Ramsingh and ors. Vs. Ramkaran and ors.

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Court : Madhya Pradesh

Decided On : Mar-30-1964

Reported in : AIR1965MP264

Judge : P.V. Dixit, C.J. and ;S.P. Bhargava, J.

Acts : Tenancy Law; Madhya Bharat Zamindari Abolition Act, 1951 - Sections 3(1), 3(2), 4(1), 4(2) and 41

Appeal No. : Misc. Petn. No. 31 of 1962

Appellant : Ramsingh and ors.

Respondent : Ramkaran and ors.

Advocate for Def. : Jalori and ;P.S. Khirwadkar, Advs.

Advocate for Pet/Ap. : R.S. Dabir and ;V.S. Dabir, Advs.

Disposition : Petition dismissed

Judgement :

S.P. Bhargava, J.

1. By its order, dated 7-9-1962, the Board of Revenue reversed the order of the Courts below and rejected the prayer of the petitioners for execution of their decree by delivery of possession of the land in suit. It held that the decree in

favour of the petitioners for delivery of possession of the suit land had become inexecutable on the Madhya Bharat Zamindari Abolition Act, Samvat 2008 (No. 13 of 1951) (hereinafter called the Abolition Act) coming into force on 2-10-1951. This petition under Articles 226 and 227 of the Constitution challenges the validity of the said order and seeks to have it set aside.

2. The relevant facts, briefly stated, are as follows: Nirbhaisingh, who was the predecessor-in-interest of the applicants, and the 7th respondent Mehtabsingh, had instituted a Revenue Case No. 100 of samvat 2001 in the year 1944 under Sections 326 and 329 of the Qanoon Mal of the erstwhile Gwalior State against Ghasiram, Dharsingh, Prabhulal and deceased Uttamsingh who was the predecessor-in-interest of the 4th and 5th respondents. In the Plaint, It was alleged that the bir land in suit measuring 57 bighas and 7 biswas situated in village Jugyat was owned and possessed by the plaintiffs and their co-sharers, viz., Uttamsingh and Prabhulal and that the respondents 2 and 3 Ghasiram and Dharusingh wrongfully dispossessed them on 1-8-1944 and subsequently began to cultivate it. The plaintiffs prayed for restoration of possession and claimed damages for wrongful dispossession thereof. Later on the first respondent, Ramkaran, was added as a defendant on the ground that he was in possession of the disputed land. The plaintiffs claimed a decree for the said reliefs against him also. The suit was decreed by the Naib Tahsildar, Basoda, on 6-7-1950 and this decision was finally upheld by the Board of Revenue on 16-8-1955.

3. In the year 1952, Nirbhaysingh and Mehtabsingh filed an application for execution of the decree and the first respondent Ramkaran raised various objections to the execution of the decree. We are, however, not concerned with those objections at this stage. The objections raised by him were disallowed by the Tehsil Court by its order, dated 3-9-1956, in Revenue Case No. 55 of 1952. This order was upheld in appeal by the Sub-Divisional Officer and on further appeal by the Commissioner, Bhopal Division. Against the order of the Commissioner, respondent Ramkaran preferred an application in revision before the Board of Revenue. At the time of hearing of the revision petition, he abandoned the objections which he had raised in the lower courts but raised two new contentions, namely, (i) that the decree, dated 6-7-1950, was passed by the Naib Tahsildar

who had no jurisdiction to try a case under Section 326 of the Qanoon Mal and, therefore, the decree was a nullity; and (ii) that the decree for possession of the suit land had become inexecutable after the abolition of zamindari by the Madhya Bharat Abolition Act aforesaid. The Board of Revenue rejected the first contention hut held that the decree had become inexecutable on the ground that the decree-holders had lost their right, title and interest in the suit lands from the date of vesting in the State of their proprietary rights under the provisions of the said Abolition Act.

4. The only question, therefore, for consideration in this petition is as to whether on account of the Abolition. Act having come into force on 2-10-1951, the decree-holders (petitioners) were not entitled to execute their decree for possession of the land in suit.

5. Shri K.S. Dabir, learned counsel for the petitioners, hits raised the following contentions :--

1. That Section 3(2) of the Abolition Act expressly permits acquisition of rights 'in or over the land' to which the notification for vesting relates under a decree or order of a Court and the right to gel possession of the suit land accrued to the decree-holders (petitioners) under the decree or order of a competent Court and, therefore, the said right cannot be denied to the petitioners on an objection of the respondent Ramkaran.

2. That under Section 41 of the Abolition Act. it was clearly provided that all cases pending before any Revenue Court at the time of the commencement of that Act shall be decided according to the provisions of the Acts and Laws hereintofore in force and consequently, the decree which was obtained by the petitioners under the provisions of the Qanoon Mal of the Gwalior Stale had to be enforced according to the provisions of that Act and the other laws which were in force before the Abolition Act aforesaid came into force.

3. That on the showing of the respondent No. 1 himself the land in suit had been cultivated and, therefore, under Section 4 (1) (a) of the Abolition Act, the right, title and interest of the decree-holders (petitioners) in this land had not ceased.

6. Before considering the questions which arise for determination in this petition, it will be convenient to slate the relevant provisions of the Act and their effect. The preamble of the Abolition Act says that that Act seeks to deal with and affects the rights of the proprietor. It is an ex-proprietary legislation and does not affect the rights of the tenants as such. The word 'land' has been defined in Section 2(b) of the Abolition Act as land held or occupied for purposes connected with agriculture, horticulture, pasture or animal husbandry. In Clause (c), 'khud-kasht' has been defined to mean land cultivated by the Zamindar himself or through employees or hired labourers and includes Sir land. Section 3(1) provides for resting of proprietary rights in a village, muhal, block, etc., which were held by the proprietor or any other person having interest in such proprietary right through the proprietor from the date of notification from the Government in this behalf free from all encumbrances. Sub-section (2) of Section 3 of the Abolition Act is important. It reads thus:--

'After issue of a notification under Subsection (1), no right shall be acquired in or over the land to which the said notification relates, except by succession or under a decree or order of a Court or under a grant or contract in writing made or entered into by or on behalf of the Government; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the Government in this behalf'

Then, consequences of vesting of an estate in the State are specified in Section 4 thereof, which provides:- -

'4(1) Save as otherwise provided in this Act when the notification under Section 3 in respect of any area has been published in the Gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall, from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely--

(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells), tanks, ponds, water channels, ferries, pathways, village sites, hats and bazars and

mela-grounds and in all sub-soil, including rights, if any in mines and minerals, whether being worked or not, shall cease and be vested in the State free from all encumbrances;'

Section 4(2) provides that notwithstanding anything contained in Sub-section (1), the proprietor shall continue to remain in possession of his khud-kasht land, so recorded in the annual village papers before the date of vesting.

7. The Supreme Court considered similar provisions of the Madhya Pradesh Proprietary Rights (Estates, Mahals Alienated Lands) Act, 1950 (1 of 1951) in Haji Sk. Subhan v. Madhorao, AIR 1962 SC 1230. When the material sections of the two Acts are compared, the only difference that we find is in the language of Sections 8(2) and 4(2) of the Madhya Bharat Abolition Act. In this Act, after the words 'except by succession' and before the words 'under a grant or contract in writing made or entered into by or on behalf of the Government' in Section 3(2), we find the additional words 'or under a decree or order of a Court'. In Section 4(2) of the M.B. Abolition Act, the words 'khud-kasht land' have been used in place of the words 'possession of his homestead, home-farm land, and in the Central Provinces also of land brought under cultivation by him after the agricultural year 1948-49' which have been used in the M. P. Abolition Act.

8. We may now consider the objections raised by the learned counsel for the petitioners in the order they are stated above.

Point No. 1.--It cannot be disputed that Sub-section (2) of Section 3 of the Abolition Act must he construed harmoniously with the first sub-section. The words 'right in or over the land to which the notification relates' as they occur in Sub-section (2) cannot refer to proprietary rights which are completely taken away by Sub-section (1) of Section 3 and become vested in the State. When proprietary rights entirely disappear, there cannot obviously be a succession of such rights or acquisition of them by or under a decree or order of Court. The words 'right in or over the land' have, therefore, to he limited by construction to rights which are different from proprietary rights in or over the land. If we are correct in putting this construction on Sub-section (2) of Section 3, this sub-section can only relate to inferior rights, such us, those of tenants, lessees and the like. In our opinion, the

meaning of Sub-section (2) seems to be that after the date of vesting, such inferior rights can only be acquired by succession or by a decree or order of a Court or by grant from the Government and the erstwhile proprietors shall have no power to confer such rights. By giving this restricted construction to Sub-section (2), both the Sub-sections of Section 3 operate in their respective fields without any clash or anomaly. However, if the general words 'rights in or over the land'' are not thus limited by construction, some awkward and absurd results will follow. A proprietor would then, although divested of all his rights in the land to which the notification relates, will still be able to pass on those very rights to his successors on his demise This would he such an absurd result that it can never be held to have been intended by the Legislature. A wide construction will also nullify the proclaimed object of the Legislature to abolish Zamindaris. It is well settled that if certain provisions of law, construed in one way would make them consistent with the scheme of the Act and no other interpretation would render them nugatory, the Court would lean in favour of the former construction. In our opinion, therefore. Section 3(2) of the Abolition Act cannot be read so as to defeat the provisions of Section 3(1) thereof. The scheme of the Act clearly is to, abolish the proprietary rights except in respect of khud-kashi land which were recorded as such in favour of the proprietors in the annual village papers before the date of vesting. In our view, the decree cannot affect the consequences which follow due to the provisions made in Sections 3(1) and 4(1) (a) of the Abolition Act.

9. At this stage, we may refer to the decision of the Supreme Court in Sailendra Narayan v. Jagatkishore, AIR 1962 SC 914. The facts of that case were that the respondents had obtained a decree against the appellant for redemption of certain mortgages. The appellant appealed against the judgment of the subordinate Judge to the High Court sometime in September 1951. Before that, on September 25, 1950, the Bihar Land Reforms Act, 1950, had come into force. This Act provided that the State Government might by notification declare that the estates or tenures mentioned in it had passed to and become vested in the State. Sometime in 1952, a notification was issued by the Bihar Government under this Act vesting in the State of Bihar the tenures which had come into the possession of the appellant, it was held by the Supreme Court that the redemption decree could not be given effect to after the notification issued under the Land Reforms Act since thereafter

the mortgage tenures became vested in the State of Bihar free from all encumbrances. Their Lordships of the Supreme Court observed in paragraph 11 of the judgment in that case as follows:

'The tenures having vested in the State of Bihar, the mortgagee had no longer any interest in the lenures nor was he in possession of them. He could not carry out the decree by re-conveying the tenures to the mortgagor or put him into possession. The mortgage as a security had ceased to exist, for the mortgaged properties vested in the State of Bihar under the Act free from all encumbrances. The mortgagor in his turn also ceased to be entitled to the mortgaged properties. He had hence no right to redeem them. Therefore, in our view, the decree for redemption which had been previously passed became infructuous.' This case illustrates the proposition that merely because a decree is passed, the statutory consequences which flow from any change in legislation cannot be denied to a party and effect has to be given to them.

10. There is no difficulty about the principles of construction. An important principle is that sub-sections of a section must be read as a whole and 'an attempt should be made to reconcile both the parts'. (See State of Bihar v. Hire Lal Kejriwal, AIR 1960 SC 47 at p. 50; and Madanlal v. Shree Changdeo Sugar Mills Ltd., AIR 1962 SC 1543 at p. 1551). Another principle is that the obvious object of the Legislature should be given effect to and a construction which reduces the statute to a futality should be avoided. See: M. Pentiah v. Veeramallappa. AIR 1961 SC 1107 at pp. 1110 and 1111. A familiar approach in applying the Rule of harmonious construction is to limit the more general words by excluding the more specific from its ambit. See: J.K.C.S. and W. Mills v. State of Uttar Pradesh, ALR 1961 SC 1170 at p. 1174. If these principles are applied. Section 3(2) of the Abolition Act can only be properly interpreted in the manner stated above.

11. It is pertinent to note that the suit was originally brought by the plaintiffs in their capacity of being the proprietors of the fields in suit. The bir land in suit was obviously held by them as zamindars and in no other capacity. The decree-holders were not entitled to execute the decree for possession as they had lost their proprietary right which alone entitled them to possession. When the suit lands

vested in the State, the proprietors had ceased to be entitled to possession of these lands. Actually, if the State so liked, it could come on record in place of the decree-holders (petitioners) to execute the decree against the judgment-debtors.

12. Point No. 2: We may now consider the effect of the Proviso to Section 41 of the Abolition Act. In our view this proviso cannot on principles of construction be read as a proviso to Section 3 or 4 of the Abolition Act. The Proviso is only a Proviso to Section 41 and must be considered in relation to the subject-matter covered by the substantive portion of that Section unless there is some express or positively implied indication to the contrary. The substantive portion of Section 41 is divisible into three portions; (i) it makes various kinds of tenants in an erstwhile proprietary village tenants of the State; (ii) the proprietor himself becomes a tenant of the State as regards the sir and khud-kashi land and (iii) Part II of the Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act and similar provisions of Qanoon Mal, Gwalior State, began to apply to the erstwhile proprietary village. The Proviso to Section 44 says that all pending cases shall be decided according to law heretofore in force.

The emphasis in the Proviso is on the 'laws heretofore in force' and its effect is not to make applicable to pending cases Part II of the M.B. Revenue Administration and Land Revenue and Tenancy Act. The Proviso has not the effect of retaining the proprietary rights of erstwhile proprietors to continue the pending litigation or to save the effect of vesting as laid down in Sections 3 and 4 of the Abolition Act in respect of lands which are subject-matter of pending litigation. The Supreme Court in Haji Sk. Subhan's case. AIR 1962 SC 1239 has clearly pointed out that if a suit of a proprietor was pending for ejectment of any person at the time the Abolition Act came into force, his right to continue the litigation as proprietor is taken away by Sections 3 and 4 of the Abolition Act as all his rights vest in the State. The contention of the petitioners in substance comes to this that the executing Court had no right to go behind the decree and, therefore, had to execute the decree and deliver possession according to its terms and in consonance with the law as it was at the time of initiation of the litigation.

However, it is clear that the objection that the executing Court could not question the decree and had to execute it as it stood has no operation in the facts of the instant case. The objection of the judgment-debtors is not with respect to the validity of the decree or with respect to the decree being wrong but it is based on the effect of the provisions of the Abolition Act which have deprived the decree-holders of their proprietary rights in the bir land in suit. In these circumstances, the executing Court could refuse to execute the decree bolding that it had become inexecutable on account of the change in law and its effect. See: Para 39 of the judgment in Haji Sk. Sabhan's case, AIR 1962 SC 1230.

13. If the Proviso to Section 41 is construed as the Proviso to Section 3 or 4, it would mean that in respect of lands which were the subject mailer of litigation, the proprietary rights were not abolished. Such a construction will leave into existence many pockets of proprietary interest to be abolished in future which, obviously enough could never be the intention of the Legislature. The principle that the Proviso should be construed in relation to the subject-matter covered by the principal section to which it stands as a Proviso and to no other is a well known principle of construction and there is no good reason to depart from that Rule in the present case. See: Ram Narain Sons Ltd. v. Asst. Commr. of Sates Tax. (S) AIR 1955 SC 765.

14. Point No. 3:-- In our opinion, this contention of the learned counsel cannot also be acceded to. The word 'cultivable' as used in Section 4(1) (a) of the Abolition Act, in our judgment, also includes cultivated land. Cultivable land may be divided into land which has already been brought under cultivation and which may be brought under cultivation subsequently. Apart from this, it is dear from the provisions of this Act that the land in suit could not be regarded as 'khud-kashi' of the petitioners and so, in fact, never recorded as such in the revenue papers at the time of the vesting. They, therefore, could not claim this land as their khud-kashi land according to Section 4(2). In fact, the plaintiffs described the land as their bir land in the plaint and specifically stated that they were in possession of it by cutting the crass growing thereon. They, therefore, clearly lost their proprietary right in the land on 2-10-1951 when the Abolition Act came into force.

15. It may further he stated that even if full weight is given to the assertion of the petitioners that the land was brought under cultivation by the 1st respondent, the land in suit would be the khud-kashi of the first respondent and could not be the khud-kasht of the petitioners and, therefore, no advantage could be gained by them by the plea of the first respondent that he had brought file land in suit under cultivation,

16. We, therefore, conclude that after the dale of vesting, the petitioners could have no subsisting right to recover possession of the land in suit in respect of which they had a decree in their favour. The totality of the rights of the petitioners as proprietors vested in the State and the State could alone enforce all or any of those rights. In our opinion, there is nothing contrary in Sub-section (2) of Section 3 or in the Proviso to Section 41 to distinguish the Madhya Bharat Zamindari Abolition Act from the Rule of law laid down by the Supreme Court in Haji Sk. Subhan's Case, AIR 1962 SC 1230 and later in Suraj Ahir v. Prithinath Singh, AIR 1963 SC 454 and Prithinath v. Suraj Ahir, AIR 1963 SC 1041.

17. For all these reasons, this petition fails and is dismissed. Respondent No. 1, who alone contested the petition, shall be entitled to costs which we fix at Rs. 100/-. The remaining amount of security deposit shall be refunded to the petitioners.