

A SMT. FIRDOSH FATIMA (SINCE DEAD) ETC.
v.
SMT. FIRDOSH BEGUM (DEAD) AND ORS. ETC.

FEBRUARY 6, 1996

B [K. RAMASWAMY, B.L. HANSARIA AND G.B. PATTANAIK, JJ.]

U.P. High Court (Abolition of Letters Patent) Appeals Act, 1962/U.P. Amendment Act 33 of 1972 :

C *S.4—Power to entertain—Letters Patent Appeals under Clause (10) of Letters patent dated 17.3.1866 r/w clause (17) of U.P. High Court's (Amalgamation) Order, 1948—Taken away—No longer res integra—Amendment Act already upheld.*

D *Hasinuddin Khan & Ors. v. Dy. Director of Consolidation & Ors., [1980] 3 SCC 285 followed.*

State of Bombay v. Narothamdas Jethabai & Anr., [1951] SCR 51; Ram Adher Singh v. Ramroop Singh & Ors., [1968] 2 SCR 95; Union of India v. Mohindra Supply Co., [1962] 3 SCR 497 and Hakim Singh v. Shiv Sagar & Ors., AIR (1973) All. 596, referred to.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2194 of 1977 Etc.

F From the Judgment and Order dated 11.4.77 of the Allahabad High Court in S.A. No. 129 of 1975.

S.K. Dholakia, Aseem Mehrotra for P.K. Jain, S.K. Agnihotri, Ms. Bina Gupta, S.M. Jadhav for A.S. Bhasme, S.K. Jain, Randhir Jain, A.S. Pundir, S.K. Gambhir, Pramod Swarup, H.K. Puri, for the appearing parties.

G The following Order of the Court was delivered :

H These two appeals arise from a Full bench judgment of the High Court of Allahabad in *Hakim Singh v. Shiv Sagar & Ors.*, AIR (1973) Allahabad 596. The U.P. State Legislature enacted U.P. Amendment Act 33 of 1972 amending U.P. High Court (Abolition of Letters Patent Ap-

peals) Act, 1962 and enacted Section 4 thereof which reads as under :

"Abolition of appeals from the judgment or order of one Judge of the High Court made in the exercise of writ jurisdiction in certain cases. - (1) No appeal, arising from a suit or proceeding instituted or commenced, whether prior or subsequent to the commencement of this section, shall lie to the High Court from a judgment or order of one Judge of the High Court, made in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution, in respect of a judgment, decree or order made or purported to be made by the Board of Revenue under the United Provinces Land Revenue Act, 1901, or the U.P. Tenancy Act, 1939, or the Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956, or the Kumaun and Uttarakhand Zamindari Abolition and Land Reforms Act, 1960, or by the Director of Consolidation (including any other officer purporting to exercise the powers and to perform the duties of Director of Consolidation) under the U.P. Consolidation of Holdings Act, 1953, anything to the contrary contained in Clause 10 of the Letters Patent of Her Majesty, dated March 17, 1866, read with Clauses 7 and 17 of the U.P. High Court's (Amalgamation) Order, 1918, or in any other law notwithstanding.

(2) Notwithstanding anything contained in sub-section (1), all appeals pending before the High Court on the date immediately preceding the date of commencement of this section shall be heard and disposed of as if this Section had not been enacted."

By operation of this enactment, the power to entertain letter patent appeal under Clause (10) of the Letters Patent dated March 17, 1866 read with Clause (17) of U.P. High Court's (Amalgamation) Order, 1948, in respect of the enumerated subjects mentioned therein stands taken away. The controversy is no longer *res integra*. This Court in *Hasinuddin Khan & Ors. v. Dy. Director of Consolidation & Ors.*, [1980] 3 SCC 285 by a Constitution Bench has already upheld the validity of the Act, following the ratio of this Court in *State of Bombay v. Narothamadas Jethabai & Anr.*, [1951] SCR 51, *Ram Adher Singh v. Ramroop Singh & Ors.*, [1968] 2 SCR 95 and *Union of India v. Mohindra Supply Co.*, [1962] 3 SCR 497. As a fact, this court has upheld the validity of Section 3 of 1962 Act in *Mohindra*

A *Supply Co.'s* case. It was held thus :

"The challenge to these Acts on the ground of the unconstitutionally is, therefore, rejected."

B In view of the decision of the Constitution bench, the controversy no longer survives. The legislative competence in abolishing Letter Patents Appeals in respect of revenue and tenancy matters is covered under Section 4 of the said Act. They are under respective legislative entries in State List II in VIIIth Schedule to the Constitution relating to jurisdiction and powers of all courts of administration of justice in the State of Uttar Pradesh with respect to the matters in List II. Therefore, the Act stands upheld.

C The appeals are accordingly dismissed. No costs.

G.N.

Appeals dismissed.