

PETITIONER:
RAM ADHAR SINGH

Vs.

RESPONDENT:
RAMROOP SINGH & ORS.

DATE OF JUDGMENT:
26/10/1967

BENCH:
VAIDYIALINGAM, C.A.
BENCH:
VAIDYIALINGAM, C.A.
HIDAYATULLAH, M.
BHARGAVA, VISHISHTHA

CITATION:
1968 AIR 714 1968 SCR (2) 95
CITATOR INFO :
D 1973 SC2451 (4)
F 1975 SC1499 (1)
RF 1976 SC 443 (9)
R 1978 SC1398 (6)
RF 1980 SC2051 (2)
R 1981 SC1450 (11)
RF 1991 SC 249 (10)

ACT:
Uttar Pradesh Consolidation of Holdings Act, 1953 (U.P. Act 5 of 1954), s. 5 as amended by U.P. Act 21 of 1966-Suits and proceedings in respect of rights or interest in land pending before authorities or courts to abate in areas declared to be under consolidation operations-Amended section not specifically mentioning suits for possession-Appeal in suit for possession under s. 209 U.P. Zamindari and Land Reforms Act, abates under aforesaid s. 5-Amendment whether ultra vires the State abates under aforesaid s. 5-Amendment whether ultra vires the State Legislature as affecting jurisdiction of Supreme Court.

HEADNOTE:

A suit for recovery of possession of land under s. 209 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 was filed against the appellant. It was decreed by the trial court and the decree was affirmed by the first appellate court as well as by the High Court in second appeal. Special leave to appeal to this Court was granted to the appellant under Art. 136 of the Constitution. Thereafter the State Government issued a notification under s. 4 of the U.P. Consolidation of Holdings Act, 1953 bringing the area in which the suit lands were situate, under consolidation operations. The appellant filed an application praying for an order that in view of s. 5 of the Consolidation of Holdings Act as amended by Act 21 of 1966 the appeal stood abated. On behalf of the respondent it was however urged : (i) that suits for recovery of possession of lands did not come within the purview of s. 5 as amended and hence no question of abatement arose; (ii) that if the amended section applied to the present proceedings the legislation being one by the State Legislature, was ultra vires inasmuch

as it took away the jurisdiction of the Supreme Court to deal with the appeal.

HELD : (i) Suits for possession as such, have not been expressly referred to in the new s. 5; but the expression 'every suit and proceeding in respect of declaration of rights or interest in any land. . . .' is comprehensive enough to take in suits for possession of land, because, before a claim for possession is accepted, the court will have, necessarily, to adjudicate upon the right or interest of the plaintiff, in respect of the -disputed property, taking into account the claim of the Opposite party. The various provisions contained in the Act also clearly indicate that disputes of the nature which existed between the parties in the present litigation, are now well within the- jurisdiction of the authorities constituted under the Act, to adjudicate upon. [100E-G]

The suit filed by the respondent was therefore covered by s. 5 of the Consolidation of Holdings Act.

(ii) :Section 5 does not affect the jurisdiction of the Supreme Court and is not ultra vires. What the State Legislature has done is only to make provision in respect of matters within its jurisdiction and declare that a suit, instituted' in a court, within its area has abated. The Position, ultimately is that this Court takes note of a subsequent event, viz., the passing of the Amending Act, and the amendment of s. 5 thereby by the State Legislature, and on that basis it holds that the suit, out of which these proceedings arise, stands abated. [102D-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Miscellaneous Petition, No. 2631 of J967 (Application for abatement of Appeal).

Civil Appeal No. 691 of 1966.

Appeal by special leave from the judgment and order dated April 20, 1965 of the Allahabad High Court in Second Appeal No. 1602 of 1963.

E. C. Agrawala and P. C. Agrawala, for the petitioners appellant.

S. V. Gupte and B. Datta, for respondent No. 1.

The Judgment of the Court was delivered by Vaidialingam, J. In Civil Appeal No. 691 of 1966, the appellant, by special leave, granted by this Court, challenges the judgment and decree,, of the Allahabad High Court, dated April 20, 1965, in Second Appeal No. 1602 of 1963. In Civil Miscellaneous Petition No. 2631 of 1967, the appellant has prayed this Court, to pass an order that Civil Appeal No. 691 of 1966 has abated, in view of the amended s. 5, of the Uttar Pradesh Consolidation of Holdings Act, 1953 (,U.P. Act 5 of 1954) (hereinafter referred to as the Act).

The appellant was the defendant, in a suit instituted by the respondents, under s. 209, of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act 1 of 1950) (hereinafter referred to as the Abolition Act). The plaintiff, claiming to be a bhumindar of the land, in question, instituted the suit, out of which the second appeal arose, against the appellant, for recovery of possession of the property, on the ground that the appellant was a trespasser and that he was not entitled to remain, in possession of the property. The trial Court, as well as the Appellate Court, have held that the plaintiff was the bhumidar, and the appellant has not established his tenancy

right in the property, and, as such, he was neither a sardar nor an asami. On the other hand, the findings are that the appellant is only a trespasser. On these findings, the plaintiff's suit was decreed. The appellant, thereupon, challenged the decision of the two subordinate courts. In second appeal, before the High Court of Allahabad. The High Court has agreed with the conclusions, arrived at by the Subordinate courts, and dismissed the second appeal. This Court, on June 15, 1965, granted special leave to the appellant, to appeal against the judgment of the High Court. According to the appellant, after the grant of special leave, by this Court, the State of Uttar Pradesh has published in the State Gazette, a notification, dated October 22, 1965, under s. 4, of the Act. The effect of that notification is that the plots, in

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dispute between the parties in this litigation, and which are situated in the village of Pureon, Pargana Bayalsi, in the District of Jaunpur, have been brought under the consolidation operation by virtue of the Act. Section 5 of the Act, as it stood prior to its amendment in 1966, was as follows:

"5. Effect of declaration.-Upon the publication of the notification under section 4 in the Official Gazette, the consequences, as hereinafter set forth, shall, subject to the provisions of this Act, from the date specified thereunder till the publication of notification under Section 52 or sub-section (1) of Section 6, as the case may be, ensue in the area to which the declaration relates, namely :

(a) the district or part thereof, as the case, may be, shall be deemed to be under consolidation operations and the duty of maintaining the record-of-rights and preparing the village map, the field book and the annual register of each village shall be performed by the District Deputy Director of Consolidation, who shall maintain or prepare them, as the case may be, in the manner prescribed:

(b) (i) all proceedings for correction of the records and all suits for declaration of rights and interests over land, or for possession of land, or for partition, pending before any authority or court, whether of first instance, appeal, or reference or revision, shall stand stayed, but without prejudice to the right or interests in dispute in the said proceedings or suits before the consolidation authorities under and in accordance with the provisions of this Act and the rules made thereunder;

(ii) the findings of consolidation authorities in proceedings under this Act in respect of such right or interest in the land, shall be acceptable to the authority or Court before whom the proceeding or suit was pending which may, on communication thereof by the parties concerned, proceed with the proceedings or suit, as the case may be;

(c) notwithstanding anything contained in the U.P. Zamindari Abolition and Land Reforms Act, 1950, notenture-holder, except with the permission in writing of the Settlement

Officer, Consolidation, previously obtained shall-

(i) use his holding or any part thereof for purposes not connected with agriculture, horticulture or

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animal husbandry including pisciculture and poultry farming; or

(ii) transfer by way of sale, gift or exchange any part of his holding in the consolidation area :

Provided that a tenure-holder may continue to use his holding or any part thereof, for any purpose for which it was in use prior to the date specified in the notification issued under section 4."

It is further stated that s. 5 has been amended, by Uttar Pradesh Act XXI of 1966. The material provisions of the Amendment Act, amending s. 5, are as follows :

"It is hereby enacted in the Seventeenth year of the Republic of India as follows

1. Short title....

2. Amendment of Sec. 5 of U.P. Act No. V of 1954. The existing Section 5 of the Uttar Pradesh Consolidation of Holdings Act, 1953 (hereinafter called the Principal Act) shall be renumbered as sub-section (1) thereof, and (i) clause (b) of Sub-section (1) as so renumbered, shall be omitted; and (ii) after Sub-section (1) as so renumbered, the following new Sub-section shall be added, viz :

"(2) Upon the said publication of the notification, under sub-section (2) of Section 4, the following further consequences shall ensue in the area to which the notification relates, namely :-

(a) every proceeding for the correction of records every suit and proceeding in respect of declaration or rights or interest in any land lying in the area, of for declaration or adjudication of any other right in regard to which proceedings can or ought to be taken under this Act, pending before any Court or authority whether of the first instance or of appeal, reference or revision, shall, on an order being passed in that behalf by the court or authority before whom such suit or proceeding is pending, stand abated.

Provided that no such order shall be passed without giving to the parties notice by post or in any other manner and after giving them an opportunity of being heard

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Provided further that on the issue of a notification under sub-section (1) of Section 6 in respect of the said area or part thereof, every such order in relation to the land lying in such area or part as the case may be, shall stand vacated.

(b) Such abatement shall be without prejudice to the rights of the persons affected to agitate the right or interest in dispute in the said suits or proceedings before the appropriate consolidation

authorities under and in accordance with the provisions of this Act and the rules made thereunder.

Based upon the amended provisions of s. 5 of the Act, the appellant has filed C.M P. 2631 of 1967, to pass an order that Civil Appeal No. 691 of 1966 stands abated, inasmuch as the rights of parties, with reference to their rights or interest in the property in dispute, will have to be agitated before the appropriate consolidation authorities, in accordance with the provisions of the Act.

Learned counsel for the appellant, Mr. Agrawala, has taken us through the various provisions of the Act and, according to him, the scheme of the Act clearly shows that the question, whether the respondent is a bhumidar and as to whether his client, the appellant, has got tenancy rights in the properties, are all matters now falling for adjudication, within the exclusive jurisdiction of the authorities constituted under the Act. Counsel also points out that while originally, under s. 5, as it stood before the amendment, the proceedings pending in Courts stood 'stayed, to await the adjudication by the authorities under the Act, the position has been now altered, by virtue of the amendment effected by the Amending Act XXI of 1966, the effect of which is to declare the proceedings pending before Courts, as abated. Counsel therefore urges that there is nothing further to be done, by this Court, in the appeal, excepting to pass an order that the appeal has abated.

Mr. S. V. Gupte, learned counsel, appearing for the respondent-plaintiff, has raised two contentions : (i) that suits, for recovery of possession of lands, from trespassers do not come within the purview of s. 5, as it now stands, after the 1966 amendment, and hence no question of abatement arises; (ii) if the amended section applies to these proceedings, the legislation being one by the State Legislature, is ultra vires inasmuch as it takes away the jurisdiction of the Supreme Court, to deal with the appeal.

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After a consideration of the contentions of both the learned counsel, we are satisfied that the stand taken, on behalf of the respondent, on both the points, cannot be accepted.

We have already extracted the provisions of S. 5 of the Act, as it originally stood, and as it now stands, after the amendment in 1966. No doubt, in cl. (b) (i) of s. 5, as it originally stood, suits for possession of land were also expressly dealt with. But, under the amended s. 5, there is no direct reference to 'suits for possession of land'. It is, on this difference in phraseology of the new section, that Mr. Gupte, learned counsel for the respondent, has urged that his client's suit, being one for recovery of possession, instituted under s. 209, of the Abolition Act, is not hit by the provisions of s. 5, as it now stands. Mr. Gupte points out that when, in the original s. 5, there was a specific reference to suits for possession of land, and which suits were to be stayed, there was a conscious departure, by the Legislature, when S. 5 was amended, by omitting suits for possession of land. If the intention of the legislature was, Mr. Gupte points out, that the various types of suits or proceedings which had to be stayed, under the old s. 5, have to be declared as abated, under the new s. 5, the Legislature could have referred to all the types of actions which had been dealt with, under the original section. No doubt this line of reasoning, on the face of it, may appear to be attractive; but we are not satisfied that there is any merit in that contention. 'Suits for possession', as such, has not been expressly referred to, in

the new section 5, but, in our opinion, the expression 'every suit and proceeding in respect of declaration of rights or interest in any land are comprehensive enough to take in suits for possession of land, because, before a claim for possession is accepted, the Court will have, necessarily, to adjudicate upon the right or interest of the plaintiff, in respect of the disputed property, taking into account the claim of the opposite party.., Therefore, in our opinion, the suit, instituted by the respondent,. is covered by the amended section 5 of the Act.

The various provisions, contained in the Act, also clearly indicate that disputes, of the nature which exists between the parties in the present litigation, are all now within the jurisdiction of the authorities, constituted under the Act, to adjudicate upon. The Act itself is one, to 'provide for the consolidation of agricultural holdings in Uttar Pradesh for the development of agriculture'. Section 3 defines the various expressions. 'Chak' means the parcel of land allotted to a tenure-holder, on consolidation. 'Consolidation' means re-arrangement of holdings in a suit, amongst several tenure-holders, in such a way as to make their respective holdings more compact. 'Tenure-holder' means a bhumidhar or sardar of the land concerned, and includes an asami. Section 4

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gives power to the State Government to make a declaration that a district or part thereof may be brought under consolidation operations. There is no controversy, that the notification, issued by the State Government, under this section, on October 22, 1965, takes in the area where the disputed lands are situated. We have already referred to the provisions, contained in the original as well as the amended section 5.

Sections 8 and 8A, deal with the preparation of records, and statements, by the Consolidation Officer, and s. 9 provides for the Assistant Consolidation Officer sending notices to tenure-holders concerned, and other persons interested, showing their interests in, and liabilities, in relation to, the land. Sub-s. (2) of s. 9 provides for a person, to whom a notice under sub-s. (1) has been sent, or any other person interested, to file objections within the time specified, therein, to the Assistant Consolidation Officer, disputing the correctness of the entries made in the records. One of the entries, we have already pointed out, relates to the 'rights in and liabilities in relation to the land'. There are provisions relating to the hearing of objections and the Assistant Consolidation Officer is deemed to be a Court of competent jurisdiction. Provisions have also been made for an aggrieved party to file an appeal, to the Settlement Officer, and s. 11 provides that the order of the Settlement Officer is final and that it cannot be questioned in any Court of law.

Section 11A provides that no question in respect of a claim to a land, shall be raised or heard at any subsequent stage of the consolidation proceedings, if they have not been raised earlier. Section 24- provides for the tenure-holder being entitled to enter into possession of the plots allotted to him. Section 28 also gives power to the Assistant Consolidation Officer, on the application of the tenure-holder, to be put in possession of the land, allotted to him. We have already referred to the fact that the expression 'tenure-holder' under s. 3(11), means a bhumidhar, or sirdar of the land concerned and includes also an asami. Section 40 provides that proceedings before the Consolidation authorities are to be deemed to be judicial

proceedings. Section 48 provides for the Director of Consolidation, exercising his powers of revision, regarding cases decided, or proceedings taken, by any subordinate authority. Section 49 excludes the jurisdiction of civil courts to entertain any suit or proceeding, with respect to rights in respect of lands, covered by the notification, under s. 4, or with respect to any other matters, for which a proceeding could, or ought to have been taken, under the Act.

We have referred only to some of the salient provisions of the Act; and they will clearly show that the subject matter of the dispute, between the parties in this litigation, are all matters

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falling for adjudication, within the purview of the authorities, constituted under the Act. In fact, cl. (b), of sub-s. (2) of s. 5 of the Act, as it now stands, also lays down that the abatement of the proceedings, under cl. (a), shall be without prejudice to the rights of persons affected, to agitate the right or interest in dispute in the said suits or proceedings, before the appropriate consolidation authorities under the Act and in accordance with the provisions of the Act and the rules made, thereunder.

Having due regard to the nature of this litigation, and the provisions of the Act, we are satisfied that the amended s. 5 of the Act applies to these proceedings. If that is so, an order has to be passed that the suit, out of which these proceedings arise, stands abated.

That takes us on to the second contention, of Mr. Gupte, viz., that the provisions of the amended section 5 are ultra vires, inasmuch as the State Legislature has enacted a provision which impinges upon the jurisdiction of this Court. The learned counsel has no doubt referred us, to the various entries in the Lists in the Seventh Schedule to the Constitution; but we are not satisfied that there is any merit either, in this contention. The State Legislature has not passed any legislation affecting the jurisdiction of this Court. On the other hand, what the State Legislature has done is only to make provision in respect of matters, within its jurisdiction and to declare that a suit, instituted in a Court, within its area, has abated. The position, ultimately, is that this Court takes note of a subsequent event, viz., the passing of the Amending Act, and the amendment of s. 5 thereby, by the State Legislature, and, on that basis, it holds that the suit, out of which these proceedings arise, stands abated. Therefore, there is no question of the Legislature of the State having passed any legislation affecting the jurisdiction of this Court.

The result is that C.M.P. 2631 of 1967 is allowed and it is declared that Civil Appeal No. 691 of 1966 has abated, under the amended s. 5 of the Act. The civil appeal is also disposed of, as having abated, for the reasons given by us, when dealing with the civil miscellaneous petition. Parties will bear their own costs in both the matters.

G.C. Petition allowed.

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