Raghunandan Singh and Others

Vs

Brij Mohan Singh and Others

Civil Appeal No. 1197 of 1970

(Syed M. Fazal Ali, A. D. Koshal JJ)

15.02.1980

JUDGMENT

FAZAL ALI, J. –

1. This appeal by certificate is directed against a judgment of the Allahabad High Court, which dismissed the writ petition filed by the appellants in limine. We have heard learned counsel for the parties at great length. The only point for determination in the present appeal is whether the case of the parties is governed by Section 12 or Section 13 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act 1 of 1950) (hereinafter called the Act). The facts in dispute are that so far as the appellants are concerned, they were originally the zamindars of the lands in dispute and they granted thekas to the respondents first on July 10, 1933 and then on May 24, 1943. The interpretation of the terms of the theka would determine the question of the status of the appellants.

2. Shri Shiv Pujan Singh, appearing for the appellants, submitted that as the theka granted by the zamindars was not made with the lessees only for the purposes of personal cultivation of the lands the respondents would not fall within the ambit of Section 12 of the Act. On the other hand, it was argued for the respondents that as they were in cultivating possession of the lands in question, they had acquired the status of hereditary tenants conferred on them by Section 12 of the Act and they are not asamis as contemplated by Section 13 of the Act. Although the appellants succeeded before the Settlement Officer (Consolidation), the Deputy Director of Consolidation held in revision that the appellants were Bhoomidars and the respondents could not get any status under Section 12 of the Act.

3. In order to decide this question, we have to determine the scope and ambit of Section 12 of the Act :

> 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.

4. An analysis of this section would show that before a person can be held to be a hereditary tenant under the section, the following conditions must be fulfilled :

1. He must be in possession of the land in dispute on the 1st of May, 1950.

2. His possession must be under a theka.

3. The theka must be for the purpose of personal cultivation of the lands in dispute by that person and not for other purposes. The dominant intention of the statute, as of other land reforms legislation, is to secure land for the tiller, of the soil who alone would be clothed with the special rights of a hereditary tenant.

5. It is, therefore, manifest that only if the above three conditions are fulfilled, would the thekedars get the status of hereditary tenants and not otherwise. This section was interpreted by a decision of this Court in Babu Noorul Hasan Khan v. Ram Prasad Singh ((1980) 1 SCC 367) where this Court observed as follows :

> If such a land was in the personal cultivation of a person on the 1st 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 is 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 on 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.

6. The facts of the case before us are similar to the facts of the present case and the decision of the court is therefore directly in point.

7. A perusal of para 1 of the theka executed on July 10, 1933 in favour of the thekedars clearly shows that the leaseholders were to remain in possession of the entire agricultural land either through themselves or by arranging with temporary tenants and by recovering government revenue. The other theka which was executed on May 24, 1943 was almost in the same terms and clause (1) provides that the leaseholders will remain in possession of the agricultural land as leaseholders themselves and may appoint temporary tenants by receiving the government revenue.

8. Thus, the terms of the theka, do not spell out the fact that the respondents had taken the lease for the purpose of personal cultivation only because other purposes also are indicated as part of the theka viz. to sublet the land or to appoint temporary tenants and the like.

9. In these circumstances, the conditions required by Section 12 are clearly not fulfilled in the case of the respondents.

10. Mr. Singh appearing for the respondents relied on a decision of the Allahabad High Court in Rami Dullaiya v. Ganga Prasad (1968 ALJ 517), where it was held that although the theka may be for some other purpose also, but if it was also for personal cultivation, Section 12 of the Act would apply to the thekedars. With due respect, we are of the opinion that the view taken by the Allahabad High Court is in direct conflict with the decision of this Court referred to above and it must, therefore, be held to be incorrect.

11. For the above reasons, we allow this appeal, set aside the order of the High Court as also that of the Deputy Director of Consolidation and restore the order of the Settlement Officer (Consolidation)

dated January 24, 1968.

12. In the circumstances of this case, there will be no order as to costs.

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