

SUPREME COURT OF INDIA

Bir Singh

Versus

Pyare Singh

(S. Saghir Ahmad and D. P. Mohapatra, JJ.)

Civil Appeal No. 6119 of 1995.

06.03.2000

JUDGMENT

D.P. Mohapatra, J. - On analysis of the case of the parties and the contentions raised on their behalf the question which arises for determination is whether in the facts and circumstances of the case the appellants can be said to be 'khatedar tenants' of the land in dispute. If this question is answered in the affirmative then the further question for consideration will be whether the right of the appellants in the land in dispute was extinguished under section 12 of the Rajasthan Tenancy Act, 1955 (for short the Tenancy Act'). The High Court of Rajasthan having answered the first question in the negative and dismissed the suit, the plaintiffs are in appeal against the judgment.

2. The factual matrix of the case relevant for appreciation of the question for determination, may be stated thus :- Late Chet Singh held zamindari rights in respect of the disputed land situated in Village Mohammadpur, of Tehsil-Dholpur in the State of Rajasthan. As he was serving in the army he had engaged Sohan Singh for cultivation of the land. Since Sohan Singh got his name recorded in the revenue records as the owner of the land Chet Singh filed a suit, against him before the Assistant Collector, Dholpur. In the said suit a compromise was entered into between the parties and possession of the property was delivered by Sohan Singh to Chet Singh. In the said compromise it was averred that Chet Singh was the Khudkasht Kashatkar of the disputed land and that Sohan Singh voluntarily handed over possession of the land to Chet Singh.

3. Chet Singh mortgaged the land with Charan Singh for a period of ten years for satisfaction of the loan amounting to Rs. 300\/- vide the registered mortgage deed dated 22.9.1956. Chet Singh expired in 1965 leaving the appellants as his legal heirs. As Charan Singh did not hand over possession of the land even after expiry of the period of mortgage the appellants filed a suit, under Section 43(3) read with Section 183 of the Tenancy Act against Charan Singh seeking recovery of possession of the land. The Additional District Collector, by the order dated 12.5.1983 in case No. 142\82 decreed the suit and directed Charan Singh to hand over vacant possession of the land in dispute to the appellants declaring them as 'Khatedar kashtkar'. Charan Singh was further directed to pay to the appellants a sum of Rs. 3400\/- as penalty for illegal occupation of the land during the seventeen agricultural years after expiry of the mortgage period. In the Appeal No. 253 of 1983, filed by Charan Singh the Revenue Appellate Authority,

Bharatpur by the order dated 15.7.1985 dismissed the appeal and confirmed the order of the Additional District Collector. The second appeal, RTA No. 144\85, filed by Charan Singh before the Rajasthan Revenue Appellate Board, was dismissed by the order dated 22.6.1993. Charan Singh expired on 25.2.1991 during pendency of the appeal and the respondents herein were substituted as his legal heirs. The respondents challenged the order of the Revenue Appellate Board in CWP No. 4159\93 before the Rajasthan High Court. The High Court by the Judgment dated 24.2.1994 allowed the writ petition, quashed the concurrent orders of the statutory authorities and dismissed the suit. The said judgment is under challenge in the present appeal.

4. The thrust of the submissions made by the learned counsel for the appellants is that the High Court erred in reversing the concurrent decisions of the statutory authorities on the erroneous finding that they are not entitled to recover possession of land in dispute. The learned counsel contends that after abolition of the Zamindari right of the appellants under the Rajasthan Zamindari and Biswadari Abolition Act, 1959 [for short 'the Zamindari Abolition Act'] the appellants were entitled to retain the land in dispute which was a part of their 'khudkasht' land as recorded in the revenue records.

5. The learned counsel for the respondents supporting the impugned judgment submitted that in view of the undisputed factual position that the appellants were not in occupation of the land in dispute on the date the Zamindari Abolition Act came into force by could not retain possession of the land, notwithstanding the entry in the revenue records showing the land as 'khudkasht'. He placed reliance on the decision of this Court in the case of Budha v. Amila, 1991 Supp.(2) SCC 41.

6. Undisputedly, the plaintiff had lost possession over the land in dispute by 22 September, 1956 when the mortgage deed was registered. It is not in dispute that the plaintiff was seeking recovery of possession from the mortgagee Charan Singh in the suit filed in September, 1967. It is also an accepted position that the land in dispute was shown in the revenue record as 'khudkasht land'. It is also an accepted position that Chet Singh, the predecessor in the interest of the appellants, held Zamindari right over land in dispute. In this backdrop the question for consideration is whether after enforcement of the Zamindari Abolition Act the plaintiffs could claim right of possession over the land in dispute. From the order passed by the statutory authorities it appears that this question was not specifically adverted to by the authorities. They proceeded to determine the controversy on the basis of the provisions in Sections 10 and 12 of the Rajasthan Tenancy Act.

7. In section 2(3) of the Zamindari Abolition Act 'land' means every class or category of land forming part of an estate and includes -

(a) benefits to arise out of such land,

(b) things attached to the earth or permanently fastened to anything attached to the earth,

(c) sites of villages or towns,

(d) beds of tanks, ponds, embankments, rivers and water channels, and

(e) surface of hills

8. Under sub-section (5) of the said section the term 'Zamindar' has the meaning assigned to it by clause (46) of section 5 of the Tenancy Act and includes a malik (landowner) in the Gang canal area.

9. Sub-section (6) of section 2 provides that words and expressions defined in the Tenancy Act and in the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) but not defined in this Act shall, wherever used herein, be construed to have the meaning assigned to them by those Acts.

10. In sub-section (7) of section 2 it is laid down that the words and expression used to denote the person in possession of any right, title or interest shall be deemed to include the predecessors and successors in right, title or interest of such person.

11. Section 3 which is the provision regarding overriding effect of this Act over other laws provides that save as otherwise expressly provided in this Act, the provisions of this Act, and of the rules and orders made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law and rules for the time being in force or any instrument having effect by virtue of any law or usage, agreement, settlement, grant sanad or any decree order or any court of other authority.

12. Chapter II of the Act comprises of the provisions regarding abolition of Aamindari and Biswedari Estates.

In section 5 which is included in the said chapter provisions are made regarding consequences of abolition. The relevant portions of the section are quoted hereunder :-

"5. consequences of abolition - (1)

xx xx xx xx

(2) As from the date of vesting of any Zamindari or Biswedari estate in the State Government, notwithstanding anything contained in any contract, grant or other document or in any law for the time being in force but save as otherwise provided in this Act -

(a) such estate shall stand transferred to, and vest in, the State government free from all encumbrances.

(b) the right, title and interest of the Zamindar or Biswedari and of every person claiming through him, in such estate, including land (cultivable, waste or barren) grove-land, gross land or birs, scrub jungle, forests, trees, fisheries, hills, wells tanks, ponds, water courses and channels, ferries, pathways, village sites, abadi sites, hats, bazars, means and mela grounds, and in all sub soil therein, including rights, if any, in quarries and mines whether being worked or not and in all mineral and mineral products shall cease and be vested in the State Government, free from all encumbrances, for the purposes of the State, and every mortgage, debt or charge on any such right, title or interest shall be a charge on the amount of compensation payable to the Zamindar or Biswedari

under this Act;

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(d) every right, title or interest created in or over such estate by the Zamindar or Bisweddar or his predecessor-in-interest shall, as against the State government, cease and determine; all rents and cesses in respect of any holdings in such estate for any period after the date of vesting, which, but for such vesting, would have been payable to the Zamindar or Bisweddar, shall vest in and be payable to the State Government, and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same.

XX XX XX XX XX

(j) every mortgage with possession existing on such estate or part thereof on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such estate or part, be deemed, without prejudice to the rights of the State government under this section, to have been substituted by a simple mortgage;

(k) no claim or liability enforceable or incurred before the date of vesting against or by the Zamindar or Bisweddar for any money which is charged on or in secured by a mortgage of such estate or part thereof shall, except as provided in section 73 of the Transfer of Property Act, 1882 (Central Act IV of 1882), be enforceable against his right, title or interest in such estate or part;

(l) Subject to any rules made in this behalf, all suits and proceedings affecting such estate, in which, because of the same having vesting in the State government, the latter will be a necessary part, pending in any court, civil or revenue, at the date of vesting and all proceeding consequent upon any decree or orders passed in any such suit or proceeding before such date, shall not be proceeded with till, on an application made in that behalf, the State Government is made a party thereto;

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(4) Notwithstanding anything contained in sub-section (2) the Zamindar or Bisweddar shall, subject to the provisions of section 29, continue to retain the possession of his Khudkasht, recorded as such in the annual registers before the date of vesting. and under section 29, every tenant of such Khudkasht shall be the sub-tenant of the land in this occupation holding under and from such Malik.

16. The expression 'Khudkasht' is defined in section 5(23) of the Act to mean "land in any part of the State cultivated personally by an estate-holder and shall include -

(i) land recorded as khudkasht, sir, havala, niji-jot, gharkhed in settlement records at the commencement of this Act in accordance with law in force at the time when such record was made, and

(ii) land allotted after such commencement as khudkasht under any law for the time being in force in any part of the State.

17. In Section 5(46) 'Zamindar' is defined to mean a person on whom a village or portion of a village in any part of the State is settled on the Zamindari system and who is recorded as such in the record of rights and shall include a proprietor as defined in clauses(a) of section 2 of the Madhya Bharat Zamindari Abolition Act, Samvat 2008 (Madhya Bharat Act of 1951), if any in the Sunel area.

18. Section 43 contains the provisions regarding mortgage. The portions of the said section relevant for the purpose of the case are extracted below :

"43. xxx xx xx xx xx

(3) A usufructuary mortgage under sub-section (2) shall, upon the expiry of the period mentioned hereinbefore be deemed to have been satisfied in full without any payment whatsoever by the mortgagor, and the mortgage debt shall be deemed to have been extinguished and the mortgaged land redeemed and the possession thereof shall be delivered by the mortgagee to the mortgagor free from all encumbrances.

(4) A usufructuary mortgage of any land made before the commencement of this Act shall, upon the expiry of the period mentioned in the mortgage deed or twenty years from the date of execution thereof, whichever period is less, be deemed to have been satisfied in full without any payment whatsoever by the mortgagor and the mortgage debt shall accordingly be deemed to have been extinguished and thereupon the mortgaged land shall be redeemed and possession thereof shall be delivered to the mortgagor free from all encumbrances.

19. Section 183 of the Act under which the suit was filed reads as follows:

"183. Ejectment of certain trespassers (1) Notwithstanding anything to the contrary in any provision of this Act, a trespasser who has taken or retained possession of any land without lawful authority shall be liable to ejectment, subject to the provision contained in sub-section (2), on the suit of the person or persons entitled to eject him, and shall be further liable to pay as penalty for each agricultural year, during the whole or any part whereof he has been in such possession, a sum which may extend to fifteen times the annual rent.

(2) In case of land which is held directly from the State government or to which the State Government acting through the Tehsildar, is entitled to admit the trespasser as tenant, the Tehsildar shall proceed in accordance with the provisions of

section 91 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956)."

20. On a reading of the provisions of the Zamindari Abolition Act noted above it is clear that a Zamindar who is in possession\occupation of Khudkasht land on the date of vesting of the estate becomes a Khatedar tenant on abolition of the Zamindari right under section 29 of the Zamindari Abolition Act. Under the said section a Zamindar becomes a Malik of the Khudkasht land in his occupation and as Malik he shall be entitled to all the rights conferred and all the liabilities imposed on a Khatedar tenant by or under the ACT. It follows as a corollary that if the Zamindar is not in occupation of the Khudkasht land on the date of vesting he is not entitled to claim Khatedari right in the land. The scheme behind this provision is that if a Zamindar or Bisweddar is in actual occupation of cultivable land on the date of abolition of his Zamindari right then he should continue to be in possession of such land. Thus is in accordance with the object of bringing about agrarian reforms by giving the land to the person in cultivating possession of the land. If the Zamindar is not in occupation of the Khudkasht land on the date of vesting then such 'land' vests in the State along with the other 'lands' subject to the provisions in the Zamindari Abolition Act. In respect of such land Zamindar is not entitled to claim any right of possession and consequentially is not entitled to maintain a suit for recovery of possession of the land from any other person. In the case of *Budha v. Amilal* (supra) a division Bench of this Court interpreting the provisions of Sections 29, 5(2)(a), (b), (j), 5(4) and 2(6) of the Zamindari Abolition Act and sections 5(23)(I) and (25) of the Rajasthan Tenancy Act held:

"Even if it is assumed that the lands in dispute have to be treated as Khudkasht lands of the appellant by virtue of clause (I) of the inclusive part of the definition of 'Khudkasht' contained in Section 5(23) of the Rajasthan Tenancy Act, the appellant cannot succeed in his claim that he has acquired Khatedari rights in respect of those lands on the basis of the provisions contained in sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act. Sub-section (4) of Section 5 provides that notwithstanding anything contained in sub-section (2) of Section 5 the Zamindar or Bisweddar shall subject to the provisions of Section 29, continue to retain the possession of his Khudkasht, recorded as such in the annual registers before the date of vesting. The words "continue to retain the possession", imply that lands which are recorded as Khudkashta in the annual register before the date of vesting should be in possession of the Zamindar or Bisweddar on the date of vesting. If he is in possession of such lands he can continue to retain the possession of the same subject to the provisions of Section 29. Sub-section

(1) of the Section 29 prescribes that as from the date of vesting of an estate, the Zamindar or Bisweddar thereof shall be a malik of any Khudkasht land in his occupation on such date and shall, as such malik, be entitled to all rights conferred and the subject to all the liabilities imposed on a Khatedar tenant by or under the Rajasthan Tenancy Act. Under this provision Khatedari rights have been statutorily conferred on a Zamindar or Bisweddar as from the date of the vesting of the estate in respect of Khudkasht lands in the occupation of such Zamindar or Bisweddar on such date. The words "in his occupation on such date" postulates that the lands, though Khudkhasht, should be in the occupation of the Zamindar or Bisweddar on the date of vesting of the estate. It would thus appear that in view of sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act the mere fact of recording of the land as Khudkasht in the settlement records on the date of vesting would not be enough for a Zamindar or Bisweddar to acquire Khatedari rights over the said lands; the Zamindar or Bisweddar should be in possession\occupation of the said lands on the date of vesting of the estate under the Act. The possession\occupation envisaged by sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act is actual possession\occupation and the possession of a mortgagor through the mortgagee cannot be held to be in possession occupation as postulated in sub-section (4) of Section 5 and sub-section (1) of Section 29 of the Act.

"In the present case the appellant has come forward with a specific case in the plaint that the defendant is in possession of the lands in dispute as a mortgagee from the date of the two mortgagees. In other words the appellant was not in possession\occupation of the said lands on the date of vesting of the estate of the appellant under the ACT. The appellant cannot, therefore, claim Khatedari rights in respect of the lands in dispute."

21. On consideration of the facts and circumstances of the case as revealed from the materials on record and the relevant provisions of the Zamindari Abolition Act it is our considered view that the principles laid down and the observations made in *Budha v. Amila* (supra) apply in all force to the present case. We are also in respectful agreement with the principles laid down in the said decision. Therefore, the appellants cannot be said to be 'khatedar tenants' of the land in dispute. The first question formulated earlier is answered in the negative and in view of that answer the further question does not arise for consideration. The High Court was right in dismissing the suit. The appeal is dismissed. No costs.

