

Babu Noorul Hasan Khan (dead) by Lr's

Vs

Ram Prasad Singh and Others

Civil Appeal No. 1951 of 1969

(N.L. Untwalia, A.D. Koshal JJ)

18.10.1979

JUDGMENT

UNTWALIA, J. –

1. This is an appeal by special leave from the judgment of the Allahabad High Court disposing of ten connected civil revisions. Noorul Hasan Khan and others were the Zamindars of the village in which certain lands were given in Theka to Bhagwati Singh, Ram Prasad Singh and others on March 6, 1948. The Zamindari vested under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, hereinafter called the Act, on June 30, 1952. Disputes arose between the ex-Zamindars and the ex-Thekedars during the pendency of the proceedings under the U.P. Consolidation of Holdings Act. When entries in the list of tenancy holders were published under Section 11 of the Consolidation of the Holdings Act relating to the lands in dispute consisting of several plots, objections were filed by both the parties. Noorul Hasan Khan and others claimed that the plots in dispute being their exclusive sir and khudkasht would be deemed to have been settled with them by the State on the abolition of the Zamindari and their names should be recorded as bhumidars thereof. On the other hand Bhagwati Singh and others claimed that they had become the Sirdars of the plots in dispute and they resisted the claim of the ex-Zamindars. The Consolidation Officer referred the matter to the Civil Judge of Azamgarh in accordance with Section 12 of the Consolidation of Holdings Act. The Civil Judge sent the matter for decision to an Arbitrator appointed under the Act as the dispute gave rise to the question of title. Shri Kailash Chandra, an Assistant Collector, was appointed as an Arbitrator. On considerations of the oral and documentary evidence adduced before him he rejected the claim of ex-Zamindars and decided the matter in favour of the ex-Thekedars. Bhagwati Singh and others were held to be the Sirdars of the plots in question. Noorul Hasan and others filed objections to the Award before the Civil Judge. He allowed the objections on the ground that the illegality of the Award was apparent on the face of it inasmuch as the Arbitrator did not apply the correct law in determining the rights of the parties. He set aside the Award and remitted it back to the Arbitrator for reconsideration in the light of his judgment.
2. Appeals were taken to the learned Additional District Judge who by order dated December 8, 1962 disagreed with the learned Civil Judge on the main question but affirmed his order to remand on the ground that in the Award many questions were left undetermined. Both sides filed separate revisions before the High Court. The High Court has allowed the revisions of the ex-Thekedars and dismissed those of the ex-Zamindars. Hence this appeal.
3. The only point which was argued and agitated before us is whether Bhagwati Singh and others have been rightly held to be the Sirdars of the plots in question or whether the ex-landlords had become the bhumidars. The determination of this question depends upon a correct appreciation of

the provisions of law contained in Sections 12 and 13 of the Act. We shall read the relevant portions of the two sections. They are as follows :

12. Thekedars to be hereditary tenants in certain circumstances. - (1) Where any land was in the personal cultivation of a person on the 1st day of May, 1950, as a thekedar thereof and the theka was made with a view to the cultivation of the land by such thekedar personally, then notwithstanding anything in any law, document or order of court, he shall be deemed to be a hereditary tenant thereof entitled to hold, and when he has been ejected from the land after the said date, to regain possession as a hereditary tenant thereof liable to pay rent at hereditary rates.

13. Estate in possession of a thekedar - (1) Subject to the provisions of Section 12 and sub-section (2) of this section a thekedar of an estate or share therein shall, with effect from the date of vesting, cease to have any right to hold or possess as such any land in such estate.

(2) Where any such land was in the personal cultivation of the thekedar on the date immediately preceding the date of vesting, the same shall -

(a) if it was sir or khudkasht of the lessor on the date of the grant of the theka, be deemed for purposes of Section 18, to be the sir or khudkasht of the lessor on the date immediately preceding the date of vesting and the thekedar shall, with effect from the date of vesting, become the asami thereof liable to pay rent at hereditary rates applicable on the date immediately preceding the date of vesting and entitled to hold the land as such for the unexpired period of the theka or for a period of five years from the date of vesting whichever is less;

(b) if it was not sir or khudkasht of the lessor on the date of the grant of the theka and -

(i) its area does not exceed thirty acres, be deemed for purposes of Section 19 to have been held by the thekedar as a hereditary tenant liable to pay rent which shall be equal to the rent calculated at hereditary rates applicable on the date immediately preceding the date of vesting;

(ii) its area exceeds thirty acres, be deemed to the extent of thirty acres for purposes of Section 19 to have been held as a hereditary tenant as aforesaid and the remainder shall be deemed to be vacant land and the thekedar shall be liable to ejection therefrom in accordance with the provisions of Section 209.

4. It would be noticed from the provisions aforesaid that a Thekedar of an Estate ceases to have any right to hold or possess as such any land in such Estate with effect from the date of its vesting. This is what has been provided in sub-section (1) of Section 13. But it is subject to two exceptions-viz., one, the provisions contained in Section 12 and the other engrafted in sub-section (2) of Section 13. There is no dispute between the parties that the land in possession of the Thekedars on the date of vesting was either covered by Section 12(1) or Section 13(2)(a). We are not concerned in this case with sub-section 13(2)(b) as the land admittedly was the Sir or Khudkasht of the lessor namely the Zamindars. If such a land was in the personal cultivation of a person on the 1st day of May, 1950 as a Thekedar thereof and if the Theka was made with a view to the cultivation of the land by such

Thekedar personally then because of the non obstante clause occurring in sub-section (1) of Section 12 of the Act the Thekedar would be deemed to be a hereditary tenant of the land entitled to hold as such and liable to pay rent at hereditary rates. If, however, the land was in personal cultivation of the Thekedar merely as a Thekedar appointed to collect rent from other tenants and incidentally allowed to cultivate the Sir or Khudkasht land of the lessor then he will be a mere asami in accordance with Section 13(2)(a) of the Act. The Arbitrator on a consideration of the Theka document found that the theka was made with a view to cultivation of the land by the Thekedar personally. The interpretation of the Arbitrator was not such that it could enable the Civil Judge to take the view that there was an error of law apparent on the face of the record. On the other hand it appears to us that the interpretation put by the Arbitrator was correct. There is a subtle but clear dividing line between the two types of cases one falling under Section 12(1) of the Act and the other coming within the ambit of Section 13(2)(a). In our opinion the High Court was right in its view that the Award of the Arbitrator was not fit to be interfered with.

5. For the reasons stated above, we dismiss this appeal but in the circumstances make no order as to costs.

</html