A

SUSHILA DEVI

*v.*

RAMANANDAN PRASAD & ORS.

*November* 26, 1975

B

[V. R. KRISHNA IYER AND A. C. GUPTA, JJ.]

*Kosi Area (Restoration of Lands to Raiyats) Act,* 1951, *ss.* 3, 7, 13 *and* 16—*Order passed for restoration on payment of 1st instalment of compensation—Applicant questioning correctness of order and filing application more than 5 years later for extension of time for payment in lumpsum—Maintainability—Final order, what is—Court's action not to prejudice parties—Scope of principle—Limitation Act,* 1963, *s.* 5, *applicability.*

C

Section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act, 1951, provides for the restoration to former raiyats by the Collector, on his own motion or otherwise, of lands which were sold for arrears of rent or from which they were ejected for arrears of rent or which were treated as abandoned between January 1, 1939 and December 31, 1950, due to floods in the Kosi river. Under s. 7, the Collector is to determine, after inquiring into any objections, the land liable to be restored to the raiyat, the amount payable by him for the restoration being the cost of improvement, if any, to whom that amount is payable, whether it should be paid in instalments, and the amount of each instalment. The instalments shall, however, be payable within a period not exceeding 5 years. Section 13 states that, subject to appeal, orders passed by the Collector are final, and s. 16 provides that the decision on appeal shall be final.

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The respondent applied for restoration of land which was sold in execution of a decree for arrears of rent. On February 17, 1958, an order for restoration was made in respect of a part of the area and compensation was directed to be paid to the appellant in three instalments. The order added that if the first instalment was not paid within the specified period, "the applicant would lose the benefit of the order of restoration". The respondent did not pay the first instalment within the time prescribed for its payment, but appealed to the Appellate Authority. The appeal was dismissed and the respondent filed a revision before the Commissioner (though the Act did not provide for a revision against the order of the Appellate Authority), and the Commissioner allowed the revision. The appellant filed a writ petition and the High Court quashed the Commissioner's order. A further appeal to the Supreme Court by the respondent was dismissed for non-prosecution. Thereafter, on October 15, 1965, the respondent applied for an order extending the time for payment fixed by the order of February 17, 1958, and for permission to deposit the entire amount then determined in one lumpsum. The respondent was allowed to do so. The appellant's appeal was allowed by the Appellate Authority. But, the High Court allowed the respondent's writ petition on the grounds, (1) that the first order of February 17, 1958 was not a final order and, therefore, time could be extended notwithstanding the expiry of the period fixed by the 1958 order for payment of the first instalment; (2) that the Court's action should not prejudice any party and, therefore, excluding the time taken for the various remedies pursued by the respondent, the application made on October 15, 1965 was within the period of 5 years from the original order; and (3) in any case, the delay could be and must be deemed to have been, condoned under s. 5, Limitation Act, 1963.

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Allowing the appeal to this Court,

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HELD : (1) The order of February 17, 1958, made it clear that on failure to pay the first instalment within the specified period, the benefit of the order would be lost. This is no doubt a conditional order; it is not, however, an interlocutory order, but is a final order. [850G]

A (2) The principle that the "Court's action should not prejudice any party" has no relevance in the context of the present case. The remedies pursued by the respondent were steps taken by him at his own risk and he cannot, as a matter of right, ask for excluding the time spent on those proceedings. [850H-851A]

(3)(a) Section 5, Limitation Act cannot be invoked in connection with the application of October 15, 1965, because, (i) the officer to whom the application was made was not a Court; and (ii) there is no time limit prescribed for B the application which could be extended under the section. [751-AB]

(b) The application is not for extension of time to pay the instalments, but for permission to pay in a lumpsum, and hence, is a fresh application. But, successive applications are not permitted under the Act, because, (i) the finality attached to the orders would become meaningless; (ii) there would be uncertainty and confusion; and (iii) that there should be finality in litigation and that a person should not be vexed twice for the same cause, are well-established C principles of general application. [851-D-E]

*Daryao & Ors.* v. *The State of U.P. & Ors.*, [1962] 1 S.C.R. 574 and *Burn & Co.* v. *Their Employees*, [1956] S.C.R. 781, referred to.

[Duty of officers to give effect to orders of appellate authorities pointed out.]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 857 of D 1968.

From the Judgment and Decree dated the 22nd December 1967 of the Patna High Court in Civil Writ Jurisdiction case No. 948 of 1966.

*F. S. Nariman, D. Goburdhan* for the appellant.

*P. K. Chatterjee, D. P. Mukherjee* for Respondent No. 1.

E For respondents 2-4 *Ex parte.*

The Judgment of the Court was delivered by

GUPTA, J. This appeal by certificate under Article 133(1)(a) of the Constitution granted by the Patna High Court arises out of a proceeding under section 3 of the Kosi Area (Restoration of Lands to Raiyats) Act, 1951 (hereinafter referred to as the Act). By the order F challenged in this appeal the High Court allowed a writ petition filed by the first respondent setting aside an appellate order under section 16 and restoring the original order passed on an application under section 3 of the Act. To appreciate the nature of the dispute between the parties, it would be more convenient to refer to the relevant provisions of the Act before we turn to the facts of the case.

G The Act was passed, as its long title and preamble show, to provide for "the restoration to former *raiyats* of certain lands which were sold for arrears of rent or from which they were ejected for arrears of rent or which were treated as abandoned, between the 1st day of January 1939, and the 31st day of December 1950, in the absence of the *raiyats* due to floods in the Kosi River." Section 3 of the Act is in these terms :

H "*Steps to be taken for restoration of land to raiyats.*—If the holding of a raiyat or portion thereof was sold in execution of a decree for arrears of rent or if a raiyat was ejected from a holding or portion thereof in execution of decree

passed under sub-section (2) of section 66 of the Bihar Tenancy Act, 1885, or if the holding of a raiyat or portion thereof was treated as abandoned under section 87 of the said Act at any time between the 1st day of January, 1939, and the 31st day of December 1950, and is in the possession of the landlord or any other person, the Collector may, if he thinks fit, of his own motion or otherwise, take steps for the restoration of such holding or portion thereof to the said raiyat."

"Collector" is defined in section 2(a) as the Collector of a district or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act. Section 4 requires the Collector to give notice of the proceeding under section 3 to the raiyat, the landlord, and all other persons interested in the holding or portion thereof forming the subject matter of the proceeding so as to enable them to file their objects if any. Clauses (a) and (b) of section 5(1) state the grounds on which objection may be raised to the restoration asked for. Section 5(1)(a) which is relevant for the present purpose reads as follows :

"5. *Objection to the restoration of holding and manner of disposal.*—(1) On the date fixed in the notice, the landlord or any other person may appear and object to the restoration of the holding or portion thereof on anyone or more of the following grounds, namely :—

(a) that he has constructed any building or other structure of a permanent nature or planted any garden on the holding or any portion thereof before the date of the commencement of this Act and that such building, structure or garden is of such a value that the restoration of the land covered by such building, structure or garden will be unfair; and"

Section 5(2) provides that if after inquiring into the objections the Collector finds that the building or structure constructed, or the garden laid on the land of which restoration is sought is of such value that the restoration will be unfair, the Collector shall drop the proceedings entirely where the building, structure or garden covers the entire area in question, and where only a part of the land is so covered, only partly, in so far as they relate to the site of such building, structure or garden. Section 7 lays down the procedure to be followed by the Collector if the proceedings are not dropped entirely. The Collector is to determine the land liable to be restored to the raiyat and the amount payable by him for the restoration specifying the person to whom the amount is payable; the amount to be determined is the cost of improvement, if any, effected on the land which the Collector may deem fair and acquittable. The Collector shall then ascertain whether the raiyat desires to deposit the amount in one lumpsum or in instalments; if the raiyat desires to pay the amount in instalments, the Collector will determine the number and amount of such instalments having regard to the means and circumstances of the raiyat. But the instalments shall be payable within a period not exceeding five years. As soon as

A possible after the entire amount or the amount of the first instalment, as the case may be, is deposited with the Collector, the Collector shall direct the raiyat to be put in possession of the land. Section 13 states that subject to appeal under section 16, orders passed by the Collector under the Act shall be final and bars the jurisdiction of civil courts to vary or set aside any order passed under this Act. Section 16 provides an appeal from every order passed under this Act, (a) when the order B was made by the Collector of a District, to the Commissioner, and (b) when the order was made by any officer other than the Collector of the District, to the Collector of the District or to any officer specially empowered by the State Government by a notification to hear such appeals. The section also provides that the decision of the Commissioner or the Collector of the District or any officer so empowered shall be final.

C

The facts of this case are as follows.

The land in dispute was sold on July 11, 1945 in execution of a decree for arrears of rent. The auction-purchaser, one Tilakdhari Lal, obtained delivery of possession and remained in possession for a little over two years before selling the land to the appellant Sushila Devi on December 1, 1948. On October 27, 1957 the first respondent applied D for restoration of the land under section 3 of the Act before the Circle Officer, Birpur, who was appointed by the Government to discharge the functions of a Collector under the Act. According to the appellant she spent a large sum of money on reclamation of the land and building structure on a part of it. On February 17, 1958 the Circle Officer made an order for restoration in respect of the holding excluding an area of 9.25 acres on which the appellant had built structures. In E terms of this order the first respondent was to pay compensation of Rs. 20,000/- to the appellant in three annual instalments of Rs. 10,000, Rs. 5,000/- and Rs. 5,000/-, the first instalment was to have been paid between March 1, 1958 and June 1, 1958. The order added that if the first instalment was not paid within the specified period, the applicant would "lose the benefit of the order of restoration". The first respondent did not pay the instalment within the time allowed, and on F September 11, 1958 preferred an appeal to the Collector against the order of the Circle Officer. The appeal was dismissed for default. The first respondent thereafter filed a revision petition before the Commissioner though the Act did not provide for a revision against an appellate order passed by the Collector of the District. The Commissioner however set aside the order of the Collector and remanded the appeal for rehearing. The appellant questioned the correctness of the Com- G missioner's order by filing a writ petition before the Patna High Court which was allowed by the High Court on June 30, 1964 and the order of the Commissioner was quashed. The High Court observed in its order that it did not think that the decision of the Circle Officer was arbitrary or defective in law. The first respondent obtained a certificate under Article 133(1) of the Constitution to appeal to this Court against that order of the High Court, but the appeal was dismissed for H non-prosecution on July 9, 1965.

More than a year had passed after the dismissal of that appeal to this Court when the second chapter of the story began. On October

15, 1965 the first respondent made an application to the Block Development Officer, Birpur, who was discharging the functions of a Collector under the Act for an order extending the time for payment fixed by the order dated February 17, 1958, and for permission to deposit the entire amount as determined by that order in one lumpsum. Seeking to explain the long delay in making the application, the first respondent stated that all this time he had been diligently prosecuting other legal remedies. On this application the Block Development Officer, who was also the Anchal Adhikari, made an order directing notices to be issued to the parties concerned asking them to be present before him on October 22, 1965. As the notice had not been served on the appellant, the Block Development Officer shifted the date to November 17, 1965 for hearing of the matter. On November 17, 1965 also the notice had not been served on the appellant, but the Block Development Officer having heard the first respondent made the following order :

> "The applicant is ready to pay the total amount in one instalment. Under this provision given in Kosi Land Restoration Act and Rules, the applicant is directed to deposit the entire amount within a week from this date of his order failing which the claim of applicant be filed. Further action for restoration of land would be taken after a week. The opposite party be informed to receive the amount and appear on 25-11-65. Put up th erecord on 25-11-65."

Having come to know of the *ex-parte* order made on November 17, 1965 the appellant preferred an appeal from that order to the Additional Collector, Saharsa, who was the appellate authority. The Additional Collector admitted the appeal on November 20, 1965 and stayed further proceedings including the restoration of possession and directed the Block Development Officer to remit the record of the case to him. The copy of the Additional Collector's order appears to have been received in the office of the Block Development Officer on November 22, 1965. But on November 25, 1965 the Block Development Officer passed the following order :

> "The area Karamchari is directed to open zamabandi in the name of applicant and to issue rent receipt. The dealing Asst. is directed to issue delivery of possession in form IV under Clause 'F' of sub section 1 of section 7 of Kosi Area Restoration of Lands to raiyats Act, 1951."

Later, on the same day, he recorded another order saying that the stay order passed by the Additional Collector had been put up before him that day and directing the record to be sent to the Additional Collector. He also added that the stay order had been obtained on the basis of a wrong statement. Assuming that the Block Development Officer came to know of the Additional Collector's order only on November 25 though it was received in his office on November 22, and that too after he had made the order earlier in the day directing delivery of the possession to the first respondent, it is surprising that he took no steps to give effect to the stay order made by the appellate authority which was binding on him. One would have expected that having received the order

A he would hasten to recall or stay the operation of his own order made earlier in the day, but he did not do so. He merely directed the record to be sent to the Additional Collector with the remark that the stay order must have been obtained upon an untrue representation, a remark that he had no authority to make. Whatever the reason, the Block Development Officer appears to have deliberately ignored the order passed by a superior tribunal which was binding on him, and his B conduct deserves severe condemnation. However, on October 3, 1966 the Additional Collector allowed the appeal and set aside the order dated November 11, 1965 and all subsequent orders passed by the Block Development Officer on the view that a second application on the same grounds was not maintainable under section 3 of the Act, and the first respondent having failed to comply with the terms of the original order dated February 17, 1958, his right to restoration was lost. C The first respondent then filed a writ petition before the Patna High Court challenging the order of the Additional Collector and the High Court allowed the petition and restored the order of the Block Development Officer dated November 25, 1965.

The High Court allowed the writ petition on three grounds. It was D held that the order passed by the Circle Officer on February 17, 1958 was not a final order rejecting or allowing the petition for restoration and, therefore, the Circle Officer or any other officer discharging the functions of the Collector under the Act had power to grant extension of time notwithstanding the expiry of the period fixed for payment of the first instalment. Secondly, referring to section 7(1)(e) which provides that the instalments granted must be payable within a period E not exceeding five years, the High Court observed that "court's action should not prejudice any party" and held that excluding the time taken for the various remedies pursued by the first respondent, the application made on October 15, 1965 was within the period of five years from the date of the original order. Thirdly, the High Court held that "in any case after coming into force of the new Limitation Act, 1963, the petitioner (first respondent) had a right to ask the court concerned to F condone the delay in depositing the same under section 5 of that Act"; though the application dated October 15, 1965 did not invoke or refer to section 5 of the Limitation Act, 1963, the High Court held that the order made on that application "should be construed in substance as an order condoning the delay".

The original order dated February 17, 1958 granting three annual G instalments to the first respondent stated clearly that if he failed to pay the first instalment within the period mentioned therein, he would "lose the benefit of the order of restoration". This no doubt was a conditional order, but a conditional order is not necessarily an interlocutory order as the High Court appears to have thought. The order made it clear that on failure to pay the first instalment within the specified period the benefit of the order would be lost which gave it a finality; no other order was necessary for disposing of the application under H section 3 perhaps possibly making a note as to whether or not the instalment had been paid in time. As regards the second ground, it is difficult to appreciate how the principle that the "court's action should not

prejudice any party" can have any relevance in this context. The remedies pursued by the first respondent following the order made on February 17, 1958 were steps taken by him at his own risk and he cannot as a matter of right ask for excluding the time spent on these proceedings. The third ground on which the decision of the High Court rests relates to the applicability of section 5 of the Limitation Act, 1963. We do not see how section 5 could be invoked in connection with the application made on October 15, 1965 by the first respondent. Under section 5 of the Limitation Act an appeal or application "may be admitted after the prescribed period if the appellant or applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period". The Collector to whom the application was made was not a court, though section 15 of the Act vested him with certain specified powers under the Code of Civil Procedure; also, the kind of application that was made had no time limit prescribed for it, and no question of extending the time could therefore arise. We therefore think that the High Court misdirected itself in referring to section 5 of the Limitation Act. Further, the application does not appear to have been made for retention of time to pay the instalments. It was an application for permission to deposit the entire amount of Rs. 20,000/- in a lump. This must be taken as a fresh application under section 3 of the Act. The question that arises therefore is, whether the Act permits successive applications to be made under section 3 giving rise to a fresh proceeding every time in respect of the same subject matter. Section 13 provides that every order passed by the Collector under the Act, subject to an order passed in appeal under section 16 would be final. If successive applications under section 3 are permitted to be made, the finality attaching to the order of the Collector as provided in section 13 would become meaningless, apart from the uncertainty and confusion that would result. That there should be finality in litigation and a person should not be vexed twice for the same cause are well-established principles of general application. If any authority is needed, we may refer to two decisions of this Court where this matter has been elaborately considered : *Daryao & Ors.* v. *The State of U.P. & Ors.*(1) and *Burn & Co.* v. *Their Employee*(2). The Additional Collector was therefore right in dismissing the application made on October 17, 1965 and the reasons given by the High Court for setting aside that order, in our opinion, are not sound. The appeal is accordingly allowed with costs.

V.P.S.

*Appeal allowed.*

(1) [1962] 1 S.C.R. 574.
(2) [1956] S.C.R. 781.