REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.3375-3376 OF 2005

Ramgarh Farms and Industries Ltd. .....Appellant(s)

versus

State of Uttar Pradesh and others ..Respondent(s)

JUDGMENT

M. Y. EQBAL, J.

These appeals by special leave are directed against the judgment and order dated 12th December, 2003 of the Allahabad High Court whereby Division Bench of the High Court allowed the special appeals preferred by the State of Uttar Pradesh and set aside order dated 17.2.2000 passed by the learned Single Judge in Civil Miscellaneous Writ Peitition, who directed the authorities to correct the revenue record, pay compensation and deliver the possession of the disputed land to the appellant.

2. The factual matrix of the case is that the name of the appellant was recorded as Bhumidar of various lands in Nagina Tehsil. In the proceedings initiated under the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (for short 'Act of 1960'), the appellant was served with a notice under Section 10 and the Prescribed Authority declared an area of 5446 acres to be surplus land vide order dated 31.05.1962 and the appellant was held to be entitled to certain amount of compensation. However, later on in 1976, on the application moved by the Collector, Bijnor, the order dated 31.05.1962 was reviewed and set aside by the Prescribed Authority and the appellant was held to be not entitled to any compensation as the appellant was not the Bhumidar and the notice issued to it under Section 10 was erroneous. The appeal filed by the aggrieved appellant was dismissed by the District Court as not maintainable.

3. The appellant, thereafter, moved the High Court by way of writ petition praying therein for issuance of appropriate writ for quashing the orders of the Prescribed Authority as also

that of District Court. Learned Single Judge of the High Court allowed writ petition of the appellant with costs holding that the order passed by the Prescribed Authority on 31.5.1962 had become final and it was no longer open to the said Authority to determine as to whether the appellant was a tenure holder or not. The appeal by special leave (being Civil Appeal No.3047 of 1983) preferred by the State Government before the Supreme Court was dismissed vide order dated 15.1.1996 for non-prosecution.

4. Meanwhile, the Ceiling Act was amended and the permissible extent of land to be held was reduced to 18 acres. Notice dated 7.10.1976 was issued to the appellant and vide order dated 29.11.1976, the Prescribed Authority declared 1067.53 acres of land of the appellant in two villages to be excess and this order was not challenged by the appellant. Notification dated 16.2.1966 was issued under Section 4 of the Indian Forest Act whereby lands of the appellant in other villages were proposed to be declared as reserved forest and vide notification dated 27.7.1970 under Section 20 of the

Forest Act, such lands were declared as reserved forest area. These notifications were also not challenged by the appellant.

5. After the Apex Court dismissed the appeal preferred by the State Government, the appellant approached the authorities for correction of the revenue record and payment of compensation in accordance with order dated 31.05.1962. However, as the request was not heeded to, the appellant filed a writ petition for complying with the High Court judgment dated 05.07.1982 and paying compensation of Rs.4,19,484/- with interest from 1962 onwards, for returning possession of the land and for correcting the revenue entries in favour of the appellant in compliance with the orders passed in 1962. Learned Single Judge of the High Court, vide judgment dated 17.2.2000, directed the authorities to correct the revenue record, pay compensation and hand over the possession of the property.

6. Aggrieved by the judgment of the learned Single Judge of the High Court, the State Government preferred an appeal through the Collector who was the Prescribed Authority and

another appeal through the Chief Conservator of Forest. The appellant contested the appeals on the ground that the order dated 29.11.1976 was based on the order dated 30.07.1976 which was set aside by the High Court vide order dated 05.07.1982 and hence order dated 29.11.1976 was not required to be challenged separately. The notice dated 07.10.1976 preceding the order dated 29.11.1976 was also alleged to have been sent to Nagina Tehsil and not at the registered office of the appellant. It was also contended that the Notifications under Section 4 and Section 20 of the Forest Act were a nullity as the statutory procedure was not complied with and as the land was declared to be a holding of the company vide order dated 31.05.1962 and such lands were not permitted to be declared as part of a reserved forest in view of Section 3 of the Forest Act. The Forest Department was alleged to be bound by the order dated 31.05.1962 as it was part of the State of U.P. and had no separate identity and the maintainability of the appeal filed by it was challenged on the said ground. It was argued that the Notifications under

Sections 4 and 20 could not have been produced before the court for the first time.

7. The Division Bench of the High Court, allowing the appeals preferred by the State, held that order dated 29.11.1976 was an independent order made in pursuance of notice dated 07.10.1976 re-determining the surplus area after the Ceiling Act was amended in 1973 and 1976 and not an order made as a consequence to or to give effect to the order dated 30.07.1976. The High Court held that as order dated 29.11.1976 was not challenged, the same had to be given effect to and considered while making any correction in the revenue record, even if it was made without valid service of notice. The High Court further held that the Forest Department was a part of the State Government and bound by orders passed in relation to other State Departments. It was further held that the Court had the power to permit the production of additional evidence in appeal and held that such power had to be exercised herein for doing complete justice between the parties as the Forest Department was not a party

to the writ petition and hence could not bring the proceedings under the Forest Act to the notice of the Court and as the Notifications under the Forest Act were required to be taken on record as they had attained finality.

8. The contention that the Notification under Section 4 could not have been issued in relation to a holding was rejected by the High Court on the ground that the same would render the purpose of inviting objections under Section 6 and holding enquiry under Section 7 unnecessary. Having not made any objection under Section 6 of the Forest Act, the rights of the appellant were held to have been extinguished under Section 9. The Notifications under Sections 4 and 20 were also held liable to be given effect to as a decree of the civil court as the same had not been challenged by the appellant despite being aware of the same. The appellant had mentioned the notifications in the memorandum of writ petition (being W.P. No.23625/2000) wherein the appellant had sought relief based on a purported assurance by the Forest Settlement Officer to issue corrigendum for excluding the land from the

category of reserved forest area. However, this writ petition was noted to have been dismissed as being premature vide judgment dated 25.05.2000. Aggrieved by the impugned decision of the High Court, the Company has preferred present appeals by special leave.

9. Mr. Rakesh Dwivedi, learned senior counsel appearing for the appellant submitted that the impugned order passed by the High Court is contrary to the settled principles of law. While elaborating the case of the appellant, learned counsel submitted that once the order dated 31.5.1962 passed by the Prescribed Authority had become final and binding between the parties, every order running contrary to the said order would have lost its force. According to the learned counsel, the order dated 29.11.1976 and Notification dated 27.7.1970 issued under the Indian Forest Act automatically lost its force in the light of the judgment rendered by the High Court on 5.7.1982. Learned counsel further contended that the High Court has failed to consider that the order dated 30.7.1976 passed in review petition by the Prescribed Authority has been

set aside by the High Court and the Civil Appeal was dismissed. Learned counsel further contended that the High Court in its earlier order dated 5.7.1982 has categorically held that the rights of the appellant have been finally determined by the order of the Prescribed Authority dated 31.5.1962. There cannot be any dispute that the order dated 31.5.1962 attained its finality after the challenge of the order by the State attained finality up to this Court.

10. Mr. Dwivedi, learned senior counsel assailing the procedure adopted in the ceiling proceedings, submitted that the order passed by the Authority without affording reasonable opportunity of hearing is null and void and cannot be sustained in law. The declaration issued under the Indian Forest Act declaring the land as forest is also wholly without jurisdiction.

11. Mr. P.N. Misra, learned senior counsel appearing for the respondent, on the other hand submitted that as a matter of fact out of the land which already stood vested in the State pursuant to U.P. Zamidari Abolition and Land Reforms Act,

1950 (for short, “Act of 1950”), a portion measuring 8874 bighas was transferred to the appellant on the basis of lease deed dated 25.1.1951. Learned counsel submitted that no scrutiny or examination was done by the Tehsildar, Nagina before passing the order dated 28.4.1954 whereby the name of the appellant was entered in the khatauni.

12. Learned counsel further submitted that the Prescribed Authority vide order dated 31.5.1962 declared 5466 acres of land as surplus land under the ceiling proceedings. The said order dated 31.5.1962 was passed by the Authority without adjudicating as to whether the appellant is a tenure holder in terms of the lease deed. Learned counsel submitted that the ex-zamindar after the vesting of the entire land received compensation for nine villages and bonds to that effect were also dispatched to the said landlord.

13. Justifying the correctness of the proceeding and the Notification under the Indian Forest Act, learned counsel submitted that the said order and notification declaring the land in question as forest land were never challenged by the

appellant. On the contrary, the respondent-State filed application seeking review of the order dated 31.5.1962 on the ground that the appellant was never the tenure holder and Bhumidar of the land declared surplus.

14. Much stress has been given by the learned counsel for the appellant on the notice dated 8.01.1961 issued under Section 10(2) of the U.P. Act and the order dated 31.05.1962 whereby the prescribed authority treated the appellant as a tenure holder. We do not find any force in the submission of the learned counsel. Indisputably, the appellant came in possession of the land by virtue of the lease dated 25.01.1951 executed by Raja Harishchandra Singh which came into effect from 01.07.1951. By the said lease deed about 8874 bighas of land was transferred by way of permanent lease. The relevant portion of the lease deed is extracted hereinbelow:-

> "...In consideration of the rent hereinafter reserved and on the covenants, stipulations and conditions hereinafter contained and on the part of lease paid, observed and performed, the lessor doth hereby demise with the lessee the said lands hereinafter particularly described in the Schedule hereinafter written ---- with all surface rights, easements and appurtenances whatsoever belonging or in anyway

> appurteneancing thereto as and by way of a permanent lease to hold the said land as hereditary tenants as meant under Uttar Pradesh tenancy Act (Act XVII of 1939) subject to such conditions (Ramgarh Farm & Industries Ltd. Badri Narain Singh, Director, Ramgarh Farm & Industries Ltd., Sindh Nath Singh, Director for Ramgarh Farm & Industries Ltd, Ram Narqain Singh & Co., B.N. Singh, Managing agents Hari Chandra Raj Singh) [page 4] conditions, restrictions and limitations as imposed uinder these present yielding and paying therefore, the rent hereinafter specified provided however that this lease deed shall be deemed to have commenced on and from the 1st day of fasli year 1358 corresponding to the 1st day of July, 1951…"
>
> *(Emphasis given)*

15. It will not be out of place to mention here that before the lease was executed in 1951, the Act of 1950 was enacted and the said Act came into effect from 24.01.1951 putting a restriction on the transfer of land and, further all transfers made after 01.07.1948 were held not to be recognised. Hence, neither the lease deed nor any authority would have recognised the appellant as a tenure holder. Moreover, the lease of the land was granted to the appellant on payment of rent and on the terms and conditions contained in the said lease deed.

16. Be that as it may, admittedly, the appellant was permitted to retain 428 bighas of land spread in three villages while determining the surplus land under Section 12 of the Act. It is also not in dispute that Act of 1960 was amended with effect from 08.06.1973 whereby the ceiling area of the land was reduced from 40 acres to 18.03 acres. As a result, a fresh ceiling proceeding was initiated under the amended Act.

17. Taking into consideration the entire facts of the case and the sequence of events the High Court came to the conclusion that the appellant is entitled to 18.03 acres of land in terms of the order dated 29.11.1976 passed in the ceiling proceeding redetermining the surplus area held by the Company after amendment came into effect in the Act.

18. We have given our anxious consideration to the matter and in our view once it is held that the appellant came in possession of the land from the ex-landlord on the basis of lease treating the appellant as a tenant, the appellant cannot be held to be a tenure holder. Hence, without going into other questions it can safely be concluded that in any circumstance

the appellant would be entitled to retain the land to the extent of 18 acres which is the ceiling limit. Hence, the prescribed authority is under an obligation to give an opportunity to the appellant to exercise its option as to which land it opts to retain to the extent of 18 acres and not more than that.

19. For the reason aforesaid, we do not find any reason to interfere with the impugned order passed by the High Court. The appeals are, therefore, dismissed with the observation and direction made hereinabove.

.....J.
(M.Y. Eqbal)

.....J.
(Amitava Roy)

New Delhi
April 21, 2015

ITEM NO.1A COURT NO.9 SECTION XI
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3375-3376/2005

RAMGARH FARMS & IND. LTD. Appellant(s)

VERSUS

STATE OF U.P. & ORS. Respondent(s)

Date : 21/04/2015 These appeals were called on for pronouncement of judgment today.

For Appellant(s)
Ms. Ruby Singh Ahuja,Adv.

For Respondent(s)
Mr. Anil Kumar Jha,Adv.

Mr. Vinay Garg,Adv.

Mr. Abhishek Chaudhary,Adv.

Hon'ble Mr. Justice M.Y. Eqbal pronounced the judgment of the Bench comprising of His Lordship and Hon'ble Mr. Justice Amitava Roy.

These appeals are dismissed in terms of the signed reportable judgment.

[INDU POKHRIYAL] COURT MASTER

[SUKHBIR PAUL KAUR] A.R.-CUM-P.S.

(Signed reportable judgment is placed on the file)