

State of U P.

Vs

Smt. Sarjoo Devi and Others

Civil Appeal No. 2334 of 1968.

(P. K. Goswami, Jaswant Singh JJ)

27.07.1977

JUDGMENT

JASWANT SINGH, J. –

1. This appeal by special leave which is directed against the judgment and decree dated February 5, 1968 of the High Court of Judicature at Allahabad affirming the decisions of the District Judge and the Civil Judge, Basti, dated May 20, 1960 and July 27, 1959 respectively decreeing the suit instituted by respondent 1 herein under sub-section (7) of Section 212A of the U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. Act 1 of 1951) (hereinafter referred to as 'the U. P. Z. A. and L. R. Act'), which came into force on January 26, 1951 arises in the following circumstances :

1A. The land in dispute measuring 142 bighas, 1 biswa and 18 dhurs situate in village Baudhara, Tappa Manhdawal, Pargana Maghar East, Tehsil Khalilabad, District Basti, belonged in 1950 A. D. to Girdhar Das and Purshottam Das, Zamindars of Gorakhpur City, who became intermediaries under the U. P. Z. A. and L. R. Act. Finding that the said land was lying uncultivated, the collector, Gorakhpur, served the aforesaid Zamindars with a notice under Section 3 of the U. P. Land utilisation Act calling upon them either to cultivate the land themselves or to let out the same to other persons for cultivation. The said Zamindars thereupon settled the land in May, 1950 (1357 Fasli) with respondent 1 by executing 'pattas' in her favour for growing crops i.e. for cultivation and conferred hereditary tenancy rights on her. On May 1, 1954 a notification under Section 4 of the Indian Forest Act, 1927 was published in the U. P. Gazette in respect of 342 acres of land of village Baudhara including the land in question declaring that it had been decided to constitute the said land as a reserved forest. This was followed in June, 1954 by a proclamation as required by Section 6 of the Forest Act. Respondent 1 thereupon preferred her claim in respect of her rights to the land in question before the Forest Settlement Officer. On January 22, 1955 when the said claim preferred by respondent 1 was still pending, Ram Naresh Tewari, further of respondent 5, describing himself as Sabhapati of Gaon Samaj, Baraipur, filed an application purporting to be under Section 212 A (1) of the U. P. Z. A and L. R. Act before the Sub Divisional Officer, Khalilabad (who was empowered by the State Government to discharge the functions of a Collector) for ejection from the land in question of respondent 1 on the ground that it was a customary common pasture land and as such had vested in the Gaon Samaj and that the said respondent had encroached upon the same. By his order dated August 16, 1955 the. Sub-Divisional Officer, Khalilabad, allowed the aforesaid

application of Ram Naresh Tewari and ordered the ejectment of respondent 1. After unsuccessfully trying by means of a review petition to have the aforesaid order of her ejectment quashed, respondent 1 filed the aforesaid suit, being suit 7 of 1956. On February 15, 1960 under sub-section (7) of section 212 A of the U. P. Z. A. and L. R. Act against the State of U.P., the appellant herein, and four others including Ram Naresh Tiwari, the father of respondent 5, for declaration that the aforesaid order passed by the Sub-divisional Officer, Khalilabad, was illegal, ineffective, null and void and was not binding on her and that she was a sirdar in possession of the land in question. She also prayed for a perpetual injunction restraining the defendants from interfering with her possession and enjoyment of the land. The case as set up by respondent 1 was that in 1357 Fasli (1950 A. D.), the zamindars viz. Girdhar Das and Purshottam Das who were in possession of the land in question duly executed pattas conferring hereditary tenancy rights in the land in her favour; that the said tenancy rights were confirmed by virtue of the decrees passed by the competent revenue courts in suits brought by her under Sections 59 and 61 of the U. P. Tenancy act, 1939 (U. P. Act XVII of 1939) (hereinafter referred to as 'the U. P. T. Act'); that on the notified date viz. July 1, 1952, she became a sirdar of the land in question under Section 19 of the U. P. Z. A. and L. R. Act; that since 1357 Fasli (1950 A. D.) she had been in actual possession of the land and using it for agricultural purposes or for purposes connected with agriculture and had been appropriating its produce and regularly paying rent to the aforesaid zamindars and since July 1, 1952 she had been continuously paying revenue to the State Government; that as the land in question could not and did not vest in the Gaon Samaj, neither the Gaon Samaj nor Ram Naresh Tewari had any right to make an application under Section 212 A (1) of the U. P. Z. A. and L. R. Act and that the land not having been a common pasture land or a customary common pasture land before or after August 8, 1946 but having been in exclusive possession and ownership of the aforesaid pattas and after their execution in her exclusive possession, it was not land of the nature which could legitimately be said to fall within the purview of Section 212 A of the U. P. Z. A. and L. R. Act and the proceedings by the Sub-Divisional Officer, Khalilabad, under Section 212A of U.P.Z.A. and L.R. Act were illegal, null and void. The appellant herein alone contested the suit. The rest of the defendants having chosen to remain absent despite service of summons, the case proceeded ex-parte against them. The appellant pleaded inter alia that as the land had never been in the actual possession of the aforesaid zamindars before or after the enforcement of the U. P. Z. A. and L. R. Act, it vested in the State Government; that the land had always remained a customary pasture land of public utility in which no tenancy or other right could be conferred by the zamindars in favour of respondent 1; that the transaction of lease relied upon by respondent 1 was invalid and unenforceable; that the suit land legally vested in the Gaon Samaj and that the impugned ejectment order dated August 16, 1955 passed by the Sub-Divisional Officer, Khalilabad was binding on respondent 1 and the suit brought by her was not maintainable.

2. On a consideration of the oral and documentary evidence, the trial Court came to the conclusion that the suit land was never recorded in the revenue papers as customary pasture land but was recorded in the Khatoni relating to 1357 Fasli (1950 A. D.) as "Parti land fit for cultivation"; that there was also no evidence to support the contention of the appellant that the suit land was used in any year as common pasture land or as pasture land; that even the appellant had to concede that

some 10 or 12 bighas of the suit land had been brought under cultivation by respondent 1; that the suit land had been let out to respondent 1 in May, 1950 when she became a hereditary tenant of the same; that the suit land not being a customary pasture land, the order dated August 16, 1955 passed by the Sub-Division Officer, Khalilabad was illegal, null and void and was not binding on the plaintiff. The trial Court further held that the oral and documentary evidence adduced by respondent 1 established that she had been recorded in the revenue papers as hereditary tenant of the land; that respondent 1 had also been held by the competent revenue courts in suits 1178 to 1950, 780 of 1950 and 285 of 1952 filed by her under Sections 59 and 61 of the U. P. T. Act as hereditary tenant and that she had become sirdar of the suit land on the date of vesting. With these findings, the Civil Judge, Basti decreed the suit with costs in favour of respondent 1 by his Judgment

and decree dated July 27, 1959. Aggrieved by this Judgment and decree, the state of U. P. went up in appeal to the District Judge, Basti, who by his judgment and decree dated May 20, 1960 affirmed the aforesaid Judgment and decree of the trial Court holding inter alia that the suit land had been let out to respondent 1 for the purpose of growing crops; that in revenue papers (Exhibits 1, 7 and 8) which relate to the years 1358, 1359 and 1362 Faslis, she had been recorded as hereditary tenant of the suit land and she became sirdar thereof on the date of vesting viz, July 1, 1952. On further appeal, the High Court by its judgment dated February 5, 1968 upheld the aforesaid judgments and decrees of the trial Court and the District Judge, Basti. It is against this judgment and decree that the State of U. P. has come up in appeal to this Court.

3. Appearing on behalf of the appellant, Mr. Dixit has urged that the material on the record did not warrant the findings of the Courts below that the suit land not being of the nature contemplated by Section 212 of the U. P. Z. A. and L. R. Act, the aforesaid order passed by the Sub-Divisional Officer, Khalilabad, was null and void. He has further contended that the impugned order was final and conclusive and the suit out of which the present appeal has arisen was not maintainable. He has lastly submitted that it is the definition of "land" as contained in Section 3 (14) of the U. P. Z. A. and L. R. Act, and not the one contained in Section 3 (1) of the U. P. T. Act which is relevant for the purpose of the instant case and that the land not having been ever occupied for the purpose connected with agriculture, respondent 1 could not be said to be a hereditary tenant thereof and the Courts below have erred in declaring her as sirdar thereof. We shall consider these points seriatim.

4. Point 1 : For a proper determination of this point, it is necessary to refer to Section 212 A of the U. P. Z. A. and L. R. Act, under which the aforesaid application by Ram Naresh Tewari, father of Sheo Ram Tewari, respondent 5 herein was purported to be made as also to Section 212 of the same Act which is alluded to in Section 212 A (1) :

212A. (1) Without prejudice to the provisions of Section 212, the Chairman member or society of a committee referred to in Section 121, may, make an application to the Collector for ejection from the land of a person in possession of a land referred to in Section 212.

(7) Where an order for ejection has been passed under this section, the party against whom the order has been passed, may institute a suit to establish the right claimed by it but subject to the results of such suit the order passed under sub-section (4) or (6) shall be conclusive.

212. Ejection of persons from land of public utility. - Any person who, on or after the eighth day of August, 1946 has been admitted as a tenure or grove holder of or

being an intermediary has brought under his own cultivation or has planted a grove upon, land which was recorded as or was customary common pasture land, cremation or burial ground, tank, pond, pathway or Khalian, shall be liable notwithstanding anything contained in Section 199, on the suit of the Gaon Sabha to ejectment from the land, on payment of such compensation as may be prescribed.

5. A conjoint reading of the provisions of these two sections would show that the Chairman member or society of a committee referred to in Section 121 can make an application to the Collector for ejectment of a person only if the land of which he is in possession is of the description specified in Section 212 i.e. (1) if it was recorded as customary pasture land or (2) if it was a customary common pasture land. The evidence adduced in the case does not at all show that the suit land was recorded as customary pasture land not does it show that it was in fact customary common pasture land. On the contrary, the appellant's own record clearly negatives its case. In Exhibits 2 and 45 which are copies of settlement Khatoni of 1323 Fasli, the land in question is clearly recorded as 'Parti' with long thatching grass. Again in Khatoni of 1357 Fasli (1950 A. D.), the land is recorded as 'Parti' fit for cultivation". The courts below were, therefore, perfectly right in holding that there is no evidence to support the appellant's contention that the land in question was either recorded as customary common pasture land or had ever been used as customary pasture land or pasture land in any year. Manifestly therefore, the Sub-Divisional Officer, Khalilabad acted without jurisdiction and the impugned order passed by him directing the ejectment of the respondent 1 was wholly illegal, ineffective, null and void and not at all binding on respondent 1.

6. Point 2 : The second point urged by Mr. Dixit is also devoid of substance. even a cursory glance at Sub-section (7) of section 212 A of the U. P. Z. A. and L. R. Act reproduced above is enough to show that the order passed by the Sub-Divisional Officer, Khalilabad, under Section 212 A is not final and it is open to the party against whom the order of ejectment is passed to institute a suit to establish the right claimed by it. It is only when the suit instituted by the person sought to be ejected fails that the order of ejectment becomes conclusive. The aforesaid order passed by the Sub-Divisional Officer, Khalilabad cannot, therefore, be held to be final and the suit brought by respondent 1 to establish her right was clearly maintainable.

7. point 3 : For a decision of they point, it is essential to refer to Section 3 (14) and 19 of the U. P. Z. A. and L. R. Act, which read as follows :

3. (14) Land (except in Section 109, 143 and 144 and Chapter VII) means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming.

19. All land held or deemed to have been held on the date immediately preceding the date of vesting by any person as :

#(i) * * * * (ii) * * * * (iii) * * * * (iv) A hereditary tenant. (v) * * * * (vi) * * * *
(vii) * * * * (viii) * * * * (ix) * * * *##

Shall save in case provided for in clause (d) of sub-section (1) of Section 18, be deemed to be settled by the State Government with such person who shall, subject to the provisions of this Act, be entitled except as provided in sub-section (2) of Section 18, to take or retain possession as a sirdar thereof.

8. A bare perusal of the definition of the word "land" as contained in Section 3 (14) of the U. P. Z. A. and L. R. Act which is reproduced above would show that it is not necessary for the land to fall within the purview of this definition that it must be actually under cultivation or occupied for purposes connected with agriculture. The requirement of the definition is, in our opinion amply satisfied if the land is either held or occupied for purposes connected with agriculture. The word "held" occurring in the above definition, which is a past participle of the word "hold" is of wide import. In the Unabridged Edition of The Random House Dictionary of the English Language, the word "hold" has been inter alia stated to mean "to have the ownership or use of : keep as one's own." In The Dictionary of English Law by Earl Jowitt (1959 Edition), the word "hold" has been interpreted as meaning "to have as tenant".

9. In Stroud's Judicial Dictionary (Fourth Edition), the distinction between holding and occupation is sought to be brought out by quoting the following observations by Littledale, J. in R. v. Ditchet" :

10. In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance, the word "held" means to possess by 'legal title. Relying upon this connotation, this Court in Budhan Singh v. Nabi Bux, interpreted the word "held" in Section 9 of the U. P. Z. A. and L. R. Act as meaning possession by legal title.

11. In the instance case, it has been concurrently found by the Courts below on the basis of evidence adduced in the case that the land in question was let out to respondent 1 by the aforesaid intermediaries in May 1950 (1357 Fasli) For growing crops; that she brought a substantial portion thereof under cultivation, paid rent to Girdhar Das and Purshottam Das in 1951 and 1952 against proper receipts; that she has been regularly paying revenue to the appellant and that she has all along lawfully continued to hold the land for purposes connected with agriculture. It is also established from the appellant's own revenue records that respondent 1 was holding the land as a hereditary tenant on the date immediately preceding the date of vesting. There is, therefore, no manner of doubt that she fulfilled all the requisite condition and became a sirdar of the land on the date of vesting under Section 19 of the U. P. Z. A. and L. R. Act.

12. All the contentions raised by Counsel for the appellant, therefore, fail.

13. For the foregoing reasons we find no force in this appeal which is dismissed. The appellant shall pay costs of respondent 1 as directed in Court's order dated November 12, 1968.

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