

SUPREME COURT OF INDIA

Sarnam Singh

Vs.

Dy. Director of Consolidation

(S Ahmed and R Sethi JJ.)

21.04.1999

ORDER

1. Sarnam Singh and Brahmanand who are the appellants before us were let out certain land by the Zamindar who subsequently evicted them from that land in 1943 in proceedings under Section 171 of the U. P. Tenancy Act. Later, when the U.P. Tenancy Act was amended by the U.P. Act 10 of 1947 and Section 27 was inserted in that Act, the appellants made an application for reinstatement over that land.

2. While the proceedings under Section 27 were pending, the U.P. Zamindari Abolition and Land Reforms Act, 1950 was enforced with effect from 1-7-1952. In the meantime, proceedings under the U. P. Consolidation of Holdings Act, 1953 started in pursuance of a notification issued under Section 4 of the Act. The proceedings under Section 27 of the U.P. Tenancy Act were, on the date of notification, pending and had not been disposed of. In those proceedings under the U.P. Consolidation of Holdings Act, Respondents 2 to 7 filed objections under Section 9A(2) of the Act claiming Sirdari rights over the plots in question. The Consolidation Officer by his order dated 30-8-1970 dismissed the objections with the findings that the appellants were in possession over the land in question in 1356 and 1359 Fasli and, therefore, they had become Sirdars of that land under Section 19 of the U.P. Zamindari Abolition and Land Reforms Act. This order was upheld by the Settlement Officer, Consolidation, but set aside in revision by the Deputy Director of Consolidation. The appellants, thereafter, filed a writ petition in the High Court which has been dismissed by the impugned judgment with the finding that the benefit of Section 27 of the U.P. Tenancy Act will not be available to the writ petitioners as they had not made any application under that section for their reinstatement over that land.

3. Learned Counsel for the appellants has contended that the High Court has committed an error of

fact in recording the findings. He has drawn our attention to the copy of the writ petition filed in the High Court. Paras 1 to 8 of the writ petition, which are relevant, are reproduced below:

That Respondents 2 to 4 filed an objection under Section 9 of the U.P. Consolidation of Holdings Act, in respect of Khata No. 261, (Plots Nos. 251/1, 261/ 3, 254/1, 223), Khata No. 273 (Plots Nos. 80-81, 217, 219, 220), Khata No. 135 (Plots Nos. 221/060, 224/0.72, 225/0.63) situate in Village Chilsari Shamshabad East, District Farrukhabad with the allegations that they were ejected under Section 171 of the U.P. Tenancy Act by the then Zamindar and their ejection was based on fraud and undue influence exercised by the Kukhtar-e-am of the Zamindar.

2. That they further alleged that they applied for the reinstatement under Section 27 of Act 10 of 1947 and during the pendency of the writ petition the notification under Section 4 of the CH Act was made in the village.

3. That the petitioners contested the objection of Respondents 2 to 4 on the ground that they as well as Respondents 2 to 4 and 8 were ejected under Section 171 of the U. P. Tenancy Act. They further alleged that all the above petitioners and the aforesaid respondents, i.e. Respondents 2 to 4 and 8 applied for reinstatement under Section 27 of Act 10 of 1947. The action for restoration of possession had not concluded when the consolidation proceedings came in and the dispute had been stayed.

4. That the order respondents contested the objection of Respondents 2 to 4 on the ground that after the ejection under Section 171 of the U.P. Tenancy Act the Zamindar let out the disputed land to them and they are in possession over the same. They further contested the objection on the ground that the Consolidation Courts had no jurisdiction to decide the application for reinstatement under Section 27 of Act 10 of 1947.

5. That the Consolidation Officer dismissed the objection of Respondents 2 to 4 and maintained the basic year entries in the names of the petitioners, and Respondents 5 to 8 on the ground that the Consolidation Courts have no jurisdiction to decide the application under Section 27 of Act 10 of 1947. He has relied upon the Single-Judge ruling of this Hon'ble Court. The true copy of the order of the Consolidation Officer dated 30-9-1970/7-10-1970 is filed herewith and marked as Annexure 'A' to this writ petition.

6. That Respondents 2 to 4 filed an appeal against the order of the Consolidation Officer, which was dismissed by the Settlement Officer (Consolidation) on the ground that the Consolidation Courts have no jurisdiction to decide the application under Section 27 of Act 10 of 1947. He has adopted the same reasoning as adopted by the Consolidation Officer. The true copy of the order of the Settlement Officer (Consolidation) dated 18-5-1971 is filed herewith and marked as Annexure 'B' to this writ petition.

7. That Respondents 2 to 4 filed a revision against the order of the Settlement Officer (Consolidation) to the District Deputy Director of Consolidation and the Deputy Director of Consolidation allowed the revision on the ground that the Single-Judge ruling of this Hon'ble Court had been overruled by the Division Bench ruling and as such the Consolidation Courts have jurisdiction to decide the application under Section 27 of Act 10 of 1947. He has further held that the petitioners being recorded in the basic year are entitled to retain possession up to three years from the date of reinstatement and during that period they shall be recorded as Asamis over the

disputed land recorded in their names in the basic year. The certified copy of the Deputy Director of Consolidation Officer dated 17-9-1971 is filed herewith and marked as Annexure 'C' to this writ petition.

8. That the order of Respondent 1 is illegal and without jurisdiction. He has wrongly said in his judgment that the petitioners did not apply for the reinstatement under Section 27 of Act 10 of 1947. He has further illegally held that the names of the petitioners being recorded in the basic year shall be recorded as Asamis of the disputed land. Respondents 2 to 4 and 8 and the petitioners were ejected under Section 171 of the U.P. Tenancy Act and they had jointly moved an application under Section 27 of Act 10 of 1947 for reinstatement.

4. Grounds 2 and 4 raised in that writ petition are also reproduced below:

2. Because the petitioners applied for the reinstatement along with Respondents 2 to 4 and 8 as such are entitled to the benefit of the Division Bench ruling relied upon by Respondent 1 in his judgment.

4. Because Respondent 1 has misread the evidence by saying that the petitioners did not apply for the reinstatement under Section 27 of Act 10 of 1947.

5. Learned Counsel for the appellants has also drawn our attention to the copy of the application filed under Section 27 of the U.P. Tenancy Act which was made on behalf of the following persons:

Shri Gulzari Lal, Shri Babu, Shri Sarnam Singh Shri Brahmanand.

6. The High Court while disposing of the writ petition has, inter alia observed as under:

I am inclined to accept the findings recorded by the Deputy Director of Consolidation to the effect that Opposite Parties 2 to 4 alone applied for reinstatement over the land of the disputed holdings. The finding recorded by the Deputy Director of Consolidation on this question of fact cannot be challenged in the writ petition under Article 226 of the Constitution of India, which has not been shown to be wrong or perverse especially when the petitioners have not averred in the writ petition that they had also applied for reinstatement along with the Opposite Parties 2 to 4. The petitioners have also not brought any material on record to that effect and as such they cannot successfully urge that the finding recorded by the Deputy Director of Consolidation on the said point is wrong.

7. In view of the specific pleadings in the writ petition that the appellants had made an application for their reinstatement under Section 27 of the U.P. Tenancy Act which are supported by a copy of the application filed under that section, it is clear that the High Court has committed an error of fact in recording the finding that the appellants had not made any application for reinstatement under Section 27 of the Act. On account of this factual error, the judgment passed by the High Court cannot be sustained. The appeal is accordingly allowed. The judgment passed by the High Court is set aside and the case is remanded to the High Court for a fresh disposal according to law in the light of the observation made above. No costs.