

Amba Dutt and ors. Vs. Hira

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Court : Delhi

Decided On : Jul-08-1969

Reported in : 6(1970)DLT36

Judge : H.R. Khanna, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 104

Appeal No. : Regular Second Appeal No. 4 of 1967

Appellant : Amba Dutt and ors.

Respondent : Hira

Advocate for Pet/Ap. : Bakshi Sita Ram and; K.D. Sood, Advs

Judgement :

H.R. Khanna, J.

(1) This second appeal under Section 104 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1954 (Act No. 15 of 1954), hereinafter referred to as the Act, by Amba Datt and his two brothers is directed against the order of learned District Judge, Mahasu, Sirmur, Bilaspur and Kinnaur Districts, modifying on appeal the order of Compensation Officer, Sirmur. As a result of the appeal, proprietary rights in the land in dispute except the non-fruit trees have

been vested in Hira respondent on payment of Rs. 503.25 Paise as compensation for the land, Rs. 406.00 as compensation for the cow-sheds and Rs. 302.00 as compensation for the fruit trees.

(2) The brief facts of the case are that Hira, who was occupying the land in dispute measuring 21 Bighas 18 bids was as tenant under Amba Datt and his two brothers, filed an application under section 11 of the Act for acquisition of the proprietary rights in that land.

(3) The application was resisted by Amba Datt and his two brothers. The Compensation Officer framed the following issues in the case:-

1. How many trees are standing on the land applied for and are the respondents entitled to get compensation. on hat account, and if so, how much ?

2. How many houses belonging to the respondents are situate on the land in question and to what compensation the respondents are entitled on that account

3. Is the mother of the respondents a physically disabled person and is a widow, and, if so, what is its effect ?

4. Relief

(4) Issue No. 1 was nto decided by the Compensation Officer be cause he was of the view that land' as defined in Section 2(5) of the Act did nto include trees and the Compensation Officer was nto empowered to allow compensation on account of the standing trees on the land. The Compensation Officer,. accordingly, held that this was a matter for the Civil Court to decide. Under issue No. 2 the Compensation Officer held that some cow-sheds had been constructed on the land in dispute by the landlords. Rs. 406.00 were allowed as compensation to the landlords on account of those cow-sheds. Issue No. 3 was decided against the land lords. The compensation payable for the land under Section 12 of the Act was assessed to be Rs. 503.25 Paise. In addition to that, the landlords were held entitled to get compensation of Rs. 406.00 on account of cow-sheds standing on the land under Section 13 of the Act. Hira was allowed to acquire proprietary rights in the land in dispute on payment of Rs. 909.25 Paise as compensation. The

landlords then went up in appeal to the Court of District Judge. The learned District Judge framed an additional issue as under:-

ARE there fruit trees on the land? If so, how many and of what amount and who planted the trees and if they were planted by the landowners, what compensation if any, they are entitled ?

(5) The case was remitted to the Compensation Officer for report. In his report dated June, 6, 1965 the Compensation Officer stated that the landlords might be awarded compensation for 30 Daru trees of medium size. The amount of compensation on that account was assessed by the Compensation Officer at Rs. 300.00. The learned District Judge accepted the report of the Compensation Officer in this respect. In addition to that, the learned District Judge awarded Rs. 21.00 to the landlords on account of compensation for two banana plants. The compensation thus awarded to the landlords was enhanced by Rs. 302.00. As regards the non-fruit trees the District Judge held that the proprietary rights of those trees could not be granted to Hira petitioner.

SECOND appeal, as stated earlier, under Section 104 of the Act has been filed by the landlords. Cross-objections under Order 41 Rules 22 of the Code of Civil Procedure have been filed by Hira.

(6) In the appeal filed by Amba Datt and other landlords, Mr. Sita Ram on behalf of the appellants has not been able to show that the appellants are entitled to any additional compensation over and above what has been awarded to them by the District Judge. Mr. Sita Ram has, however, argued that part of the land in dispute is Banjar Qadim and that proprietary rights in respect of that part of the land could not be invested in Hira respondent. In this connection I am of the view that the question as to whether any part of the land in dispute is Banjar Qadim is essentially one of fact. No such question appears to have been agitated either before the Compensation Officer or before the learned District Judge in appeal. In the circumstances, I am of the opinion that this contention, which essentially involved a question of fact, should not be allowed to be advanced for the first time in second appeal. I, therefore, find no merit in the appeal filed on behalf of the landlords.

(7) So far as the cross-objections filed on behalf of Hira respondent are concerned, a preliminary objection has been raised by Mr. Sita Ram that the cross-objections are not competent. According to the learned counsel, the Code of Civil Procedure does not apply to the appeals under Section 104 of the Act and in the circumstances the respondent is not entitled to file cross-objections under order 41 Rule 22 of the Code of Civil Procedure. In reply Mr. Sud on behalf of the respondent contends that the provisions of the Code of Civil Procedure apply as much to an appeal under Section 104 of the Act as they apply to other appeals filed in this Court. In this respect I find that Section 104 of the Act provides that an appeal shall lie to the District Judge from any order of the Compensation Officer and a second appeal from the decision of the District Judge shall lie to the Judicial Commissioner. It is not disputed that with the extension of the jurisdiction of the Delhi High Court to Himachal Pradesh the second appeal, which previously lay to the Judicial Commissioner, now lies to the High Court. No procedure has been prescribed by the Act in respect of the appeals filed in the High Court. In the absence of any such procedure having been prescribed by the Act for appeals in the High Court, the provisions of the Code of Civil procedure, in my opinion, shall apply to such appeals. I am fortified in this conclusion by the decisions of their Lordships of the Judicial Committee as well as their Lordships of the Supreme Court. In the case of Secretary of State for India v. Chelkani Rama Rao and other, (i) their Lordships of the Judicial Committee were dealing with an appeal which had been preferred to the District Court under Section 10 of the Madras Forest Act against a decision of Forest Settlement Officer. Question arose as to what was the procedure applicable to such appeals. It was held that the Provisions of the Code of Civil Procedure shall apply to such an appeal and that against an order made by the District Judge in such appeal further appeals could be filed in accordance with the provisions of the Code. Their Lordships observed :

'IT was contended on behalf of the appellant that all further proceedings in Courts in India or by way of appeal were incompetent, these being excluded by the terms of the Statute just quoted. In their Lordships' opinion this objection is not well-founded. Their view is that when proceedings of this character reach the District Court, that Court is appealed to as one of the ordinary Courts of the country, with regard to whose procedure, orders, and decrees the ordinary rules of the Civil

Pocedure Code apply.'

(8) In R.M.A.R.A. Adaikappa Chetfiar and other v. R. Chandrasekhara Thevar. (2) their Lordships were dealing with a 8HCD/69-6

CASE under Madras Agriculturists' Relief Act of 1938. It was observed :

'THE true rule is that where a legal right is in dispute and the ordinary Courts of the country are seized of such dispute the Courts are governed by the ordinary rules of procedure applicable thereto and an appeal lies, if authorised by such rules, notwithstanding that the legal right claimed arises under a special statute which does nto in terms confer a right of appeal.'

(9) The above two authorities were followed by the Supreme Court in the case of National Sewing Thread Co. Ltd., Chidambaram v. James Chadwick and Bros, Ltd., (3) Their Lordships in that case were dealing with an appeal under section 76 of the Trade Marks Act. The said section provided for an appeal from a decision of the Registrar appointed under the Trade marks Act to the High Court having the jurisdiction. Mahajan, J., as he then was, speaking for the Court, observed:

'THE Trade Marks Act does nto provide or lay down any procedure for the future conduct or career of that appeal in the High Court indeed Section 77 of the Act provides that the High Court can if it likes make rules in the matter. Obviously after the appeal had reached the High Court it has to be determined according to the rules of practice and procedure of that Court and in accordance with the provisions of the charter under which that Court is constituted and which confers on it power in respect to the method and manner of exercising that jurisdiction. The rule is well settled that when a statute directs that an appeal shall lie to a Court already established, then that appeal must be regulated by the practice and procedure of that Court.'

(10) In view of the above observations I have no hesitation in holding that an appeal under Section 104 of the Act is governed by the Code of Civil Procedure. I may observe that Shri Om Parkash, Judicial Commissioner, as he then was, in the case of Union of India v. The Hotz Hotels (Private) Ltd., held that appeals under

sections 104 of the Act are governed by the Code of Civil Procedure.

(11) Mr. Sita Ram on behalf of the appellants has referred to the case of Daya Ram v. Smt. Reshmu, , wherein it was held that a Compensation Officer acting under the provisions of the Act is not a Court. We are, however, in the present case not concerned with the question as to whether the Compensation Officer is or is not a Court but whether the procedure applicable to an appeal under Section 104 of the Act is that prescribed by the Code of Civil Procedure. It may also be observed that the decision of the Judicial Commissioner in the case of Daya Ram v. Smt. Reshmu (5) has been expressly overruled by a Division Bench (Jagjit Singh and Shankar, JJ.) of this Court in Thola v. Shri Kisluin (6) decided on May 17, 1968. It was held by the learned Judges that a Compensation Officer while dealing with an application under section 11 of the Act is a Court. I, therefore, overrule the preliminary objection raised by Mr. Sita Ram and hold that the present cross-objections filed on behalf of Hira respondent are maintainable.

(12) Coming to the merits of the case, Mr. Sud has challenged the finding of the learned District Judge that the proprietary rights of the non-fruit trees cannot be granted to Hira respondent. This contention, in my opinion, is well-founded. The matter indeed is concluded by a decision of the Supreme Court in the case of The Divisional Forest Officer, Himachal Pradesh v. Daut and others, Their Lordships in that case were dealing with the question as to whether trees standing on a land are included in the land for the purpose of Section 11 of the Act. Sikri J., speaking for the Court, observed :

'THERE can be no doubt that trees are capable of being transferred apart from land, and if a person transfers trees or gives a right to a person to cut trees and remove them it cannot be said that he has transferred land. But we are concerned with a different question and the question is whether under section 11 of the Act trees are included within the expression 'right, title and interest of the landowner in the land of the tenancy'. It seems to us that this expression 'right, title and interest of the landowner in the land' is wide enough to include trees standing on the land. It is clear that under section 8 of the Transfer of Property Act, unless a different intention is expressed or implied, transfer of land would include trees standing on

it. It seems to us that we should construe section 11 in the same manner.'

(13) It was further observed :

'SECTION 11 is drafted very simply and under subsection (6) the tenant becomes the owner of the land comprised in the tenancy on and from the date of grant of the certificate, and it is expressly provided that the right, title and interest of the landowner in the said land shall determine. In the context the word 'owner' is very comprehensive indeed, and it implies that all rights, title and interest of the landowner pass to the tenant. Further, it seems to us that it would lead to utter confusion if the contention of the learned counsel is accepted. There would be interminable disputes as to the rights of the erstwhile landowners to go on the lands of erstwhile tenants and cut trees or take the fruit. Moreover, under section 15 of the Act we would, following the same reasoning, have to hold that the trees on the land of the landowner did not vest in the State. This could hardly have been the intention.'

(14) In view of the above observations I am of the view that the learned District Judge was in error in holding that proprietary rights in non-fruit trees could not be granted to Hira respondent. therefore, dismiss the appeal and accept the cross-objections. The order of the learned District Judge is set aside to the extent, he held, that the proprietary rights in the no fruit trees could not be granted to Hira respondent. Hira respondent would also be entitled to the proprietary rights in those trees. The parties, in the circumstances of the case, are left to bear their own costs of the appeal and cross-objections.