

Amba Prasad

Vs

Abdul Noor Khan and Ors

Civil Appeals Nos. 680 to 682 of 1963

(M. Hidayatullah, N. Rajgopala Ayyangar JJ)

17.04.1964

JUDGMENT

HIDAYATULLAH, J. –

This judgment shall also govern the disposal of C.A. 681 of 1963. These are appeals by special leave of this Court against a common order of the Board of Revenue, U.P. dated February 8, 1960 disposing of three appeals. Civil Appeal No. 682 of 1963 (since compromised) was also against the same decision. The appellant in each of these appeals is one Amba Prasad who was the Zamindar of village Rhonda, Pargana and Tehsil Khurja, District Bulandshahr, before the coming into operation of the U.P. Zamindari Abolition and Land Reforms Act, 1950. The opposite parties (who will be referred to as the answering respondents in this judgment) are persons whose names were recorded in column 23 (miscellaneous) in the Khasra for the year 1356 Fasli, as persons in possession and who claim, by reason of the entry, to be the recorded occupants of the fields in dispute, and to have obtained adhivasi rights in the fields under s. 20 of the Abolition Act. Though the point in dispute appears to lie within a very narrow compass the history of litigation in respect of these plots is as tedious as it is long. It must unfortunately be told to get a true measure of the arguments in the appeals.

Amba Prasad brought two suits under s. 180 of the U.P. Tenancy Act, 1939 for ejectment from the fields now in dispute and for damages, against Mohammad Ali and Mst. Sharifan respectively because their names were recorded in the Khasra as tenants 'bila tasfia lagan'. These suits were dismissed by the trial Judge and Amba Prasad's appeal to the Commissioner failed on November 30, 1943. Amba Prasad then appealed to the Board of Revenue, U.P. and succeeded. The order of the Board of Revenue, U.P. is dated March 19, 1949 (item No. 25). Mohammad Ali had died by then and was represented by one Faiyazali and six others. Mst. Sarifan had also died and was represented by one Abdul Sattar alias Chunna Khan and two others. As a result of the decision of the Board of Revenue possession of the fields was delivered to Amba Prasad on July 1, 1949 - the day of the commencement of the year 1357 Fasli. The dakhalmamas are items Nos. 44 and 45 in this record and they mention fields Nos. 427/2, 428/2, 429, 430, and 380 (item No. 44) and fields Nos. 416, 418/1 and 418/2 (item No. 45) of village Rhonda, Pargana and Tehsil Khurja, District Bulandshahr.

Immediately after obtaining possession of the fields Amba Prasad was required to commence proceedings under s. 145, Criminal Procedure Code before the Sub-Divisional Magistrate, Anupshahr against Faiyazali and Abdul Sattar and others and on January 13, 1951 these proceedings terminated in favour of Amba Prasad (item No. 28). The Sessions Judge Bulandshahr made a reference to the High Court of Allahabad recommending that the order be vacated but the High Court declined to interfere. The order of the High Court is dated October 20, 1951 (item No. 29).

Meanwhile Amba Prasad started a prosecution under s. 218, Indian Penal Code against the Lekhpal alleging that he had made false entries in the Revenue papers but the Magistrate, 1st Class, Bulandshahr discharged him by his order dated July 24, 1950 (item No. 26). An application for revision of the order filed by Amba Prasad was dismissed by the Sessions Judge, Bulandshahr on October 10, 1950 (item No. 27).

During the pendency of the proceedings under s. 145, Criminal Procedure Code these fields remained under attachment from August 23, 1949 (1358 F.) to November 6, 1951 (1359 F.). Two suits were then commenced in the court of the Munsif, Khurja for declaration that crops of the fields under attachment belonged to the plaintiffs. One suit (97 of 1951) was filed by Abdul Noor Khan and others (answering respondents) and the other (67 of 1952) was filed by Sarfraz Ali Beg and 8 others (respondents in C.A. 682 of 1963 - since compromised). These suits were directed against Amba Prasad and the plaintiffs claimed to be in possession of the fields by virtue of entries to this effect in the remarks column of the Khasras of the relevant years. These suits failed on August 9, 1952 and August 8, 1953 respectively (vide items Nos. 30 and 32). It appears that proceedings under s. 107, Criminal Procedure Code were also started against A. Noorkhan and others before Magistrate, 1st Class, Bulandshahr and they were bound over to keep the peace. There is on the file of this case an order of the Sessions Judge, Bulandshahr dismissing their application in revision on February 24, 1953 (item No. 31).

Meanwhile, the answering respondents and Sarfraz Ali and others commenced on November 6, 1951 three suits under s. 61 read with s. 183 of the U.P. Tenancy Act, 1939 for declaration of Sirdar rights and to claim hereditary rights under s. 180/2 *ibid*. These suits were decreed against Amba Prasad by the Judicial Officer, Anupshahr on July 14, 1953. He held that the Dakhaldehi of July 1, 1949 did not affect the plaintiffs and since they were shown to be in possession they were entitled to succeed (item No. 33). Amba Prasad filed an appeal and the Commissioner, Meerut Division reversed the decision by his order dated April 1, 1954 (item No. 35). The Board of Revenue, U.P. also dismissed the appeal of the plaintiffs on September 17, 1955 (item No. 38).

On October 10, 1953 two suits were filed by the answering respondent in these two appeals and a third by the respondent in C.A. No. 682 of 1963 which has been compromised. These suits were under s. 232/20 of the U.P. Zamindari Abolition and Land Reforms Act. It is with these suits that we are concerned in the appeals. Two suits also under s. 232/20 of the Abolition Act were filed by Ayub Ali Khan and Abdul Sattar Khan and others against Amba Prasad. The answering respondents and Sarfraz Ali and others were joined as defendants in those suits. The plaints in these two suits are dated December 28, 1954 and December 20, 1954 (items Nos. 36 and 38). They were dismissed by the Sub-Divisional Magistrate, Khurja on May 16, 1955. The Additional Commissioner, Meerut, dismissed the appeals on January 30, 1950 in default of appearance (item No. 39).

On September 4, 1958 the Sub-Divisional Officer, Khurja dismissed the three suits filed by the answering respondents and the respondents in the companion appeal. In these suits the answering respondents relied on extracts from the Khasras of 1355F, 1356F, 1357F, 1358F and 1359F as showing their possession. These lands, however, were under attachment from August 23, 1949 (1358F) to November 6, 1959 (1359F) and could not be in the possession of the answering respondents in the years 1358F and 1359F. This fact was noticed by the Commissioner, Meerut Division, in his order dated April 1, 1954 and he cast doubts on the entries in 1355F and 1356F. The Sub-Divisional Officer took up the same line of reasoning and pointed out that in years subsequent to 1355F the entry would have found place in column 6 of the Khasra and not the remarks column. He accordingly held that the entries of 1355 F and 1356 F were unreliable and the answering

respondents had not acquired adhivasi rights. On Appeal, the Additional Commissioner, Meerut, reversed the decision on April 19, 1959 and decreed the suits. Before the Commissioner the answering respondents claimed that as they were recorded occupants in 1356F they were not required to prove actual possession. This proposition, it appears, was conceded by the counsel for Amba Prasad. He only argued that the entries were not in accordance with paragraph 87 of the Land Records Manual and they were considered spurious in earlier litigation. He also claimed that the answering respondents were barred by the principle of res judicata because though they were parties to the suits of Ayub Ali Khan and Abdul Sattar they did not claim adhivasi rights in those suits.

The learned Commissioner pointed out that the entries were no doubt suspected to be spurious by the Commissioner on April 1, 1954, but this was after July 1, 1952 which was the date of vesting and the case therefore was outside Explanations II and III of s. 20(b) of the Abolition Act. The learned Commissioner, therefore, was of the opinion that the entries could not be discarded as they must have been completed under the rules before April 30, 1949, that is to say, even before the Dakhaldehi. He held that the answering respondents (appellants before him) had acquired adhivasi rights.

Amba Prasad appealed to the Board of Revenue. The Board dismissed his appeal on February 8, 1960 by the order now impugned. This time the learned counsel for Amba Prasad conceded that the entry was made put contended that it was fraudulently made after July 1, 1949 and referred to the prosecution of the Lekhpal. The Board of Revenue pointed out that there was no order for the correction of the entry before the date of vesting and the Lekhpal was acquitted of the charge under s. 218, Indian Penal Code. Since the entries were not corrected as required by Explanation II to s. 20 the conditions of s. 20(b) of the Abolition Act were held to be satisfied and the appeal was dismissed.

Mr. Goyal on behalf of Amba Prasad contends that these suits were barred by res judicata. He submits that in the previous suits filed by Ayub Ali Khan and Abdul Sattar and others, the answering respondents were made defendants and could have raised the plea that they had acquired adhivasi rights and as they did not raise such a plea they cannot now raise it. We did not accept this contention. The answering respondents had filed these suits even before Ayub Ali Khan and Abdul Sattar had filed their suits. Further, the suits filed by Ayub Ali Khan and Abdul Sattar did not decide anything because they were dismissed owing to a technical flaw in the plaint. Even the appeal was dismissed in default of appearance. Lastly, the answering respondents and Amba Prasad were co-defendants and no issue between them was tried or decided even if one was necessary to be tried.

Mr. Goyal next contends that the answering respondents must show that they were in possession and that under Explanation I to s. 20 they were evicted after June 30, 1948. He submits that these conditions are not fulfilled by them. Mr. Goyal also wishes to withdraw the concession made on behalf of Amba Prasad before the Tribunals below that the answering respondents need not prove their possession. He says that the concession was made because there were rulings of the Allahabad High Court which bound the Revenue Tribunals. He submits that these rulings should be considered and urge that possession in 1356 Fasli must be proved. He further submits that even entires in the Khasra and Khatauni to be of value must be made in accordance with ss. 28 and 33 of the U.P. Land Revenue Act and he relies on paragraph 87 of the Land Record Manual to contend that the entries in favour of the answering respondents were irregular. These contentious though they appear to be many are really two. The first questions the entry and the other the right of the answering respondents even if the record be correct to claim adhivasi rights under s. 20 of the Abolition Act. We shall consider them separately.

The first question is whether these entries were regularly made. It is pointed out that they were doubted by the Revenue Tribunals in some other proceedings and that the Lekhpal was also prosecuted under s. 218, Indian Penal Code. That, however, does not prove in these proceedings that the entries are spurious. The Lekhpal was discharged and the Additional Commissioner has held here :

"By making the entry in the remarks column it is also not possible to attribute any dishonest or collusive entry. It appears that Shri Amba Prasad had filed a criminal case against the patwari but this was after the entries in the remarks column in favour of appellants had been made. The entry in 1356 fasli cannot be discarded on the remarks in the judgments referred by the learned counsel for the respondent. It appears the Sri Mohammad Ali and Srimati Sharifan were the proprietors and they mortgaged their share with present respondents and Sri Amba Prasad purchased the equity of redemption and got the share partitioned. There was litigation between Sri Amba Prasad and Sri Mohammad Ali and Srimati Sharifan upto High Court. Sri Amba Prasad and others filed suits against Srimati Sharifan and Sri Mohammad Ali under section 180 and it was decreed in the 2nd appeal on 19-3-49. The possession was delivered on 1-7-1949, in execution of the decree. The Khasra for 1356 fasli under the rules may have been deposited some time before 31st July 1950 but the entries in the Khasras had to be completed upto 30th April 1949".

Mr. Goyal relies upon paragraph 87 of the Land Records Manual and argues that the names of persons occupying land without the consent of persons whose names are recorded in column 5 of the khasra should have been entered in column 6 but column 6 is crossed out. It is, however, to be seen that when a tenant leaves the neighbourhood without leaving in charge of his holding, a person responsible for the payment of his rent as it falls due and without giving a written notice to the land holder of such arrangement, the Lekhpal is required to show the name of the actual cultivator in the column of remarks preceded by the word 'qabiz' (see Para. 85(c)). That is how the entry stands and there is nothing on the record of this case on the strength of which it can be said that the entry in 1356F was not regularly made. If it was wrong Amba Prasad ought to have got it corrected but the doubts cast on the entry cannot be said to have corrected it as required by Explanation III to s. 20 of the Abolition Act.

There is thus no doubt that the answering respondents were recorded as 'qabiz' in 1356F. There is also no doubt that if they were 'qabiz' they were dispossessed after June 30, 1948. The possession of Amba Prasad did not begin earlier than July 1, 1949. There is nothing to show that the possession of the answering respondents was disturbed between these two dates, because the attachment came much later. Mr. Goyal, however, contends that the burden is on the answering respondents to prove their possession and eviction after June 30, 1948 before they can regain possession as adhvasis under s. 20. Mr. Brij Bans Kishore, however, joins issue and claims that the answering respondents have done enough when they show that they are recorded as 'occupants' in the year 1356F. He contends that it is not necessary to show possession though he does not admit that the lands were not in his clients' possession.

We have pointed out above that the eviction could not have taken place before July 1, 1949. The Dakhalnamas show that possession was given to Amba Prasad on July 1, 1949. In so far as the appellant is concerned he was not in possession before that date and the khasra for 1356F shows that the answering respondents were 'qabiz' (in possession). It is contended that the suit is for possession and the date of dispossession has not been given as required by rule 183. No such objection appears

to have been made at any time. In any event, that is useful only to calculate limitation and it is not Amba Prasad's cases that there is any such bar.

The real dispute thus is whether a person who is recorded as 'qabiz' but not as a tenant or a sub-tenant can get the advantage of s. 20 of the Abolition Act and claim rights as an adhvasi. It is convenient at this stage to set out the material portions of s. 20 :

"20. Every person who

##(a) \* \* \* \* ##

(b) was recorded as occupant -

The scheme of the section may now be noticed. The section, speaking generally, says that certain persons "recorded" as "occupants" of lands (other than grove lands or lands to which section 16 applies) shall be known as adhvasis and shall be entitled to retain or to regain possession of them, after the date of vesting which was July 1, 1952. Such persons do not include an intermediary (Explanation IV). Such persons must be recorded as occupants in the khasra or khatauni for 1356F (1-7-48 to 30-6-49). If such a person is in possession he continues in possession. If he is evicted after June 30, 1948 he is to be put back in possession notwithstanding anything in any order or decree. By fiction such persons are deemed to be entitled to regain possession (Explanation I). The emphasis has been laid on the record of khasra or khatauni of 1356F and June 30, 1948 is the datum line. The importance of an entry in these two documents is further apparent from explanations II and III. Under the former, if the entry is corrected before the date of vesting (1-7-52), the corrected entry is to prevail and under the latter the entry is deemed to be corrected (even though not actually corrected) if an order or decree of a competent court ordering the correction had been made before the date of vesting and the order or decree had become final. There are thus two date lines. They are June 30, 1948 and July 1, 1952, and the title to possession as adhvasi depends on the entries in the khasra or khatauni for the year 1356F.

Before we proceed to decide whether the answering respondents satisfy the above tests we must consider what is meant by the terms 'occupant' and 'recorded'. The word 'occupant' is not defined in the Act. Since khasra records possession and enjoyment the word 'occupant' must mean a person holding the land in possession or actual enjoyment. The khasra, however, may mention the proprietor, the tenant, the sub-tenant and other person in actual possession, as the case may be. If by occupant is meant the person in actual possession it is clear that between a proprietor and a tenant the tenant, and between a tenant and the sub-tenant the latter and between him and person recorded in the remarks column as "Dawedar qabiz" the dawedar qabiz are the occupants. This is the only logical way to interpret the section which does away with all intermediaries. If rights are not to be determined except in the manner laid down by the section, the entries must be construed as explained by the four explanations. Once we find out the right person in the light of the explanations, that person continues as an adhvasi after July 1, 1952, provided he is in possession or was evicted after June 30, 1948. If he was evicted after June 30, 1948 he is entitled to regain possession in spite of any order or decree to the contrary. The word 'occupant' thus signifies occupancy and enjoyment. Mediate possession, (except where the immediate possessor holds on behalf of the mediate possessor) is of no consequence. In this way even persons who got into occupation when lands were abandoned get recognition. The section eliminates inquiries into

disputed possession by accepting the records in the khasra or khatauni of 1356F, or its correction before July 1, 1952. It was perhaps thought its correction before July 1, 1952. It was perhaps thought that all such disputes would have solved themselves in the four years between June 30, 1948 and June 30, 1952.

There was, however, for some time a difference of opinion, on the point whether possession in 1356F should be proved, between the High Court of Allahabad and the Board of Revenue. Section 20 came before this Court in *The Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rehman and others* [[1961] 1, S.C.R. 564] where the correctness of *Lala Nanak Chand v. The Board of Revenue, U.P.* [1955 A.L.J. 408] was challenged on the ground that it had held that a mere entry in 1356F without possession in that year was sufficient. This Court did not decide the question and left it open. Subsequently, the Allahabad High Court in several decisions including the Full Bench decision in *Ram Dular Singh and another v. Babu Sukh Ram and others* [1963 A.L.J. 667] has endorsed the earlier view in *Nanakchand v. Board of Revenue, U.P.* [1955 A.L.J. 408]. In *L. Bhal Singh v. Bhop and another* [1963 A.L.J. 288 at p. 291] the following passage from *Nanak Chand's* case was expressly approved :-

"It seems to us that clauses (b)(i) and (b)(ii) of Sec. 20 do not require the proof of actual possession in the year 1356F. What they require merely is the entry of a person's name as an occupant in the Khasra or Khatauni of 1356F. The words of the section are clear.

(Every person who was recorded as occupant in the Khasra or Khatauni in 1356F. etc.).

The words are not "every person who was an occupant in 1356F" : nor are the words "every person who was recorded as an occupant in the year 1356F and who was also in possession in that year". There is no warrant for introducing words in the section which are not there. This conclusion is reinforced by what is stated in Explanation II".

The Board of Revenue in *Sugriva v. Mukhi etc.* [1963 A.L.J. 17 (Rev.)] has also adopted the same view. In view of the long established line of cases we see no justification for reopening of this question. The decision of the Board of Revenue was therefore right. The appeal fails and is dismissed with costs. One set of hearing fees.

Appeal dismissed.

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