

ALLAHABAD HIGH COURT

Gopal Narain

Vs.

Kanchanlal

Special Appeal No. 367 of 1967, from judgment of G.C. Mathur, J. in Civil Misc. Writ Petn. No. 1314 of 1962

(V.G. Oak, C.J. and R.B. Misra, J.)

13.04.1967. 23.04.1971

JUDGMENT

R.B. Misra, J.

1. The present Special Appeal arises out of consolidation proceedings. The dispute between the parties relates to plots Nos. 154, 171 and 177. Gopal Narain and Tula Ram were the tenants of these plots. They surrendered them in favor of the land-holder Smt. Rani Chauhani on 14th July, 1943. The land-holder came in possession over the plots. On 9th December, 1944, the land-holder settled the plots with Kanchan Lal, Raghubir, Ram Kishan and Babu Ram (hereinafter to be referred to as the newly inducted tenants).

2. In 1947 the U. P. Tenancy Act of 1939 was amended by the U. P. Tenancy (Amendment) Act, 1947 (Act No. X of 1947). It was designed to give relief to certain tenants who had suffered at the hands of the zamindars. Section 27 (1) of U. P. Act X of 1947 gave relief to tenants who had been ejected under Section 165 or Section 171 or Section 180 of the U. P. Tenancy Act. Sub-section (2) of Section 27 of U. P. Act X of 1947 gave relief to such tenants who had surrendered their plots on account of fraud, undue influence or coercion on the part of the zamindar. It was open to such tenants to apply for reinstatement within six months from the date of the enforcement of U. P. Act X of 1947.

3. Gopal Narain and Tula Ram accordingly moved an application for reinstatement under sub-section (2) of Section 27. They alleged that the surrender was brought about on account of coercion of the Karindas of the land-holder. Their application was dismissed by the Assistant Collector on 30th August, 1958. An appeal filed against the order dated 30th August, 1958 was also dismissed on 31st October, 1958. Gopal Narain and Tula Ram thereupon filed a revision before the Additional Commissioner, who referred the matter to the Board of Revenue. But before the reference could be finally decided, the village, where the plots in suit are situate was brought under consolidation operations.

4. Section 5 of the U. P. Consolidation of Holdings Act (hereinafter referred to as the

Consolidation Act) provided for the stay of all proceedings for correction of record and all suits for declaration of rights or for possession of land pending in any Court. This was, however, without prejudice to the rights of the persons affected to agitate the matter in dispute before the consolidation authorities. The Board of Revenue accordingly stayed the proceeding before it in view of Section 5 of the Consolidation Act.

5. Gopal Narain and Tula Ram thereafter vindicated their rights before the consolidation authorities. They filed an objection and alleged that they were hereditary tenants of the plots under Section 16 of the U. P. Tenancy Act. The agents of the land-holder, by coercion, obtained surrender of the plots. They were entitled to reinstatement in view of Section 27 of U. P. Act X of 1947, and indeed they had applied for reinstatement but the proceedings were eventually stayed by the Board of Revenue.

6. The claim was resisted by the newly inducted tenants. According to them, the surrender made by Gopal Narain and Tula Ram was a voluntary surrender. After the surrender, the land-holder settled the plots with them, and ever since then they had been in possession over the plots. They acquired the rights of Sirdar after the date of vesting.

7. The Consolidation Officer found that Gopal Narain and Tula Ram were hereditary tenants of the plots before surrender. He further found that the surrender was obtained by coercion. On these findings the Consolidation Officer ordered the names of Gopal Narain and Tula Ram to be recorded as tenants-in-chief and the newly inducted tenants as trespassers.

8. On appeal, the Settlement Officer (Consolidation) reversed the order of the Consolidation Officer. He held that the objectors had failed to prove that they were the hereditary tenants under Section 16 of the U. P. Tenancy Act or that the surrender of the plots was made by them as a result of coercion by the land-holder. He, therefore, directed the existing entry in the name of the newly inducted tenants to continue.

9. Against the order of the Settlement Officer (Consolidation) dated 17th December, 1960, the objectors filed a second appeal. The District Deputy Director of Consolidation upheld the finding of the Settlement Officer (Consolidation) that the objectors were not hereditary tenants under Section 16 of the U. P. Tenancy Act. He, however, reversed the other finding of the Settlement Officer. In agreement with the Consolidation Officer (Consolidation), he held that the surrender was obtained by the land-holder by coercion. Accordingly he set aside the order of the Settlement Officer (Consolidation) and restored that of the Consolidation Officer.

10. The newly inducted tenants filed a revision against the order of the District Deputy Director of Consolidation. The Director of Consolidation, however, refused to interfere with the order of the District Deputy Director and dismissed the revision by his order dated 4th January, 1962. The newly inducted tenants thereafter challenged the order of the Director of Consolidation by filing

a writ petition. A Single Judge of this Court allowed the writ petition and quashed the order of the consolidation authorities, sending back the case to the Consolidation Officer for fresh decision according to law, by his order dated 13th April, 1967. The learned Single Judge has found that there was no specific provision in the U. P. Zamindari Abolition and Land Reforms Act providing for the continuance of proceedings pending under Section 27 of U. P. Act X of 1947. Nor there was any provision for conferring the status of one of the tenure-holders on the person reinstated. It was, therefore, not possible to reinstate any person as a tenant. Support for the order was taken from a reported decision in *Shital Prasad v. Board of Revenue*¹, The objectors, Gopal Narain and Tula Ram, have now filed the present Special Appeal against the order of the learned Single Judge.

11. Sri R. K. Srivastava, appearing for the appellants, contended that the learned Single Judge has erred in law in holding that there is no provision in the U. P. Zamindari Abolition and Land Reforms Act or the Rules framed thereunder to continue the proceedings under Section 27 of the U. P. Act X of 1947.

12. U. P. Tenancy Act, 1939, was repealed by Section 339 of the U. P. Zamindari Abolition and Land Reforms Act, from the date of vesting, i.e., from the first of July, 1952. After the repeal a difficulty arose with regard to proceedings pending under the U. P. Tenancy Act. Section 342 of the U. P. Zamindari Abolition and Land Reforms Act authorised the State Government to make orders for facilitating the transition. Pertinently, Section 342 reads thus :-

"(1)..... The State Government may, for the purpose of facilitating the said transition, by order -

(a).....

(b) make such other temporary provisions for the purpose of removing any such difficulties as aforesaid as may be specified in the order."

Pursuant to the power conferred under Section 342 of the U. P. Zamindari Abolition and Land Reforms Act, the State Government passed the "U. P. Land Tenures Legal Proceedings (Removal of Difficulties) Order, 1952" (hereinafter referred to as the Removal of Difficulties Order), Section 2 of this Order provides as follows :-

"Except as expressly provided in the U. P. Zamindari Abolition and Land Reforms Act, 1950 or in the U. P. Zamindari Abolition and Land Reforms Rules, 1952, every suit, appeal or legal proceeding in respect of any right, privilege, obligation or liability acquired, accrued or incurred under or in pursuance of the U. P. Land Revenue Act, 1901, or the U. P. Tenancy Act, 1939, shall -

(a) where pending on thirtieth day of June, 1952, in any revenue or civil Court, be continued in such Court.

(b)

And every such suit, appeal or legal proceeding shall be heard, inquired into and decided under and in accordance with the provisions of the U. P. Land Revenue Act, 1901 and U. P. Tenancy Act, 1939."

13. Admittedly the proceeding under Section 27 of U. P. Act X of 1947 was pending before the Board of Revenue in the form of a reference. It could, therefore be continued in view of Section 2 of the Removal of Difficulties Orders. It appears that this provision was not brought to the notice of the learned Single Judge. The case of Shital Prasad (supra) has no application to the present case. The facts of that case were materially different. In that case a suit under Section 59 of the U. P. Tenancy Act was filed after the date of

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vesting for a declaration of tenancy rights. But in the case in hand, the application for reinstatement under Section 27 of U. P. Act X of 1947 had been filed long before the date of vesting and was pending before the Board of Revenue in the form of a revision or reference. Such a proceeding, in our opinion, could certainly continue even after the date of vesting.

14. As stated earlier, the village in question was brought under consolidation operation. We have now to examine the effect of the U. P. Consolidation of Holdings Act on the proceeding under Section 27 of U. P. Act X of 1947.

15. Section 5 of the Consolidation Act provided for the stay of the proceedings pending under the U. P. Tenancy Act. Section 5 was subsequently amended by U. P. Act XII of 1965. The amended Section 5 provided for the statement of all suits or proceedings pending before any Court. But the amended Section 5 also saved the rights of the persons affected by abatement to agitate their right or interest in the said suits or proceedings before consolidation authorities. Indeed there could be no stay or abatement unless the person affected had a corresponding , right to agitate the matter before the Consolidation authorities.

16. It is the common case of the parties that the application under Section 27 of U. P. Act X of 1947 had been filed within the prescribed period of limitation. The objectors could, therefore, get the same relief from the consolidation authorities which they could have got in proceedings under Section 27 of U. P. Act X of 1947. A proceeding under Section 27 virtually is like a suit under Section 183 of the U. P. Tenancy Act. The objectors were tenants at the time when the surrender was made. If they could succeed in establishing that the surrender by them was obtained as a result of coercion, they could certainly be reinstated over the plots in question. It is true that the rights could accrue to the objectors only on reinstatement, in view of Section 27 (5) of U. P. Act X of 1947. But if the objectors were entitled to be reinstated, they would be deemed to be tenants and consequently they would be entitled to be declared as Sirdar under Section 19 of the U. P. Zamindari Abolition and Land Reforms Act. Section 19 provides thus :-

"All land, held or deemed to have been held on the date immediately preceding the date of vesting by any person as -

(i)-(iii)

(iv) a hereditary tenant,

(v)-(ix) shall. be deemed to be settled by the State Government with such person, who shall, subject to the provisions of this Act, be entitled except as provided in sub-section (2) of Section 18, to take or retain possession as a Sirdar thereof."

Similarly, Section 20 of the Act also confers rights not only on tenants of Sir but on persons deemed to be tenants of Sir. It is therefore clear that the U. P. Zamindari Abolition and Land Reforms Act confers the right of a tenure-holder not only on the person who is in possession as a tenant but also on one who is entitled to get possession as a tenant. The objectors were certainly entitled to get reinstatement over the plots if they succeeded to bring their case within the four corners of Section 27(2) of U. P. Act X of 1947.

17. As mentioned above, the District Deputy Director of Consolidation recorded a clear finding that the surrender by the objectors was obtained from them by the land-holder by coercion. It would be noticed that Section 27 (2) of U. P. Act X of 1947 confers right of reinstatement on two categories of persons : (i) tenants of Sir who had acquired right under Section 16 (1) of the U. P. Tenancy Act and had been ejected from their holdings or part thereof; and (ii) tenants dispossessed of their holding or any part thereof through surrender or otherwise in consequence of any fraud, misrepresentation, undue influence or coercion practiced upon or against them by the land-holder or by any person acting on behalf of the land-holder. In the present case, from the findings of the District Deputy Director of Consolidation, it is evident that the objectors had succeeded in bringing their case under the second category.

18. Sri P. N. Singh, on behalf of the contesting respondents, argued that the contesting respondents were sub-tenants under the proviso to sub-section (3) of Section 27 of U. P. Act X of 1947. They became Adhivasi-cum-Sirdar under Section 20 of the U. P. Zamindari Abolition and Land Reforms Act. And once they acquired the rights of Adhivasi-cum-Sirdar, they could not be deprived of those rights even if the objectors are reinstated over the plots.

19. We are unable to accept this argument. A sub-tenant under Section 27(3) of U. P. Act X of 1947 does not become an Adhivasi under Section 20 of the U. P. Zamindari Abolition and Land Reforms Act. He is entitled only to remain in possession for a period of three years from the date of declaration as sub-tenant under Section 27 (3). The contesting respondents have already remained in possession for more than three years according to the findings of the consolidation authorities themselves.

20. The contesting respondents could not mature title by adverse possession also, as the objectors

had filed the application for reinstatement well within time. The appellants were, therefore, entitled to get back possession on their establishing the ingredients of Section 27 (2) of U. P. Act X of 1947. On the findings of fact recorded by the last authority on facts, the objectors have established that the surrender made by them had been obtained as a result of coercion by the land-holder or her agent.

21. We, therefore, allow the appeal, set aside the order of the learned Single Judge dated 13-4-1967, and dismiss the writ petition. The parties shall bear their own costs, throughout.

Appeal allowed.