

Jagannath vs Board Of Revenue, U.P., Allahabad And ... on 28 March, 1955

Equivalent citations: AIR1955ALL432, AIR 1955 ALLAHABAD 432

JUDGMENT

Mootham, C.J.

1. Two questions have been referred to this Full Bench for decision. The circumstances in which the reference has been made are these:

2. In 1950 or early in 1951 the petitioner, who was the tenant-in-chief of a certain plot of land, filed a suit under Section 180, U. P. Tenancy Act, 1939, (hereinafter referred to as 'the Tenancy Act') for the ejectment of the third respondent on the ground that he was a trespasser. On 11-5-1951, the petitioner obtained a decree, and thereafter in execution of his decree he recovered possession of the plot. The third respondent appealed, but before his appeal could be heard a vesting order to take effect from 1-7-1952, was made under Section 4, U. P. Zamindari Abolition and Land Reforms Act, 1950, (hereinafter referred to as 'the Act' or 'the Zamindari Abolition Act') which came into force on 26-1-1951.

3. The Act abolished the zamindari system and made far reaching changes in the system of land tenure. Under Section 20 those persons who on the date immediately preceding the date of vesting, that is on 30-6-1952, were 'inter alia' recorded as occupants of any land (other than grove land or land to which Section 16 applied) in the khasra or khatauni of 1356 Fasli were to be called 'adhivasis' and were, subject to the provisions of the Act, entitled to take or retain possession of such land.

4. The third respondent was so recorded as occupant of the plot in suit, and on 9-5-1953, the Commissioner allowed his appeal on the ground that under Section 20 he had become an adhivasi and as such was entitled to possession of the plot. The petitioner filed a second appeal to the Board of Revenue which on 28-8-1953, dismissed his appeal.

5. The petitioner thereupon filed a petition in this Court under Article 226 of the Constitution in which he prayed that the order of the Board of Revenue be quashed on the ground that it was vitiated by an error of law apparent on the face of the record. His contention was that the provisions of Section 20 of the Act had no application to a pending suit or appeal and he relied on the case of -- 'Bikram Singh v. Sunehra', AIR 1954 All 434 (A) in which that view was taken. The Bench before whom this petition came for hearing was of opinion that the decision in Bikram Singh's case (A) required reconsideration, and although that case was distinguishable on the facts from the case before it inasmuch as the suit in Bikram Singh's case (A) had been filed under Section 175 of the Tenancy Act, the 'ratio decidendi' appeared to apply with no less force to a case in which the suit had

been filed under Section 180 of that Act. The Bench has therefore referred to this Full Bench the following questions:

"(i) Would Section 20 affect the rights of the parties to the suit even though the suit had been filed prior to coming into force of Section 20?

(ii) Whether the provisions of the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, would make any difference to applying the provisions of Section 20 to pending suits or appeals?"

6. Section 20 of the Zamindari Abolition Act confers upon the persons referred to therein the status of an adhvasi, and it expressly provides that a person who has acquired that status shall be entitled, subject to the provisions of the Act, to take or retain possession of the land of which he is the tenant or sub-tenant or of which he was recorded as occupant. Section 234 further provides that an adhvasi shall be liable to ejectment from the land held by him only on one or more of the three grounds stated therein.

7. The question to be determined is whether a defendant in a suit under Section 180, Tenancy Act who has acquired the status of an adhvasi during the pendency of the suit or appeal can set up his right to possession as an answer to the plaintiff's claim. In our opinion, he is entitled to do so. It is no doubt a general rule that where the intention of the Legislature is doubtful an enactment will not be construed so as to affect vested rights of action but the matter is one of construction, and if upon a consideration of the enactment as a whole it is apparent that it was the intention of the legislature that the provisions of the Act should be applicable to pending suits, they will be so applied.

'Quilter v. Mapleson', (1882) 9 QBD 672 (A) is an instructive case on this point. The plaintiff brought an action to recover the demised property under a proviso of re-entry for breach of a covenant to insure, and he obtained judgment on 4-7-1881. The defendant appealed and obtained a stay of execution. On the 1st January, 1882, the Conveyancing and Law of Property Act, 1881, came into operation and thereafter the appeal was heard. Under the Act of 1881, the Court was given power to grant relief against forfeiture, and the Court of Appeal held that that provision was not confined to breaches taking place after the Act came into force but also to breaches committed before the Act and to proceedings pending when the Act came into operation. Jessel M.R. when delivering his judgment allowing the appeal said "We must, therefore, in furtherance of the objects of the Act, hold the enactment to apply to pending proceedings, unless there is something in the words to prevent our doing so."

The Court of Appeal further held that assuming the judgment of the trial Court to have been correct according to law as it then stood, the Court of Appeal could grant to the tenant the relief to which he was entitled according to the law as it stood at the date upon which the appeal was heard. In the case before us the legislature, as part of a radical scheme of land reform, has conferred not only a new status upon certain persons but has vested those persons with rights which are inconsistent with the continued exercise by other persons of rights which they formerly possessed. Prior to 30-6-1952, the petitioner had a legal right to obtain an order for the ejectment of the third respondent; after that

date the third respondent obtained prima facie a right to take or retain possession of the land from which the plaintiff sought to have been ejected.

8. It is strenuously argued for the petitioner that an examination of certain other sections of the 'Act, and of the Rules made under the Act, makes it clear that it was the intention of the legislature that the right of a plaintiff to eject a tenant under the provisions of the Tenancy Act should not be curtailed; indeed it is said that care has been taken to protect such rights. This argument requires examination as it commended itself to this Court in Bikram Singh's case (A).

9. Section 6 of the Act (which is a part of Chapter II) states the legal consequences which follow upon the making of a vesting order, and clause (i) enacts that "(i) all suits and proceedings of the nature to be prescribed pending in any court at the date of vesting, and all proceedings upon any decree or order passed in any such suit or proceeding previous to the date of vesting, shall be stayed;"

Section 26 then empowers the State Government to make rules for the purpose of carrying into effect the provisions of Chapter II, and Sub-section (2)(b) provides that, without prejudice to the generality of the power conferred by Sub-section (1), such rules may provide for-

"(b) the disposal of suits and proceedings stayed under this chapter;"

The other provision of the Act to which it is necessary to refer is Section 342 which empowers the State Government to make, within a limited period, such Orders as are considered necessary to remove difficulties which may arise in relation to the transition from the provisions inter alia of the U. P. Tenancy Act, 1939 to the provisions of the U. P. Zamindari Abolition and Land Reforms Act, 1950.

10. Rules were made under the Act on 30-6-1952. Rule 4(1) provides that all suits and proceedings whether of first instance, appeal or revision of the nature specified later in the rule, in respect of an area to which a vesting order applied, pending in any court for hearing on the date of vesting shall be stayed. At the end of the rule are set out a number of clauses enumerating the suits and proceedings to which sub-rule (1) refers; and Clause (v) as originally published read thus:

"Suits, applications and proceedings including appeals, references and revisions under Sec. 180 of the U. P. Tenancy Act, 1939;"

On the 8th October, 1952, the clause was amended by the addition thereto of the words-

"or of similar nature pending in a civil Court, except where the plaintiff is a tenant or where the land was the sir, khudkasht or grove of an-intermediary and in which rights have not accrued to the defendant under Section 16 or any other section of the Act."

The final word "Act" was intended to mean the U. P. Zamindari Abolition and Land Reforms Act and that was made clear by a further amendment published on 11-2-1953.

11. Rule 5 then made provision for the disposal of suits stayed under Rule 4. All "proceedings stayed under clauses (i) to (iii) and (v) of Rule 4 were to abate (sub-rule 1); all proceedings pending in a court of first instance and stayed under clause (iv) of Rule 4 which referred to proceedings under a number of sections of the U. P. Tenancy Act other than Section 180 were to abate (sub-rule 2), but all other proceedings stayed under clause (iv) were to be "continued and decided in accordance with the provisions of the U. P. Tenancy Act, 1939, and the U. P. Land Revenue Act, 1901, as may be applicable." (sub-rule 3).

An additional rule, which is of some importance, Rule 5 A, was added on 25-8-1953. That rule reads thus-

"5-A. Nothing in Rule 4 or 5 shall be construed as depriving any party to the suit or proceeding from any right which may have accrued in his favour in the land., the subject-matter of the suit or proceeding, under the Zamindari Abolition and Land Reforms Act, 1950."

12. Now the third respondent's appeal to the Commissioner from the order of ejectment obtained by the petitioner was pending when these Rules came into force, and under Rule 4 it was automatically stayed, before however an order of abatement could be made under Rule 5(1), Clause (iv) of Rule 4 was amended (on 8-10-1952) with the result that the appeal, the plaintiff being a tenant, ceased to be stayed. No provision was or could be made in the rules for the manner in which suits and proceedings which were not stayed were to be disposed of, and it appears to have been for this reason among others that' on 26-8-1952, the Governor promulgated the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order, 1952, clause (2): of which provided that-

"2. Except as expressly provided in the U. P. Zamindari Abolition and Land Reforms Act, 1950^ or under the U. P. Zamindari Abolition and Land Reforms Rules, 1952, every suit, appeal or legal proceedings 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 the 30th day of June, 1952, in any Revenue or Civil Court, be continued in such Court; and

(b) where not so pending, may be instituted or commenced in the Court in which it would, but for the enactment of the U. P. Zamindari Abolition and Land Reforms Act, 1950, have been* instituted or commenced, and every such suit, appeal or legal proceedings shall be heard, inquired into and decided under and in accordance with the provisions of the U. P. Land Revenue Act, 1901, and the U. P. Tenancy Act, 1939."

13. The argument is that the provision in Sub-rule (3) of Rule. 5 and in clause (2) of the U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order that the suits and proceedings referred to therein are to be continued and decided in accordance with the provisions of the U. P. Land Revenue Act or the U. P. Tenancy Act, as the case may be, is a clear indication that in the decision of such suits the plaintiff will have the rights accorded to him by such enactments and the defendant is not entitled to rely on any rights which may have been conferred on him by any other Act. Stated baldly the argument means that such suits will be decided as though the Zamindari Abolition Act (which repealed the Tenancy Act and extensively modified the Land Revenue Act) had not been placed on the Statute Book. We do not think this argument is well founded.

14. In the first place the purpose of the Zamindari Abolition Act, as expressed in its preamble, is to acquire the right, title and interest of intermediaries between the tiller of the soil and the State, and to reform the law relating to land tenures. The Act provides for the vesting of of proprietary rights in the State, and save where land was in the personal cultivation of a 'thekadar' the latter ceases to have any right to hold or possess such land. It creates new categories of tenure-holders, 'bhumidhars', 'sirdars' and asarnis; certain tenants of sir', sub-tenants "and occupants of land became 'adhivasis'. The whole pattern of land tenure has been changed; new rights have been created and old rights abolished.

The U. P. Land Tenures (Legal Proceedings) (Removal of Difficulties) Order was made for one purpose only, as an aid to the transition from the old system to the new, and we are of the view that the Order must, if possible, be so construed as to be in harmony with the Act under which it is made and not as an Order which confers upon a plaintiff rights which have been taken from him or which deprives a defendant of the benefit of rights with which he has been invested. In other words, we are of opinion, that the proceedings to which clause (2) of this Order refers are to be decided in accordance with the provisions of the Land Revenue Act or the Tenancy Act, as the case may be, read with the provisions of the Zamindari Abolition Act.

15. In the second place Rule 5-A, which we have already quoted, makes it clear that in a suit under Section 175 of the Tenancy Act or under any of the other sections of that Act enumerated in clause (iv) of Rule 4 which are to be continued under Rule 5(3), neither the plaintiff nor the defendant can be deprived of any right which has accrued to him under the Act in the land the subject of the suit. Is it the position therefore that a defendant in a suit under Section 180, Tenancy Act, is deprived of the right to resist the plaintiff's claim on a ground which it would be open to him to advance were the suit under Section 175 of that Act, namely, that he has acquired a right in the land the subject of the suit under the Zamindari Abolition Act? We are unable to believe that such was the intention of the legislature; in our opinion no such distinction was intended to be made.

16. Thirdly, in a case such as the present in which the suit was filed under Section 180 of the Tenancy Act it was incumbent on the plaintiff to establish that the defendant is in possession, in the words of the section, "otherwise than in accordance with the provisions of the law for the time being in force." We are unable to appreciate why the defendant should be debarred from contending that the Zamindari Abolition Act is part of the law for the time being in force and that in accordance with the provisions of that law he is entitled to possession of the land in suit.

17. An argument was addressed to us based on Section 6, U. P. General Clauses Act, 1904. The provisions of that section have application however only in the absence of a different intention appearing in the repealing enactment. The section therefore carries the matter no further, as for reasons which we have already given it was in our opinion the intention of the legislature in passing the Zamindari Abolition Act that pending proceedings under the Tenancy Act should be affected.

18. Finally a reference was made to Section 232 of the Act which provides a procedure according to which an 'adhivasi' may on application being made by him to the Assistant Collector be put in possession of the land of which he is the Adhivasi, and it was contended that the fact that specific provision is made for restoration of possession to an Adhivasi shows that an Adhivasi is not entitled to set up his rights as such as a defence to a suit for ejectment. The argument, in our opinion, is without force. A suit for ejectment presupposes that the defendant is in possession--in which case Section 232 has no application -- and the fact that he may have lost possession as a result of the decree of the trial Court cannot mean that he has also lost his right of appeal. It is impossible to hold that one Court can find that the plaintiff is entitled to possession under Section 180, Tenancy Act, and another Court that the defendant is entitled to possession under Section 232.

19. We are of opinion that the two questions referred to this Bench must be considered together and be answered as follows.

20. Notwithstanding anything contained in the U. P. Land Tenures (Legal Proceedings) (Removal, of Difficulties) Order 1952, a suit, appeal or other legal proceeding under Section 180, U. P. Tenancy Act 1939, pending on 30-6-1952, will be decided with reference to any right which may have accrued to either party in the land, the subject-matter of the suit, appeal or other proceedings under the U. P. Zamindari Abolition and Land Reforms Act, 1950.