

SUPREME COURT OF INDIA

Thakur Prasad (Dead) through Lts.

Versus

Raj Karan (Dead) by Lrs. and Ors.

7.12.70

(Syed Shah Mohammed Quadri and Arijit Pasayat JJ.)

Civil Appeal No. 865 of 1984.

JUDGMENT

Syed Shah Mohammed Quadri, J. :- These appeals from various judgments and orders of the High Court of Judicature at Allahabad arise out of the same factual matrix and raise a common question of law viz., how are the rights of the mortgagors and the mortgagees of the suit land affected by the provisions of the U.P. Zamindari Abolition and Land Reforms Act ?

The search for the answer to the question takes us back a century and a quarter and obliges us to examine the nature of the tenure under different Acts. The undisputed facts giving rise to the above question lie in a narrow compass. The object of controversy is certain plots of land in village Chaura Kalan, Taluka Konrh, Parganna Bhadohi, District Varanasi of the State of U.P. (hereinafter referred to in this judgment as, 'the suit land'). In 1923 one Ram Nath Singh, who was said to be sub-proprietor, granted the suit land as 'Krishnarpan' to one Prayag Dutt Tiwari who passed away in 1947 leaving behind him his L.Rs. Respondent Nos. 5 to 10, who (hereinafter referred to as 'the mortgagors') executed usufructuary mortgage in favour of Thakur Prasad and Shitla Prasad (Appellants in Civil Appeal Nos. 865-866 of 1984 - hereinafter referred to as 'the mortgagees') on November 3, 1947. The mortgagors sold the suit land in different bits. They sold 1/6th share in favour of the mortgagees and 1/6th share to Jadunath (respondent in Civil Appeal No. 866 of 1984). The remaining 2/3rd share in the suit land was sold under two sale deeds in favour of Raj Karan (appellant in Civil Appeal No. 868 of 1984).

On October 7, 1960, Raj Karan, who had entered into shoes of the mortgagors (hereinafter referred to as such in this judgment) filed the suit, out of which these appeals arose, for ejection of Thakur Prasad and Shitla Prasad (mortgagees) by depositing the mortgage money. The suit could not proceed due to the issuance of Notification of consolidation in the said village. The case was, however, tried under Section 9 of the U.P. Consolidation of Holdings Act by the Consolidation officer who dismissed the suit. On appeal by Raj Karan, the Settlement Officer decreed the suit on August 12, 1965. The mortgagees filed revision before the Deputy Director of Consolidation who allowed the revision petition and restored the order of the Settlement Officer (Consolidation) on December 21, 1965. The said order was impugned in writ petitions before the High Court of Judicature at Allahabad by different parties. From the judgments and orders of the High Court the above appeals came to be filed in this Court by special leave.

3. Mr. E.C. Agarwala, the learned counsel appearing for the appellants - mortgagees contended as follows; the Deputy Director of Consolidation found that the suit land was donated by the sub-proprietor, Ram Nath Singh, in favour of Prayag Dutt Tiwari which was not disturbed by the Maharaja of Banaras after purchasing the village; Prayag Dutt Tiwari and his successors continued in possession for more than fifty years and thus acquired the status of an owner under Section 158 of the N.W. Provinces Tenancy Act of 1901 (later termed as the Agra Tenancy Act - for short, 'the Agra Act'), under Section 6 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (for short, 'the Z.A. Act'), the rights of a mortgagor has come to an end and he became entitled to recover the mortgage amount as a simple mortgagee; however, Section 14(2) conferred the right of ownership/bhumidar on such a mortgagor who held land as 'Sir' or under 'Khudkasht' on the date of the mortgage but the suit land was not so held and some other mortgagees were in possession so it could not have been under the Khudkasht of the mortgagors on the relevant date as such their right got extinguished; the mortgagees would have become hereditary tenant, had they deposited five times the rent but they failed to do so and therefore Gaon Sadha became entitled to eject them under Section 209 within three years from the date of the vesting in view of Section 210 of the Z.A. Act and Rule 338 of the U.P. Zamindari Rules read with Appendix III (Item 30) but no suit was brought by Gaon Sabha till date and so they had become sirdar or asami and would be deemed to be a tenant from year to year; even assuming the mortgagors become bhumidar, they could not evict the mortgagees after the limitation of three years as they perfected their title by adverse possession; in the written submission it is added that the mortgagors, not having acquired the right under Section 14(2)(a), had no right to bring the suit for eviction.

4. Mr. V.K.S. Chaudhary, the learned senior counsel appearing for the mortgagors, argued that; in the Namanzuri village, the mortgagors could not claim any right under Section 158 of the Agra Act; by the 1954 Notification the Z.A. Act was applied to the suit land village duly deleting Sections 4 to 112 thereof the mortgagees were entitled only to mortgage money which was already deposited in the court; even in the sale deed obtained by mortgagees the position of the mortgagors as bhumidarss was accepted which could not be permitted to be denied now; the mortgagors became bhumidar under Section 130 and under Section 133 of the Z.A. Act the mortgagees became asamis so the suit for ejectment of the mortgagees was required to be decreed; Raj Karan and others were given possession of the suit land by the Consolidation Officer accepting them as bhumidars and the mortgagees' possession was confined only to the 1/6th share which they had purchased; they could not deprive the mortgagors of their land.

5. It is a common ground that the suit land formed part of erstwhile Banaras State before its merger in the State of U.P. on January 26, 1950. The Maharaja of Banaras was the absolute owner of the Banaras State before its merger in the State of U.P. on January 26, 1950. The Maharaja of Banaras was the absolute owner of the Banaras State which, it was stated, was formed out of Banaras family Domain in 1911-1912. In the Banaras State there were two types of villages called (i) Manzuri Villages and (ii) Namanzuri villages. Where a village was granted by the Maharaja to an intermediary, it was termed as 'Manzuri' village; the other village in respect of which no grant was made by him were referred to as 'Namanzuri' villages.

6. We have perused a copy of the English translation of Dastur-e-Dehi (also known as 'Wajibularz') of village Chaura Kalan, a 'Manzuri' village, which was auctioned to the Government Taluka Kqrnh pargana Bhadohi district Mirzapur, relating to year 1281 F. Section 1 thereof says that the village, Abad-2 is of 'Namanzuri' category' in regard to which it was specified that the owner and zamindar was Maharaja Sahab Bahadur, Kashi Naresh and that the tenants of the village were entitled to cultivate with a right to transfer their tenancy in accordance with the custom of that locality with the

exception of sub-tenant-shikimi asami. The Settlement Officer on the basis of village record of 1281F (1873-74) and settlement of 1230 Fasli (1911-12) found that the village in which the suit land was situated was a Namanzuri village. We, therefore, proceed on that basis.

7. The Z.A. Act was enacted in 1950 but it was made applicable to different areas of the State of U.P. in stages first by notification issued on June 30, 1953 (referred to as 'the 1953 Notification') to certain areas of the State and then on July 1, 1954 (referred to as 'the 1954 Notification') to the estates owned by the State in those areas. We shall now consider how the Notifications - the 1953 or the 1954 - would operate in regard to the suit land village. First, we shall refer to the provisions of Section 1 and 2 of the Z.A. Act which are relevant here. Section 1 deals with short title, extent and commencement of the Act; it has three sub-sections. Sub-section (1) of Section 1 speaks of the title of the Z.A. Act and sub-section (2) excludes certain areas from the operation of the Act but now we are not concerned with those areas; sub-section (3) which is material reads as under :

"It shall come into force at once except in the areas mentioned in clauses (a) to (f) of sub-section (1) of Section 2 where it shall, subject to any exception or modification under sub-section (1) of Section 2, come into force on such date as the State Government may by notification in the Gazette appoint, and different dates may be appointed for different areas and different provisions of this Act."

The substance of the above provisions is that the Act shall come into force at once (January 26, 1951) and that the State Government may apply the whole or any provision of the Z.A. Act, subject to any exception or modification as may be required to the areas mentioned in clauses (a) to (f) of sub-section (1) of Section 2; it is also clarified that different dates may be appointed for different areas and different provisions of that Act.

8. Section 2 which speaks of modification of the Act and its application to areas or estates specified thereunder, may be quoted :

"Modification of the Act in its application to certain areas - (1) The state Government may be notification in the Gazette apply the whole or any provision of this Act to any of the following areas or estates subject to such exception or modifications, not affecting the substance, as the circumstances of the case may require -

(a) xxx xxx xxx

(b) any estates or parts thereof owned by the Central Government, State Government or any local authority,

(c) xxx xxx xxx

(d) Pargana Kaswar Raja of Banaras District,

(e) any area which, on the 30th day of November, 1949, was included in -

(i) Banaras State as defined in the Banaras State (Administration) Order, 1949,

(ii) and (iii) xxx xxx xxx

*** **

[(ee)] xxx xxx xxx

(f) xxx xxx xxx

Provided that, when this Act or its provisions are so extended to such areas or estates, with or without exceptions or modifications, so much of any Act or Regulation in force therein as is inconsistent with this Act or the provisions so extended or with any modifications made therein, shall be deemed to have been repealed :

[Provided further that a notification under this sub-section in respect of any estate or part thereof owned by the Central Government shall not issue except in consultation with such Government]"

9. It is seen that under Section 2(1), the State Government is empowered to apply the whole or any provision of the Z.A. Act to the areas or estates enumerated in clauses (a) of (f) thereof. With reference to each of these clauses the footnotes specify the amplitude of the application of the Z.A.Act. Here it will be apt to read the relevant part of the 1953 Notification by which the Z.A. Act was applied to former Banaras State.

"PART A

Application of U.P. Act I of 1951 as amended by U.P. Act XVI of 1953

NOTIFICATION

No.1830/1-A -1060-53

Dated Lucknow, June 30, 1953.

In exercise of the powers conferred by sub-clause (i) of clause (e) of sub-section (1) of Section 2 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951), as amended by the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1951 (U.P. Act XVI of 1953), (hereinafter referred to as the said Act), The Governor of Uttar Pradesh is pleased to direct that the said Act shall apply, subject to the modifications and amendments specified in the schedule hereto annexed to the territories of the former Banaras State as defined in the Banaras State (Administration) Order, 1949, except the areas included on the date of this notification in a municipality or notified area, under the provision of the U.P. Municipalities Act, 1961, or a town area under the provisions of the U.P. Town Areas Act, 1914. The Governor is further pleased to order under sub-section (3) of section 1 of the said Act that this Act, shall come into force in the aforesaid territories with effect from the date of this notification.

SCHEDULE

-----	3	In sub-section (1) of Section 2
---	12	omit clauses (a), (d), (e) and (f)
-----	----	-----
----	----	----

10. By this Notification, the Z.A. Act, subject to the modifications and amendments specified in the

schedule, was applied to the former Banaras State as defined in the Banaras State (Administration) Order, 1949 except to the areas mentioned therein which are not material here. A perusal of the schedule shows that from the clauses of sub-section (1) of Section 2, clauses (a), (d), (e) and (f) are omitted. Consequently, the areas mentioned in clauses (b) and (c) only remained in sub-section (1) of Section 2 when the Z.A. Act was applied to the former Banaras State. However, clause (c) is not relevant here. It follows that after application of the Z.A. Act to former Banaras State, it was left to the State Government to extend the Z.A. Act to the area in clause (b) which enumerates any estates or parts thereof owned by the Central Government, State Government or any local authority. The other modifications and amendments will be referred to as and when necessary.

11. Here, it is necessary to refer to the relevant part of the 1954 Notification :

PART B

Application of U.P. Act I of 1951

As amended by U.P. Act XVI of 1953

To the

Government Estates without Intermediaries

NOTIFICATION

No. 3170/I-A-1002-1954

Dated Lucknow, July 1, 1954

In continuation of notification No. 1830/I-A 1060-53, dated June 30, 1953, and in exercise of the powers conferred by clause (b) of sub-section (1) of Section 2 read with sub-section (2) of Section 1 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951) and of all other powers conferred in this behalf the Governor of Uttar Pradesh is pleased to direct that the said Act shall, in its application to the former Banaras State, be subject in the case of estates owned by the State Government and in which no intermediary had any right, title or interest on June 30, 1953, to the modifications and amendments specified in the schedule hereto annexed.

The Governor is further pleased to direct that the said Act as amended and modified shall come into force in the said States with effect from July 1, 1954.

<p>SCHEDULE</p> <p>-----</p> <p>-----</p>	<p>Secti on of Extent of The modificatio Uttar n or Prade amendment sh, o. Zami ndari Aboli tion</p>	<p>3 12 ----- -----</p>	<p>(1) "(1) (2) (3) "(28) any For `appoi Cla For reference clause nted uses the to the ((1) day' (3), existi U.P. the means (5), ng Land) follow date (6), clause Revenue ing of (12) (28) Act, shall public , the 1901, be ation (13) follow shall be substit of this , ing deemed</p>	<p>After 4-112 Secti Secti on 3, on 4 the to follo 3112 A wing of shall Chap be ters adde II to d as VI in</p>
---	--	-------------------------------------	---	--

and
Land
Refor
ms

uted; notific (15) shall to be a Part I
ation , be reference new shall
in the (17) substito the Secti be
officia, uted; U.P. on 3- delec
l (21) Land A ted."
Gazett, Revenue "3-A.
e." (23) Act, in
, 1901, as this
and applicabl Act
(24) e to the any
, former refer
shal Banaras ence
l be State as to
dele defined `date
ted. in the of
Banaras State vesti
(Adminis ng' in
tration) what
Order, ever
1949," form
shall,
unles
s the
conte
xt
other
wise
requi
res,
be
deem
ed to
be
refer
ence
to
the
appoi
nted
day."

[Emphasis supplied]

12. This notification says that in its application to the former Banaras State, the Z.A. Act shall be subject to modifications and amendments specified in the schedule thereto in the case of estates owned by the State Government *and in which no intermediary had any interest on June 30, 1953* (date of the 1953 Notification). The 1954 notification was in continuation of the 1953 notification in its application to the former Banaras State in regard to the estates owned by the Central

Government, State Government or local authority. It will not be quite correct to say that the issue is as to which notification is applicable. The issue is whether Chaura Kalan village was an estate owned by the State Government and in which no intermediary had any interest on June 30, 1953. After the purchase of interest of Ram Nath Singh by Maharaja of Banaras subject to the rent free grant of the suit land as 'Krishnarpan' in favour of Prayag Dutt Tiwari it became a Namanzuri village and was treated as such from 1320 F. After merger of Banaras State in the State of U.P. the village was as estate owned by the State Government with no intermediary. In the result though on application of the Z.A. Act to the former Banaras State by the 1953 Notification applied the provisions of Chapters II to VI [Sections 4 to 112] were applicable, yet when by the 1954 Notification the Z.A. Act was extended to estates owned by the Central Government, State Government or local authority, the said provisions [Section 4 to 112] were deleted in the application of the Act. We are unable to accept the contention of Mr. Agrawala that the suit land was not of the State Government as it had been given in Krishnarpan by Ram Nath Singh to Prayag Dutt Tiwari not by the Maharaja but by the proprietor intermediary, therefore, 1953 Notification would directly apply and also the reasoning of the Deputy Director. We find considerable force in the Deputy Director. We find considerable force in the submission of Mr. Chaudhary that the Z.A. Act was made applicable to the former Banaras State by the 1953 Notification duly retaining clauses (b) and (c) of sub-section (1) of Section 2; and as the State was the sole proprietor of all the villages comprised in the erstwhile Banaras State, (since the former Banaras State was the proprietor of all the lands in that State, except the private properties of the Maharaja as described in the instrument of accession) the Z.A. Act was extended to estates or parts thereof owned by the State Government or any local authority by the 1954 Notification.

13. Admittedly, Prayag Dutt Tiwari was the original rent-free grantee of the suit land but the grant was neither at the pleasure of the grantor nor for the performances of any specific service whether religious or secular. It was otherwise also not a conditional grant. Therefore, the grant was not resumable under Section 154 of the Agra Act. Section 158 of the Agra Act confers proprietary rights on rent-free tenure holder. Section 158 reads as follows :

"158. Land not liable to resumption under Section 154 and which has been held rent-free for fifty years and by two successors to the original grantee, and land which was acquired in perpetuity in consideration of the loss or surrender of a right previously vested in the grantee, or by a written instrument and for a valuable consideration, shall be deemed to be held in proprietary right, and the court shall declare the holder of such land to be the proprietor thereof, and to be liable to pay the revenue thereon, and shall determine the revenue payable by him."

14. A perusal of this section shows that to invoke the said section the following conditions must be satisfied : (1) the land shall not be resumable under Section 154; (2) the land should have been held rent-free for fifty years and by two successors to the original grantee; and (3) the land should have been acquired in perpetuity in consideration of the loss or surrender of a right previously vested in the grantee or by a written instrument and for valuable consideration. If the aforementioned requirements are satisfied, the land shall be deemed to be held in proprietary right and the holder of the land was entitled to declaration from the court to that effect and would also be liable to pay revenue thereon as determined by the court. The expression 'rent' free grantee' is defined in sub-section (8) of Section 4 of the Agra Act. It is an inclusive definition and includes a person who holds land on service tenure. Having regard to above requirements of Section 158 of the Agra Act, in the absence of any finding with regard to those requirements, it is not possible to accept the contention of the mortgagees that the mortgagors have become proprietors of the suit land under

Section 158 of the Agra Act.

15. The position that would obtain on application of the Z.A. Act to the Banaras State under the 1953 Notification has been discussed above. To the areas to which the Z.A. Act applied by the 1953 Notification, Section 4 to 112 thereof among others would apply. Section 4 vests in the State all estates situate in Uttar Pradesh as from the date to be specified by the State Government. Section 6 speaks of consequences of such vesting. Among them is the consequence that every mortgage with possession existing on any estate or part thereof on the date immediately preceding the date of vesting was substituted by a simple mortgage, without prejudice to the rights of the State Government under Section 4. Section 14 deals with the rights of the mortgagor and the mortgagee in an estate in possession of a mortgagee with possession. Sub-section (1) of Section 14 provides that subject to the provisions of sub-section (2), a mortgagee in possession of an estate or share therein shall, with effect from the date of the vesting, cease to have any right to hold or possess any such land in such estate. In other words the right of the possessory mortgagee to hold or possess the mortgaged land come to an end. However, sub-section (2) says, where the mortgaged land was in the personal cultivation of the mortgagee on the date immediately preceding the date of vesting, the following two consequences will follow : (1) if the mortgaged land was *sir* or *khudkasht* of the mortgagor on *the date of the mortgage*, then it will be treated as *sir* or *khudkasht* of the mortgagor or his legal representative for purposes of working out the rights under Section 18 thereof; and (2) if it was not *sir* or *khudkasht* of the mortgagor on the date of the mortgage, the mortgagee is fongered with a right (for purpose of Section 19) to become the hereditary tenant thereof provided he pays to the State Government, within six months from the date of the vesting, an amount equal to five times the rent calculated at hereditary rates applicable on the date immediately preceding the date of vesting. But if the mortgagee fails to pay the amount within the afore-mentioned period, he loses all rights in the mortgaged land and it shall be deemed to be a vacant land and the mortgagee shall be liable to be ejected on the suit of the Gaon Sabha or Collector under Section 209 as if he were a person in possession thereof otherwise than in accordance with the provision of this Act. This section (Section 14) contains two explanations but they are not relevant for the present discussion. In passing we may note that Section 18 is a deeming provision. It says that all lands, subject to the provision of Section 10, 15, 16, and 17 shall be deemed to be settled by the State Government, inter alia, with an intermediary in possession of such land as *Sir* or *Khudkasht*, who shall be entitled to retain possession as *Bhumidar* thereof. Section 19 is also a deeming provision. It says that all land held or deemed to have been held on the date immediately preceding the date of vesting by any person as, inter alia, a hereditary tenant shall except as provided in Section 18(2) be entitled to take or retain possession as a *sirdar* thereof.

In the instant case, it has already been mentioned above that the suit land was neither *sir* nor *khudkasht* of the mortgagors on the date of the mortgage in question as in was it possession of some other mortgagees (Ram Khelawan and Ram Saran Singh) on that date. Under the said provisions the mortgagors could not be said to have acquired the *Bhumidari* rights. It may also be noted that the mortgagees failed to avail of the benefit of Section 14 of the Z.A. Act and they did not deposit with the State Government an amount equal of five times the rent within six months from the date of vesting. Consequently, the mortgagees who acquired no right under Section 14(2) read with Section 19 became liable to be evicted either by the Gaon Sabha or by the Collector under Section 209 of the Z.A. Act. In the light of the above discussion, it is difficult to accept the plea of the mortgagees that their possession became adverse to that of the mortgagors. The judgment of the Full Bench of the Allahabad High Court in *Balwant & Ors. v. The Deputy Director of Consolidation & Ors.* [AIR 1975 Allahabad 295] was a case of the mortgagor being a *Bhumidar*. It is, therefore, not on the point.

16. However, the germane question is : did Section 14 apply to the suit land ? Inasmuch as the village Chaura Kalan, Taluka Konrh, Pargana Bhadohi, District VAranasi of the State of U.P. was Namanzuri village and consequently the State Government became the owner thereof on the merger of the Banaras State with the U.P. State, the estate in the village was owned by the State of U.P. It has already been noticed above that Z.A. Act was made applicable to the estates owned by the State Government in the former Banaras State by the 1954 Notification. The Z.A. Act was applied to the estate owned by the State Government after duly deleting Section 4 to 112(Chapter II to VI in Part I), Consequently Section 14 would obviously be inapplicable, therefore, the contention of the mortgagees that the rights of he mortgagors were extinguished under Section 14 and that the mortgagees became liable to be evicted only on a suit instituted by the Gaon Sabha or by the Collector cannot but be misconceived and an untenable plea. On the facts of this case Section 209 and 210 of the Act are not attracted.

17. It is important to note here that on application of the Z.A. Act, Chapter VIII (Section 129 to 230) applied to the aforementioned area. Section 130 and 133, which are material for our purpose, read as under :

"130. Every person belonging to any of the following classes shall be called a bhumidar and shall have all the rights and be subject to all the liabilities coffered or imposed upon bhumidars by or under this Act; namely :-

(i) a fixed rate tenant or a rent-free grantee;

.....

133. Every person belonging to any of the following classes shall be called an asami and shall have all the rights and be subject to all the liabilities conferred or imposed upon asamis by or under this Act, namely :-

(a) every person who on the date immediately preceding the appointed day held land as :-

(i) *** ** *

(ii) a mortgagee from a person belonging to any of the classes mentioned in sub-clauses (i) to (iv) of clause (a) of Section 130 or sub-clauses (i) to (iv) of clause (a) of Section 131

....."

18. From a perusal of the provisions, extracted above, it is plain that a rent-free grantee became bhumidar under sub-clause (i) of clause (a) of Section 130 and a mortgagee from bhumidar became asami under subclause (ii) of clause (a) of Section 133 of the Z.A. Act. Thus, in the instant case, the mortgagors became bhumidars and the mortgagees became asamis. The title of the mortgagors as bhumidars was also accepted by the mortgagees when they purchased one sixth share in the suit land from the mortgagors. In view of this position, the mortgagors (bhumidars) were entitled to seek ejection of the mortgageres (asamis) on depositing the mortgage money under Section 200(c) of the Z.A. Act.

19. From the above discussion, it follows that the mortgagees are not entitled to claim any right either under the Agra Tenancy Act or under the Z.A. Act. As the mortgage money had been deposited by the mortgagors, the mortgagees had no right to continue in the possession of the

mortgaged land. However, we clarify that having purchased one sixth share of the mortgagors the mortgagees are entitled to remain in possession of only one sixth share of the land. We have already noted above that the Settlement Officer had allotted one sixth share of the suit land to the mortgagees and the possession of the rest of the suit land had been given to the purchasers of the mortgaged land (suit land).

20. For the foregoing reasons the order under challenge in Civil Appeal Nos. 865 to 867 of 1984 does not call for any interference by this Court. The Civil Appeal Nos. 865 of 1984, 866 of 1984 and 867 of 1984 are, therefore, dismissed.

21. In view of the dismissal of the above appeals, Civil Appeal No. 868 of 1984 filed by the Raj Karan deserves to be allowed and it is accordingly allowed.

22. In the circumstances of the case, we direct the parties to bear their own costs.