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Court : Allahabad

Decided On : Mar-15-1927

Reported in : AIR1927All530; 101Ind.Cas.638

Appellant : Rup Narain Singh

Respondent : Jagrup Singh

Judgement :

Iqbal Ahmad, J.

1. I have not troubled the counsel for the respondent as after hearing Dr. Agarwala at length and after going through the judgment of the lower appellate Court, I have come to the conclusion that the decision of the Courts below is perfectly correct and ought to be affirmed.

2. The controversy centres round certain land that has on the findings of the lower appellate Court, been under the control of the Military Authorities for a long time and was first used as a camping ground and later as a rifle range. The land is situated in the district of Benares, It was acquired by the Government for military purposes long ago, and is abundantly clear, from the findings of the lower appellate Court, that the land has never been abandoned by the Military Authorities, and is administered by the Cantonment Authorities acting directly under the control of the Government of India and under the Local Government. It appears that at the time of the acquisition of the land, of which the land in dispute

forms a part, the Secretary of State for India or the Government of India agreed to make a remission of Rs. 2,101-9-0 from the entire revenue assessed on the taluqa of which the land acquired formed a part and further agreed to pay a sum of Rs. 135 as malikhana to the co-sharers of the village. A reference to the halath-i-dehi of the village in question shows that the co-sharers of the taluqa are under a liability to pay the entire revenue assessed on the mahal minus a sum of Rs. 2,101-9-0 that was remitted as representing the revenue in respect of the area acquired. It is true that in the Khewat of 1291 F. Kaisar-i-Hind Bahadur (Emperor of India is shown as a pattidar of the area) acquired, and in the column of revenue a sum of Rs. 2,101-9-0 is recorded as the revenue with respect to that area. But that entry does not show that the revenue so recorded was ever intended to be paid or was ever paid by the Military Authorities who, as already stated administered the acquired area under the direct control of the Government of India. A lease of the land in dispute was given to the plaintiff by the Cantonment Authorities, and the plaintiff's case was that the defendant was a sub-tenant holding under him and was liable to ejectment, and a six months' notice expiring with the end of the years of the tenancy was served on the defendant asking him to quit possession of the land, and as the defendant had not delivered possession to the plaintiff, the plaintiff was entitled to the reliefs sought in the plaint. The suit was resisted by the defendant-appellant inter alia on the ground that he had by cultivating the land for more than 12 years acquired an occupancy right in the land in dispute and as such was not liable to ejectment. This was the only point argued before me in appeal and as such I am not concerned with the remaining points urged in the written statement.

3. It does not appear to have been disputed that the defendant-appellant had been in possession of the land in dispute for a period of more than 12 years prior to the institution of the suit. But the contention of the plaintiff-respondent was that the defendant could not, in view of the provisions of Section 1(2) and Section 11(e) of the Tenancy Act, acquire occupancy rights in the land in dispute. This contention of the plaintiff has been accepted by the lower appellate Court and in my judgment, the conclusion at which the lower appellate Court has arrived is correct. It having been found as a fact by the lower appellate Court that the administration of the land in dispute

is made by the Cantonment Authorities acting directly under the Authority of the Government of India.

4. it follows that the land in dispute is not for the time being administered by the local Government, and as such an Act passed by a Local Legislature cannot affect the rights in the area which is under the control of the Government of India and not of the Local Government. It is distinctly provided by Clause 2 of Section 1 of the Tenancy Act that Act extends only to the territories for the time being administered by the Local Government.

5. It also appears to me that Section 11(e) of the Tenancy Act was a sufficient answer to the assertion of the defendant-appellant as to the acquisition of occupancy rights by him. The lower appellate Court, no doubt, has held that for some time past the land let out to the plaintiff by the Military Authorities has not been used as a camping ground. But the mere fact of non-user does not take out the land out of the category of lands that form part of a military encamping ground. If the land was acquired for the purpose of military encamping ground as it was, it continues to form part of such ground notwithstanding the fact that it has not been used for that purpose for some time past. Even if the land in dispute is not and does not form part of an encamping ground it must be held to have been acquired by the Government 'for a public purpose' within the meaning of Section 11(e) of the Tenancy Act and as such the defendant could not acquire occupancy rights in the land in dispute. Moreover the land in dispute was let out to the defendant not by the Military Authorities but by thekedars to whom a lease was granted by those authorities. A thekedar is a tenant and consequently the appellant's position is that of a sub-tenant. A subtenant cannot acquire occupancy rights and as such the appellant's contention that he has acquired occupancy rights in the land is untenable.

6. My attention has been drawn to a decision of the Board of Revenue dated the 29th of July 1909, a certified copy of which is on the record. In that case no doubt it was held by the Board of Revenue that occupancy rights could be acquired in the land in dispute, but a reference to the judgment shows that the Board of Revenue did not consider the question as to whether or not, in view of the

provisions of Section 1, Clause (2) of the Tenancy Act, the land in dispute in that case could be governed by the provisions of the Tenancy Act. Nor was it considered in that case as to whether or not the land in dispute should be deemed to have been acquired for a public purpose by the Government so as to attract the provisions of Section 11(e) of the Tenancy Act. In any case for the reasons given above, I, with all respect, am unable to agree with the decision. I have also been referred to another judgment of the revenue Court but I, for the reasons given above, cannot adopt the view taken by the revenue Courts. Reference was also made by Dr. Agarwala to Section 3 of the Cantonments Act (15 of 1910). In my judgment that section has absolutely no bearing on the present case. No other point was argued before me.

7. For the reasons given above I dismiss the appeal with costs.

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