SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

State of H.P. Vs. Sh. Ramji

State of H.P. Vs. Sh. Ramji

SooperKanoon Citation : sooperkanoon.com/889231

Court : Himachal Pradesh

Decided On : Mar-21-1994

Reported in : AIR1995HP127

Judge : Devinder Gupta, J.

Acts : Himichal Pradesh Vesting and Utilisation Act, 1974 - Section 10

Appeal No. : R.S.A. No. 272 of 1989

Appellant : State of H.P.

Respondent : Sh. Ramji

Advocate for Def. : A.K. Goel and; Ramakant, Advs.

Advocate for Pet/Ap. : Om Parkesh Sharma, Addl. Adv. General

Disposition : Appeals allowed

Judgement :

Devinder Gupta, J.

1. These three appeals were admitted for hearing on the following question of law:

Whether the Civil Court has no jurisdiction in view of the bar created by Section 10 of the Himchal Pradesh Common Lands Vesting andUtilisation Act, 1974?

2. Not only the question of law but also the facts in the three appeals are almost same and similar on which similar findings have been recorded by the two Courts below. Respondents in the appeals are the plaintiffs.

3. Plaintiffs filed three separate suits claiming decree for declaration that they had become owner of the suit property and the orders passed by Sub-Divisional Collector ordering their eviction were illegal, null and void and without jurisdiction. By way of consequential relief a decree for permanent prohibitory injunction was claimed restraining the State from dispossessing them from the suit property. This declaration with consequential relief of injunction was prayed by alleging that the concerned Gram Panchayats, in whom the land stood vested had inducted the plaintiffs as tenant over the suit land through resolution passed by it and ever since the plaintiffs have remained in occupation of the property as tenant under the Panchayat. It was further alleged that on coming into force of the Himachal Pradesh Village Common Lands Vesting and Utilisation Act, 1974, here-in-after referred to as the Act, all shamlat lands including the suit land stood vested in the State and thus the plaintiffs, who were in occupation of the property as tenants under the Gram Panchayat became Chakotadars under the State Government. Since the plaintiffs were in possession of the suit land as Chakotadar on coming into force of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and the Rules framed thereunder, therefore, they have become owner thereof, thereby extinguishing all rights, title and interest of the State Government. Accordingly the orders passed subsequently by the Sub-Divisional Collector-Nalagarh ordering the plaintiffs 'ejectment from the suit property are null and void and without jurisdiction since they have become absolute owner of the property.

4. The State of Himachal Pradesh contested the suits. It was denied that plaintiffs were ever inducted as tenants over the land by the Gram Panchayats. The other averments made in the written statement are that theland stood vested in the State Government tree from all encumbrances and since the plaintiffs were in unauthorised possession, therefore, they were rightly ordered to be evicted from the suit land by virtue of lawful orders passed by Sub-Divisional Collector. It was also averred that plaintiffs never became the owners. Jurisdiction of the Civil Court to entertain and decide the suit was also challenged.

5. The suits were decreed by the trial Court. It was held that the Court had jurisdiction and the plaintiffs were inducted as tenants on different parcels of land by the Gram Panchayat. Plaintiffs were found to be in possession as tenant on coming into force of H.P. Tenancy and Land Reforms Act, 1972, and Rules framed thereunder. Trial Court also found that since land had vested in the State Government under the provisions of the Act, the plaintiffs automatically became Chakotadars under the State and by virtue of the provisions of the Tenancy and Land Reforms Act they had now become owners of the suit property and thus Collector had no jurisdiction to order their eviction. Besides granting decree for declaration State was restrained from interfering with their possession. While decreeing the suits liberty was reserved to the State Government to collect compensation of the suit land at 96 times the land revenue plus rate and cesses from the plaintiffs.

6. Feeling aggrieved State Government preferred appeals. Lower appellate Court while dismissing the appeals modified the decrees passed by the trial Court. It was held that the plaintiffs had been inducted as tenants by the Gram Panchayat where after the suit land had vested in the State Government. Thus, the plaintiffs had automatically become Chakotadars in possession of the suit land under the State Government. In view of the Himachal Pradesh Tenancy and Land Reforms (Amendment) Act, 1987 (Act No. 6 of 1988), which became operative retrospectively, it was held that in so far as the property of the State Government is concerned, the tenants are not entitled to claim to have automatically become the owners of land by operation of Section 104 of the Tenancy Act. Thus modifying the trial Courts decree, only a decree for permanent prohibitory injunction was granted in favour of the plaintiffs, restraining the State Government from interfering with their possession till evicted in accordance with the law. Instead of declaring the plaintiffs to be the owners declaration was granted that they are Chakotadars in possession of the suit land under the State Government. These judgments and decrees are under appeal at the behest of the State Government.

7. I have heard the learned counsel for the parties and have also gone through the records of the cases.

8. So far as the findings of the Courts below that the plaintiffs are in possession of the suit land by virtue of resolutions passed by the Gram Panchayat, the same are not capable of being interfered with in these second appeals. It is also not in dispute that suit land, which earlier formed part of shamlat has vested in the State Government under the provisions of the Act. In view of their possession on the suit land the plaintiffs sought declaration that since they were in occupation of the property firstly as tenant under the Panchayat and then under the State Government, therefore, they had become owners of the same. In so far as the declaration as regards their ownership, the lower appellate Court declined to grant such relief in view of the retrospective effect given to the Tenancy Act by virtue of the Amendment. Act No. 6 of 1986 providing that nothing contained in Section 104 of the Tenancy Act shall apply to such land, which is owned by or is vested in the Government under any law, whether before or after the commencement of the Act, and is leased out to any person. Plaintiffs have not questioned this part of the judgment and decree of the lower appellate Court. Thus the only question which now survives for consideration is as to whether the Courts below were justified in granting decree for declaration in plaintiffs favour that they are in occupation of the suit property as Chakotadars under the State Government and that whether civil Court has or has no jurisdiction to grant such a-decree.

9. Section 4 of the Act makes a provision in dealing with those cases where leases were granted by the Panchayats with respect to such lands which vested in the Panchayats under the Punjab Village Common Lands (Regulation) Act, 1961 and the Rules framed thereunder and the manner in which the same are to be treated. It says :--

'4. Treatment of leases made by Panchayats:-- (1) The Collector shall call for from Panchayats in his district, the record of leases, contracts or agreements entered into by the Panchayats in respect of any land vested in the Panchayats under the Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961) and the rules made thereunder and examine such record for satisfying himself as to the legality or propriety of such leases, contracts or agreements.

(2) Where on examination of the record under Sub-section (1) and after making such enquiry as he deems fit, the Collector is satisfied that such leases, contracts or agreements are in accordance with the provisions of the said Act and rules, he shall pass orders declaring such leases, contracts or agreement having been made on behalf of the State Government.

(3) Where on such examination and enquiry the Collector finds that a lease, contract or agreement has been entered into in contravention of any of the provisions of the said Act or the rules made thereunder or has been entered into as a result of fraud or concealment of facts or is detrimental to the interest of the estate right-holders, he shall cancel such a lease, contract or agreement and such person shall be liable to ejectment under the provisions of Section 150 of the Punjab Land Revenue Act, 1887 (17 of 1887):

Provided that no order under Sub-sections (2) and (3) of this section shall be passed by the Collector without affording an opportunity of being heard to the parties to the lease, contract or agreement.'

10. A bare reading of the provision would show that the Collector, in each case is required to call for, from the Panchayats in his District, the record of leases, contracts or agreements entered into by it and then to examine the same in order to satisfy himself as to the legality or propriety of such leases, contracts or agreements. This exercise is required to be done by the Collector for a meaningful purpose which itself is made evident in Sub-section (2) of Section 4, namely, to record a decision as to whether the person can or cannot he treated as a tenant under the Suite Government. If on enquiry the Collector finds that lease, contract or agreement was in consonance with the Punjab Village Common Lands (Regulation) Act, he is required to pass an order declaring the lease, contract or agreement having been made on behalf of the State Government. In other words such lease, contract or agreement made by the Panchayat is then, by virtue of the Collector's finding will be deemed to have been recognised as a valid lease, contract or agreement made on behalf of the State Government; otherwise, the Collector is empowered under Sub-section (3) of Section 4 to initiate proceedings for ejectment of the person in occupation by treating the lease, contract or

agreement to have been cancelled.

Admittedly, the aforementioned exercise has not yet been done by the Collector in these cases. The Act makes the order, which is to be passed by the Collector under Section 4 appealable to the State Government under Section 9 of the Act and Section 10 of the Act creates a complete bar in questioning the order of Collector or of the State Government before any Court or an authority. A Full Bench of this Court in Gram Panchayat, Khynyara etc. v. State of Himachal Pradesh, ILR 1978 (HP) 225, has considered the scope of Section 10 of the Act barring the Civil Courts' jurisdiction in entertaining any suit. In Dalip Singh v. State of H. P. (1992 (1) Sim LC 320) also the scope of Section 10 of the Act has been considered and it has been held that when an adjudication on any question is required to be made by the authorities under the Act and the decision of such authority is made subject to appeal, that authority alone has the jurisdiction to decide such a matter and Section 10 of the Act is a complete bar in the civil Courts entertaininga suit for taking a decision in that regard.

11. The question whether a person, who was leased out certain land by the Panchayat is or is not to be treated or considered as having become a tenant under the State Government, when the land is such which has vested in it under the Act, the same by virtue of Section 4 is required to be decided by the Collector, after calling from the Panchayats in his district record of the lease, contract or agreement. Such a decision is to be arrived at after affording an opportunity to the party concerned and making an enquiry as the Collector may deem fit. This decision of the Collector is appealable to the State Government. By virtue of the Rules, in making enquiry the Collector is enjoined upon to follow the procedure as is applicable to a Revenue Officer under the H. P. Land Revenue Act. Therefore, there is no manner of doubt that such a declaration cannot be granted by a Civil Court that with respect to land which earlier vested in the Panchayat under the Punjab Village Common Lands (Regulation) Act, 1961, for which lease was granted by it, the lessee has become chakotadar or a tenant under the State Government on the land vesting in the State under the Act. Such a decision has to be taken by the Collector. Consequently, there is no manner of doubt that Civil Court has no jurisdiction to entertain and decide the suit with respect to the

declaration prayed for by the plaintiffs in the instant suits. Question of law thus posed deserved to be answered in affirmative.

12. On the admitted possession of the plaintiffs over the suit land, undoubtedly civil Courts, in view of the decision in Dalip Singh's case 1992 (1) Sim LC 320 (supra) will be entitled to grant a decree for prohibitory injunction restraining the State that their possession be not interfered with otherwise than in due course of law.

13. Resultantly the appeals are allowed in part. Judgment and decree passed by the Courts below are modified and substituted by granting a decree in favour of the plaintiffs for prohibitory injunction restraining the State of Himachal Pradesh from dispossessing the plaintiffs or interfering with their possession over the suit land otherwise than in due course of law. The remaining suit shall stand dismissed. It is also made clear that it shall be open for the Collector to initiate appropriate proceedings, as contemplated under Section 4 of the Act and the Rules framed thereunder and pass suitable orders, in accordance with law. The parties are left to bear their own costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com