Sukhram Singh And Another vs Smt. Harbheji on 19 February, 1969

Equivalent citations: 1969 AIR 1114, 1969 SCR (3) 762, AIR 1969 SUPREME COURT 1114

Author: M. Hidayatullah

Bench: M. Hidayatullah, G.K. Mitter

PETITIONER:
SUKHRAM SINGH AND ANOTHER

Vs.

RESPONDENT:
SMT. HARBHEJI

DATE OF JUDGMENT:
19/02/1969

BENCH:
HIDAYATULLAH, M. (CJ)
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HIDAYATULLAH, M. (CJ)
MITTER, G.K.

CITATION:
1969 AIR 1114 1969 SCR (3) 762
1969 SCC (1) 609
CITATOR INFO :
F 1977 SC 94 (10,11)
RF 1991 SC 480 (6)

ACT:
U.P. Zamindari Abolition and Land Reforms Act 1951-Sections 21 and 157-Amendment by Act 20 of 1954-Express provision for retrospective application of amended s. 21-No provision for retrospective effect of s. 157-If s. 157 also deemed to have been amended retrospectively--Statement by Compensation Officer under section 240(F)-When final.

HEADNOTE:
The respondent as Bhumidhar filed an objection under section 240(G) of the U.P. Zamindari and Land Abolition Act, 1961, in respect of a preliminary statement compiled by the

Compensation Officer under section 240(F) showing the appellants as Adhivasis of certain land. The objection was dismissed by the Compensation Officer on October 25, 1956, who held that the appellants had Adhivasi rights and the objector had no interest in the land. The Compensation Officer decided the matter without framing an issue and referring it for decision to a competent Court. in the meantime, in consolidation proceedings the respondent applied for correction of the records under section 10(1) of Consolidation of Holdings Act, but her objection was dismissed by the Consolidation Officer. However, on appeal, the Settlement Officer, (Consolidation), reversed this decision holding the,. the appellants were Asamis. The Director of Consolidation, U.P. dismissed a revision application. In these consolidation proceedings, the respondent claimed the advantage of the amendment of section 21(h) and section 157 introduced by the U.P. Land Reforms Act, XX of 1954, on the ground that her husband was suffering from physical infirmity and was incapable of cultivating land. The appellants' contention was that while section 21 had been expressly amended to have retrospective effect, the amendment of section 157 was not effective retrospectively; the, respondent was therefore not entitled to claim the advantage from the amendment of section 157

It was further contended by the appellants that the order of the Compensation Officer made on October 25, 1956, bad finally decided the status of the appellants as Adhivasis and not having been appealed against, the question could not now be reopened.

HELD : Section 157(1) (a) must, be read to apply retrospectively.

If the new s. 21(h) is to be read retrospectively from the commencement of Land Reforms Act, the amendment of section 157(1) which was made simultaneously must also be clearly intended to operate with retrospection. There would be no point in making the amendment of s. 21(h) retrospective if the other clauses were to apply prospectively for then the force of the retrospectivity of clause (h) of s. 21 would be made neutral. [759 E-F]

A law is undoubtedly retrospective if the law says so expressly but it is not always necessary to say so expressly to make it retrospective. There are occasions when a law may be held to be retrospective in operation. Retrospection is not to be presumed for the presumption is the other way but many statutes have been regarded as retrospective without a declaration. Thus it is that remedial statutes are always regarded as

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prospective but declaratory statutes are considered retrospective. Similarly sometimes statutes have a retrospective effect when the declared intention is clearly and unequivocally manifest from the language employed in the particular law or in the context of connected provisions.

It is always a question whether the legislature has sufficiently expressed itself. To find this one must look at the general scope and purview of the Act and the remedy the legislature intends to apply in the former state of the law and then determine what the legislature intended to do. This line of investigation is, of course, only open if it is necessary. [758 H]
Main v. Stark [1890] 15 A.C. 384 at 388; referred to.
The order of the Compensation Officer under s. 240-F did not have that finality which was claimed for it. That finality attaches only to the order of the Assistant Collector under s. 229-B on a reference of an issue from the Compensation Officer.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 666 of 1966. Appeal by special leave from the judgment and order dated September 20, 1963 of the Deputy Director of Consolidation, U.P. Lucknow in Revision No. 91 of 1963.

J. P. Goyal and R. S. Gupta, for the appellants. S. P. Sinha and M. I. Khowaja, for the respondents. The Judgment of the Court was delivered by Hidayatullah, C.J. The parties in this appeal are the same as in Civil Appeal No. 286 of 1966 which we declared to have become infructuous because of the operation of S. 5 of the Uttar Pradesh Consolidation Act' The judgment in that appeal was delivered by us on February 7, 1969. For the narration of facts in this appeal we have, however, referred to certain orders which were passed by the High Court from the sister appeal. The parties to this appeal as in the other appeal are Sukhram Singh and Laiq Singh of the one part and Smt. Harbheji of the second part. These two parties have been fighting a long drawn litigation over khata No. 271 of village Shahgarh. Two separate proceedings took place before the Revenue Courts and reached this Court by way of special leave, one of which has been disposed of and the other is now before us. The points involved in this appeal are short but in view of the length of litigation a long narration is necessary.

On March 10, 1954 Smt. Harbheji as bhumidar filed a suit (No. 38 of 1954) under s. 202 of the U.P. Zamindari Abolition and Land Reforms Act, 1955 against the other party in the court of the Assistant Collector, 1st Class, Aligarh. The allegation in the suit was that Sukhram Singh and Laiq Singh were Asamis who were leased the khata in 1947 from year to year. Smt. Harbheji asked for their ejectment from the khata. The defence of the other side was that the occupants were Adhivasis. The Land Reforms Act was passed in 1951. Under the Act the intermediaries were abolished and their rights and title vested in the State from July 1, 1952. The Act was later amended from time to time and we are concerned with one such amendment made by the U.P. Land Reforms Act XX of 1954 which came into force on October 10, 1954.

Reverting to the facts, the suit No. 38 of 1954 was dismissed by the Assistant Collector, 1st Class, Aligarh on April 20, 1956 and it was held that Sukhram Singh and Laiq Singh were not Asamis and

therefore not liable to ejectment. On appeal the, Civil Judge of Aligarh allowed it on February 1, 1957 and declared Sukhram and Laiq Singh to be Asamis. A second appeal in the High Court before a Single Judge succeeded on February 19, 1958. Sukhram Singh and Laiq Singh were again declared to be Adhivasis. A Letters Patent Appeal was filed in the High Court. Meanwhile the Consolidation of Holdings Act was brought into force in this area and a notification under s. 4 of the Consolidation of Holdings Act declaring village Shahgarh area to be under consolidation was published on November 11, 1961. The appeal in the High Court was decided on February 8, 1962. It appears that the arguments were already heard and the case was reserved for judgment when the notification came into force. The learned Judges did not apply s. 5 of the Consolidation of Holdings Act which provides that on notification issuing any suit, proceeding or appeal must be taken to have abated. lie Division Bench gave its decision reversing the judgment of the Single Judge. As a result Sukhram Singh and Laiq Singh were again declared to be Asamis. An appeal was then brought to this Court by special leave and it is that appeal which we declared had become infructuous by reason of the abatement of the suit. This was the end of the proceedings under s. 202 of the Land Reforms Act.

Meanwhile Smt. Harbheji as bhumidar was entitled to com- pensation for the extinguishment of her rights. The Compensation Officer prepared a preliminary statement under s. 240F and showed Sukhram Singh and Laiq Singh as Adhivasis. Smt. Harbheji filed an objection under s. 240G but on the date of hearing (October 25, 1956) she did not appear before the Compensation officer who dismissed her objection holding that Laiq Singh and Sukhram Singh had Adhivasi rights and the objector had no interest in the land. The statement of compensation was also confirmed on the same date. in the consolidation proceedings Smt. Harbheji applied for correction of the records under s. 10(1) of the Consolidation of Holdings Act. This matter was decided by the Consolidation Officer III Khera Narainsingh on March 7, 1963. The objection filed by Smt. Harbheji was dismissed. On appeal the Settlement Officer (Consolidation) reversed the above decision on June 14, 1963 holding that Sukhram Singh and Laiq Singh were Asamis. The Deputy Director of Consolidation, exercising the powers of the Director of Consolidation Uttar Pradesh dismissed the revision petition on September 20, 1963 filed by Sukhram Singh and Laiq Singh. The present appeal is from the last decision by special leave.

Two points were argued before us, namely, that Smt. Har- bheji was not entitled to the benefit of s. 21 as amended by Act XX of 1954 and secondly that the order of the Compensation Officer made on October 25, 1956 had finally decided the status of Sukhram Singh and Laiq Singh as Adhivasis and not having been appealed against, the question cannot now be reopened. We shall take these points one by one.

The U.P. Zamindari Abolition and Land Reforms Act was amended in 1954 by the above amending Act in several respects. We are only concerned with the amendment of ss. 21 and 157 and the addition of Chapter IX-A. Section 21 leaving out portions not necessary for our purposes provides after the amendment as follows :

> "Sec. 21. Non-occupancy tenants, sub-tenants of grove-lands and tenant's mortgagees to be assamis.

(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held as-

(h) A tenant of sir land referred to in sub-

clause (a) of clause (i) of the Explanation under section 16, a sub-tenant referred to in sub-clause (ii) of clause (a) of Section 20 or an occupant referred to in sub-clause (i) of clause (b) of the said section where the landholders or if there are more than one landholders, all of them were person or persons belonging--

(b) if the land was let out or occupied on or after the ninth day of April, 1946, on the date of letting or occupation, to any one or more of the clauses mentioned in sub-section (1) of Section 157 shall be deemed to be an asami thereof."

Before the amendment the corresponding part of the section read as follows:

"Section 21 (1). Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as-

(h) a tenant of sir or land referred to in sub-clause (a) of clause (i) of the explanation under section 16, a sub-tenant or an occupant referred to in section 20, where the landholder or if there are more than one landholder all of them were person or persons belonging, both on the date of letting and on the date immediately preceding the date of vesting, to any one or more of the classes mentioned in sub-section (2) of section 1 0 or clause (e) of subsection (1) of section 157.

shall be deemed to be an asami thereof."

The difference between the two sections material for our purposes lies in the mention of all clauses of s. 157 sub-section 1 after the amendment whereas before the amendment only clause (e) of sub-section 1 of s. 157 was mentioned. Section 157 also was amended.

Again for the purposes of this case it is not necessary to reproduce the whole of the section. It read before the amendment as follows:

"Section 157(1). A bhumidhar or a sirdar or an asami holding the land in lieu of maintenance allowance under section II, who is-

(a) an unmarried woman, or if married, divorced or separated from her husband, or a widow;

(b) a minor whose father has died;

(c) a lunatic or an idiot;

(d) a person incapable of cultivating by reason of blindness or other physical infirmity;

(e) prosecuting studies in a recognised institution and does not exceed 25 years in age;

(f) in the Military, Naval or Air service of the Indian Dominion; or

(g) under detention or imprisonment.

may let the whole or any part of his holding." After the amendment it reads as follows:

"Section 157--Lease by a disabled person.-(1) A bhumidhar or a sirdar or an asami holding the land in lieu of maintenance allowance under Section 11 who is-

(a) an unmarried woman, or if married divorced or separated from her husband or whose husband suffers, from any of the disqualifications mentioned in clause (e) or

(d) or a widow;

(b) a minor whose father suffers from any of the disqualifications mentioned in clause (c) or (d) or has died; and

(c) a lunatic or an idiot;

(d) a person incapable of cultivating by reason of blindness, or other physical infirmity;

(e) prosecuting studies in a recognised institution and does not exceed 25 years in age and whose father suffers from any of the disqualifications mentioned in clause (e) or

(d) or a has died :"

"(f) in the Military, Naval, or Air service of the Indian Dominion; or

(g) under detention or imprisonment;

may let the whole or any part of his holding." The difference here is that a lease by a woman' although married was possible if her husband was suffering from insanity or idiocy or was a person incapable of cultivating by reason of blindness or other physical infirmity. Smt. Harbheji in her applications wished to take advantage of the amendments of ss. 21 and 157 on the ground that her husband was suffering from sinus and hence from physical infirmity and was incapable of cultivating the land. The difficulty arises because the Legislature while making the amendment made the amendment in clause (h) of s. 21 retrospective from the date of the passing of the Abolition

Act but in s. 157 it did not expressly state that the amendments were retrospective. The short question that arises is another s. 157 when read with s. 27 also becomes retrospective notwithstanding that there are no express words of retrospectivity.

The second point is concerned with the addition of Chapter IX-A which is headed Conferment of Sirdari Rights on Adhivasis. The grounds on which the ejectment of an Adhivasi could be made are contained in s. 234 of the Land Reforms Act but none of the Pounds applies here. Thus if Sukhram Singh and Laiq Singh were adhivasis they could not be ejected by Smt. Harbheji but if they were only asamis then the ejectment could take place because they were only tenants from year to year. Chapter IX-A added sections 240A to 240N. It provides that the Government may by a notification declare that the rights, title and interest of the landholders in the land held by Adhivasis shall cease and vest in the State and also provides for payment of compensation to the landlord whose rights, title or interest in the land are acquired. The compensation statement is required to be published under s.240F and s. 240G gives a right to any person interested to file objections. Section 240H deals with the procedure for disposal of the objections under S. 240G. It provides that the Compensation Officer shall frame an issue regarding it and refer it for disposal to the Court which has jurisdiction to decide a suit under s. 229B read with S. 234A and that thereupon all the provisions relating to the hearing and disposal of such suit shall apply to his reference as if it were a suit. Section 229B provides that any person claiming to be an Asami of the whole or a part of it may sue the landlord for a declaration of his rights as Asami. Subsection 3 of the same section provided that the provisions are to apply mutatis mutandis to a suit by a person claiming to be sirdar (Adhivasi). Section 234A then provides that the provisions of s. 229B mentioned above shall apply to an Adhivasi as if he were an Asami. Schedule 11 to the Land Reforms Act in Item 34 appoints the Assistant Collector, 1st Class, as competent court for the trial of suits for declaration of rights under S. 229B. The Schedule also provides for an appeal to the Commissioner from the order and to the Board of Revenue by a second appeal. In the present case the Compensation Officer who passed the, order on October 25, 1956 was also Assistant Collector, 1st Class but he did not refer the case to himself after framing an issue and hence his order has been treated to have been passed by him in his capacity as a Compensation Officer. We will now come to the question whether S. 157 also operates retrospectively with s. 21. The latter was made retrospective expressly. The High Court in the Division Bench decision held that S. 157 was also retrospective by implication. The contention of the appellants is that Smt. Harbheji was not entitled to take the benefit of the amendment and to plead that she could let out her sir land because her husband was suffering form an infirmity and was not able to look after the cultivation:' If Smt. Harbheji is entitled to plead the amended section then under s. 21 Sukhram Singh and Laiq Singh must be treated as Asamis because that is what s. 21 enacts. If the unamended section is to be read with s. 21 then the contrary result is reached.

Now a law is undoubtedly retrospective if the law says so expressly but it is not always necessary to say so expressly to make the law retrospective. There are occasions when a law may be held to be retrospective in operation. Retrospection is not to be presumed for the presumption is the other way but many statutes have been regarded as retrospective without a declaration. Thus it is that remedial statutes are always regarded as prospective but declaratory statutes are considered retrospective. Similarly sometimes statutes have a retrospective effect when the declared intention is clearly and unequivocally manifest from the language employed in the particular law or in the context of

connected provisions. It is always a question whether the legislature has suffi- ciently expressed itself. To find this one must look at the general scope and purview of the Act and the remedy the legislature intends to apply in the former state of the law and then determine what the legislature intended to do. This line of investigation is, of course, only open if it is necessary. In the words of Lord' Selborne in Main v. Stark(1) there might be something in the context of an Act or collected from its language, which might give to words prima facie prospective a large operation. More retrospectively, is not to be given than what can be gathered from expressed or clearly implied intention of the legislature.

Applying these tests to the statute we have in hand, we are clear that section 157 (1) (a) must be read to apply retrospectively. It is clear that s. 21(h) mentioned only one of the clauses viz. clause (e) as furnishing a ground for declaration. After the amendment of clause (h)_ one or more of the clauses of s. 157(1) are to be taken into account. Now there would be no point in making the amendment of s. 21 (if) retrospective if the other clauses were to apply- prospectively for then the force of the retrospective of clause (h) of s. 21 is made neutral. Therefore if the new s. 2 (h)is to be read retrospectively from the commencement of Land Reforms Act, the amendment of section 157(1) which was made simultaneously must also be clearly intended to operate with retrospection. The legislature intended that at any given moment of time from the commencement of the Lands Reforms Act all the clauses or one or more them and not clause (e) alone were to be taken note of. The amendment of clauses (h) speaks of one or more clauses and when we read the clauses of s. 157(1) we find them altered also. Therefore the new clauses must be read and not the old clauses. The High Court was thus right in its conclusion that the clauses of s. 157(1) as amended also operate retrospectively. This disposes of the first point. The next point is about the finality of the order of October 25, 1956 passed by the Compensation Officer. We cannot refer that order to his capacity as the Assistant Collector. An act would, no doubt be referrable to a capacity which would give it validity. But the law required the compensation officer to frame an issue and refer it to the competent court. He could not decide the matter without doing so. One of the parties was before it and he (1) [1890] 15 A.C. 384 at 388.

ought to have asked that party to prove its case. He did nothing. It is, therefore, not wrong for the Settlement officer and the Deputy Director to treat the order as proceeding from the Compensation Officer. Further since proceedings under S. 202 of the Land Reforms Act were already pending for the decision of the identical question the Compensation Officer ought to have stayed his hands. In our opinion, the order of the Compensation Officer did not have that finality which is claimed for it. That finality attaches only to the order of the Assistant Collector on a reference of an issue from the Compensation Officer. There was thus no finality.

The order of the Deputy Director cannot, therefore, be assailed. The appeal must fail and is dismissed but in view of the fact that an amendment of the law deprives the present appellants of a valid plea we make no order about costs.

R.K.P.S. Appeal dismissed.