Union of India Vs. Dinesh Kumar

Union of India Vs. Dinesh Kumar

SooperKanoon Citation : sooperkanoon.com/681610

Court : Delhi

Decided On : Feb-19-1968

Reported in : AIR1968Delhi255; 4(1968)DLT419; ILR1968Delhi32

Judge : I.D. Dua, C.J.,; S.K. Kapur and; T.V.R. Tatachari, JJ.

Acts : Tenancy Law; Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 - Sections 11, 15, 27, 27(3), 27(4), 27(5) and 83; Himachal Pradesh Abolition of Big Landed Estates and Land Reforms (Amendment) Act, 1954; Land Acquisition Act, 1894 - Sections 16

Appeal No. : Misc. Second Appeal No. 23 of 1965

Appellant : Union of India

Respondent : Dinesh Kumar

Advocate for Def. : B.C. Misra, Senior Adv., ; D.N. Vaidya, ; Hem Chand and

Advocate for Pet/Ap. : J.N. Kaushal, Senior Adv. and; Sita Ram, Adv

Judgement :

S.K. Kapur, J.

1. The following two questions regarding the scope and construction of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953,

have been referred to Full Bench :-

'1. Where the annual land revenue of the land holding of a landowner exceeds Rs. 125/- per year, is his entire landed holding to be deemed automatically to have been transferred and vested in the State Government free from all encumbrances, or is it only the portion of the holding which exceeds the land, the annual land revenue of which amounts to Rs. 125/- per year, which is to be deemed to have been so transferred and vested?

2. Is the right, title and interest 0f a landowner who holds land the annual land revenue of which exceeds Rs. 125/- per year to be deemed automatically to have been transferred and vested in the State Government free form all encumbrances on the enforcement of the Abolition Act, or shall it be deemed to have been so transferred and vested after the compensation payable to such landowner is determined by the Compensation Officer?

2. The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as the said Act) came into force on 26th January, 1955. The authorities concerned with the administration of the said Act took ntoe, from the revenue records, of the fact that Dinesh Kumar respondent owned land in the village of Machkeher measuring about 670 bighas and assessed to a land revenue of Rs. 417.39 per annum. They, thereforee, treated the land as having vested in the Government under Section 27 of the said Act and communicated the preliminary assessment of the amount of compensation to the respondent. By the said communication objections were invited from the respondent regarding assessment of compensation. The respondent filed objections on 17th February, 1964. By order dated 16th March, 1964, the Compensation officer, Mandi, determined the compensation payable at Rs. 8777.78 Paise.

Aggrieved by the said order, respondent Dinesh Kumar filed an appeal before the District Judge, Mandi. The learned District Judge, by his order dated 26th February, 1965 allowed the appeal and remanded the case to the Compensation Officer with a direction to take fresh proceedings in accordance with law. In allowing the appeal the District Judge followed the judgment of the learned Judicial Commissioner, Himachal Pradesh, in Rajkumar Rajinder Singh v. Lieutenant

Governor, .

In that case the learned Judicial Commissioner had decided that on true interpretation of section 27 of the said Act the right, title and interest of the landowner vested in the State Government only after the compensation payable to him had been determined and consequently the mutation entries effected in favor of the State Government on the fotoing that the land vested in the State Government immediately on the said Act coming into force were illegal.

Aggrieved by the decision of the learned District Judge, the Union of India filed a second appeal in the Court of the Judicial Commissioner, Himachal Pradesh, which came up before me at Simla on June 22, 1967 for disposal. I felt that the contention of the Union of India that under section 27 of the said Act the lands vested in the State Government immediately on the said Act coming into force had considerable force. In view of the decision of the learned Judicial Commissioner, however, I thought it advisable that the matter should be heard by a larger Bench. When the appeals came up before my Lord the Chief Justice and Mr. Justice S. N. Shanker, they formulated the above-mentioned two questions for decision by a Full Bench and that is how the matter has come before us.

3. The answer to btoh the questions depends on the true interpretation of section 27 of the said Act, and practically the entire statute was read before us at the bar, and the various provisions referred to by the learned counsel as shedding light on the interpretation of the said section 27. It is, thereforee, necessary to read section 27 -

'27. (1) Ntowithstanding anything contained in the foregoing provisions of this Chapter, a landowner who holds land, the annual land revenue of which exceeds Rs. 125/- per year the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free from all encumbrances.

(2) Ntohing contained in sub-section (1) shall apply in respect of such land which is under the personal cultivation of the landowner.

(3) The landowner whose rights are acquired under sub-section (1) by the State Government, shall be entitled to receive compensation which shall be determined by the Compensation Officer having regard to sections 17 and 18 of this Act, in accordance with the provisions of Schedule Ii, but in the case of such occupancy tenant who is liable to pay rent in terms of land revenue or the multiple of land revenue, the compensation payable to this landowner shall be computed in accordance with Schedule 1.

(4) The right, title and interest of the landowner acquired under sub-section (1) or (2) shall be transferred by the State Government on the payment of compensation in accordance with Schedule 1 to such tenant who cultivates such land.

(5) The State Government shall give rehabilitation grant according to the rules framed under this Act, to such small landowner whose right, title and interest have been extinguished and who does nto have any toher means of livelihood.'

Sub-section (1) of Section 11 of the said Act confers right on the tenant except on certain specified cases, to acquire interests of the landowner in the land held by him as tenant. Sub-section (2) exempts certain landlords form the application of sub-section (1). Under sub-section (5) of section 11, the Compensation Officer has been obliged to grant a certificate declaring the tenant to be the landowner in respect of the lands specified therein as soon as the compensation payable by the tenant to the landowner or the first Installment thereof has been deposited in the Government treasury. Sub-section (6) of Section 11 provides that on an from the date of the grant of the certificate under sub-section (5) the tenant shall become the owner of the land comprised in the tenancy and the right, title and interest of the landowner in the said land shall determine.

Section 12 prescribes the mode of determination of compensation payable by the tenant to the landowner and provides for appeals against the order of the Compensation officer determining compensation. Section 14 entitles the tenant to acquire the rights of the landowner, in a portion of the lands held by him as a tenant, in certain circumstance. Section 15 deals with the acquisition by the State Government of the rights of the landowner and reads -

'15. (1) Ntowithstanding anything contained in the foregoing provisions of this chapter but subject to the provisions of this clause (d) and clause (g) of sub-section (1) of Section 54, the State Government may by ntoification in the Gazette declare that as from such date and in respect of such area as may be specified in the ntoification, the right, title and interest of the landowner in the lands of any tenancy held under him by a tenant shall stand transferred to and vest in the State Government free from all encumbrances created in such lands by the landowner.

(2) With effect form the aforesaid date -

(a) The landowner shall cease to have any right to collect or to receive any rent or any share of the land revenue in respect of such lands and his liability to pay the land revenue in respect of the lands shall also cease.

(b) the tenant shall pay direct to the State Government the rent he was liable to pay to the landowner before the date of the ntoification; and

(c) the consequences mentioned in clauses (b) to (f) of Section 84 shall mutates mutants ensue.'

4. It will be seen that even under section 15 the right, title and interest of the land owner vest in the State Government only from such date as may be specified in the ntoification. The provisions of Section 15 apply ntowithstanding anything contained in sections preceding Section 15 in Chapter Iii and consequently; ntowithstanding anything contained in section 11. According to Mr. Kaushal the learned counsel for the appellant, the effect sections 11, 15 and 27 read together is that sections 11 and 15 apply to lands which are held by tenants and are nto covered by sections 27 such a lands with a land revenue of Rs. 125/- per year or less. Mr. Kaushal said that the State Government is because of sub-section (4) of section 27 bound to transfer all lands vesting in it to the tenants who cultivate such lands and consequently sections 11 and 15 must be read as dealing with a different subject-matter.

According to Mr. Kaushal, the scheme of these three sections is this: Land the annual and revenue of which is Rs. 125/- or less and has been let to a tenant falls under Section 11 and the tenant may acquire on payment of compensation the right title and interest of the landowner in such land under the said section. Under section 15 the Government may, however, take over the right title and interest of the landowner in the lands covered by section 11 by a ntoification in the official Gazette. On the toher hand the interest of the owners in the lands of which the land revenue exceeds Rs. 125/- per year, except lands under the personal cultivation of the landowners, vest automatically under S. 27 in the State Government. Mr. Kaushal further suggested that if sections 15 and 27 were applicable to the same type of lands there could have been no point in the Legislature prescribing for the taking over of the right, title and interest of the landowner by a ntoification under section 15 when such rights etc. , were being automatically vested in the State Government under section 2.

5. Mr. Misra, the learned counsel for the respondent on the toher hand, contended that sub-section (1) of section 27 served no purpose inasmuch as under sub-section (2) of section 27 the lands under personal cultivation of the landowners were exempted from vesting in the State Government while the lands under the tenants irrespective of the amount of land revenue were covered by sections 11 and 15 with the result that either the tenant could take over the right, title and interest of the landowner under section 11 or the State Government could do so under section 15.

The fact that btoh under section 11 and 15 the vesting of the right, title and interest of the landowner were postponed to some future date was also brought in aid by Mr. Misra on the second question. Mr. Misra also contended that no machinery was provided in sub-section (1) of S. 27 or anywhere else in the Act for determining which lands satisfied the conditions prerequisite to their vesting in the State under section 27 and, thereforee, it could nto have been intended that-

(I) the entire land the land revenue of which exceeds Rs. 125/- per year should be taken ; and

(ii) there was vesting in the State Government immediately on the said Act coming into force.

6. I must confess that I have nto been able to appreciate how the absence of any machinery helps Mr. Misra in deducting that it is the land beyond the land with a land revenue of Rs. 125/- per year that vests in the State Government. The policy of the Legislature, of which it is the best Judge, appears to be to abolish the intermediaries and the legislation in primarily directed to that end. The reasons for enactment of a statute have to be kept in mind and the statute should be construed with reference to its intended scope and purpose. The Court should seek to carry out that purpose and nto defeat it. If the language is nto ambiguous, the statute must be accorded the expressed meaning without deviation. Even where the statute is ambiguous the Court should be cautious lest its opinion should substitute the legislative intent. It is in the light of these principles that I have proceeded to examine the statute.

The overall scheme of the Act seems to be that landowners who personally cultivate the land should be allowed to retain their holdings while the interests of the landowners in land which are tilled by the tenants should be vest either in the tenants or the State Government. The State Government is again in turn obliged to transfer all the lands vesting in it under section 27 to the tenants who are actual tillers. The statute has been most inartistically drafted and that has led to considerable arguments and added to the difficulty of its interpretation. A question does definitely arise that if that be the policy of the Legislature what treatment has been accorded to the lands in which the right, title and interests of the landowners have been acquired by the State Government under section 15 because sub-section (4) of section 27 is confined only to lands acquired under sub-section (1) or sub-section (2) of section 27.

It is nto impossible that section 15 may have been intended to operate only in some special type of cases, for instance, where the tenants choose nto to acquire the right, title and interest of the landowner under section 11 or if the State Government is of the opinion that allowing the tenants to exercise their rights under section 11 may nto be in the interest of the general public. Again, there may be lands which are either cultivated personally by the landowners nor left to tenants. In such cases, if it be a land falling within the definition of the term in sub-section (5) of section 2 with a land revenue exceeding Rs. 125/- per year, it will vest in the State Government under section 27. If, on the toher hand, it falls outside the purview of the definition, it will nto be affected by the provisions of the Act at all. Again, there may be lands with land revenue of Rs. 125/- per year or less which fall within the definition and yet they are neither personally cultivated by the landowners nor let to the tenants. It appears that the Legislature did nto intend to bring those lands either under section 11 or section 15. Such small holdings were probably intended to be left with the landowners undisturbed.

The Legislature is best conservant with the needs of the people and the conditions prevailing within their legislative area. It is possible that lands neither personally cultivated nor let to tenants with land revenue of less than Rs. 125/- per annum were small in number and, thereforee, the Legislature did nto want to deprive the owners of such holdings. In view of this scheme of the Act, it is difficult to accept the arguments of the respondents that under section 27, out of the lands with land revenue of over Rs. 125/- per year only the portion of the holding which exceeds the land the annual land revenue of which amounts to Rs. 125/- is deemed to have vested in the State Government. The plain language of section 27 seems to suggest that where the land revenue of land is more than Rs. 125/- per year the entire land vests in the State. That seems to follow logically from the scheme of Ss. 11, 15 and 27.

If a part of the land was intended to be left to the landowners under section 27, the Act will nto work properly. As I have already said, if the entire land is entire land is under personal cultivation, it is left untouched by section 27. If, on the toher hand, there are tenant in the land, such tenants would be entitled to acquire the right, title and interest of the landowner under section 11, even in cases where the land revenue is less than Rs. 125/- per year. In case of larger holdings the State Government has to transfer lands to the tenants under section 27 (4). If, thereforee, the lands under tenants up to an area with a land revenue of Rs. 125/- per year were taken as excluded from the purview of section 27 the owners rights in such lands would in any case, be acquirable by the tenants under section 11 or by the State under section 15. There could have been , in such circumstances, no purpose in excluding lands up to land revenue of Rs. 125/- per year from the operation of section 27. That appears to be the only way to read harmoniously section 11, 15 and 27.

Reference to Schedule Ii would also lend support to the view I am taking. The first clause in the said second Schedule provides for compensation payable 'for land revenue up to Rs. 125/-'. It may possibly be suggested that this clause in the Second Schedule is consistent with the interpretation suggested by the respondents and deals with the first slab of the land revenue up to Rs. 125/- with respect to the surplus land acquired under section 27. That would, however, be stretching the provisions of the Schedule unnecessarily and cannto be termed as a reasonable interpretation thereof.

7. The learned counsel for the parties referred also to the provisions of Chapter Viii dealing with assumption of management and acquisition by the State of certain lands, but I am unable to find anything in the Chapter which is destructive of the view taken by me on the construction of section 27. In my opinion, thereforee, the answer to the first question is that with respect to the lands the land revenue of which exceeds Rs. 125/- per year the entire holding vests in the State Government.

8. That takes me to the second question. The learned counsel for the respondent relied on the provisions of Ss. 11, 15 and 83 of the said Act, as showing that vesting of the landowner's right, title and interest was in all cases deferred to a particular date and there was, thereforee, no justification for holding that under section 27 the lands vested in the State Government immediately on the enforcement of the said Act. The sheet-anchor of the respondents was the decision of learned Judicial Commissioner, Himachal Pradesh, in . In that case the learned Judicial Commissioner decide that the right, title and interest of a landowner vested in the State Government under S. 27 only after the amount of compensation had been determined and the determination of compensation was the sine qua non to the extinction of the right, title and interest of the landowner.

The learned Judicial Commissioner based his decision on two reasons-

'(1) The use of the word 'acquired' in sub-sections (3) and (4) of section 27 was indicative of the fact that the land vested in the government on determination of compensation. He relied on the provisions of the Land Acquisition Act in support of the conclusion.

(2) 'Sub-section (2) of section 27 excludes, from the operation of sub-section (1), land, which is under the personal cultivation of a landowner. The landowner will be able to avail himself of the benefit of sub-section (2), only if he has ntoice before the actual vesting of his proprietary rights in the State Government, If there be automatic vesting of his rights, without ntoice, the prtoection afforded by sub-section (2) to a landowner, may become useless in most cases. Of course, there will be entries in the revenue records whether a particular piece of land is under the personal cultivation of a landowner. But those entries may be incorrect. The landowner should have an opportunity to prove the incorrectness of such entries, by showing that a particular piece of land, though shown in the revenue records, under the cultivation of a tenant was under his personal cultivation'

9. When the matter came to me originally I had my doubts as to the correctness of the view taken by the learned Judicial Commissioner, but in view of my great respect for his opinion, I had directed for the constitution of a larger Bench to decide this question and now I am clearly of the opinion that the right, title and interest of the landowner with respect to lands covered by section 27 vest in the State Government immediately on the enforcement of the Act.

10. So far as the provisions of the Land Acquisition Act are concerned, they appear to be of no assistance in the interpretation of this Act as there are special provisions about the date of vesting. If the view suggested by the respondents were to be accepted the words 'shall be deemed to have been transferred and vested in the State Government' will nto have their full effect. Wherever Legislature intended to defer the date of vesting such as sections 11 and 15 the Legislature has clearly provided to that effect and the reasons thereforee are obvious. For instance, in section 11, the option has to be exercised by the tenant to acquire the right, title and interest and vesting of such rights would necessarily depend on the time of the exercise of such option. Similarly, having regard to the scope of section 15, as already discussed, the Legislature had of necessity to provide a future date.

11. The learned counsel for the respondent had recourse to the various principles of interpretation of Statutes, but it is, however, nto necessary to elaborate on the same as the first principle of interpretation is to give effect to the plain language used in a statute. The Legislature could nto have intended that the date of vesting will be flexible one depending on determination of compensation in each case. The object appears to be that on the basis of mutation entries, the lands covered by section 27 should immediately vest in the State Government, leaving the parties to agitate their rights in proper forum. If they contend they their lands do nto fall within the purview of the section. The whole purpose of the Act namely, 'to provide for the abolition of big landed estate' would stand frustrated if the vesting was to be deferred for years, depending on determination of compensation and various toher questions, such as whether the land is covered by section 27 or nto.

Again by sub-section (5) of section 27, the State Government is obliged to pay rehabilitation grant to small landowner whose right, title and interest 'have been extinguished.' That again goes to show that the operation of section 27 was intended to be immediate. The word 'acquired' in sub-section (3) and (4) appears to have been used in the general sense meaning 'divesting of the interest of the landowner and vesting thereof in the State.' And has no link with the date of vesting. In my opinion, the words 'the right title and interest of such owner in such land shall be deemed to have been transferred and vested in the state Government' can have no toher meaning except that the vesting is immediate My answer to the second question, thereforee, is that the lands covered by section 27 stand automatically transferred and vested in the State Government on the enforcement of the Act.

12. The matter will now go back to the Division Bench for decision on toher points in this appeal and appeals Nos. 25, 26 of 1965 in which the same two questions were referred to Full Bench. There will, however, be no order as to costs.

Dua, C.J.

13. I agree that the question referred be answered as proposed.

Tatachari. J.

14. I also agree.

15. Reference answered accordingly.