Ishrat Hussain vs Deputy Custodian And Ors. on 18 February, 1955

Equivalent citations: AIR1955ALL538, AIR 1955 ALLAHABAD 538

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The land in dispute (Plot No. 100 situate in village Mokaratpar district Meerut) was previously owned by one Mohammadi Begum who left for Pakistan in April 1950. A notice was issued by the Assistant Custodian, Evacuee Property, Meerut, under Section 8(4), Administration of Evacuee Property Act, sometime in October 1950, asking the petitioners to show cause why the lease of the aforesaid plot should not be cancelled, as the land had become evacuee property after the departure of Mohammadi Begum to Pakistan. It appears that the petitioners had entered into possession of this land even during the time that Mohammadi Begum was in India, but the exact date when they entered into possession is a matter of dispute between the parties.

The petitioners say that they obtained a lease in 1947 (1355 F.) from Mohammadi Begum, but this fact is denied in the counter-affidavit, filed on behalf of the respondents. In para. 2 of the counter-affidavit it is stated that one of the petitioners admitted before the Assistant Custodian, Meerut, that he did not obtain any lease or even oral permission from Mohammadi Begum. A copy in Roman script of the statement has been filed and is attached to the counter-affidavit, as Annexure A. At the same time it appears that the petitioners did enter into possession of the land one year before 1357 F., which would roughly mean that they got into possession in 1949 or in 1950.

After the receipt of the notice under Section 8(4), the petitioners, filed objections on 15-11-1950 alleging that they had been, in possession over the plot on payment of Rs. 20/- per month as rent since 1355F. (1947). The Assistant Custodian recorded the statements of the witnesses produced before him, and in the end he came to the conclusion that the execution of lease by Mohammadi Begum in favour of the petitioners had not been proved, he declared that the possession of the petitioners was unauthorised and passed an order on 7-3-1951 for the ejectment of the petitioners from the plot in dispute, which is numbered as plot No. 100.

The petitioners then went up in revision to the Deputy Custodian, Meerut, against the aforesaid order," but he dismissed the revision. A revision was then preferred before the Custodian General of India, and he held that it appeared that the petitioners came into possession of the land in dispute about the time when Mohammadi Begum migrated to Pakistan, and on these findings he dismissed the revision on 6-5-1952.

The present petition was filed on 26-3-1953 praying that a writ of mandamus be issued to the Deputy Custodian restraining him from dispossessing the petitioners from plot No. 100.

3. The learned counsel for the petitioners has contended that his clients acquired Bhumidhari rights over this land by paying ten times the rent to the Government in 1951, when they obtained a certificate under Section 6 of the U. P. Agricultural Tenants (Acquisition of Privileges) Act No. 10 of 1949, and the contention is that that being the position, the Assistant Custodian has no right to dispossess the petitioners from this land. It is not denied in the counter-affidavit that the petitioners had obtained a declaration under Section 6 of the said Act, and the question is whether the petitioners have acquired Bhumidhari rights because of their obtaining a certificate.

Section 18(2) of the U. P. Zamindari Abolition and Land Reforms Act is the relevant provision, of law on the point and it may be quoted in full. It says, "Every person belonging to the class mentioned in Section 3 or Sub-section (2) of Section 3A of the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949, who has been granted the declaration referred to in Section 6 of the said Act in respect of any holding or share thereof shall, unless the declaration is subsequently set aside, be deemed to be the Bhumidhar of the holding or the share in respect of which the declaration has been made and continues in force."

4. It appears from a reading of this sub-section that a person has to fulfil two conditions before he can be deemed to be a Bhumidhar of the holding, The first condition is that he must be a person belonging to the class mentioned in Section 3 or Sub-section (2) of Section 3A of U. P. Act No. 10 of 3949, and the second condition is that he should have been granted the declaration referred to in Section 6 of that Act. The contention of, the learned counsel for the petitioners is that, according to the proper interpretation of the section, the mere obtaining of a declaration under Section 6 is sufficient for the conferment of Bhumidhari rights. I do not 'find it possible to accept this contention.

The word 'person' used in the beginning of the sub-section is followed by the words "belonging to the class' and subsequently it is said 'who has been granted the declaration'. If the intention of the Legislature was that the mere obtaining of the declaration under Section 6 conferred Bhumidhari rights, the first clause need not have been put in the sub-section at all. The first clause also qualifies the word 'person', and what it means is that the person should be of one of the classes mentioned in Section 3 or Sub-section (2) of Section 3A. It is, therefore, necessary to sec whether the petitioners fulfil this first requirement of belonging to the class mentioned above.

So far as the second qualification is concerned, it is admitted that they have acquired a declaration under Section 6. Section 3 of U. P. Act No. 10 of 1949, as it originally stood, mentioned only four classes, which are enumerated in Clauses (a) to (d) of the section. The petitioners admittedly do not come under any of these classes nor is it said that they come under Section 3A. Act 10 of 1949 was amended by U. P. Act No. 7 of 1950, and by Section 2 of, this amending Act another class was added to the classes originally enumerated in Section 3 and the addition was put in the following words:

p1"(e) an occupier."

> Two explanations were added by Sub-section (2) of S, 2 of the amending Act and we are concerned with explanation 2, Clause (1), which defines the word 'occupier' as follows:
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> "Occupier means an occupier of any land which on the date immediately preceding the date of declaration under Section 6 is not included in the holding of a permanent tenure holder, permanent grantee, grantee at a favourable rate of rent, or which is not sir or khudkasht or which is not in the personal cultivation of a thekadar or a mortgagee."

According to the definition contained in this clause, it appears that only that person in occupation is called an 'occupier' who was immediately, preceding the date of vesting or the date of declaration under Section 6 was in possession of land, which was not included in the holdings of the kind of tenants, enumerated in the clause, or which was not sir or khudkasht, or which was not in the personal cultivation of a thekadar or a mortgagee. If the land was sir or khudkasht, the person in occupation would not he ah occupier, as defined in the clause. So far there is no difficulty in the interpretation of this clause, but the learned counsel for the petitioners urged that the land should be sir or khudkasht on the date preceding the date of declaration.

I do not think that it is necessary that the land should be sir on the date preceding the date of declaration because one qualification of the land is that it should be, immediately on the date preceding the declaration in the holding of any of the kinds of tenants enumerated in the clause, and the other alternative qualification is that it is not sir or khudkasht. The use of the word 'which' after 'land' and then the use of the same word before the words 'is not sir or khudkasht' goes to show that the first clause beginning with the word 'which' came to an end before the second "clause beginning with the same word started.

If the requirement was that the land should be sir or khudkasht cm the date preceding the date of declaration, the word 'which' before the words "is not sir or khudkasht' would not have been used, and the clause might simply have read 'or was not sir or khudkasht'. I, therefore, prefer to accept the interpretation put upon this clause by the learned counsel for the respondents, which is to the effect that it is not necessary to show that the land was sir or khudkasht on the date preceding the date of declaration.

There does not appear to be much difference for practical purposes between the two interpretations and, if the land had ceased to be sir or khudkasht on the date preceding the date of declaration, it could not be said that it was sir or khudkasht which the occupier was in possession of.

5. The position, therefore, is that an occupier of land, which is sir or khudkasht, does not come within the definition of the word 'occupier', as used in this clause. I have, therefore, to see whether the land in dispute in this case was the sir or khudkasht of Mohammad Begum. In the affidavit, it has not been stated whether the land was sir or khudkasht. On the other hand, in para 2fd) of the counter-affidavit it has been stated clearly that in the khasra of 135GF. Mohammadi Begum was entered as a tenant of khudkasht of the aforesaid plot.

Again, in Annexure D, filed along with the counter-affidavit, which is a copy of the statement of the Patwari made before the Assistant Custodian, it is disclosed that the petitioner Istafa Hussain was entered as having been in possession for one year in 1357F, and that before this the land was in the possession of Mohammadi Begum, who was the ramindar of the land, and that the land was khudkasht of Mohammadi Begum. No affidavit in rejoinder has been filed to controvert the above assertion. The position, therefore, is that Mohammadi Begum was the zamindar o this land, and the land was her khudkasht at least till the year 1356F, when the petitioners may have entered into possession of it.

The mere possession of the petitioners for a short period of time would not alter the character of the land. It the land was khudkasht of the zarnindar, it might have lost that character if 'the zamindar let it out to a tenant. In the present case, it has not been proved that Mohammadi Begum let it out to a tenant. The mere fact that a trespasser got into possession of the khudkasht land does not alter the character of the land, and the definition of the word 'occupier' itself goes to show that a man may be in occupation of the land, which land may continue to have the character of sir or khudkasht.

It might have lost the character of khudkasht, if it had been let out to the petitioners; but in para 2(a) of the counter-affidavit, it has been asserted that the petitioners obtained no lease nor oral permission from the owner of the aforesaid land and that Ishrat Husain admitted in his statement before the Assistant Custodian that he did not obtain any lease or oral permission. The possession, therefore, of the petitioners over this land was as trespassers and no authority need be cited for saying that a khudkasht land docs not cease to be khudkasht merely because some trespasser has entered into possession of it for a short time.

6. In this connection I might also refer to certain provisions of the Uttar Pradesh Land Reforms (Amendment) Act, U. P. Act No; 20 of 1954. By this amending Act, Sections 26A and 26B have been added to the U." P. Zamindari Abolition and Land Reforms Act of 1950, and Section 26B is to the effect that the provisions of the U. P. Zamindari Abolition and Land Reforms Act in their application to evacuee property shall have effect subject to the modifications set out in Schedule 5. Paragraph 1 of Schedule 5 is in the following words:

> "Where any land was recorded as khudkasht of an evacuee at the time the evacuee migrated to Pakistan, such land shall, notwithstanding that the evacuee may not have continued subsequently to cultivate it, be deemed for purposes of Chapter II to have been the Khudkasht of the evacuee on the date immediately preceding the date of vesting."

This provision of law makes it clear that till 31-6-1952 this land must be deemed to have been khudkasht land of the evacuee, as it has been proved that it was khudkasht of the evacuee at the time she migrated to Pakistan. The land being khudkasht land, the petitioners did not become the "occupier" of the land and they, therefore, had not acquired Bhumidhari rights under Section 18(2) of the U. P. Zamindari Abolition and Land Reforms Act.

7. The learned counsel " for the petitioners has not urged that his clients acquired the rights of an Adhivasi, and a look at the provisions of Section 20 shows that no such claim could have been advanced, because the petitioners could have acquired rights of an Adhivasi only if they were recorded as occupants of the land in Khasra or Khatauni of 1356F. Admittedly their names had not been recorded in the Khasra or Khatauni of that year, though it is said that they were in possession of the land, What Section 20(b)(1) requires is the record of the name, in either of these registers, in the year 1356F, and the names not having been entered, the petitioners could not acquire the rights of Adhivasis, even though they may have been in possession of the land.

8. The learned counsel for the respondents urged that, in view of the amendment to the Administration of Evacuee Property Act by Act 11 of 1953, a new section 18 is substituted to the principal Act, and the learned counsel has relied on Sub-section (2) of Section -18, substituted by the amending Act. The purport of this section is that, when a person has acquired any rights under a Provincial or a State Act in respect of any property by reason of being in possession of that property, whether in pursuance of a grant, lease, or allotment made by the Custodian or otherwise, the acquisition of such rights shall not in any way affect or be deemed to have affected the rights and powers conferred on the Custodian under the Act in respect of that property.

The argument was that' even if the petitioners had acquired the rights 'of Bhumidhars under the U. P. Zamindari Abolition and Land Reforms Act, those rights would be subject to the rights conferred on the Custodian by the Administration of Evacuee Property Act. It is not necessary to decide in, this case the actual meaning of this subsection or the point whether this section is void under some provision of the Constitution, because I have found above that the petitioners have not acquired any sort of rights under the U. P. Zamindari Abolition & Land Reforms Act. This section has been clearly given a retrospective operation by the opening words of Section 8 of the amending Act. But, as I' have said above, I do not propose to go into the validity of this provision of law, because the question does not arise in the instant case.

9. In my view of what I have stated above, the position of the petitioners appears to be that of trespassers, who had subsequently paid the rent for sometime to the Custodian of Evacuee Property. As trespassers, the petitioners had acquired no right to the property and, if any rights had accrued to them by virtue of the payment of any rent to the Custodian, those rights could be put an end to by the Custodian or the Assistant Custodian, whenever they chose to do so.

The position is made clear by the provisions of Section 8, Sub-section (4) of the Administration of Evacuee Property Act, 1950, which are to the effect that where any evacuee property has vested in the Custodian, and any person is in possession of the property, he shall be deemed to be holding it on behalf of the Custodian arid shall, on demand, surrender possession of it to the Custodian or to any other person duly authorised by him in this behalf.

The petitioners, therefore, are bound to deliver possession to the Custodian whether they were in possession of the property as trespassers or holding it under the Custodian by his permission, and in either case the Custodian can call upon the petitioners to surrender possession of the lane? to him, or to any other person authorised by him in this behalf.

Under Section 9 of the same Act the Custodian is permitted to use or cause to be used such force as may be necessary for taking possession of the property from the person, who may be asked to surrender possession under Section 8(4). The notice, that had been issued to the petitioners on 28-10-1950, is a notice issued under Section 8(4) and, in my opinion, the notice is a legal and valid notice. The prayer contained in the petition is for the issue of a writ of mandamus commanding the respondents to refrain from taking any steps to dispossess the petitioners from the land in dispute, and, in view of my findings on the points mentioned above. I think no such prayer can be granted to the petitioners.

10. The learned counsel for the respondents further urged that the Custodian has acquired Bhumidhari rights under Section 18(1} of the U. P. Zamindari Abolition and Land Reforms Act in this land. Section 18(1) says that, subject to certain other provisions, all lands in possession of or held or deemed to be held by an intermediary as sir or khud-kasht on the date immediately preceding the date of vesting, shall be deemed to be settled by the State Government with the intermediary, and the intermediary shall be entitled to retain possession of the land as a Bhumidhar.

If the land continued to be sir or khudkasht the date of vesting the custodian would acquire the rights of a Bhumidhar in the land. But again, it is not necessary to decide this point in this petition, because in the writ petition it is the petitioner who has to make out a legal title before any writ can be issued" to protect that title. This the petitioner totally failed to do in this case.

11. This petition, therefore, fails and is dismissed with costs.