

Shiveshwar Prasad Narain Singh and Another

Vs

Ghurahu and Another

Civil Appeals 1198-1200 of 1969

(D. A. Desai, P. S. Kailasam JJ)

15.11.1978

JUDGMENT

DESAI, J. –

1. These three appeals by special leave arise from three different suits filed by plaintiff Smt. Raj Rup Kunwar for possession of certain plots of land from the defendants in each suit under Section 202 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 ('Abolition Act', for short), alleging that on the relevant date she was holding the land involved in the suit as an intermediary as sir and has accordingly become bhumidhar under Section 18 of the Abolition Act and she being a disabled person within the meaning of Section 157, the defendant in each case being an occupant has become an asami by the combined operation of Section 20(b)(i) and Section 21(I)(h) of the Abolition Act and, therefore, she is entitled to recover possession from the defendant in each suit. The defendant in each suit contested the claim of the plaintiff contending that the defendant in each case has become an adhvasi and, therefore, the plaintiff is not entitled to recover possession. The Sub-Divisional Officer in whose court the suit was instituted agreed with the defendants and dismissed the suits and the first appeal in each suit to the District Judge, Varanasi and the second appeal to the High Court at Allahabad did not meet with success. Hence the present appeals by the legal representatives of the original plaintiff, who died in the course of litigation. The appeals were consolidated by the High Court and were disposed of by a common judgment.

2. The facts concurrently found and not in dispute are that the deceased plaintiff was an intermediary who held the land involved in the dispute as sir and under Section 18 of the Abolition Act became a bhumidhar to the land. Defendant in each case was the tenant of sir. Deceased plaintiff was paying more than Rs. 250 per annum and, therefore, Section 16 would not be attracted. Plaintiff was a disabled person within the meaning of Section 10 and Section 157. All the courts are agreed that the defendant in each suit was recorded as tenant of sir in the khasra of 1356 Fasli.

3. On these undisputed facts a narrow but interesting question raised in these appeals is whether the defendant in each case would become an adhvasi under Section 20(a)(i) or an asami by the combined operation of Section 20(b)(i) and Section 21(I)(h) of the Abolition Act.

4. Section 20 reads as under :

20. Every person who -

(a) on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act -

(i) except as provided in sub-clause (i) of clause (b), a tenant of sir [other than a tenant referred to in clause (ix) of Section 19 or in whose favour hereditary, rights accrue in accordance with the provisions of Section 10], or

(ii) except as provided in sub-clause (i) of clause (b) a sub-tenant other than a sub-tenant referred to in proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act 17 of 1939), of any land other than grove land.

(b) was recorded as occupant, -

(i) of any land other than grove land or land to which Section 16 applies or land referred to in the proviso to sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947 in the khasra or khatauni of 1356 F prepared under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901 (U.P. Act III of 1901), or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under clause (c) of sub-section (1) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act 10 of 1947), or

(ii) of any land to which Section 16 applies, in the khasra or khatauni of 1356 Fasli prepared under Section 28 and 33 respectively of the United Provinces Land Revenue Act, 1901 (U.P. Act 3 of 1901), but who was not in possession in the year 1359 F,

shall, unless he has become a bhumidhar of the land under sub-section (2) of Section 18 or an asami under clause (h) of Section 21, be called adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

5. Section 21(I)(h) reads as under :

21. Non-occupancy tenants, sub-tenants of grove-lands and tenant's mortgagees to be asami. - Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as -

(h) a tenant of sir of land referred to in sub-clause (a) of clause (i) of the explanation under Section 16, a sub-tenant referred to in sub-clause (ii) of clause (a) of Section 20 or an occupant referred to in sub-clause (i) of clause (b) of the said section where the landholder or if there are more than one landholder, all of them were person or persons belonging -

(a) if land was let out or occupied prior to the ninth day of April, 1964, both on the date of letting or occupation, as the case may be, and on the ninth day of April, 1946, and

(b) if the land was let out or occupied (on or) after the ninth day of April, 1946, on the date of letting or occupation,

to any one or more of the classes mentioned in sub-section (1) of Section 157.

shall be deemed to be an asami thereof.

6. The Abolition Act as its Preamble shows, was enacted to provide for the abolition of the Zamindari system which involved intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provisions for other matters connected therewith. Chapter II makes provision for acquisition of the interest of intermediaries and the consequences flowing therefrom. On a notification to be issued by the State Government after the commencement of the Act as from the date to be specified in notification all estates situated in Uttar Pradesh shall vest in the State and all such estates shall stand transferred and vest, except otherwise provided, in the State, free from all encumbrances. With a view to extinguishing feudal over lordship and removing all intermediaries so as to establish direct relationship between the State and the tiller of the soil, a bold attempt was made by the Abolition Act to remove all intermediaries. This laudable object in enacting the statute must inform interpretative process and where the language is ambiguous, or capable of two interpretations, the court should so interpret the provisions as to advance the legislative intendment. Bearing in mind this well-known canon of construction of such welfare legislation, we may now approach the specific contentions raised in this appeal.

7. Section 20 which we have extracted above provides for conferring adhvasi status on certain classes of tenants, sub-tenants and occupants. Section 20(a)(i) seeks to confer on a tenant of sir the status of adhvasi, subject to certain exceptions enacted in the section. Indisputably, defendant in each case was a tenant of sir. Sub-section (a)(i) of Section 20, omitting inapplicable portion, provides that every person who, on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of the Act, a tenant of sir, shall, unless he has become a bhumidhar of the land under sub-section (2) of Section 18 of an asami under clause (h) of Section 21, would become adhvasi of the land. Sub-clause (i) of Section 20(a) starts with an exception as set out in sub-clause (i) of clause (b) of Section 20. Analysing Section 20(a)(i) it would appear that every person who is a tenant of sir on the date immediately preceding the date of vesting shall, unless he has become a bhumidhar under Section 18(2) or asami under Section 21(h) would become an adhvasi. Sub-clause (i) of clause (b) provides that every person who was recorded as occupant of any land in the khasra or khatauni of 1356 Fasli prepared under relevant statute, shall, except in cases therein mentioned, become adhvasi. Section 20 confers status of adhvasi on certain classes of tenants of sir as provided in Section 20(a)(i) and on certain sub-tenants provided in Section 20(a)(ii) and on occupants of land envisaged in Section 20(b)(i) and (ii). The expression "except as provided in sub-clause (i) of clause (b) both in Section 20(a)(i) and 20(a)(ii) would only mean that except those persons who would fall in sub-clause (i) of clause (b), all other tenants of sir falling under sub-clause (i) of Section 20(a) or all sub-tenants falling under clause (ii) of Section 20(a) would become adhvasi unless otherwise provided in Section 18(2) or Section 21(h). On a pure grammatical construction it would appear that every tenant of sir or a sub-tenant covered by clause (i) or clause (ii) of Section 20(a), would become adhvasi unless there is someone who is covered by clause (b)(i) of Section 20 recorded as occupant of the land of which there was a tenant of sir as envisaged by Section 20(a)(i) or a sub-tenant as envisaged by Section 20(a)(ii). Once in respect of a land there is not shown to be any person as envisaged by Section 20(b)(i) on the land of which there is a tenant of sir or a sub-tenant as envisaged by Section 20(a)(i) and (ii) respectively, the latter would become adhvasi but if there is someone in respect of such land who is recorded as occupant and qualifies for being regarded adhvasi under Section 20(b)(i), he would become adhvasi in preference to or overriding the claim of a tenant of sir or sub-tenant described in Section 20(a)(ii) respectively.

8. It was, however, contended that the occupant is not defined in the Act and that the occupant can only mean a person holding the land in possession or actual enjoyment. Proceeding, further it was said that if a tenant of sir who falls under Section 20(a)(i) is also recorded as occupant under Section 20(b)(i) in the khasra of 1356 Fasli, he would become an occupant and would acquire the status of adhvasi under Section 20(b)(i) and in that event if the landholder of such occupant is a disabled person and within the meaning of Section 157, such occupant would not be an adhvasi but shall be deemed to be an asami thereof in view of the provision contained in Section 21(h). Legal consequence of acquiring a status of adhvasi or asami is that in the former case the disabled person cannot evict adhvasi from land for personal cultivation, which bar does not exist in the case of asami.

9. It was contended that a tenant of sir who, if he is also an occupant of the land within the meaning of Section 20(b) (i), would become adhvasi under Section 20(b)(i) whereupon Section 21(1)(h) would be attracted and such a tenant of sir would become an asami and not adhvasi. This construction is sought to be spelt put by reference to the exception engrafted in Section 20(a)(i) by submitting that a tenant of sir can become adhvasi under Section 20(a)(i), if on the date immediately preceding the date of vesting he is a tenant of sir but is not recorded as occupant in the khasra or khatauni of 1356 F. This approach, apart from being contrary to the grammatical construction of the section, also runs counter to the very object or the scheme of the legislation. A tenant of sir was more favourably placed than a mere occupant whose possession may not be referable to a valid title before the enactment of Abolition Act. The expression 'occupant' in Abolition Act is not defined but it has been interpreted to mean a person holding the land in possession or actual enjoyment (see *Amba Prasad v. Abdul Noor Khan* ((1964) 7 SCR 800)). If a person is a tenant of sir on the date immediately preceding the date of vesting but is not recorded as an occupant in khasra or khatauni of 1356 F., he becomes adhvasi and not an asami under Section 20(a)(i). If on the other hand he is not only a tenant of sir and is also recorded as an occupant in the khasra or khatauni of 1356 F., meaning thereby that if on the relevant date he was in possession and actual enjoyment of the land he would become adhvasi under Section 20(b)(i) and would be exposed to the further exception enacted in Section 21(I)(h) which if attracted, would make him asami. Therefore, a tenant of sir not being in possession on the relevant date would be in a more favourable position than one who would be in continuous undisturbed possession being recorded as occupant in khasra or khatauni of 1356 F. Such could not be the intention of the Legislature. Therefore, the construction suggested by Mr. Goyal cannot be accepted.

10. A tenant of sir or a sub-tenant would become under Section 20(a)(i) or (ii), as the case may be, an adhvasi. Now let us recall the object in enacting the legislation which was to confer certain rights on persons who were in actual possession of land. Legislature must have in view the eventuality were a tenant of sir or sub-tenant as contemplated by Section 20(a)(i) or (ii), as the case may be, would not be in possession but someone else is in possession and enjoyment and, therefore, may have been recorded as an occupant in the khasra or khatauni of 1356 F. The statute in such a situation intended to confer the status of adhvasi on such occupant in preference to a tenant of sir or sub-tenant who is not in possession. This construction advances the object to be achieved by the legislation, namely, to remove intermediaries and to bring the tiller of the soil in direct relation to the State. Section 20(b)(i) contemplates an occupant who is recorded in respect of land therein mentioned as being in actual possession because khasra records possession and enjoyment of the land and therefore the expression occupant was interpreted to mean a person holding a land in possession or actual enjoyment. If this meaning of the expression 'occupant' is kept in view, Section 20(a) and (b) present no difficulty for construction. Section 20(a)(i) and (ii) provide for conferring the status of adhvasi on a tenant or sir or sub-tenant, as the case may be, but it also comprehends

the situation that such a tenant of sir or a sub-tenant may not be in possession and there may be someone else recorded as occupant in khasra or khatauni of 1356 F., which would mean that someone other than the tenant of sir, or a sub-tenant was in possession or actual enjoyment of the land. It is such an occupant who is in actual possession and enjoyment of land being the tiller of soil, was to be adhvasi in preference to tenant of sir or sub-tenant of such land. Such class of occupant envisaged in Section 20(b)(i) is taken out of the operation of Section 20(a)(i) or (ii) by engraving an exception, except as provided in Section 20(b)(i). That is why Section 20(a)(i) and (a)(ii) open with an exception, namely, except as provided in sub-clause (i) of clause (b) which would mean that except where there is an occupant recorded in 1355 F. on the land of which there is a tenant of sir or sub-tenant, the latter would become adhvasi, but where there is an occupant on land recorded in 1356 F. such occupant would be adhvasi. The Allahabad High Court in *Kumari Radha Kishori v. Joint Director of Consolidation, U.P.* (1972 All LJ 738) interpreted Section 20(a)(i) and (ii) to mean what we have indicated above when it observed that "except as provided in sub-clause (i) of clause (b) "occurring in Section 20(a)(i) indicates that if 'A' is a tenant of sir on the date immediately preceding the date of vesting and 'B' is recorded as occupant of sir in 1356 F. then 'B' will acquire adhvasi rights in preference to 'A'. It was further held that a person who is in fact a tenant of sir and who is so recorded in the records of 1356 F., will acquire adhvasi rights under Section 20(a)(i) and not under Section 20(b)(i).

11. Mr. Goyal, however, contended that this Court in *Amba Prasad's case* (supra) has in terms held that a person in possession alone can be recorded as an occupant and that if a tenant of sir was in possession and actual enjoyment and was, therefore, recorded as occupant in 1356F. He is an occupant and the case would fall under Section 20(b)(i). In a slightly different context this Court observed as under :

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 a 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.

Instead of supporting the construction as canvassed for by Mr. Goyal, this observation accords with the construction as put by us. The whole gamut of law under discussion proceeds in the direction of removal of intermediaries of all sorts and kinds so as to bring the tiller in direct relation to the State. Now, if there is a tenant of sir or a sub-tenant of a land who held the status or character on the day just preceding the date of vesting but someone other than the tenant or sir or sub-tenant is recorded as occupant in khasra or khatauni of 1356F., obviously the tenant of sir or sub-tenant is intermediary and by conferring adhvasi status on the occupant in such circumstances the intermediaries are being done away with. The hierarchy set out in *Amba Prasad case* (supra) would show that Dawedar qabiz means person in actual possession but whose possession is not referable to a valid title would become an occupant. This would indicate that in considering relative rights Section 20(b) accords preference to one in actual possession against one who holds some right in the land. The construction, therefore, as put by us accords with the object and purpose of the legislation and it is a well-settled canon of construction that where two constructions are possible, one which advances the object of the legislation must be preferred to one which may retard or frustrate the object of the legislation.

12. The view in Amba Prasad case (supra) was affirmed by this Court in Nath Singh v. The Board of Revenue ((1968) 3 SCR 498).

13. If defendant in each case was a tenant of sir in respect of land of which the possession is sought by the plaintiff and no one else was shown as the occupant of such land in 1356 F., obviously the defendant in each case would become adhivasi under Section 20(a)(i). Therefore, Section 21(l)(h) would not be attracted as contended for by Mr. Goyal in this case because the third clause of Section 21(l)(h) refers to an occupant as envisaged in sub-clause (i) of clause (b) of Section 20 and therefore, the defendant would not become an asami as therein contemplated. In this view of the matter the plaintiff's suit has been rightly dismissed. Accordingly these appeals fail and are dismissed with no order as to costs.

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