 provides that the State Government may constitute any forest land or waste land which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce to which the Government is entitled a reserved forest. Section 4 provides for the issue of a notification declaring the intention of the Government to constitute a reserve forest. Section 5 bars accrual of forest rights in the area covered by the notification under Section 4 after the issue of the notification. Section 6, inter alia, gives power to the Forest Settlement Officer to issue a proclamation fixing a period of not less than three months from the date of such proclamation and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period, either to present to the Forest Settlement Officer a written notice specifying or to appear before him, and state the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof. Section 7 gives power to the Forest Settlement Officer to investigate the objections. Section 8 prescribes that the Forest Settlement Officer shall have the same powers as a Civil Court has in the trial of a suit. Section 9, inter alia, provides for the extinction of rights where no claim is made under Section 6. Section 11(1) lays down that in the case of a claim to a right in or over any land, other than a right of way or right of pasture, or a right to forest produce or water course, the Forest Settlement Officer shall pass an order admitting or rejecting the same in whole or in part. In the event of admitting the right of any person to the land, the Forest Settlement Officer, under Section 11(2), can either exclude such land from the limits of the proposed forest or come to an agreement with the owner thereof for the surrender of his rights or proceed to acquire such land in the manner provided by the Land Acquisition Act, 1884. Section 17 provides for appeal from various orders under the Act and Section 18(4) for revision before the State Government. When all the proceedings provided under Section 3 to 19 are over the State Government has to publish a notification under Section 20 specifying definitely the limits of the forest which is to be reserved and declaring the same to be reserved from the date fixed by the notification.

10. It is thus obvious that the Forest Settlement Officer has the powers of a Civil Court and his order is subject to appeal and finally revision before the State Government. The Act is a complete Code in itself and contains elaborate procedure for declaring and notifying a reserve forest. Once a notification under Section 20 of the Act declaring a land as reserve forest is published, then all the rights in the said land claimed by any person come to an end and are no longer available. The notification is binding on the Consolidation Authorities in the same way as a decree of the Civil Court. The respondents could very well file objections and claims including objection regarding the nature of the land before the Forest Settlement Officer. They did not file any objection or claim before the authorities in the proceedings under the Act. After the notification under Section 20 of the Act, the respondent could not have raised any objection qua the said notification before the Consolidation Authorities. The Consolidation Authorities were bound by the notification which had achieved finality.

11. We, therefore, allow the appeals, set aside the impugned judgment of the High Court and also the orders of the Consolidation Authorities to the extent they are against the interest of the State. We hold that the land in dispute was rightly declared and notified as a reserve forest and the respondents have no rights or claim or any interest in the said land. No costs. Appeal allowed.