

Chandrika Singh And Ors. vs The Board Of Revenue, U.P., Allahabad ... on 17 October, 1955

Equivalent citations: AIR1956ALL177, AIR 1956 ALLAHABAD 177

ORDER

Mehrotra, J.

1. Pour suits were filed by the present applicants under Section 183, U. P. Tenancy Act in the Court of Sri Lakshman Prasad, Judicial Officer I, Ballia, against the opposite parties 3 to 5 to this petition for possession on the ground that the applicants were the tenants and were ejected and prevented from obtaining possession of their holding otherwise than in accordance with the provisions of law. The suits were dismissed by the trial Court on merits on 29-6-1953.

Appeals were filed against the decisions of the trial Court in the Court of the Additional Commissioner, Banaras. The appeals were disposed of by the Additional Commissioner on a preliminary point and were dismissed on 12-5-1954. The Additional Commissioner held that the defendants, being recorded occupants in 1356 P. and being in possession, had acquired adhvasi rights and were protected from being ejected under Section 20, U. P. Zamindari Abolition and Land Reforms Act.

The plaintiffs, thereupon, filed appeals to the Board of Revenue against the decisions of the Additional Commissioner. According to the allegation of the applicants, the defendants were the zamindars and they dispossessed the applicants, who were the tenants, not in accordance with the provisions of the U. P. Tenancy Act. The contention of the applicants in appeals before the Board of Revenue was that in view of the amendment of Section 20, Zamindari Abolition and Land Reforms Act, by which Explanation IV was added to the section, the defendants were not occupants under the Act; they were in possession as intermediaries of the land.

The Board of Revenue dismissed the appeal holding that Section 20 was amended by Act 20 of 1954 and by the Amending Act, Explanation IV was added to Section 20 and this amendment came into force in October, 1954, after the judgment of the Additional Commissioner. The Explanation added by the Amending Act (20 of 1954) could not be given retrospective effect and consequently the decision of the Additional Commissioner could not be set aside on the ground of the new Explanation added to Section 20.

The Board of Revenue did not enter into the merits of the appeals at all and upheld the decision of the Additional Commissioner on the sole ground that the Explanation added to Section 20 by

Amending Act 20 of 1954 could not be given retrospective effect. The present writ petitions have been filed under Article 226 of the Constitution praying that the orders of the Board of Revenue in appeals be quashed.

2. The main contention of the applicants is that the decision of the Board of Revenue is manifestly erroneous on a question of law and this Court can interfere in the exercise of its power under Article 226 of the Constitution.

3. A number of preliminary points have been raised by Mr. Suraj Nath Singh who appeals for the opposite parties. His first contention is that even assuming that the decision of the Board of Revenue is erroneous on a question of law, it cannot be regarded as a decision manifestly erroneous and this Court will not interfere in the exercise of its power under Article 226 of the Constitution with the decision of the subordinate tribunal only on the ground that it takes a different view of law from that of the subordinate tribunal.

Reliance has been placed on a Full Bench decision of this Court reported in -- 'Deoria Sugar Mills Ltd., Deoria v. Government of U. P.', AIR 1954 All 497 (A), where this Court held that a writ petition will not lie to quash an order of a subordinate Court on the ground that it has taken an erroneous view of law. In view of a number of cases of this Court and the Supreme Court laying down in what circumstances this Court can interfere, in the exercise of its jurisdiction under Article 226 of the Constitution, with the decision of a subordinate tribunal, it is not necessary for me to elaborately deal with that question in this petition.

Reference may be made to the following cases:

-- 'Hari Vishnu kamath v. Ahmad Syed Ishaque', (S) AIR. 1955 SC 233 (B). -- 'Dr. Lshwari Prasad v. Registrar, University of Allahabad', (S) AIR 1955 All 131 (C); and -- 'Ch. Krishansingh v. The Board of Revenue U. P. at Allahabad', (S) AIR 1955 All 557 (D). In my judgment, if this Court comes to the conclusion in the present case that the decision as regards the retrospective effect of the Explanation added to Section 20 is manifestly erroneous, this Court can interfere with that decision under Article 226 of the Constitution.

It was next contended that on the facts of the present case, the applicants have no right to bring the suits and the Explanation does not apply to the case of the defendants as they are not in possession as intermediaries. The Board of Revenue has not considered these questions and it will be open to the Board of Revenue, when the appeals go back to the Board of Revenue, to consider these points and dispose of the appeals on the merits.

The only point which was urged and decided by the Board of Revenue is that the Explanation added by the Amending Act of 1954 could not be given retrospective effect and if the decision on that question is manifestly erroneous, the order of the Board of Revenue can be quashed by this Court in the exercise of its jurisdiction,

under Article 226 of the Constitution. When the appeals go back to the Board of Revenue, it can consider the other points raised by the opposite parties and dispose of the appeals on merits.

4. Coming to the question whether the Explanation added by the Amending Act to Section 20 can be given retrospective effect or not and whether the decision of the Board of Revenue on that point is manifestly erroneous, the petitioners have relied on two cases of the Federal Court reported in -- 'Shyamakant Lal v. Rambhajan Singh', AIR 1939 FC 74 (E) and -- 'Lachmeshwar Prasad Shukul v. Keshwar Lal', AIR 1941 FC 5 (F).

In both the cases it was observed by the Federal Court that the appellate jurisdiction in India, due to the procedure of this country, is of rehearing of the suit and not a jurisdiction to review the order of the trial Court and consequently any change which has happened during the pendency of an appeal can be given effect to by the appellate Court. To the same effect is the decision of this Court reported in -- 'Jagannath v. Board of Revenue, U. P.', (S) AIR 1955 All 432 (FB) (G).

In that case a number of suits Were brought under Section 180 for ejectment of trespassers: During the pendency of the appeal, the Zamindari Abolition and Land Reforms Act was enforced and the defendants took up the plea that they were entitled to the benefit of Section 20 of the Zamindari Abolition and Land Reforms Act. It was held by the Board of Revenue that they were entitled to take benefit of Section 20 and the said section was retrospective in its operation. This Court in a Bench decision had taken a contrary view.

The point was again agitated in a writ petition and the Full Bench held that Section 20 was in effect retrospective having regard to the scheme of the Act and it was open to the defendant to claim benefit of Section 20, even though the Zamindari Abolition and Land Reforms Act came into force during the pendency of the appeal.

In my judgment, the principle, on which the decision of the Full Bench in (S) AIR 1955 All 432 (G) is based, fully applies to the facts of the present case and having regard to the scheme of the Zamindari Abolition and Land Reforms Act and to the fact that an appeal is the continuation of a suit, it is open to the defendants to take advantage of Section 20. It is equally open to the plaintiffs to urge that the defendants cannot take advantage of Section 20 in view of the Explanation which was added by the Amending Act of 1954. In my judgment, therefore, the decision of the Board of Revenue is manifestly erroneous and must be quashed.

5. I, therefore, allow the petitions and quash the decisions of the Board of Revenue dated 21-3-1955 and send back the appeals to the Board of Revenue to hear them on merits according to law.

6. As I have already pointed out, it is open to the opposite parties to justify the order of the Additional Commissioner on other grounds before the Board of Revenue.

7. In the circumstances of the case, I make no order as to costs.