Ram Saroop And Ors. vs Board Of Revenue, Uttar Pradesh, ... on 7 April, 1954

Equivalent citations: AIR1954ALL639, AIR 1954 ALLAHABAD 639

ORDER

Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution. The petitioners filed a suit under Section 180, of the U. P. Tenancy Act in respect of certain plots of land against the respondent-No. 2. The suit was decreed by the trial court but was dismissed by the Additional Commissioner of Agra. The petitioner then filed a second appeal before the Board of Revenue. This appeal was filed on 29-7-1950. Before, however, the appeal could be heard on merits, a vesting order was passed under Section 4, U. P. Zamindari Abolition and Land Reforms Act (No. 1 of 1951), on 1-7-1952. Certain rules were framed under the said Act and under Rule 4 of the Rules the Board of Revenue ordered the hearing of the appeals to be stayed on the merits and fixed 10-11-1953 for hearing the parties under Rule 5(a) (I) of the rules in order to determine whether the appeal should be abated or not.

One Member of the Board of Revenue heard the appeal on that date and passed an order on 12-11-1953 holding that the suit and the appeal should both be held to have abated. On 18-12-1953, another Member of the Board concurred in this order. The result of these two orders was that the petitioners' appeal and the suit were held to have abated.

2. The present petition was filed on 2-3- 1954 praying for the quashing of the orders of the Members of the Board of Revenue dated 12th.

November and 18-12-1953 already referred to above and to direct the Board to hear and decide the appeal on merits.

3. It is not contended by the learned counsel that the decision of the Board that Rules 4 and 5 apply to the case and that the appeals had to be declared to have abated under those rules was an incorrect decision.

What he has submitted before me is that these rules are ultra vires and should not have been acted upon by the Members of the Board. He has urged a number of grounds on which he asserts that the rules should be held to be ultra vires. He has challenged the validity of rules Nos. 4 and 5 only framed under the Act.

The first contention of the learned counsel is that Section 6(1) only says that suits and proceedings of the nature to be prescribed shall be stayed and the rule does not say that the appeals are also to be

stayed. Rules 4 and 5 permitted the stay and the abatement of the appeals as well as the suit. The argument of the learned counsel is that the rules in respect of the abatement of appeals were not authorised by Clause (1) of Section 6, U. P. Zamindari Abolition and Land Reforms Act.

I do not agree with the contention because the word 'suits' really includes appeals also. The appeals are really a continuation of the suits and the suits continue not only in the court of the first appeal but also in the court of the second appeal. There are a number of decisions of this Court on the point, and it is not necessary to mention those decisions. It is well settled that the word 'suit' includes appeals and Section 6(1) which permitted the framing of rules with respect to abatement of suits, therefore, also conferred power on the State Government to frame rules with respect to abatement of appeals as well.

4. The; second point argued by the learned counsel was that under Section 26 (2) (b) the State Government is authorised to make rules for the disposal of suits and proceedings stayed under this chapter, but he says that Clause (b) does not permit the Government to frame a rule directing the abatement of a suit.

Learned Counsel concedes that abatement of a suit is one of the methods by which a suit may be disposed of. But he says that it is not the only method of disposing of a suit. Abatement being one of the methods. I fail to see why it is not included within Section 26 (2) (b). It is one of the methods of disposal of a suit and the State Government was permitted to adopt any method it thought proper of disposal of the suits. This argument of the learned counsel also therefore does not appeal to me.

His third contention was that the petitioners were conferred a right of appeal by the Statute and the right could only be taken away by another statute and not by any rules framed by the State Government. This contention would have had force if the Statute itself had not provided for the stay or abatement of the suit; but both Section 6(1) and Section 26(2) (b) specifically confer power on the State Government to make rules providing for the stay or disposal of suits of a certain nature. The power cannot be challenged as being an undue delegation of authority because the whole of the Act has been declared to be valid by the Supreme Court of India. I must therefore take it that the power conferred by the above two provisions on the State Government to make the rules is a valid power and if the power has been validly conferred and the State Government, in the exercise of the power SO conferred, has made rules, it cannot be said that the rules are ultra vires or beyond the powers of the State Government.

If the power itself conferred by the above two provisions could be questioned as an invalid delegation of power, the position might have been different; but as far as the U. P. Zamindari Abolition and Land Reforms Act is concerned, this power has been finally held to be properly delegated and that being the position, it cannot be said that the delegatee when he exercised that power was not authorised to do so.

The next argument of the learned counsel was that the rules purported to have come into force on the 30th of June, 1952, whereas the consequences of the vesting order mentioned in Section 6 could only have ensued after the vesting order had been made which was done on the 1st of July, 1952,

that is, one day after the rules are said to have come into force.

The power conferred under Section 6(1) could be properly exercised after the passing of the vesting order and it may be that the rules framed for the staying of suits under Section 6 (1) may not have been valid on 30-8-1952. But the vesting order having been passed the next day the rules could certainly be enforced after the vesting order, that is, from 1-7-1952. In this case it will be immaterial whether the rules staying suits were actually valid or not on 30-6-1952. The orders of the Board of Revenue were passed after the 1st July 1952, that is, after the date of the vesting order and the rules after the vesting order certainly had the force of law.

The next point urged by the learned counsel was that Rule 5 of the Rules provides that an order of abatement shall not debar a person from having his right determined in any subsequent proceeding and this provision is invalid because it leads to multiplicity of suits.

An enactment cannot be held to be invalid because as a result of it a multiplicity of litigation may follow and the rules framed under this Act have really the force of law. It cannot also be said that this provision was in any way unreasonable. In view of the change brought about by the vesting order it was found necessary to put an end to a number of previous suits which were filed when the zamindars still had the right to eject tenants. That right having been taken away by the vesting order, the Government considered it proper to stay some of the old suits and even to declare them to have abated. As the situation then stood, the provision was a reasonable one.

The further provision that the abatement did not debar the party from having his right determined in other proceedings was an essential provision because the suit having abated without being decided on merits any decision that had been arrived at in those proceedings could not obviously be given the force of res judicata. It was but reasonable that under the circumstances a provision should have been made that the abatement of the suits would be no bar to the determination of the same question in any subsequent litigation.

I am therefore not prepared to hold that Rules 4 and 5 are invalid or ultra vires on the grounds urged by the learned counsel for the petitioners.

5. The petition, therefore, fails and is hereby dismissed.