SUPREME COURT OF INDIA

Smt. Gorabai

Vs

Ummed Singh (Dead) By Lrs.

Appeal (Civil) 689 of 1995

(P. Venkatarama Reddi and D.M.Dharmadhikari)

19/04/2004

JUDGMENT

D. M. DHARMADHIKARI, J.

This appeal has been preferred by the Legal Representatives of the original plaintiff. The original defendants are also dead and are now represented by their Legal Representatives. The plaintiff sought eviction of the defendant and possession of the suit lands. The suit was dismissed throughout and decree has been confirmed in the second appeal by the High Court.

Shorn of details, the question involved is whether the suit lands which continued in possession of the defendants even after expiry of their term of lease, can be claimed by the plaintiff landlord. as his Khudkasht lands of which he can retain possession as an ex-proprietor under sub-section (2) of section 4 of Madhya Bharat Zamindari Abolition Act, 1951 [for short 'the Act].

The relevant facts as concurrently found by all the courts and are no longer in dispute are as under:-

The plaintiff Virendra Singh was proprietor or Zamindar of Survey No. 216 of village Kanawar, District Bhind. The suit lands in that Survey were recorded up to Samvat 1999 [corresponding to the year 1942] as Zamindar's 'Khud-kasht' lands as defined in section 2(c) of the Act. Under Gwalior-Mal-Qanoon which was the revenue law applicable to the agricultural lands of the Gwalior region of erstwhile State of Madhya Bharat, Khud-kasht lands could be leased by the proprietor for

cultivation. A lease for a period of eight years was granted to the defendants. On expiry of the period of lease i.e. in July 1951, the proprietor promptly instituted eviction proceedings in the Revenue Court under the Gwalior-Mal-Qanoon, for obtaining possession of the land. The proceedings for eviction instituted prior to the coming into force of the Act did not fructify in favour of proprietor. Those proceedings terminated as inconclusive because the Legal Representatives of one of the tenants were not brought on record.

Proprietary rights were abolished by the Act which came into force on 25.6.1951 and with effect from the notified date 02.10.1951, all proprietary rights of proprietors in accordance with the provisions of section 3 of the Act stood vested in the State. Section 4(1) enumerates the various kinds of rights, title and interest of the proprietors which were divested and vested in State. Sub-section (2) of section 4 of the Act allowed the proprietor to remain in possession of his Khudkasht land which is so recorded in annual village papers before the date of vesting. The lands which were in personal cultivation of the proprietor have been described as 'Khudkasht.' 'Khudkasht' is defined under section 2(c) of the Act as under:-

*"Section 2(c): 'Khud-kasht' means land cultivated by the Zamindar himself or through employees or hired laborers and includes sir land." **

Sub-section (2) of section 4 saves Khud-kasht lands in favour of the proprietor to be retained by him. It is a provision directly for interpretation and application to the facts of the case and reads as under :- *"Section 4(2) : Notwithstanding anything contained in sub-section (1), the proprietor shall continue to remain in possession of his khud-kasht land, so recorded in the annual village papers before the date of vesting." $* *

(Emphasis added)

All proprietary rights stand abolished by Section 3 of the Act. In accordance with Section 41 of the Act, tenants of various categories described therein and proprietors holding Khudkasht or Sir lands are to be deemed to be tenants of the Government from the date of vesting. Section 41 reads as under: *"41: Tenant to be deemed to be a Government's tenant from the date of vesting and Revenue Administration and Ryotwari Act to apply to the vested land ; When the proprietary rights in any village, Muhal, land, chak or block are vested in the State under Section 3 of this Act, every Sakitulmilkiyat, Pacca Maurusi, Mamuli Maurusi, Gair Maurusi tenant of such village muhal, land, chak or block who was in possession of any holding shall from the date of vesting, be deemed to be a tenant of the Government and the proprietor shall also likewise, in respect of the holding of his Khudkasht or Sir, be deemed to be a tenant of the Government from the date of vesting and all provisions of Part II of Madhya Bharat Revenue Administration and Ryotwari Land Revenue and Tenancy Act, Samvat 2007, shall, subject to other provisions of this Act, apply to such village, Muhal, land, chak or block are similar provisions of Qanoon Mal, Gwalior State, Samvat 1983, and of other laws shall cease to apply:*

Provided that all cases pending before any Revenue Court at the time of commencement of this Act

shall be decided according to the provisions of Acts and laws heretofore in force." $ *

(Underlining for pointed attention)

The contention which was advanced on behalf of the defendants and has persuaded the courts below and the High Court to dismiss the suit is that on date of vesting, the suit lands were not in actual cultivating possession of the proprietor as admittedly they were in possession of defendants as his tenants. The High Court was also of the view that on the date of vesting, the lands having not been shown to have been recorded in annual village papers as Khud-kasht, they cannot be held to have been saved to be retained by the ex proprietor under sub-section (2) of section 4 of the Act.

Learned counsel appearing for the Legal Representatives of the ex proprietor in this appeal, strenuously urged that annual village papers, duly exhibited before the court, clearly established that before grant of lease of the lands for eight years to the defendants, the lands were recorded as Khud-kasht lands and under the then existing revenue law, it was permissible to grant lease of Khud-kasht land by the ex proprietor. Attention specifically is invited to annual village papers of Samvat 1999 corresponding to year 1942 [Ex.P-9] in which the ex proprietor is shown in possession of the suit lands which are described as Khud-kasht.

The first limb of argument advanced on behalf of the LRs of the proprietor, is that under sub-section (2) of Section 4 of the Act, for seeking retention of the Khud-kasht lands, it is not necessary that the land should be so recorded in annual village papers immediately preceding the date of vesting. It is pointed out that the consistent view of law holding the field in the State of Madhya Bharat (now part of Madhya Pradesh) is that entry in annual village papers of the lands as Khud-kasht can be of a period not necessarily before the date of vesting. Reliance is placed on the decision of Madhya Pradesh High Court in Pancham Singh vs. Dhaniram [1977 MPLJ 787].

The other limb of the argument for availing provisions of sub- section (2) of section 4 of the Act is that on the date of vesting, the eight years' lease granted to the tenants had expired and their possession, thereafter despite eviction notice and proceedings for eviction, was that of tenants-at-sufferance which is as worst as that of trespassers. It is submitted that the Khud-kasht lands which the proprietor had 'right to possess' on the 'date of vesting' by evicting the trespassers or tenants-at-sufferance should be deemed to be constructively in possession as Khud-kasht lands of the proprietor. The possession of the tenant-at-sufferance or trespassers has to be ignored to give full benefit of the provisions of sub-section (2) of section 4 of the Act which intends to save such part of land to the proprietor of which he was himself a tiller. In support of the above argument, decisions of Madhya Pradesh High Court and of this Court are cited which take a view that Khud-kasht lands even though in possession of trespasser, would be saved from vesting in the State and allowed to be retained by the proprietor under sub-section (2) of section 4 of the Act and under analogous provision of Madhya Pradesh Abolition of Proprietary Act. The decisions relied are : Choudhary Udai Singh & Anr. vs. Narainbai & Ors. [6]; Deo Rao vs. Ramachandra [1982 MPLJ 414(FB)]; Harischandra Behra vs. Garboo Singh & Ors. [1961 MPLJ 835(DB)]; Dayaram Bodhram vs. Maheshwar Danardan [1961 MPLJ 501(DB)]; and Himmatrao vs. Jaikisandas & Ors.].

We have considered the submissions made by the learned counsel for the parties and the provisions of the Act. The provisions of the Act read with its preamble clearly show the legislative intent to abolish Zamindari system and establish direct relationship of the tiller with the State. The proprietors, Zamindars or Malguzars by whatever names they were called in different regions, were 'intermediaries' and their rights as intermediaries were taken away. The proprietors were, however, allowed to retain such lands which were in their personal cultivation and recorded as 'Khudkasht.' The provisions of sub-section (2) of section 4 of the Act have, therefore, to be interpreted keeping in view the above aim and object of the Act.

The decision of Division Bench of the Madhya Pradesh High Court in the case of Pancham Singh (supra), which is relied as the settled law in the State of Madhya Bharat (now forming part of the State of Madhya Pradesh), fully supports the arguments advanced on behalf of the ex proprietor that if the nature of the lands is Khud- kasht and it is so recorded in annual village papers in any of the years before the date of vesting, the benefit of provisions under sub- section (2) of section 4 should not be denied to the proprietor. The relevant part of the judgment of the Division Bench of Madhya Pradesh High Court reads as under:-

*"The combined effect of sections 3, 4(2) and 2(c) is that a proprietor shall continue in possession in spite of the abolition of the Zamindari, (I) if the land was his 'Khud- Kasht' i.e. cultivated by the Zamindar himself or through employees or hired labourers, and (ii) it was recorded in the annual village papers before the date of vesting, i.e. before Samvat year 2008. We do not see any force in Shri Dixit's contention that the expression 'before the date of vesting' must be read as immediately before the date of vesting. There is no warrant for adding the word 'immediately, ' which is not there in the section. All that the saving clause requires is (1) that by its nature the land should be Khud- Kasht, and (2) that it is not enough to be Khud- Kasht land it should also have been recorded as such. A trespasser who having unlawfully dispossessed a proprietor was in possession in Samvat year 2007, cannot be heard to say that since the proprietor was not in possession in Samvat year 2007, or was not recorded as such in the Samvat year 2007, he lost his right to possession. It will be repugnant both to the letter and spirit of the law to deprive a person of his rights to possession merely because he was unlawfully and forcibly dispossessed." **

This decision, it is pointed out, was followed in subsequent decisions and the law laid down therein is being consistently followed.

In the instant case, it is an undisputed position that the suit lands were recorded in annual papers of 1942 as Khud-kasht lands of the ex proprietor and they were as such leased out for a fixed period of eight years to the tenants. The appellate Court observed "It was also undisputed that in Samvat 1999 i.e. immediately before giving the disputed land on patta, the plaintiff who was the zamindar cultivated the land as Khudkasht." Therefore, one important condition contained in sub-section (2) of section 4 is satisfied that the land was Khud-kasht and so recorded in annual village papers before the date of vesting.

Admittedly, on the date of vesting, the ex proprietor was not in actual cultivating possession of the

Khud-kasht lands. The lands were in possession of the tenants even though the lease of eight years' duration granted to them had expired and after serving eviction notice, proceedings for eviction were instituted by the proprietor against them even prior to date of vesting. After coming into force of the Act, the present suit was filed for their eviction and obtaining possession of the land.

The possession of the tenant after expiry of the term of lease is treated in law as unauthorised possession being against the consent and wish of the landlord. Such a tenant is called a tenant-at- sufferance and his possession is deemed to be almost like that of a trespasser. # Mulla in the 'Transfer of Property Act', 9th Edition at pp. 1013 explains the status of tenant-at-sufferance thus:-

"A tenancy at sufferance is merely a fiction to avoid continuance in possession operating as a trespass. It has been described as the least and lowest interest which can subsist in reality. It therefore cannot be created by a contract and arises only by the implication of law when a person who has been in possession under a lawful title continues in possession after that title has determined, without the consent of the person entitled. But the Act, as already observed is not exhaustive; and the term is a useful one to distinguish a possession, rightful in its inception but wrongful in its continuance, from a trespass wrongful both in its inception and it its continuance. A tenant holding over after the expiration of his term is a tenant at sufferance. If he holds over against the landlord's consent, he is a trespasser, and is liable for mesne profits." $ * [Emphasis added]

Decisions of this Court and the Madhya Pradesh High Court, have been cited before us holding that even though the proprietor is dispossessed of Khudkasht lands by a trespasser, the proprietor is deemed to be in cultivating possession of the lands for the purpose of the beneficial provisions of sub-section (2) of section 4 of the Act and to allow him to retain the lands. We find sufficient force in the submission made on behalf of LRs of the ex proprietor that the same principle as is applied in case of a trespasser should also be made applicable to the case of tenants-at-sufferance. On the expiry of the period of their lease and service of notice of eviction on them, even though they are not actually evicted from the Khud-kasht lands, their possession would be deemed to be of trespassers and the lessor or the proprietor should be held to be legally and constructively in possession. **Any cultivation by the tenant-at-sufferance against whom action was initiated to evict by the date of vesting should be deemed to be the cultivation of the proprietor himself. #**

The High Court referred to the definition of the Khud-kasht lands given in clause (c) of section 2 of the Act for coming to the conclusion that unless on the date of vesting, the proprietor is in actual cultivating possession, the benefit of sub-section (2) of section 4 of the Act to allow him to retain the Khud-kasht lands cannot be granted. We find no good reason to give such a restricted meaning and effect to the provisions of sub-section (2) of section4 of the Act. **The expression 'Khud-kasht' has been defined to describe the category of land forming part of proprietary. Such land under sub- section (2) of Section 4 of the Act has to be allowed to be retained by the proprietor. The benefit of sub-section (2) of section 4 cannot be denied to an ex proprietor who has been illegally deprived of his right to possess and cultivate his Khud-kasht lands.** # In the instant case, the proprietor could not regain possession of Khud-kasht lands for personal cultivation as the tenants, despite expiry of their period of lease, illegally continued in possession and the eviction proceedings in the Revenue Court abated for want of substitution of Legal Representatives of one of the tenants and due to the intervening legislation that is the present Act which came into

force w.e.f. 02.10.1951. It may be made clear that the provisions of Gwalior-Mal- Qanoon did not bar filing of a civil suit within the prescribed period under Limitation Act by the proprietor for seeking eviction and obtaining possession of his Khud-kasht lands from his tenants. On the facts found in this case, on the date of vesting the term of lease granted to the defendants as tenant had expired and their possession thereafter had been rendered as unauthorized. The ex-proprietor should be deemed to be legally in possession and cultivation of his Khudkasht land on the date of vesting. In accordance with Section 41, the ex-proprietor in respect of his Khudkasht land is deemed to be tenant of the Government from the date of vesting. He had right to retain possession of his Khudkasht land under Section 4(2) of the Act. He had also acquired status of tenant under Section 41 of the Act. His right to sue for possession of the lands which are in unauthorized occupation of the defendants as tenants-at-sufferance has therefore to be recognized and granted by passing a suitable decree in his favour.

The following observations of this Court in the case of Choudhary Udai Singh & Anr. vs. Narainbai & Ors. [6 para 7 at pp 544] supports our conclusion :- "In Harishchandra Behra v. Garbhoo Singh [1961 JLJ 780 (CN 203)], the expression 'personal cultivation' is explained as not mere bodily cultivating the land but constructively also and also the right to possess against a trespasser. If a wrongdoer takes possession, steps to exclude him can certainly be taken and cultivation of trespassers in such circumstances cannot clothe him with any right and his cultivation has to be deemed to be on behalf of the rightful owner. Thus the appellants are entitled to claim right to possess in respect of the land in question. We are further fortified by the decision in Himmatrao vs. Jaikisandas] where a distinction has been drawn between a suit brought by a proprietor in his character as proprietor for possession of property and in his individual right to possess in respect of the said property against the trespasser. The High Court lost sight of the provisions of section 41 of the Act which enables even a proprietor holding land khudkasht or sir, to be deemed to be a tenant from the date of vesting. If the appellants were entitled to be put in possession of the land and the same had been deprived of by a trespasser, that possession has to be recognised as that of the person who is entitled lawfully to cultivate the land in question.

Lastly, only a mention is required to be made of an objection of a preliminary nature raised by the other side, for the first time in this appeal, that as after the date of vesting, the lands happened to be recorded in the name of State, the State was a necessary party to the suit. Reference is also made to the provisions of Order 1 Rule 3(A) of the Code of Civil Procedure as amended in the State of Madhya Pradesh. In view of the discussion aforesaid, we do not think proper at this belated stage to allow parties to implead the State of Madhya Pradesh as a party. The objection to the non-maintainability of suit for non-joinder of State as party raised at this stage, therefore, is rejected. However, it is clarified that any decision rendered in these proceedings does not affect the rights and remedies of the State against the parties under the provisions of the Act.

In the result, the appeal succeeds and is allowed. The judgments respectively of the High Court and the courts below, are, hereby, set aside. The suit in terms of the prayer clause in the plaint to the extent of delivery of possession of the lands in suit is decreed.

In view of the long pendency of the litigation between the parties and as both sides are being represented by Legal Representatives, we leave the parties to bear their own costs in this appeal.