Richpal Singh and Another

Vs

Desh Raj Singh and Others

Civil Appeals No. 1725 and 1726 of 1973

(V.D. Tulzapurkar, A. Varadarajan JJ)

25.08.1981

JUDGMENT

TULZAPURKAR, J. –

1. These appeals by certificate granted by the Allahabad High Court raise the following substantial question of law of general importance which needs to be decided by this Court :

> Whether the view taken by the Full Bench in Smt. Maya v. Raja Dulajji [1970 ALJ 476] that the lessor/landlord should not only be disabled person on the relevant dates, but that he should continue to live on the date immediately preceding the date of vesting, within the meaning of clause (h) of Section 21(1) of the U.P. Zamindari Abolition and Land Reforms Act, represents a correct construction of clause (h) of Section 21(1) of the Act ?

2. The facts giving rise to the aforesaid question may be stated. One Smt. Ram Kali, widow of Tikam Singh, was the landholder of the plots (agricultural land) in dispute situated in villages Agaota and Khaiya Khera in District Bulandshahr (U.P.). On June 14, 1945 Smt. Ram Kali who was a sirdar and a "disabled person" falling within Section 157(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called the Act) executed a registered deed of lease for a period of five years in favour of Uttam Singh and Murli Singh (the predecessors-in-title of the respondents) but before the expiry of the period of five years she died in the August 1945 and Dan Sahai (her husband's real brother and predecessors-in-title of the appellants) inherited her interest. Dan Sahai was also a "disabled person" within the meaning of Section 157(1) of the Act. It seems that after the expiry of the period of the registered lease Uttam Singh and Murli Singh continued to hold the lands as tenants from year to year under Dan Sahai. In consolidation proceedings a question arose whether Uttam Singh and Murli Singh, who were lessees under Smt. Ram Kali and Dan Sahai, acquired the status of sirdars or they remained asamis of the plots in disputes. The case of Dan Sahai was that they were asamis and not adhivasis entitled to be treated as sirdars under Section 240-B of the Act and that depended upon whether a tenants or occupants of the plots in dispute their case fell within the provisions of Section 21(1)(h) of the Act. The contention of Dan Sahai was that since Smt. Ram Kali was a disabled person on the date of letting and since he who succeeded her was also a disabled person on April 9, 1946, the lease in favour of Uttam Singh and Murli Singh would fall within Section 21(1)(h) and as such Uttam Singh and Murli Singh shall be deemed to be asamis. On the other hand the contention on behalf of Uttam Singh and Murli Singh was that the landholder should not only be a disabled person on both the dates mentioned in sub-clause (a) of clause (h) of Section 21(1) (being the date of letting as also April 9, 1946) but the same landholder should continue to live on the date immediately preceding the date of vesting (which is July 1, 1952 under the Act) and

since in the instant case the same landlord who had let out the plots and who was disabled person on the date of letting had not continued to live on the date immediately preceding the date of vesting Section 21(1)(h) was totally inapplicable and, therefore, they were entitled to be treated as sirdars. The Division Bench of the Allahabad High Court in Special Appeals Nos. 424-425 of 1971 accepted the contention raised by the counsel on behalf of Uttam Singh and Murli Singh (the respondents' predecessors) relying on the view taken by the Full Bench in Smt. Maya v. Raja Dulajji [1970 ALJ 476] and decided that appeals in their favour by the holding that they were not asamis but had become sirdars.

3. At the outset it may be stated that it was not disputed either in the lower courts or before us that both Smt. Ram Kali as well as Shri Dan Sahai who succeeded to her interest in the plots after her death were disabled persons under Section 157(1) of the Act. In fact it was accepted by both the sides that on the date of letting (being June 14, 1945) Smt. Ram Kali, the then landholder was disabled person and on April 9, 1946 (being the other relevant date under sub-clause (a) of clause (h) of Section 21(1), Dan Sahai, the then landholder, was a disabled person who continued to be the landholder up to the date of vesting and the question is whether in such a case the occupation of the plots by Uttam Singh and Murli Singh under the lease from both of them would fall within the provisions of Section 21(1)(h) of the Act.

4. The relevant provision runs thus :

> 21. (1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as -
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> (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 landholders, all of them were person or persons belonging -
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> (a) if the land was let out or occupied prior to the ninth day of April, 1946, both on the date of letting or occupation, as the case may be, and on the ninth day of April, 1946, and
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> (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,
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> to any one or more of the classes mentioned in sub-section (1) of Section 157,
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> shall be deemed to be an asami thereof.

In other words, Section 21(1)(h) provides that every person occupying or holding land in any one of the capacities mentioned in clause (h) on the date immediately preceding July 1, 1952 shall be deemed to be an asami thereof notwithstanding anything contained in the Act, if the landholder or if there are more than one all of them were disabled persons within the meaning of Section 157(1), both on the date of letting as well as on April 9, 1946 where the letting has taken place prior to April 9, 1946, or were disabled persons on the date of letting if the letting has occurred after April 9, 1946.

5. In the instant case it is not disputed that Uttam Singh and Murli Singh were on the date immediately preceding the date of vesting holding or occupying the plots in questions in one or the other capacity mentioned in clause (h); secondly, since the letting was prior to April 9, 1946 sub-clause (a) of clause (h) is attracted and it is also not disputed that on the date of letting the then landholder (Smt. Ram Kali) was a disabled person and on April 9, 1946 the then landholder Dan Sahai, who succeeded her, was also a disabled person under Section 157(1) of the Act. Incidentally Dan Sahai continued to be the landholder on the date immediately proceedings July 1, 1952. On these facts if seems to us clear that all the requirements of Section 21(1)(h) could be said to have been satisfied but the Division Bench relying upon the Full Bench decision in Smt. Maya v. Raja Dulajji [1970 ALJ 476] held that Uttam Singh and Murli Singh were not asamis and had become sirdars because Section 21(1)(h) was not attracted inasmuch as in their view it was requirement of that provision that not merely should the landholder be a disabled person on both the dates mentioned in sub-clause (a) of clause (h) but the same landholder should continue to be landholder on the date immediately preceding the date of vesting (i.e. the identity of the disabled landholder or landholders on both the dates and the landholders or landholders seeking the benefit or protection of the provisions on the date immediately preceding July 1, 1952 must remain unchanged) and this requirement was not satisfied in this case. The question is whether on true construction of the provision such a requirement can be read into the said provision ?

6. In Smt. Maya v. Raja Dulajji [1970 ALJ 476] the facts were that the disputed plots belonged to one Bijain and were inherited on his death by his widow Smt. Lakshmi and when Smt. Lakshmi died her minor unmarried daughter Kumari Maya become the landholder. Her elder sister Saheb Kunwar acting as her guardian executed a registered lease of the plots in favour of plaintiffs (Ram Charan and other) on October 15, 1947 for a period of five years [a case falling under sub-clause (b) of clause (h)]. Later on Maya was also married to her sister's husband Thakurdas who admitted to the holding as co-tenant with Maya, with the consent of the zamindar in the year 1948. Thus on the date of vesting (July 1, 1952) both Maya (who was still minor and disabled person) as well as her husband Thakurdas were the landholders of the plots in question. The lessee-plaintiffs filed a suit in the year 1954 for a declaration that they had become adhivasis of the land on the coming into force of the U.P.Z.A. & L.R. Act and had subsequently acquired sirdar rights on the passings of the U.P. Act 20 of 1954. The suit was decreed by the both the courts below and hence Maya defendant preferred a second appeal to the High Court. The question raised for determination was whether for the purpose of Section 21(1)(h) the disability of the landholders who were in existence on the date of vesting was material or the disability of the landholder who let out the land was a deciding factor ? The Court noticed that Section 21(1)(h) had been introduced in the Act for the first time by U.P. Act 16 of 1953 with retrospective effect from July 1, 1952 and was later on amended by U.P. Act 20 of 1954 and has thereafter continued in its present form. Section 21(1)(h), as originally enacted, in express terms required that "the landholder or if there are more than one landholder all of them were person or persons belonging, both on the date of letting and on the date immediately preceding the date of vesting, to any one or more of the classes mentioned in sub-section (2) of Section 10 or clause (viii) of sub-section (1) of Section 157". As a result of the amendment made by Act 20 of 1954 the words "both on the date of letting and on the date immediately preceding the date of vesting" were omitted. In other words, by the amendment the requirement that disability of the landholder should subsist on the date of immediately preceding the date of vesting was deleted. The Full Bench accepted the position that for purposes of Sections 21(1)(h), in its present form, the disability of the landholder need not continue or subsist on the date immediately preceding the date of vesting and might cease on or before the date of vesting but took the view that in the case before it there were two landholders of the date immediately preceding the date of vesting, namely, Smt.

Maya and her husband Thakurdas, that a new body of "landholders" had come into existence subsequent to the date of letting and that all of them were not landholders who had let out the land as disabled persons and, therefore, the plaintiffs, become adhivasis and the defendants were not entitled to the benefit of Section 21(1)(h) of the Act. In other words, the Full Bench has been of the view that for purposes of Section 21(1)(h) it is necessary that the landholders on the date immediately preceding the date of vesting must be the same persons as those who let out the land and suffered from disability on the date of letting, and also on April 9, 1946 in case the letting was before that date. In other words, the identity of the landholder or landholders must remain unchanged up to the date of vesting.

7. For reading such a requirement into the provision the Full Bench has given two reasons : (a) that such a requirement arises on construction of certain words used in clause (h) (vide Para 17 of the Judgment) and (b) that the protection given to a disabled landholder was intended to be a personal protection granted to the very individual who let out the land as a disabled person and this was warranted by a historical survey of parallel provisions contained in the preceding Tenancy Laws in U.P. (vide Para 19). According to the Full Bench the crucial words used in clause (h) are "where the landholders or if there are more than one landholder all of them were persons or persons belonging" to any one or more of the classes of disabled persons under Section 157(1) and the Full Bench has reasoned "the word 'are' and the word 'them' together with the word 'were' in the aforementioned phrase clearly show that the intention of the legislature was that on the date of vesting the 'landholder' should be the very person who was the landholder on the relevant dates, to earn the benefit of clause (h) of Section 21(1)". The Court observed that Section 21(1)(h) could bear the interpretation suggested by the counsel for Smt. Maya only if the words "or their predecessors-in-interest" were added before the words "all of them". The Court has further stated that historical survey of the parallel provisions contained in the preceding Tenancy Laws showed that the protection given to a disabled person had always been in the nature of a personal protection granted to the very individual who let out the land as a disabled landholder and the protection ceased to be available when the identity or personality of that landholder is changed and in that behalf reliance was placed on certain provisions of the Agra Tenancy Act, 1926 and U.P. Tenancy Act, 1939. In our view neither reasons holds good for sustaining the literal construction placed upon the provisions by the Full Bench.

8. It is true that clause (h) contains the phrase "where the landholder or if there are more than one landholder, all of them were persons or persons belonging" to any one or more of the classes mentioned in Section 157(1), but for arriving at the correct interpretation of this crucial phrase it is necessary to have regard to the definition of "landholder" and the provisions of Section 157 of the Act with which Section 21(1)(h) is interconnected.

9. Under Section 3(26) of the Act, the definition of "landholder" as given in the U.P. Tenancy Act, 1939 has been adopted since the expression is not defined in the Act. That expression has been defined in Section 3(11) of the U.P. Tenancy Act 1939, thus : "'Landholder' means the person to whom rent is or, but for a contract express or implied would be, payable." This definition must be read in light of Section 3(1) of that Act which runs thus :

> All words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person.

In other words, the expression "landholder" who obviously is a possessor of interest in land under

Section 3(11) means a person to whom rent is payable, and under Section 3(1) by legal fiction it shall include his predecessor-in-interest as also successor-in-interest to whom the rent was or is payable. It is such definition that will have to be read in the U.P.Z.A. & L.R. Act wherever that expression occurs. It is thus obvious that the expression "landholder" occurring in Section 21(1)(h) must mean a person to whom rent is payable and by fiction would include his predecessor-in-interest. Read in this light there would be no question of adding the word predecessor-in-interest of the landholder in Section 21(1)(h) as that would be implicit in the term "landholder" on account of the deeming provision of Section 3(1) read with Section 3(11) of the U.P. Tenancy Act, 1939. It does appear that this aspect of the matter was not brought to the notice of the Full Bench when is construed the concerned crucial phrase. Moreover after the amendment effected by Act 20 of 1954 the thrust of clause (h) is on the landholder or landholders being disabled persons on the material dates only.

10. Further Section 157(1) permits leases by disabled persons and says that a bhumidhar or an asami holding land in lieu of maintenance allowance under Section 11, who is a disabled person falling under any of the clauses (a) to (g), may let the whole or any part of his holding; and the proviso thereto is very important which runs thus :

> Provided that in the case of a holding held jointly by more persons than one, but one or more of them but not all are subject to the disabilities mentioned in clauses (a) to (g), the person or persons may let out his or their share in the holding.

And sub-section (2) provides that where any share of a holding has been let out under the aforesaid proviso the Court may on an application of the asami or the tenure-holder determine the share of the lessor in the holding and partition the same. Having regard to the aforesaid proviso under which even in the case of a joint holding a lease of his share by a disabled landholder is permissible and the same is liable to be separated by a partition it is obvious that the expression "all of them" must refer to all such landholders who were disabled landholders on the material dates. When under the proviso to Section 157(1) a lease of his share by a disabled landholder in joint holding (held along with a non-disabled person) is expressly permitted and under Section 157(2) the Court has to determine such share of the disabled lessor and partition the same on an application being made in that behalf, it is difficult to accept that the legislature intended to deprive the protection of Section 21(1)(h) to such disabled landholder simply because on the date immediately preceding the date of vesting such landholder comes to hold the land jointly with some other non-disabled landholder. In other words on the facts found in the Full Bench case when on the date of letting the entire holding belonged to Smt. Maya who was a disabled person and on the date of vesting she along with her husband Thakurdas (a non-disabled person) became joint holder, could Smt. Maya at any rate to the extent of her share in the joint holding be denied the benefit of Section 21(1)(h) notwithstanding the proviso to Section 157(1) and Section 157(2) being in the statute ? The answer is obviously in the negative. In fact in view of the fact that on the material date (being the date of letting) the entire holding belonged to Smt. Maya the disabled person, and having regard to the deeming provision which has to be read in the definition of "landholder" and having regard to the thrust of the amended clause (h) which does not require that the successor-in-interest be a disabled person on the date of vesting, the benefit of Section 21(1)(h) should have been extended or made available in respect of the entire holding. In other words, on true construction of the crucial phrase occurring in clause (h) it is not possible to read into the provision the additional requirement, namely, that the identity of the landholder or landholders must remain unchanged up to the date of vesting.

11. Coming to the second reason then Full Bench has observed that a historical survey of parallel

provisions of the Agra Tenancy Act, 1926 and U.P. Tenancy Act, 1939 supported the conclusion that protection was granted only to the very individual who let out the land as a disabled landholder and the protection ceased when the identity of the personality of that landholder changed and in that behalf reference was made to Section 29(6) and (7) of the former Act and Section 41(2) of the later Act. Now apart from the fact that the scheme of the U.P.Z.A. & L.R. Act is different from these two earlier enactments, a careful analysis of the two provisions in the earlier enactments will clearly show that in each of the provisions express words had been used conferring personal rights on the individuals concerned which is not the case with Section 21(1)(h) of the Act.

12. Having regard to the above discussion we are of the opinion that the view taken by the Full Bench of Allahabad High Court in Smt. Maya v. Raja Dulajji [1970 ALJ 476] does not represent the correct construction of Section 21(1)(h) of the Act. On true construction of the said provision in our view, the benefit thereof would be available to the landholder on the date of vesting, if the same landholder or his predecessor existing on the material dates was a person or persons belonging to one or more of the classes mentioned in Section 157(1) of the Act.

13. Since in the instant case, which falls under sub-clause (a) of clause (h), on the date of actual letting Smt. Ram Kali was a disabled person and since on the next material date, namely, April 9, 1946 Dan Sahai (successor-in-interest of Smt. Ram Kali) was also a disabled person, the landholder on the date of vesting, who incidentally happened to be Dan Sahai, would be entitled to the benefit of Section 21(1)(h) and the respondents (successors of Uttam Singh and Murli Singh) would remain asamis and cannot be said to have become sirdars.

14. We might mention that after the arguments in these appeals were concluded and our judgment was ready for pronouncement we were informed that in a later case Dwarika Singh v. Dy. Director of Consolidation [1981 AWC 213 : 1981 ALJ 484] a larger Bench of five Judges of the Allahabad High Court, by majority, overruled the view taken in Smt. Maya case [1970 ALJ 476].

15. In the result the appeals are allowed, the orders of the Division Bench in Special Appeals Nos. 424-425 of 1971 are set aside and for reasons given by us above, the decision of the learned Single Judge dated May 10, 1971 is restored.

16. We direct that each party will bear its own costs.

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