SUPREME COURT OF INDIA

Lakshmi Narain Mandal

Vs.

State of Bihar

C.A.No.834 of 1997

(Shivaraj V. Patil and D. M. Dharmadhikari JJ.)

05.08.2003

JUDGEMENT

Shivaraj V. Patil, J.

1. In this appeal, the order passed by the Division Bench of the High Court in L. P. A. No. 64 of 1994 affirming the order passed by the learned single Judge in writ petition filed by respondents 4 and 5 herein, is challenged questioning its validity. The writ petition was allowed by the learned single Judge by his order dated 13-4-1994 setting aside the order dated 27-2-1984 passed by the Additional Collector and the same was affirmed by the order under challenge. The facts as noticed in the order of the learned single Judge are that a large number of persons had to lose their lands in execution of rent decrees on account of their failure to pay rent in respect of their holdings or have to abandon on account of vagaries of river Kosi. In order to provide relief to those unfortunate persons, to compensate them the *Kosi Area (Restoration of Lands to Raiyat) Act, 1951* (for short 'the Act') was brought into force. The Preamble of the Act states that it was intended to restore to former raiyats lands which were sold for recovery of arrears of land or from which they were ejected for arrears of rent or which were treated as abandoned during certain period due to floods in the Kosi river. The respondents 4 and 5 made applications for restoration of lands under S. 3 of the Act. The Deputy Collector of Land Reforms (DOLR) exercising the powers of the Collector under the Act passed the order on 9-3-1961 for restoration of the lands to them on payment of compensation in instalments. Respondents 4 and 5 paid the first instalment on 16-3-1961 and the possession of the lands was delivered to them. The appellants preferred appeal before the Additional Collector who by his order dated 31-10-1961, directed the DOLR to re-hear the matter. The DOLR on 21-2-1964 again decided the matter in favour of the respondents 4 and 5 by reducing some area and also fixing higher rate of compensation. Although, in his order, he directed payment of compensation money within three years and two years respectively in three equal instalments in two sets of cases, he did not fix the schedule of payment. The appellants preferred appeal against the said order, to the Additional Collector who affirmed the said order on 20-6-1970. The respondents 4 and 5 on 27-5-1972 filed an application before the DOLR for fixing instalments so that the necessary payments could be made. Their prayer was allowed on 31-5-1972. The appellants again preferred appeal against

the said order before the Additional Collector. The Additional Collector by his order dated 9-8-1975 set aside the order of DOLR dated 31-5-1972 and remitted the matter for fresh consideration. The DOLR again passed order in favour of the respondents 4 and 5. However, on appeal by the appellants, the Additional Collector set aside the order of DOLR. Hence, the respondents 4 and 5 filed writ petition before the High Court. Before the learned single Judge, on behalf of the respondents 4 and 5, it was submitted that the order of 31-5-1972 was passed by the DOLR only to give effect to the order of restoration dated 21-2-1964 to do justice between the parties and, therefore, the appellate authority should not have interfered with the same. On the other hand, learned counsel for the appellants contended that having regard to the provisions of the Act, the DOLR had no discretion in the matter; that the outer limit for payment of compensation within five years has been statutorily fixed and that payment of compensation having not been made within the period, the respondents 4 and 5 lost their rights to get the lands restored. In support of this submission, reliance has placed on the judgment of this Court in *Smt. Sushila Devi v. Ramanandan Prasad and others.*[1]. The learned single Judge distinguishing the case of Smt. Sushila Devi (supra) on facts held that it had no application to the facts of the present case. He also noticed that the first of the three instalments fixed by the order of 9-3-1961 had already been paid by the respondents 4 and 5 within time; further payment was not made on account of the pendency of the appeal; though the appellate authority did not pass any order of stay, nevertheless, if on account of the pendency of the appeal, the respondents in their wisdom had not paid the remaining instalments waiting hopefully for its result, they could not be said to be guilty of deliberate and wilful laches; after remand, the DOLR passed order in favour of the respondents 4 and 5 with certain modifications but did not fix any schedule for payment of compensation; in the said order, he reduced the area of land from 24 bighas and odd to 19 bighas and odd but had also fixed higher rates of compensation. It was also noticed that under S. 7(1)(e) of the Act, the Collector was obliged to ascertain whether the raiyats desire to deposit the amount of compensation in lump sum or in instalments; the appeal remained pending over six years till 20-6-1970 and by that time, the outer limit of five years had already expired. The learned single Judge took the view that the respondents should not suffer for the mistake of the Court when the Court did not fix the schedule of payment; having regard to the pendency of the appeal and other circumstances of the case even if two views were possible the one that serves the object of the Act should be preferred was the view of the learned single Judge. He also took note that the entire amount of compensation has been deposited pursuant to order dated 31-5-1972 and that the respondents 4 and 5 having been put in possession of lands in question in 1961, it was not proper to upset the status quo existing on the land. In this view, the writ petition was allowed. The Division Bench of the High Court did not find good reason to interfere with the order of the learned single Judge. Consequently, it affirmed the same by the order under challenge holding that the learned single Judge had considered the matter in proper perspective.

2. The learned counsel for the parties before us reiterated the submissions that were made before the High Court. The emphasis of the learned counsel for the appellants was on two points : (1) that the respondents 4 and 5 having not paid the compensation amount within the outer limit of five years fixed, there was no justification in allowing their claim and (2) S. 5

of the Limitation Act could not at all be applied to the case having regard to the specific provisions in the Act itself.

3. The facts found in this case are that the object and purpose of the Act were to give benefit and to compensate the unfortunate raiyats, who had lost their lands on account of various factors mentioned in the Preamble and the Statement of Objects and Reasons. The respondents 4 and 5, in execution of the order of restoration of possession of the land in question were put in possession on 16-3-1961 as per order dated 9-3-1961 after payment of the first instalment. The entire compensation money has been deposited pursuant to the order dated 31-5-1972. Ultimately the order dated 20-6-1970 passed by the appellate authority upholding the order of restoration dated 21-2-1964 attained the finality as it was not challenged any further. Although the order dated 21-2-1964 directed payment of compensation money in three equal instalments within three years and two years respectively in two sets of cases, the schedule of payment was not fixed. In that situation the respondents 4 and 5 filed petition on 27-5-1972 before the DOLR fixing instalments with schedule of payment. The prayer was allowed on 31-5-1972. It is the said order dated 31-5-1972 and not the order dated 20-6-1970, which was challenged in the appeal before the Additional Collector, who, by his order dated 9-8-1975, set aside the order of DOLR dated 31-5-1972 and remanded the matter for a fresh consideration. On remand again the DOLR passed the order in favour of Respondents 4 and 5, but the Additional Collector once again set aside the order of the DOLR. Under these circumstances respondents 4 and 5 filed the writ petition, which was allowed by the learned single Judge and the Division Bench affirmed the same by the impugned order. From what is stated above, it is clear that the respondents 4 and 5 came in possession of the lands in question on 16-3-1961 pursuant to the order of restoration of possession dated 9-3-1961. Thus they are in possession of the land as of now for more than 42 years. The order dated 20-6-1970 upholding the restoration of possession in favour of Respondents 4 and 5 attained finality. It may be noted here itself that the order of restoration of possession originally made was modified after remand by reducing the area of land and enhancing the amount of compensation, which ultimately became final by the order dated 20-6-1970. Thus, after making payment of the first instalment of amount of compensation there was change as to the area of the land and the amount of compensation payable. Further, the schedule of payment of instalments was not fixed in the order of 21-2-1964, as affirmed in the appeal. It is only the order dated 31-5-1972, fixing the schedule of payment, became the subject matter of subsequent litigation. Learned single Judge of the High Court taking note of the pendency of the appeal, non fixing of schedule of payment in the order of 21-2-1964 and also the fact that Respondents 4 and 5 had been in possession right from 16-3-1961, set aside the order passed by the Additional Collector and allowed the writ petition. The learned single Judge took the view that the act of the Court could not prejudice the claim of Respondents 4 and 5. The learned single Judge, on facts, clearly distinguished the decision of this Court in Smt. Sushila Devi case (supra). That was a case in which peremptory order was made and even first instalment of amount was not paid. That was the decision in the context of the facts of that case and the distinction made by the learned single Judge as to the application of Smt. Sushila Devi case (supra) to the present case appears to be correct. Moreover, in that case there was a specific condition in the order that on failure to pay the first instalment within the specified period the benefit of the order would be lost. That is not the position in the present

case. When the order of restoration became final on 20-6-1970 and that order having not been challenged, it cannot be annulled indirectly by setting aside the order dated 31-5-1972 relating to the fixing of the schedule of payment, which was made to give effect to earlier order of 20-6-1970. We find some force in the submission of the learned counsel for the appellants as to the non-applicability of Section 5 of the Limitation Act but that does not change the ultimate decision of the case. The facts and circumstances of the case were properly considered by the learned single Judge to do justice between the parties. The order of learned single Judge was rightly affirmed by the order under challenge. The appeal being in continuation of the original proceedings, the order of restoration became final only on 20-6-1970 and the original order of restoration, as already noticed above, was modified after remand relating to the extent of land and payment of compensation. The entire amount of compensation is also paid by the Respondents 4 and 5. Under these circumstances the argument, that amount of compensation has been paid beyond five years and as such the order of restoration of possession in favour of Respondents 4 and 5 is vitiated, cannot be accepted.

4. Be that as it may, when substantial justice is done between the parties in the light of the facts stated above, in our view, it is not a fit case for exercise of our jurisdiction under Article 136 of the Constitution. Hence the appeal is liable to be dismissed. Accordingly it is dismissed. Parties to bear their own costs.

Appeal dismissed.

[1]*AIR 1976 SC 177*