

Nath Singh and Others

Vs

The Board of Revenue and Others

Civil Appeals Nos. 621 to 626 of 1965

(J. C. Shah, G. K. Mitter JJ)

21.03.1968

JUDGMENT

MITTER, J.-

These six appeals by special leave arise from a common judgment of the Allahabad High Court rejecting six writ petitions filed by the appellants in that court for quashing the orders of the Board of Revenue arising out cases filed under section 232 of the U.P. Zamindari Abolition and Land Reforms Act.

The relevant facts are as follows. In 1945 one Ram Dhari Singh who was the thekadar of the proprietary rights of a village sued the appellants and the respondents other than the Board of Revenue for their ejection under section 171 of the U.P. Tenancy Act alleging that the appellants had illegally sublet the lands to the said respondents. The appellants and the respondents made a common cause denying the alleged subletting and stating that the entries in the village records about the respondents being subtenants were erroneous. On 3rd March 1946 i.e., towards the end of 1353 F. the suit was dismissed on the ground that there had been no subletting and that the entries regarding the subletting in the village records were not correct. No attempt was however made by anyone to bring the village records in harmony with the said decision with the result that the said respondents continued to figure therein as sub-tenants as before. On his attention being drawn to this fact, the Lekhpal on his own authority removed the entries in favour of the said respondents showing them as sub-tenants from the records of the year ending 1358 F. The entries in the year 1356 F. were left undisturbed and it was not within the jurisdiction of the Lekhpal to make any alterations therein.

The U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the 'Act') came into force with the commencement of 1360 F. i.e. 1st July, 1952. Under s. 20(b)(i) every person who was recorded as occupant in the Khasra or Khatauni of 1356 F. prepared under sections 28 and 33 respectively of the U. P. Land Revenue Act was to be called an "adhivasi" and was subject to the provisions of the Act, to be entitled to take or retain possession of the land (unless he would become a bhumidar or an asami). The second Explanation to the section provided that where any entry in the records referred to in clause (b) of section 20 had been corrected before the date of vesting under or in accordance with the provisions of the U.P. Land Revenue Act, 1901, the entry so corrected was to prevail for the purposes of the said clause. The third Explanation provided that for the purposes of the second Explanation an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent court requiring any correction in the records had been made before the said date and had become final even though the correction may not have been incorporated in the records.

On the strength of the Khasra and Khatauni of 1356 F. the respondents claimed adhivasi rights under s. 20(b)(i) of the Act. They filed six suits praying for recovery of possession under s. 232 of the Act. According to their case, the appellants were never in possession of the lands in dispute at any time. They lost the suits before the Sub-Divisional Officer and the Additional Commissioner of Varanasi but they ultimately succeeded in appeals to the Board of Revenue.

The appellants filed the writ petitions for quashing the orders of the Board of Revenue. The High Court went elaborately into the procedure for making entries in the records of rights and examined the question as to whether an entry recording a person as a sub-tenant was equivalent to an entry recording him as occupant for the purpose of the Act. The High Court concluded that the impugned orders of the Board of Revenue were wrong but held that the Board had jurisdiction to interpret s. 20(b) as it thought proper and as the orders passed by it were final without being subject to any appeal, they could not be quashed by certiorari as being mere errors of law. It is from this judgment that the present appeals have been launched.

Learned counsel for the appellants raised the following points in his address :

(1) The correctness of the entry in the record of rights of 1356 F. can be gone into and is capable of challenge in a court of law exercising jurisdiction under Art. 226.

(2) In the present case there was an adjudication in March 1946 and the respondents were not sub-tenants : consequently, unless they showed that they had hereafter become sub-tenants the benefit of the entry in their favour in 1356 F. could not be availed of by them.

(3) Under rule 183 of the rules framed under the Act it was incumbent on the respondents to state in their applications the dates of their dispossession and the failure to do so rendered their petitions defective.

(4) In the Khasra of 1356 F. the respondents were only recorded as sub-tenants but not as occupants and hence they cannot get the benefit of s. 20(b)(i) of the Act.

Before entering into a discussion as to the merits of the points raised, it is worthy of note that before the Board of Revenue i.e. the ultimate fact-finding authority the contention on behalf of the respondents who were the appellants before the Board, was that they had been recorded as occupants in the revenue papers of 1356 F. and hence they were entitled to be reinstated to possession, it being unnecessary for them to prove that they were in actual possession in 1356 F.

The arguments before the Board of Revenue on behalf of the present appellants were : (1) as the appellants were not in possession, they were not sub-tenants either in 1356 F. or before and hence they could not be regarded as occupants in 1356 F : in support of this proposition reliance was placed on a decision of this Court in *The Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman and others* [[1961] 1 S.C.R. 564.] which will be discussed later : (2) as both the courts below and the Board of Revenue had concurrently found that there was no contract of sub-tenancy, the respondents could not be regarded as sub-tenants and could not rely on an entry in the year 1356 F. in their favour, and (3) a sub-tenant was not an occupant and as such not entitled to maintain an application under s. 232 of the Act.

All these contentions were turned down by the Board of Revenue. As regards the first point the Board took the view that the *Upper Ganges Sugar Mills'* [[1961] 1 S.C.R. 564.] case did not lay

down that a person had to be in actual possession before he could get the benefit of the entry in the record of rights of 1356 F. With regard to the second point, the Board held that even if the respondents had failed to prove that they were sub-tenants they could still be treated as trespassers. The third point was disposed of by the Board placing reliance on an earlier decision of its own to the effect that the entry of sub-tenancy should be held to be an entry of a recorded occupant.

There are two decisions of this Court which negative the points canvassed before us. In the *Upper Ganges Sugar Mills'* [[1961] 1 S.C.R. 564.] case, the appellant company, a thekadar up to 1355 F. (June 1948) had retained possession of the lands in dispute by virtue of stay orders granted although the landlord had succeeded in the ejectment suit under the U. P. Tenancy Act in all the courts up to the Board of Revenue. During the pendency of the company's appeal to this Court, the Act came into force. The company started proceedings to recover actual possession under s. 232 of the Act read with sections 12 and 20. The trial court decided in favour of the company and ordered delivery of possession under both the sections. The landlords lost in appeal. Thereupon there was a Second Appeal to the Board of Revenue which was dismissed in January 1956. The landlords came to this Court on special leave, The appeals were remanded by this Court for a finding whether the company had acquired any rights under s. 20 of the Act. The Board held that the company was entitled to such benefit and had acquired Adhivasi rights thereunder.

Before this Court at the final hearing, there was a good deal of discussion as to the meaning of the expression "a person in occupation". It was held that in order that the company could take the benefit of s. 20 it should have been recorded as in occupation of the land in dispute in the year 1356 F. and the only limitation placed by judicial decisions on the meaning of the word "occupant" was that a person should be in occupation in his own right and not on behalf of some one else. On behalf of the landlords it was argued that the company was not in possession in its own right firstly because there was an order for ejectment in November 1948 and thereafter it remained in possession only on account of the stay orders; and secondly, as a thekadar the possession of the company was on behalf of the landlords. This Court held that on the landlords' own showing the company was not in possession as a thekadar as the theka had expired before 1356 F. and consequently the nature of occupation of the company was on its own behalf and not on behalf of the court or of the landlords. In the result, the company was held entitled to Adhivasi rights.

This case establishes that a person recorded as an occupant on the relevant date although found by courts of law to have no right to possession even prior thereto, is not to be denied adhivasi rights.

The case of *Amba Prasad v. Abdul Noor Khan and others* [[1964] 7 S.C.R. 800.] is more in point. *Amba Prasad* was a zamindar of a village before the coming into operation of the Act. The opposite parties were persons whose names had been recorded in column 23 (miscellaneous) in the Khasra for the year 1356 F. as persons in possession and they claimed to be recorded as occupants of the fields in dispute and to have obtained Adhivasi rights under s. 20. The case of the respondents was that they were in occupation of the land and had been dispossessed after June 30, 1948 by the appellant and as they were recorded occupants in 1356 F. they were not required to prove actual possession. The appellant's stand was that the entry was fraudulently made after July 1, 1949. The suits were dismissed by the Sub-Divisional Officer but in appeal the Additional Commissioner held that the respondents had acquired Adhivasi rights. This was upheld by the Board of Revenue. The appellant then filed appeals to this Court. The real dispute as noted by this Court was, whether a person who was recorded as 'Qabiz' but not as a tenant or sub-tenant would get the advantage of s. 20 of the Act and claim Adhivasi rights. Examining the scheme of s. 20 along with its Explanations, it was observed :

"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 must be recorded as occupants in the Khasra or Khatauni for 1356 F. (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 1356 F. 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 1356 F."

The Court went on to add that the word 'occupant' had not been defined in the Act and said :

"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 a person recorded in the remarks column as "Dawedar qabiz" the dawedar qabiz are the occupants..... The section eliminates inquiries into disputed possession by accepting the records in the khasra or khatauni of 1356 F. or 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."

With regard to the question as to whether a mere entry in 1356 F. without possession in that year was sufficient, reference was made by this Court to the Full Bench decision of the Allahabad High Court in Ram Dular Singh and another v. Babu Sukh Ram & others [[1963] A.L.J. 667.] which had endorsed the earlier view in Nanakchand v. Board of Revenue, U.P. [[1955] A.L.J. 408.]. In the last mentioned case the Allahabad High Court had observed that the words in the section were not "every person who was an occupant in 1356 F." nor were the words "every person who was recorded as an occupant in the year 1356F. and who was in possession in that year." According to the Allahabad High Court there was no warrant for introducing words in the section which were not there. This Court felt that in view of the long established line of cases, there was no justification for reopening this question and the decision of the Board of Revenue was right.

These decision negative the first, second and the fourth points sought to be raised on behalf of the appellants. The record of rights for the year 1356 F. had not been corrected afterwards. We have to go by the entry in the record of rights and no enquiry need be made as to when the respondents became sub-tenants after the decision in favour of the landlord, Ram Dhani Singh. The last decision of this Court also shows that as between the tenant and the sub-tenant the entry in the record of

rights in favour of the sub-tenant makes him the occupant entitled to the adhivasi rights under s. 20 of the Act.

With regard to the point as to the violation of rule 183 it is enough to say that the point was not canvassed before the Board of Revenue and as such we need not look into it.

In the result, the appeals fail and are dismissed with costs. One hearing fee.

Appeals dismissed.##

</html