

Nanak Chand and ors. Vs. State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Dec-03-1954

Reported in : AIR1955All165

Judge : Raghubar Dayal and ;Roy, JJ.

Acts : High Court Rules; High Court Orders; Allahabad High Court Rules - Rule 5;
[Constitution of India](#) - Article 226

Appeal No. : Special Appeal No. 40 of 1954

Appellant : Nanak Chand and ors.

Respondent : State of Uttar Pradesh and ors.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : B.L. Dikshit, Adv.

Judgement :

Raghubar Dayal, J.

1. One hundred and fifty persons filed a petition under sicle 226 of the Constitution praying for the issue of a suitable direction or writ in the nature of mandamus commanding the opposite parties, namely the State of Uttar Pradesh, the Collector of District Rampur, the S. D. O. of Suar, district Rampur, and

Tehsildar of Tehsil Suar, district Rampur, to withdraw the orders, dated the 2nd and 8th of February, 1954, and to refrain from dispossessing the petitioners, except through Court of law. The petition alleged how they came to occupy certain land in the district of Rampur with the consent and the authority of the State Government and their representative, the then Collector of Rampur. It is not necessary to enter into those allegations.

The order, dated 2-2-1954, was by the District Magistrate of Rampur to the Sub-Divisional Officer Suar, directing him to eject refugees living in certain villages from all the lands by 1-3-1954, as the said lands were to be allotted to the retired servants of the old Rampur State. In view of this order, the Sub-Divisional Officer, Suar, issued an order to the Tehsildar of Tahsil Suar on 8-2-1954, to eject those persons from the lands in dispute occupied by them and in case of objection to dispossess them from the lands through the help of the police.

2. The learned single Judge entertaining the petition dismissed it on the ground that whether the applicants had acquired the rights of Adhivasis or licensees of the land in question, that was a private right for possession of land and that for any infringement of such a right by the order of the District Magistrate, Rampur, they could file a suit in an appropriate court for such relief as they be advised, including the recovery of damages to which they might be found entitled and that in this application it would not be possible to assess the correct damages on mere affidavits. The petitioners, therefore, filed this special appeal against the dismissal of their petition.

3. At the hearing of the appeal the learned Standing Counsel appearing for the opposite parties submitted that the appeal was not competent as the order of the learned Single Judge did not amount to a 'judgment' within the meaning of Rule 5, Chapter 8, Rules of Court, as by the order under appeal the Court had not determined any rights of the parties. It is conceded that if this order had been passed after issuing notice to the opposite parties and hearing the parties the order would have amounted to a 'judgment' which could have been appealable as a special appeal. We do not agree with the contention. It is not necessary or a certain order to amount to a 'judgment' that it must be passed after the issue of

notice to parties. It is the nature of the order and its effect on the proceeding which would determine whether it amounts to a 'judgment' or not. The order under appeal did decide the right of the petitioners to file a petition under Article 226 of the Constitution and to get a decision thereon. It terminated the proceedings started on the petition. No further action can be taken in this Court on that petition. It should, therefore, amount to a 'judgment' in view of the case reported in -- 'Asrumati Debi v. Rupendra Deb', AIR 1953 SC 198 (A).

The Supreme Court did not finally decide what should amount to a 'judgment', but it is clear from this case that any order which terminates the proceedings before the Court -- proceedings which cannot be said to be steps towards obtaining a final adjudication in the suit -- would be a 'judgment'. The order under appeal can be compared to an order for the rejection of a plaint which has been considered to be a 'judgment' within the meaning of that expression in the Clauses of the Letters Patent of the various High Courts. There is nothing in the case reported in -- 'Vishnu Pratap v. Sm. Revati Devi', AIR 1953 All 647 (B), referred to by the learned Standing Counsel which would go against this view. It was observed at p. 652 :

'This interpretation, if accepted, would widen the scope of the word 'judgment' in Clause (13) of the Letters Patent so as to include every order passed on any application raising a dispute during the pendency of a suit or proceeding even though it may not affect the merits of the controversy between the parties in the suit it-self nor may it terminate or dispose of the suit or proceedings on any ground. Such a wide interpretation cannot be accepted.'

This observation, means that every order passed on any application raising a dispute in a suit or proceeding will not be a 'judgment', but that it can be a judgment if it affects the merits of the controversy between the parties in the suit or if it terminates or disposes of the proceeding on any ground. All orders terminating the proceedings will also be not judgments unless those proceedings be not (sic) steps towards obtaining the final adjudication in the suit as was made clear by the Supreme Court in the aforesaid case in interpreting what had been said by Sir Arnold White, C. J., in -- 'Tuljaram Raw v. Alagappa Chettiar, 35 Mad 1 (FB) (C).

We, therefore, hold that this special appeal is maintainable.

4. The petitioners do not really desire a decision in this petition with respect to their right and its nature in the land they occupy. Their main grievance is against the legality of the order directing their ejectment by force through the help of the police. Nothing has been shown on behalf of the opposite parties which would justify the aforesaid orders, dated the 2nd and 8th of February, 1954. Whether the petitioners have got any right in the land in dispute or not, they are the persons in possession of the land and in case they have no right in the land they can be ejected under a proper process of law. Ordinarily they should be sued for ejectment. If they were to be evicted by the opposite parties by force, there should be some law which gives this power to the opposite parties. No such law has been referred, to us.

An Act which gives power to the competent authority to eject certain persons in possession in, certain circumstances came into force on 15-2-1954. It is Act No. 29 of 1953, the Uttar Pradesh Government Land (Eviction and Rent Recovery) Act, 1953. Even under its provisions the competent authority cannot order an ejectment without giving an opportunity to the other party to present his case, .Any way this Act was not in existence when these impugned orders were passed. Those orders were, therefore, without justification. They certainly tended to affect the rights of the petitioners in their possessing the land which they had occupied in certain circumstances. We, therefore, consider these orders to be beyond the jurisdiction of the District Magistrate and the Sub-Divisional Officer and therefore order that a writ of mandamus be issued to the District Magistrate, Rampur, and the Sub-Divisional Officer, Suar,Rampur, to withdraw their orders, dated the 2nd and 8th of February, 1954, respectively and not to dispossess the petitioners in pursuance of those orders. We direct the opposite parties to pay the petitioners' costs, which we assess at Rs. 100.

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