[2023] 10 S.C.R. 1001 : 2023 INSC 600

HARI PRAKASH SHUKLA & ORS. A

v.

THE STATE OF UTTAR PRADESH & ANR.

(Civil Appeal No(s). 9697-9698 of 2014)

JULY 05, 2023 B

[KRISHNA MURARI AND AHSANUDDIN AMANULLAH, JJ.]

Forest Act, 1927: s. 4 – Declaration of reserved forest – Forest inhabitants – Right to be heard by Forest Officer – On facts, land in possession of the appellants-bhoomidars, declared as reserved forest – Initiation of eviction drive against the appellants – Forest Settlement Officer held that the appellant had a rightful claim over the said land – Writ petition by the Forest Department – Allowed by the High Court and directed eviction of the appellants – Review petition there against also dismissed – On appeal, held: Right of forest inhabitants to be heard on the claims by the Forest Officer is not restricted only to certain forest communities – Right to be heard, must be granted to all claiming possession of the subject land, and the substantial right of possession can be granted or denied during the said hearing, by the competent authority – Right to enjoy possession of any land notified u/s. 4 is not only limited to Adivasi communities and other forest dwelling communities, but is also based on proof of residence, date of original possession, etc – Right to inhabit the said lands is not restricted only to certain communities – Appellants are not from a backward community and nor do they claim to be so, thus, have right to be heard by the Forest Officer – Furthermore, the concurrent findings of the lower courts neither perverse, nor the said courts have over stepped their jurisdiction – Re-appreciation of evidence done by the High Court while exercising its inherent powers u/Art. 226, bad in law and is liable to be struck down – Thus, the impugned order and judgment not liable to be sustained and is set aside – Constitution of India, 1950 – Art. 226 . C D E F G

Allowing the appeals and dismissing the contempt petitions, the Court

HELD: 1.1 It must be noted that forest communities do not only consist of people from recognized Adivasi and other H

backward communities, but also other groups residing in the said land. These other groups, who do not get recognition under the law as a forest dwelling community due to several socio-political and economic reasons, are also an integral part of the said forest communities and are essential to their functioning. Further, there can also be several instances of people ancestrally being forest dwellers, however, due to lack of documentation, are not able to prove the same. [Para 20][1006-G; 1007-A]

1.2 The appellants are not from a backward community and nor do they claim to be so, however, the *Banwasi j*udgment, if interpreted in a narrow manner only to benefit certain recognized forest communities, would cause a great deal of harm to multiple other communities. It must be noted that the *Banwasi* judgment only grants a right to be heard by a competent authority, and if such authority rejects a claim, then the said claim cannot exist against the situate land. [Para 21][1007-B-C]

1.3 This right to be heard, must be granted to all claiming possession of the subject land, and the substantial right of possession can be granted or denied during the said hearing, by the competent authority, that is to say, the right to be heard must be enjoyed by all, and the right to possess, must be enjoyed by those who have a legitimate claim. Further, the right to enjoy possession of any land notified under Section 4 of the Forest Act is not only limited to Adivasi communities and other forest dwelling communities, but is also based on proof of residence, date of original possession, etc. If the right to inhabit the said lands is not restricted only to certain communities, how can the right to be heard on such claims be restricted to the same. [Paras 22 and 23][1007-C-E]

1.4 The appellants before the impugned order passed by the High Court in Writ Jurisdiction, had two concurrent findings in their favour by way of decisions rendered by the lower courts. The appellants had proved their possession over the subject land by leading evidence, and the veracity of the same, by way of proper procedure, was tested by both the lower courts. The High Court, however, without evidence being led by the respondents, set aside the concurrent findings. [Para 25][1007-G-H]

1.5 The concurrent findings of the lower courts are neither perverse, nor the said courts have over stepped their jurisdiction. In such a scenario, wherein neither of the conditions were satisfied, the High Court could not have re-appreciated the evidence in writ jurisdiction and come to a different conclusion. [Para 29][1008-E]

1.6 The remedy granted under the *Banwasi Sewa* judgment is available to the appellants, and the reappreciation of evidence done by the High Court while exercising its inherent powers under Article 226, is bad in law and is liable to be struck down. [Para 32][1009-B]

1.7 Since the dispute has been held in favour of the appellants, the contempt petitions are rendered infructuous. The impugned order and judgment passed by the High Court is not liable to be sustained and is set aside. The orders passed by the Forest Settlement Officer and Additional District Judge are confirmed. [Paras 33 and 34][1009-C-D]

Banwasi Seva Ashram vs State Of Uttar Pradesh **(1986) 4 SCC 753 : [1987] 1 SCR 336 – explained.**

BK Muniraju Vs. State Of Karnataka **(2008) 4 SCC 451 : [2008] 2 SCR 992;** *Krishnanand Vs. Director of Consolidation* **(2015) 1 SCC 553 : [2014] 11 SCR 1001 – referred to.**

Case Law Reference

[1987] 1 SCR 336	**explained**	**Para 17, 18, 21, 32**
[2008] 2 SCR 992	**referred to**	**Para 27**
[2014] 11 SCR 1001	**referred to**	**Para 28**

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 9697-9698 of 2014.

From the Judgment and Order dated 04.02.2013 in CWP No. 28242 of 2006 and dated 08.02.2013 in CWP No. 28242 of 2006, CMRA No. 41732 of 2013 of the High Court of Judicature at Allahabad.

With

Contempt Petition (Civil) Nos. 209-210 of 2021.

A Anil Kaushik, Mrs. Shashi Sharma, Abhishek Mishra, Rajat Rana, Ms. Anju Kaushik, Ms. Arunima Dwivedi, Advs. for the Appellants.

S. R. Singh, Sr. Adv., Kamlendra Mishra, Adv. for the Respondents.

B The Judgment of the Court was delivered by

KRISHNA MURARI, J.

1. The present appeals are directed against the impugned order and judgment dated 04.02.2013 passed by the High Court of Allahabad at Allahabad, (hereinafter referred to as "High Court"), whereby, the C Writ Petition preferred by the respondents herein was allowed.

FACTS

2. The relevant facts necessary for the adjudication of the present appeals, for the sake of convenience, are being mentioned herein.

D 3. The appellants herein are the bhoomidars of the subject land and are in possession of the same. The said lands, as per the appellants, is being used by them for agricultural purposes since a permanent lease was executed in their favour by the then zamindar in the year 1952.

4. It is to be noted that part of the subject land, including the land E in possession of the Appellants, was declared as reserved forest, and the other part of the said land was subject to a notification under Section 4 of the Forest Act for declaration as reserved forest.

5. Such a declaration of the said land initiated an eviction drive of the local inhabitants, and against this, on the basis of a letter received from Banwasi Seva Ashram, a writ petition was instituted in this Court F regarding the claim of the local inhabitants.

6. This Court, vide judgment and order dated 20.11.1986 in the abovementioned writ petition, directed the formation of a High Powered Committee consisting of a retired High Court Judge and two officers for the purpose of adjudicating upon the claims of persons over the said G disputed land, and subsequently, further directed the claims to be heard by Forest Settlement Officer.

7. On the basis of the abovementioned judgment, the appellants herein filed their claims before the Forest Settlement Officer, and after proper consideration of representations made by both the parties, the H forest settlement officer held that the said land has been in possession

of the Appellants even prior to 1385 Fasli and thus, have a rightful claim over the said land.

8. Aggrieved by the abovementioned order, the respondents herein preferred an appeal before the Additional District Judge, however, by way of a well-reasoned order dated 04.04.1991, the same was dismissed.

9. Subsequent to the dismissal of the Appeal, the appellants herein filed an application for the enforcement of the abovementioned order, and the learned Additional District Judge vide order dated 23.03.2005 allowed the said application and directed the recording of the Appellants herein as Bhoomidars.

10. The respondent Forest Department then filed a Review against the order dated 04.04.1991, however, while observing that the nature of the review was more in the nature of an appeal, dismissed the same vide order dated 08.12.2005.

11. Despite the said dismissal, the Forest Department filed an application for recall against the abovementioned order of review, however, the said application for recall was also dismissed vide order dated 08.12.2005.

12. Aggrieved by the said orders, the respondent Forest Department filed a writ petition in High Court of Allahabad, and vide impugned judgment and order dated 04.02.2013, the same was allowed, and the eviction of the Appellants was directed.

13. Against the said order, the appellants filed Review Petition which was dismissed by order dated 08.02.2013. However, the eviction of the appellants was stayed until 20.03.2013 to enable them to approach this Court.

14. As against the abovementioned impugned order of the High Court, the appellants herein have preferred the present appeals.

ANALYSIS

15. We have heard Shri Anil Kaushik for the appellants and Shri S.R.Singh, Learned Senior Counsel assisted by Shri Kamlendra Mishra for the respondents.

16. At the outset, for the adjudication of the present appeals, it is our considered opinion that following two issues arise for our consideration.

A I. Whether the relief granted in the Judgment of ***Banwasi Seva Ashram vs State Of Uttar Pradesh***[1] is only applicable to SC/ST/ other backward communities?

II. Whether the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, could have
B re-appreciated the evidence adduced to come to its findings?

ISSUE I- Whether the relief granted in the Judgement of *Banwasi Seva Ashram vs State Of Uttar Pradesh*[2] is only applicable to SC/ST/ other backward communities?

C 17. In the case of ***Banwasi Sewa Ashram (Supra),*** wherein certain Adivasi communities inhabiting the situate land were being evicted from their homes on grounds of the said land being subject to a Section 4 notification under the Forest Act, this Court held that the said inhabitants had a right for their claims to be heard by the Forest Officer, and it was
D the forest officer, who had the power to go into the merits of the case and decide the claims of the inhabitants.

18. The abovementioned ***Banwasi Sewa Judgment (Supra)***, when read into detail, would show that it confers upon the inhabitants of the subject land, only a procedural right to be heard by the appropriate
E authority, and not a substantive right of possession/inhabitation of the land. In simpler terms, this would mean that this Court, while delivering the said judgment, did not go into the merits of each claim but only provided an appropriate forum for the claims to be heard.

19. The object of such judgment, in our opinion, is to further the
F cause of substantive justice, and to ensure that every party with a valid claim over the notified land is heard in detail, and no arbitrary power to evict local inhabitants is given to the state.

20. It must be noted that forest communities do not only consist of people from recognized Adivasi and other backward communities, but
G also other groups residing in the said land. These other groups, who do not get recognition under the law as a forest dwelling community due to several socio-political and economic reasons, are also an integral part of the said forest communities and are essential to their functioning. Further,

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[1] 1986 4 SCC 753

H [2] 1986 4 SCC 753

there can also be several instances of people ancestrally being forest dwellers, however, due to lack of documentation, are not able to prove the same.

21. While we are aware of the fact that the Appellants herein are not from a backward community and nor do they claim to be so, however, the abovementioned ***Banwasi Judgment (Supra),*** if interpreted in a narrow manner only to benefit certain recognized forest communities, would cause a great deal of harm to multiple other communities. At the sake of repetition, it must be noted that the ***Banwasi Judgment (Supra)***, only grants a right to be heard by a competent authority, and if such authority rejects a claim, then the said claim cannot exist against the situate land.

22. This right to be heard, in our opinion, must be granted to all claiming possession of the subject land, and the substantial right of possession can be granted or denied during the said hearing, by the competent authority, that is to say, the right to be heard must be enjoyed by all, and the right to possess, must be enjoyed by those who have a legitimate claim.

23. Further, the right to enjoy possession of any land notified under Section 4 of the Forest Act is not only limited to Adivasi communities and other forest dwelling communities, but is also based on proof of residence, date of original possession, etc. If the right to inhabit the said lands is not restricted only to certain communities, how can the right to be heard on such claims be restricted to the same.

24. Therefore, in light of the abovementioned discussions, we hold Issue No. I in favor of the Appellants.

ISSUE-II Whether the High Court, while exercising its jurisdiction under Article 226 of the Constitution of India, could have re-appreciated evidence to come to its findings?

25. The Appellants herein, before the impugned order passed by the High Court in Writ Jurisdiction, had two concurrent findings in their favour by way of decisions rendered by the lower courts. The Appellants had proved their possession over the subject land by leading evidence, and the veracity of the same, by way of proper procedure, was tested by both the lower courts. The High Court, however, without evidence being led by the respondents, set aside the concurrent findings vide impugned order and judgment dated 04.02.2013.

A 26. This Court, in a catena of judgments has held that the High Court, while exercising its inherent powers under 226 of the Constitution of India, cannot re-appreciate evidence and arrival of finding of facts, unless the authority which passed the original order did so in excess of its jurisdiction, or if the findings were patently perverse.

B 27. In the case of ***BK Muniraju Vs. State Of Karnataka***[3], this Court, while expounding on the powers of the High Court under Article 226 of the Constitution of India, held that the same cannot be used to re-appreciate evidence unless an error of fact appraised by the lower court is manifest and such an error has caused grave injustice.

C 28. Further, in the case of ***Krishnanand Vs. Director of Consolidation***[4]**,** this Court, in a similar fact circumstance wherein concurrent findings of the lower courts were dismissed by the High Court while exercising its writ jurisdiction, held that re-appreciation of evidence under Article 226 can only be done in cases where the original D order by the lower court was passed in excess of its jurisdiction or if the findings of the lower courts were patently perverse.

29. It is our opinion that as far as the present case is concerned, the concurrent findings of the lower courts are neither perverse, nor the said courts have over stepped their jurisdiction. In such a scenario, E wherein neither of the conditions were satisfied, the High Court could not have re-appreciated the evidence in writ jurisdiction and come to a different conclusion.

30. It must be noted that the introduction and admission of evidence at the trial stage goes through a rigorous process, wherein each piece of F evidence introduced is subject to very strict scrutiny, and every party is given the opportunity to test the veracity of the said evidence through procedure established by law. The legitimacy of the evidence, at every stage, is questioned, and the opposing party is given the right to question the said evidence by placing their doubts regarding the same in court. Such a mechanism in law of going through evidence, is not available to G the High Court while exercising its powers under writ jurisdiction, and therefore, evidence which has been confirmed by the lower courts, must only be reversed by the High Courts in the rarest of rare cases.

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[3] 2008 4 SCC 451

H [4] 2015 1 SCC 553

31. In light of the abovementioned discussions, we hold Issue No. II in favour of the Appellants herein.

32. In the present case at hand, both the issues framed by us has been answered in favour of the Appellants herein, that is to say, the remedy granted under the ***Banwasi Sewa judgment (supra)*** is available to the appellants herein, and the reappreciation of evidence done by the High Court while exercising its inherent powers under Article 226, in our opinion, is bad in law and is liable to be struck down.

33. Further, Contempt Petitions filed at the behest of the appellants herein have also been brought to our notice. However, since the dispute in question has been held in favour of the appellants, the contempt petitions are rendered infructuous.

34. In light of such observations, the impugned order and judgment passed by High Court of Allahabad dated 04.02.2013 is not liable to be sustained and is thereby set aside. The orders passed by the Forest Settlement Officer and Additional District Judge are hereby confirmed. The appeals, accordingly, stand allowed and the captioned contempt petitions are dismissed.

35. In the facts and circumstances, we do not make any order as to costs.

Nidhi Jain (Assisted by : Tamana, LCRA) Appeals allowed and contempt petitions dismissed.