

Ram Gopal Vs. State

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Court : Allahabad

Decided On : Jan-24-1968

Reported in : 1970CriLJ384

Judge : Rajeshwari Prasad, J.

Appellant : Ram Gopal

Respondent : State

Judgement :

ORDER

Rajeshwari Prasad, J.

1. The revisionist has been convicted under Section 218, I. P. C. and sentenced to undergo one year's rigorous imprisonment.
2. His appeal from the order of conviction was dismissed by the if Temporary Civil Sessions Judge, Bareilly and the order of conviction so also the sentence, awarded by the trial Court were maintained.
3. The revisionist was a Lekhpal of village Udaypur Khas district Bareilly during the period 1368 Fasli and 1369 Fasli. He was charged with having wrongly framed revenue record of 1368 Fasli inasmuch as he entered the name of Devki Nandan alleged to be his son and one Shrimati Ishwara Devi wife of Aram Singh as

tenants of plot No. 301. According to the prosecution, this was done by the revisionist with the intention to cause loss and injury to Durga Prasad, who was the recorded tenant or his descendants.

4. The defence taken by the revisionist was that the entries had been made, by him on the basis of demarcation Khasra for the year 1367 Fasli, prepared by one Bhup Singh Amin under the provisions of Urban Area Zamindari Abolition and Land Reforms Act. The second defence raised by him was that he made the impugned entries in the Khasra of the year 1368 Fasli 'mutabiq mauqa'. The implication of that version of the revisionist appears to be that he found the persons, whose names, he entered in the Khasra of 1368 Fasli, in actual occupation of the land and it was on account of that discovery that he proceeded to enter the names of the aforesaid two persons in that record.

5. The two Courts below found that It was incorrect that Bhup Singh had entered the name of Deyki Nandan and Shrimati Ishwara Devi in the Khasra of 1368 Fasli. Bhup Singh had only scored out the name of Durga Prasad which had continued to be entered in the revenue records for a fairly long time, but he had not substituted the name of the aforesaid two persons in the place of the name of Durga Prasad. The defence was, therefore, found to be false and I have no manner of doubt that the view of the Courts below is perfectly correct.

6. After disposing of that particular line of defence the Courts below proceeded to convict the revisionist. Unfortunately, the Courts below did not consider the other line of defence adopted by the revisionist, which I have mentioned above, namely, that the correction in the entries was made by the revisionist on the basis of his discovery that the aforesaid two persons were actually in occupation of the land. The Courts below should have considered that defence also before proceeding to convict the revisionist when the revisionist was interrogated as accused, in reply to question No. 14 he had clearly disclosed that line of defence. On the earlier occasion when the revision petition was heard by me, I found that the Courts below had rightly dismissed the defence of the revisionist so far as it was based on the entries in the demarcation Khasra. Having found that, I proceeded to maintain the order of conviction and the sentence awarded to the revisionist. It was not

urged before me, as it had been urged now, that one of the principal defence raised by the revisionist had not been noticed by the two Courts below and consequently, no decision with regard to that part of the case had been arrived at.

7. An application under Section 561-A 'Cr. P. C. was thereafter made before me and after hearing the learned Counsel for the revisionist, I recalled my order by which I had dismissed the revision petition and now the revision petition is before me for hearing again.

8. In support of this revision petition, it has been urged that the initial error committed by the trial. Magistrate and so also the appellate Court is, that the entry of the name of Durga Prasad in the records was treated to be an entry of name of a tenant. It is not in controversy that the name of Durga Prasad was recorded in column No. 5 of the Khasra under Ziman 10-A. Having found that the name of Durga Prasad was entered in the records as a tenant, the two Courts below came to the conclusion that in view of the procedure prescribed for the substitution of the name of the tenant in the Khasra, the revisionist must be held to be guilty of the offence with which he was charged. If it had only to be noticed that the entry of the name of Durga Prasad was not that as a tenant, but as a cultivator under Ziman 10-A, the necessary consequence which could flow from the prescribed procedure could not arise in this case. My attention has been invited to the various paragraphs of the Land Record Manual and finally to a decision of this Court in Mahadeo Pandey v. Suraj Bhan Singh 1964 All LJ 1127, with a view to show, that a person recorded under Ziman 10-A is not a tenant. I am in agreement with that contention and I hold that the name of Durga Prasad under Ziman 10-A did not amount to an entry of the name of tenant, as one knows, under the provisions of the U. P. Tenancy Act.

9. So far as substitution of names in place of names recorded under Ziman 10 is concerned, under paragraph 84 Cl. (V) of the Land Record Manual, it appears to be well within the powers of the Lekhpal to alter the entries in case he finds that the person whose name he proposed to enter was in actual cultivation or occupation of the plots in question. Paragraph 60 of the Land Record Manual which devotes itself to the subject of 'preparation of Khasra' enumerates the

actions which are to be taken by the Lekhpal with regard to maintenance of record. Para. 60 (ii) enjoins that column Nos. 1 to 3 shall be written up before the first tour; the names of tenants and sub-tenants and the entries relating to kharif crops, shall be made during the first tour; entries relating to rabi and zaid crops shall be made during the second and third tour respectively; entries relating to right and liabilities of tenants (i.e. nature of tenure, leases and rents) shall be made before the end of the first tour, or in the case of letting for the rabi season, as soon as possible thereafter; all other entries shall be made as early as possible in the year. If a person recorded in Ziman 10 is not really a tenant within the meaning of the Tenancy Law and the Land Records Manual, then the entry of his name is covered by the residuary clause of paragraph 60 column No. 2, and entries in respect of such names as has to be made as early as possible.

10. Paragraph 84 of the Land Records Manual after dealing with entries regarding various classes of tenants by its sub-clause (v), prescribes that if the Lekhpal finds that such person does not fall in any of the classes mentioned in Cls. (i), (ii), (iii) and (iv) and the person recorded in column No. 5 belongs, in Agra to class 10 or 10-A ... of the khatauni, the lekhpal will substitute for the recorded person the name of the actual occupier in column 5 in red ink. It further goes on to say that if the person recorded in column 5 is a tenant of any class other than these or is a grove-holder or a grantee under Class 10 in Agra or Class 6 in Avadh the lekhpal shall follow the procedure laid down in sub-paragraphs (b) to (d) below. A perusal of the above provisions of the Land Records Manual would indicate that it is open to the lekhpal, so far as entries of names under Ziman 10 or 10-A are concerned, to substitute other names in place of the recorded name, provided the lekhpal finds that the new entrants were the actual occupier of the land.

11. From the materials on the record, it is also clear that in the Khasra of 1368 Fasli, initially the revisionist himself had entered the name of Durga Prasad and it was subsequently that, that name was scored out by him and the names of the two persons named above were substituted. So far as entry of the name of Durga Prasad at the initial stage in the Khasra of 1368 Fasli is concerned, it is sufficiently justified on the consideration that it was the name of Durga Prasad which was recorded in the Khasra column No. 5 for a very long time, and therefore, the entry

of the name of Durga Prasad in the Khasra of 1368 Fasli at the initial stage was in accordance with the then existing entries. The subsequent alteration in that entry by bringing in the name of two persons named above, by the lekhpal could be justified on the assumption that the lekhpal could have found those two persons as in occupation of the land at that time. At any rate, the entries made by the revisionist were made in exercise of powers given to the lekhpal under the Land Records Manual. I am not in this case concerned with the question whether the assumption of the revisionist that the aforesaid two persons were in actual occupation of the plots is correct or not. There is no finding to indicate that it is not correct. Even if that assumption be assumed to be incorrect, the remedy for such a conduct would lie elsewhere. It might be open to the real occupant to show by appropriate proceedings, that Deoki Nandan and Shrimati Ishwara Devi were really not in occupation of the land, but that consideration alone cannot be a ground for conviction under Section 218 of the Indian Penal Code. If he made the entries in exercise of powers reserved to him by law, it is a different matter that he exercised that power erroneously. That erroneous entry could have been corrected by the higher revenue authorities but that could not be made a ground for the prosecution of the revisionist for offence under Section 218 of the Indian Penal Code.

12. The next question is what should be the appropriate order to be passed in this case. I have just been thinking of the propriety of sending back the case to the trial Magistrate for fresh decision, after considering the various lines of defence adopted by the revisionist. It, however, appears that the revisionist has been undergoing prosecution at least from the year 1962. I am informed that to begin with, a complaint was filed in respect of the same conduct of the revisionist by Durga Prasad himself. It, however, failed. Durga Prasad died. Then another complaint was made by Durga Prasad's son Dilip Kumar. That also proved abortive and was rejected in the year 1963. Dilip-Kumar again started prosecution of the revisionist thereafter in the year 1363 Fasli and it was in October 1964 that the revisionist was committed to the Court of session to stand trial.

13. In view of the long and protracted prosecution either on the basis of the complaint or otherwise, I am of the opinion that the revisionist has been sufficiently

penalised and harassed in the matter and ends of justice warrant that there should not be a retrial of the revisionist again.

14. The revision petition is allowed and; the conviction of the revisionist for offence under Section 218 of the Indian Penal Code so also the sentence awarded to him by the trial Judge as well as by the appellate Judge are set aside. The revisionist is acquitted. The revisionist is on bail. He need not surrender and his bonds are discharged.

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