Jagat Narain Prasad Sahu vs Madhusudan Dass on 22 March, 1950

Equivalent citations: AIR1952ALL327, AIR 1952 ALLAHABAD 327

JUDGMENT

Agarwala, J.

1. This is a plaintiff's appeal arising out of a suit for a declaration that the transfer of a plot by the Government of the Utter Pra-desh in favour of defendant-respondents 1 and 2 is ultra vires and void and, in the alternative, for a declaration that the plaintiff has a preferential right of taking the transfer and for an order for the transfer of the land to the plaintiff by defendant respondents 1 and 2.

2. A further relief claimed was to the effect that the constructions made by defendant-respondents 1 and 2 be removed and they may be restrained by an injunction from making any other construction on the land in dispute and for maintaining the land in dispute as a passage for the public or for the plaintiff or for both.

3. The property in dispute is plot No. 67 in village Sahjanwa. It was formerly owned by the plaintiff-appellant. In the year 1883, the U. P. Government acquired this land for the purposes of the railway station at Sahjanwa. After the acquisition, the land was, however, not used for the purpose for which it was acquired but was allowed to be used by the public as an unmetalled road in continuation of a road leading to the station. In 1940 the Government considered that the land was not required for the purposes of a road and that it could be beneficially utilized for other purposes. The Government ultimately agreed to transfer the land to defendants respondents 1 and 2 for a consideration of Rs. 255 and the latter were put in possession of the land. The defendants then made certain constructions on a portion of the land.

4. The plaintiff's case was that the Collector's order giving the land to defendants-respondents 1 and 2 was against the rules framed by the Government and contained in the Revenue Manual and that the sale was, therefore, void. In the alternative he pleaded that the land had been dedicated for the use of the public and could not be diverted to some other use and that he as a member of the public had a right to use it as a road. He further alleged that in his private capacity also, he had acquired bright of easement of way over the land. According to him, when the Government had acquired the land from his ancestors, it was their duty under the rules to offer it to the plaintiff in the first instance before selling it to a stranger. The plaintiff claimed a relief for demolition of the constructions on the ground of their constituting an encroachment on his own adjoining land.

5. The defendants controverted the pleas taken by the plaintiff in so far as he claimed any rights under the rules, or of right of way in favour of the public or in his own favour. It was also pleaded that the constructions could not be ordered to be demolished.

6. The trial Court decreed the suit only for the removal of certain cornices and eaves which overhung the plaintiff's land. In other respects, it dismissed the suit. The lower appellate Court confirmed the trial Court's decree.

7. Now Rules 544, 545 and 546 of the Revenue Manual lay down that:

> 544. "Plots of land which, by reason of their situation, size or shape are practically of no value to any one but the owners of the adjoining land, land forming a small share of a mahal which it is desirable should not pass into the possession of anyone but the owners of the mahal, should first be offered to such owners on condition of their paying to Government the fair market value of the land, and any reasonable offer on their part should have the preference over that of an outsider."
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> 545. "Where the preceding rule does not apply, the proprietary rights in the land should, ordinarily, as an act of grace, be first offered to the persons from whom they were acquired, or to their heirs, if discoverable. If, at the time of acquisition, compensation was paid on account of rights of occupany in the land to tenants, or others, the rights of occupany extinguished by the acquisition should be offered to the persons who received compensation, or their heirs; the proprietary rights being made subject to the rights of occupancy under the provisions of the Crown Grants Act (XV [15] of 1895)."
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> 546. "If no one referred to in paraa. 544 and 545 will accept the land on these terms, the Collector shall dispose of the land otherwise to the best advantage of Government."

8. It is conceded that the Government in transferring the land to defendants 1 and 2 con-travened the provisions of Br. 644 and 545 inasmuch as they did not sell tbe land to the plaintiff who was both the owner of the adjoining land and also the original owner of the land which had been acquired and was ready and willing to purchase it. Undoubtedly, the action of the Government is not commendable. The question, however, is whether the rules aforesaid conferred any right on the plaintiff enforceable in a Court of law. In my opinion, the rules do not confer any such right.

9. These rules are part of chap. XX of the Revenue Manual which is headed 'Disposal of Agricultural and Pastoral Land Relinquished After Permanent Appropriation'.

10. Learned counsel appearing for the appellant, was unable to point out to me any statutory provisions under which the rules mentioned above were made by the Government. A perusal of the rules shows that they were made by the Government for the guidance of its own executive officers. They are in the nature of directions which the Government expects its officers to carry out. They are,

however, not rules forming part of the law of the land and cannot be enforced in a Court of law. An officer who is guilty of breach of such rules may be departmentally punished by the Government. But a contravention of the rules does not confer a right on the members of the public to sue the Government for their breach. The plaintiff, therefore, had no right of suit on the basis of the breach of these rules.

11. The next point urged before me is that the Government having allowed the land to be used as a public road must be deemed to have dedicated it for the benefit of the public and having done so could not now divert the use thereof and sell it to private individuals. No proof of dedication was adduced in the case. Learned counsel says that dedication may be presumed by the user of the land by the public. In my opinion, no such presumption can be raised when the land belongs to the Government. The Government, is the custodian of the rights of the public and works for their benefit. Dedication connotes the grant of an irrevocible licence. If the Government were presumed to have made a dedication, the result would be that even though, as custodian of the rights of the public, it considered that a certain land should be used in a particular manner, it will not be able to use it in that manner because of the irrevocable licence granted by it. Such presumption would not be in the interest of the public at all. The case is different when the land belongs to a private individual and a right created in favour of the public is presumed by long user.

12. There is another reason why no presumption of dedication of a piece of land by the Government can be made. A presumption in favour of dedication implies that the dedication is an oral transaction. Now the Government is an artificial person. An artificial person can only act in the manner provided by law. A Government, normally acts through its officers authorised by law or by a particular rule or order to do an act. Dedication can only be made by an officer of the Government who is authorised to do so. No law or rule authorises any officer to make a dedication and no order regarding dedication can be presumed to have been passed without strict proof thereof.

13. For all these reasons, I hold that no presumption of dedication of the land for the benefit of the public can be made in the present case. No other point was urged before me.

14. There is no force in this appeal and I dismiss it with costs.