

Barnu Vs. Balandansi

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Court : Delhi

Decided On : Nov-20-1969

Reported in : 6(1970)DLT94

Judge : Prilam Singh Safeer, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 2(17) and 27(4);

Appeal No. : Miscellaneous Second Appeal No. 27 of 1969

Appellant : Barnu

Respondent : Balandansi

Advocate for Pet/Ap. : H.S. Thakur,; K.D. Sood and; T.C. Chitkara, Advs

Judgement :

Pritam Singh Safeer, J.

(1) The provisions of Section 27 sub-section (4) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 which will hereinafter be referred to as the Act

, Notwithstanding anythg contained in the foregoing provisions of this Chapter, a landowner who holds laud, 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) Nothing 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 subsection (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 H, 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 his landowner shall be computed in accordance with Schedule 1. (4) The right, title and interest of the land-owner acquired under Sub-section (1) or (2) shall be transferred by the State Government on the payment of compensation in accordance with Schedule I 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 not have any other means of livelihood.'

(2) A reference to Sub-Section (4), reproduced above shows that a person to be entitled to the transfer contemplated in terms of that section must be a tenant cultivating the land in question.

(3) The word 'tenant' is defined in clause (17) of Section 2 of the Act. That definition is as under : -

'(17)'tenant' means a person who holds land under another person, and is or but for a contract to the contrary would be liable to pay rent for that land to that other persons but it does not include - (a) an inferior landowner, or (b) a mortgagee of the rights of land owner, or (c) a person to whom a holding has been transferred or an estate or holding has been let in farm under the Punjab Land Revenue Act, 1887, as in force in Himachal Pradesh, immediately before 26th January, 1960 for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear, or (d) a person who takes from the State Government a lease of unoccupied land for the purpose of subletting it ;'

(4) M. Thakur who appears for the appellant in case his rightly contended that the appellant would invoke the opening part of the definition. That part of the definition describes a person as a tenant who. holds land under another person, and is, or but For a contract to the contrary would be liable to pay rent for that land to that other person, It is apparent that the appellant would be tenant if he would show that he was paying rent to the late husband of the respondent Mr. Thakur very fairly submits that the appellant was at no time paying any rent. He has then to fulfill the other obligation created by the definition clause and has to establish that there was a contract in view of which he was not liable to pay any rent to Daulat Ram the husband of respondent Smt. Baldassi. His submission is that there did exist such a contract He urges that the words used in document Exhibit. PA-1 are to the effect that the rent was not being paid because of consent 'and those should be interpreted to be constituting the contract contemplated by the definition contained in the opening part of clause (17) of Section 2 of the Act. It is no doubt true that the document Exhibit -A-1 is a Jamabandi of the year 1963-64 and is entitled to due consideration. My fear, however, is that the words contained in the said Jamabandi are at a best a citation of some kind of understanding between the occupancy tenant and the present appellant The citation in itself can mean a reference to the contract but it does not mean that contract itself. To be more elaborate if in a record of rights somebody is recorded as a person holding a certain right say as a 'mortgagee' than that recording of a fact which may have been reported to a revenue official will not itself constitute the mortgage deed which may in itself contain the terms of a contract. The existence or validity of the contract could only be looked into by construing such a mortgage deed. I hold that the citation in the Jamabandi referred to above by itself does not constitute any contract. In that situation the appellant does not seem to have fulfilled the obligations of clause (17) of Section 2 of the Act If that is then he cannot be tenant within the meaning of sub-section (4) of Section 27. Before parting with this observation [may make a reference. to the document which is Exhibit Q-A on the record of this case. There the present appellant is shown to be cultivating 3 'Bighas and 10 bids was of land out of the total area of 4 Bighas and 16 bids was of land comprised in Khasra No. 354-249. He has been shown as a mortgagee in possession and the interpretation would be that the mortgage is in lieu of a sum

of Rs. 220/. It must be noticed at once that the total area involved in this case is 6 Bighas and 4 Biswas. That mean; that the area of 3 Bighas and 20 bids was mentioned in document Exhibit O/A does nto exactly correspond with the area in dispute. The Khasra number given there is only one of three in which the preset land is comprised. There has been a good deal of controversy about this document in the cross-examination of Shri Hari Saran Dass Patwari, who deposed retarding the entry made in the document Exhibit O/A and effort seems to have been made to bring out that the entry proceeding the original of the aforesaid document .pertaining to another person occurred in different ink. It has been conceded at the Bar that the mother entry of the document Exhibit O/A in itself ism the same ink. Iam nto impressed by the difference in the ink used in recording the mother entry of Exhibit O/A and that ink which is said to have been used in the entry preceding that. If the original of document Exhibit O/A had contained any interpolation in different ink then that may have raised some suspicion. As the matter now stands the argument raised, amounts to nothing. There is another aspect which is also note-worthy. In the last but one sentence of his deposition the appellant himself stated, while he was under cross-examination, that an amount of Rs. 220was payable to him by the late husband of the respondent of Beldassi. It is significant that the amount of Rs. 220/ admitted by Barnu as having been due to him from the respondent's husband tallies with the amount mentioned in document Exhibit O/A. Only two persons knew about the exact amount. One of the two persons was late Daulat Ram and the other, is the appellant. No revenue official could have dreamt of the exact figure except of the same being mentioned to him by either of the two. This leads me to the conclusion that there is something authentic about the words appearing in the document Exhibit O/A. If the appellant was cultivating the land because of the mortgage than he was certainly nto a tenant in terms of Section 2 (19) of the Act. That of course would nto have been the situation if the appellant had established that one of the terms of any valid mortgage was in itself in the nature of a contract absolving him from paying any rent to the occupancy tenant under whom he may have been holding. The question even then would be whether a mortgagee could be said to be holding under the occupancy tenant. The derivation of right through a mortgage may change the nature, of the rights between the parties It may change the nature of

the right between the parties. It may change their relationship altogether. The relationship can either be that of the mortgagee, with possession or of an occupancy tenant cultivating under a non-occupancy tenant. A close analysis of the situation would show that in none of those positions the appellant would be a tenant within the meaning of clause (17) of Section 2 of the Act. The matter does not rest there the property claimed by the appellant is 6 Bighas and 4 bids was of land and he wants the transfer thereof on the basis of his being a tenant. I wonder if a mortgage of the immovable property of the value of upwards of Rs. 100 could have been validly effected without a regular registered deed. I do not find in this case any contract pleaded by Barnu appellant which may entitle him even to the consideration thereof. The stand disclosed by his deposition is simply this that he was holding the land for cultivation on account of some consent and he proceeds to say that after the death of Daulat Ram he performed certain ceremonies in connection with his death. There is no specific plea raised by him either in terms of the reply filed by him to the application filed by Smt Beldassi or in terms of any express words used in the course of his evidence that there was any contract whatsoever between him and the Late I Daulat Ram, when no plea is raised regarding the existence of any contract in terms where Barnu was absolved from the obligation of paying rent then the question of holding that he is protected within the terms of clause (17) of Section 2 of the Act does not arise. Admittedly he was paying no rent and the case discloses that he has pleaded no contract. That being the situation I am fortified in holding that he had failed to prove that he was a tenant within the meaning of the aforementioned clause 17 of Section 2 of the Act. He was, therefore, not entitled to any transfer in terms of the provisions of section 27(4) of the Act.

(5) The next submission made by Shri Thakur was that in no case the respondent, Smt Beldassi is entitled to the transfer in terms of the aforesaid provision. He submitted that the impugned judgment is clearly contrary to law and the proven circumstances of the case. The learned counsel submitted that a person to be entitled must be 'such tenant who cultivates such land.' This is a significant submission. Before Smt. Beldassi respondent can set up any entitlement under the aforesaid provisions she must fall within the terms of the foregoing phraseology. It is nowhere her case that she is cultivating the land, even though

engaged labour. The learned Counsel appearing for the said respondent has set up the case which again merits consideration. He says that the date of the vesting of the land in question is the 26th of January, 1955 and he is very rightly supported by the decision of this Court as recorded in *Union of India v. Dinesh Kumar*. A Full Bench of this Court on the total reasoning of the judgment and more precisely on the reasoning contained in paragraph 9 and 11 of that judgment came to the conclusion that the date of vesting could only be one uniform date and that would be the date of the enforcement of the Act. The date of vesting was determined as the 26th of January, 1955. The argument is that Daulat Ram was alive on that date and that the word 'tenant' in Section 27(4) in the context of the Act meaning 'the tenant', as on the date of the vesting. The argument then is that if a reference is made to the rules framed under the Act which are known as the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms (Mode of payment of Compensation and Grant of Proprietary Rights) Rules 1963 then it would be found that there is a schedule attached to those rules containing certain forms. The form in reference is the form 'K' and the same has been drafted with reference to Rule 16. There is a star mark which occurs before the word 'years' and that star mark refers to an Explanation which would lead to the Conclusion that the Jamabandis of the year pertaining to the vesting date are to be taken into consideration. To place the argument in more simple language, it is, that 'the tenant' as on the vesting date is the person who would be entitled to the transfer in terms of Section 27 Sub section (4) of the Act. It was submitted on behalf of Smt. Beld as is that her husband Daulat Ram was entitled to the transfer contemplated by Sub-section (4) of section 27 of the Act because he was alive on the date of vesting and that in terms of Section 67 of the Act it is she who can take the benefit of being the widow of the deceased and thus can claim the transfer contemplated by Sub section (4), which provision has been reproduced earlier. This argument brought in the counter submission by Mr. Thakur that she was totally disentitled to, the transfer in terms of Section 67 of the Act because the said widow had remarried. The counsel placed reliance upon the clear statement of Barnu appellant where in he stated that Smt. Beldassi widow of Daulat Ram had remarried. That statement was recorded before the compensation Officer proceeded to dispose of the contentions raised by the parties. Mr Thakur submits

that no question was directed against the statement of Bamu and the cross-examination is blank on that point. He insists that fact of the remarriage by the widow should be taken into consideration. The reply furnished by the learned counsel for the respondent Smt. Beldassi is based upon the law laid down by the Hon'ble Supreme Court of India in *Messrs Troign and Co v. R.M.N N Naglppa Chettiar* which is to the effect that the decision of no case can proceed on facts outside the pleadings of the parties. Strictly speaking I am not dealing with judgment and decrees resulting from a civil suit tried under the Civil Procedure Code. There the Hon'ble Supreme Court of India was dealing with a case which had resulted out of total civil trial. During the course of arguments I remembered the case decided by the Hon'ble The Federal Court of India and reported as *That is the well known case of Lachme shwar Prasad shkual and othe s v. Keshwar Lal Chaudhauri and others*

(6) At one time the Judicial principle which prevailed was that the parties are governed by law under which they begin to move. For a long time that view held its own sway but then the Courts in England began to feel differently and on page 14 of the aforementioned judgment of the Federal Court, Lord Justice Thankerton's observations made in the English decision have been noticed. The view taken was that the relief to the parties must be dispensed in terms of the law applicable at the time of such dispensation. It is quite significant that the law with which the Federal Court was dealing had come in after the High Court of Judicature at Patna had made its judgment. The Federal Court decided the case in accordance with the change caused in the law after the judgment of the High Court under appeal before the Federal Court had come into being. This principle has become well-established. The Hon'ble the Supreme Court of India was dealing with the significance of the amendments caused in the Punjab Pre-emption Act by the amending Act of 1960 and the view of law taken by the Federal Court in *Air 1951 FC 5* was relied upon in the decision recorded as *Ram Sarup v. Munshi*'. This being the situation the statement of Bamu that the widow respondent had remarried could certainly be taken into consideration. That is so because the rule of law laid down in the foregoing cases, and particularly so in *A 1. R 1941 FC 5* does not confine it self to the taking of the change of law into consideration but goes to the extent of laying down that the hearing of the appeal under the

procedural law in India is in the nature of rehearing and, therefore while granting the relief in a case on an appeal the appellate Court is entitled to take into account even the facts and events which have come into existence after the decree appealed against. I may also mention that this view of law found favor with the Punjab High Court and is relied upon in the case reported as Messers Watikns Mayor and Company, Jullundur City v. Registrar of Trade Marks, Bombay and another. But when there was no clear chance given to the respondent Smt. Beldassi to refute the allegation of re marriage leveled against her. In view of the decision of the Full Bench of this Court referred to in an earlier part of this judgment it would call for a clear determination whether the widow would be entitled as a successor-in interest to the rights of her late husband in terms of subsection (4) of Section 27 read with Section 67 of the Act. That determination can only come in when the respondent has had a fair chance of controverting the allegation of re-marriage preferred against her.

(7) It seems to me that the rules framed under the Act have been sufficiently ignored in this case. The orders otherwise made by the Compensation Officer as well as by the first appellate Court do not show any intimate consideration of the facts or the law applicable. There are specific rules beginning with rule 12 and going onwards which are concerned with the transfers to the cultivating tenants Section 27 (4) of the Act is expressly mentioned therein. On the vesting of the property the revenue officers are to arrive at a final stage of attesting the entries pertaining to the column of ownership and once the land stands mutated in the name of the State the revenue officers are then to proceed to deal tenant wise with the files for the purposes of assessment and determination of the amount of compensation to be paid by such tenants who are found to be entitled to the relief envisaged by sub-section (4) of Section 27 of the Act. There is nothing to show that due attention has been paid to the provisions contained in the Act or to the rules framed there under.

(8) Ordinarily after having heard the arguments I would not have remanded the case but I am persuaded to imagine that the respondent Beldassi may be able to establish some rights on the basis that she has not remarried and I am not inclined to come to a firm finding against her merely on the basis of a passing statement

made by the appellant Bamu The matter thus becomes concerned with a finding of fact which when clearly arrived at may call for a consideration of the combined effect of Sections 27 (4) and 57 of the Act. With these observations this case is remitted back to the Compensation Officer with the direction that he will give due opportunity once again to the parties to lead evidence, even after amending their pleadings and thereafter into the provisions of the Act as well as the rules before recording the decision. In spite of the finding that Zarpu-appellant does not fulfill the requirements of law and is not entitled to the transfer in terms of Section 27 (4) of the Act it is appropriate that he may have the liberty of continuing as a party to the proceedings so that the opportunity to controvert the stand which respondent Beldassi may take may still remain there. It is directed that the proceedings may be held expeditiously and the rights be adjudicated upon if possible within a period of six months from today. With these observations that appeal is disposed of.