

CASE NO.:
Appeal (civil) 2462-2463 of 2002

PETITIONER:
RAJESHWAR DAYAL & ORS.

Vs.

RESPONDENT:
AVNEESH KUMAR AVASTHI & ORS.

DATE OF JUDGMENT: 04/04/2002

BENCH:
D.P. Mohapatra & Brijesh Kumar

JUDGMENT:

D.P. MOHAPATRA, J.

Leave granted.

These appeals filed by heirs and legal representatives of the erstwhile lessee are directed against the judgment dated 9.9.1999 of the High Court of Judicature at Allahabad dismissing the second appeal nos. 425/1960 and 1649/1962. The dispute raised in both the appeals relates to the property under old plot No.5199 which corresponds to new plot no.4635-A with an area of 1 bigha 2 biswas situate in the city of Meerut which forms a part of the estate of a charitable trust, the Lala Nanak Chand Trust. Bateshwar Dayal was one of the trustees of the said trust. A registered lease deed was executed by the trust in his favour for a period of 30 years w.e.f. 1.6.1926 on annual rental of Rupees12 and 8 annas. After expiry of the period of lease on 1.7.1956 the trust instituted the suit, Original Suit No.690 of 1956, against Bateswar Dayal and others seeking recovery of possession of the property. The trial court dismissed the suit. The trust filed an appeal, Civil Appeal No.914 of 1958, which was allowed and the suit for eviction was decreed. The lower appellate court while decreeing the suit observed that if the defendants so like they may file a suit for specific performance of contract to enforce the renewal clause of the registered agreement between the trust and the defendants. Taking clue from the observation of the lower appellate court the appellants who are the heirs and legal representatives of Bateshwar Dayal who died on 6.3.1958, instituted a suit, O.S.No.34/60 for specific performance of contract. The trust contested the suit. The trial court dismissed the suit vide the judgment dated 30.10.1961. The appeal filed by the plaintiff was also dismissed.

Two second appeals were filed in the High Court challenging the judgments of the first appellate courts in the two suits. Second appeal No.425/60 arose from Original Suit No.690/56; the second appeal no.1649/62 arose out of original suit No.34/60. In second appeal

No.425/60 the High Court formulated the following substantial questions of law for decision :

"1. If the Civil Court has jurisdiction to try the suit

2. If the plaintiffs got a decree for eviction in view of renewable clause in the agreement ?"

In second appeal No.1649 of 1962 a substantial question of law settled for decision was :

"If the time consumed in pursuing the suit No.690 of 1956 and Civil Appeal No.914 of 1958 should be given in aid to the time of limitation for filing a suit for specific performance of contract in the present case ?."

During pendency of second appeal No.425 of 1960 the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act (UP Act No.IX of 1957) (hereinafter referred to as 'the Act') came into force in the city of Meerut. The land in dispute was declared as agricultural area and a notification under Section 8 of the Act was issued by the Government of Uttar Pradesh. The trust filed an appeal in the High Court praying for quashing of the notification issued under section 8 of the Act. The appellants in the second appeal which was pending before the High Court filed application for abating the appeals since the area was declared agricultural area under section 8 of the Act. The High Court allowed the application and the suits and the appeals arising therefrom were abated. Against the order of abatement the trust filed special leave petition before this Court which gave rise to civil appeal Nos.1402/69 and 1403/69 (wrongly stated as 1492 and 1493) and also a writ petition bearing No.185/69 (wrongly stated as 105/69) for quashing the Government Notification dated 16.6.1964 under Section 8 of the Act. A Constitution Bench of this Court by the judgment reported in 1973 (2) SCC 238 (S.P.Watel & Ors. vs.State of U.P.) allowed the writ petition and quashed the Notification dated 16.7.1964 under Section 8 of the Act in respect of the lease in dispute and issued certain directions to the State Government. The operative portion of the judgment reads as follow:

"In the result, we allow the writ petition and quash the Government notification under Section 8 of the Act, dated June 16, 1964, with respect to the land in dispute. We direct the Government to proceed afresh with respect to the land in dispute in accordance with Sections 3,4,5 and 6 of the Act. If it is found in the course of enquiry under Sections 3,4 and 5 that the land in dispute was an "agricultural area" and was being used for agriculture or horticulture on the relevant date, it will be open to the Government to issue a notification with respect to it under Section 8 if, on the other hand, it is found in that enquiry that it was not an "agricultural area" on the said date, no

notification under Section 8 should be issued with respect to it. The appeals are also allowed. The orders of the High Court abating the appeals and the suits are set aside. The High Court will restore the appeals and the suits to their original numbers. The appeals will be decided on merits when the appropriate authority under Section 5 of the Act has held that the land in dispute is not an "agricultural area". If it is held by him that the land in dispute is an "agricultural area" and the State Government issues a notification under Section 8 of the Act with respect to the land, the appeals will be disposed of in accordance with the provisions of the Act. In the circumstances of this case parties shall bear their own costs."

From the impugned judgment it appears that the learned single Judge dealing with the contentions raised on behalf of the appellants that the civil court has no jurisdiction to deal with the matter took note of the decision of the Constitution Bench and held :

"Since 28th March, 1973 upto now admitted to both parties, the State of U.P. has not issued a fresh notification under section 8 of the U.P. Urban Zamindari Abolition & Land Reforms Act. The Hon'ble Supreme Court has taken note of the affidavit of Trust that the suit land is kothi land and it is not agricultural land. Under the circumstances there remains no material at all to hold that the suit land is land under the definition of Section 3(b) of the U.P. Tenancy Act. The lower appellate Court has, of course, observed that the suit land is a grove land but after the judgment of the Hon'ble Supreme Court there remains no point for argument to the appellants that the Civil Court has no jurisdiction to try the suit."

Dealing with the question of enforcement of the renewal clause of the contract the learned Judge held that appellate court was right in holding that in the context of the case remedy, if any, available to the plaintiff was to file a suit for specific performance of the renewal clause of the contract. The learned single Judge upheld the decision of the Court below decreeing the suit filed by the trust for recovery of possession of the property.

Dealing with the suit filed by the appellants herein for specific performance of the renewal clause of the contract of lease the learned single Judge held that they are not entitled to take the help of section 14 of the Limitation Act. They cannot be accepted to be bona fide pursuing the remedy in a court of law for enforcing the renewal clause. Therefore, the time consumed in defending the eviction suit filed by the trust could not be availed by them under the provisions of section 14 of the

Limitation Act. The learned single Judge further observed that the period of limitation for instituting a suit for specific performance of contract will run from the date on which cause of action for such suit arose. So computed the suit filed by the appellants was clearly barred by limitation and was rightly dismissed as time barred. The learned single Judge also observed that undisputedly the 30 years term for which the claim of renewal was made by the appellants had expired in 1986 and thus the appellants had enjoyed the extended period of lease despite refusal of extension by the landlord. On the above findings the learned Judge dismissed the second appeal vide judgment dated 9.9.1999. These appeals by special leave are directed against the said judgment.

During pendency of these appeals, this Court in the order dated 6.11.2000 referring to the directions issued in the judgment of the Constitution Bench had observed :

"It is unfortunate that after 1978 nothing concrete was done in this matter for several years but the aforesaid directions were binding on the High Court. The aforesaid enquiry as directed by this Court is not yet completed but the High Court has now disposed of the Second Appeals on merits, without waiting for the result of the inquiry. In these appeals the question is whether the property is 'agricultural land' and that question is still pending inquiry, as directed by this Court earlier. It appears that the said inquiry is in progress and the Commissioner, Meerut Division is proceeding to complete the inquiry. We direct that the inquiry into the demarcation under sub-section (2) & (3) of Section 4 and Rule 30 of the U.P. Urban Zamindari Abolition and Land Reforms Act, 1956 shall be completed within three months from the date of the receipt of this order and the Commissioner shall submit a report to this Court by sending it to the Registrar (General) of this Court. As and when the report is received, the copies of the same will be furnished to the parties and the matter will be listed for further orders."

Thereafter the Commissioner Meerut Division passed an order under Section 52 on 1.5.2001. The appeal filed against the said order under sub-section (3) of section (5) of the Act, appeal No.93-Z(M)/2001 titled Rajeshwar Dayal & others vs. State of U.P. & Ors. was decided by the Board of Revenue, U.P. vide order dated 19.11.2001.

From the order dated 1.5.2001 of the Commissioner, Meerut Division it appears that the authority has discussed in great detail the different steps taken for verification of the revenue records in respect of the land in dispute over a span of four decades; the spot visits made by the demarcation officer and his report containing the

observations regarding the prevailing state of things on the land; the contentions raised by both sides and the position of law with reference to the relevant provisions of the Act. The ultimate findings recorded by the Commissioner are quoted hereunder:

"I have heard the contentions of the learned Advocates and perused the available evidence on record. From the comments of demarcation officer of the year 76 and 2000, it is clear that disputed land is not being used as agricultural land. Revenue Records which are produced by Sri Rajeshwar Dayal, they are of the year late than 1956 when the decision is to be taken for the year 1956 whether the disputed land was used for agriculture purposes. From the comments of Demarcation officer it is clear that on the appointed date, disputed land was not used for agricultural purpose but was land appurtenant to the house built in abadi which was given by Nanak Chand Trust for fixed period on Patta to Pt. Bateshwar Dayal. Evidence available on record on the basis of comments of Demarcation Officer it is clear that on the appointed date disputed land was not being used for agricultural purpose. On the appointed date the aforesaid land is not agricultural land. Accordingly, objections are disposed of and there is no requirement of (Simankan) Demarcation."

In the appeal filed by Rajeshwar Dayal and others against the order of the Commissioner Meerut Division App. No.93(Z)M 2000-2001 the Member, Board of Revenue, dismissing the appeal, by his order dated 19.11.2001 made the following observations :

".The main dispute in this case is that whether the disputed land is being used by Pt. Bateshwar Dayal Sharma and his legal heirs for the purpose of agriculture or plantation or not. For determination of this fact, on perusal of the evidence adduced on the record of file, it is clear that in the Reports dated 05.04.1976 and 13.11.2000 of Demarcation Officer, in this regard, it is clearly mentioned that the disputed land is not being used for agricultural purpose. In this respect, I am fully in agreement with the view of Commissioner, Meerut Division, Meerut that the assessment of the disputed land is to be determined on the basis of prescribed year 1956 and the evidence adduced on the record by Rajeshwar Dayal & Ors. is related to after the year 1956. In such

circumstances, I am fully in agreement with the conclusion of the Commissioner, Meerut Division and I uphold the order dated 1.5.2001 passed by him and do not consider any need of interference of any kind. The present appeal being devoid of any substance, is liable to be dismissed.

In view of the above discussion, this appeal is dismissed. Order dated 1.5.2001 passed by the Commissioner, Meerut Division, Meerut is confirmed."

From the discussions in the foregoing paragraphs the position that emerges is that the revenue authorities i.e. Commissioner, Meerut Division and the Member, Board of Revenue, have in compliance with the directions issued in the Judgment of the Constitution Bench in S.P. Watel case (supra) have determined the question whether the land in dispute was 'agricultural land' on the relevant date. They have concurrently held that the land was not being used as agricultural land on the relevant date. In view of such concurrent findings the question of Government issuing a notification under Section 8 of the Act abolishing the intermediary interest held by the trust in the property does not arise. The consequential position that follows is that the appellants who are in unauthorized occupation of the land since the expiry of the period of the lease have no valid reason to resist the claim of the trust for recovery of possession of the property. Therefore the judgment of the High Court dismissing the second appeals filed by the appellant herein is unassailable.

In the result these appeals being devoid of merit are dismissed with costs. Hearing fee is assessed at Rs.20,000/-.

.J.
(D.P. MOHAPATRA)

.J.
(BRIJESH KUMAR)

April 4, 2002