ALLAHABAD HIGH COURT

Chobey Sunder Lal

Vs.

Sonu alias Sonpal

Second Appeal No. 1579 of 1955, connected with Second Appeal No. 1443 of 1961 and Civil Misc. Writ No. 446 of 1960. against judgment of Civil J. Mainpuri,

(V.G. Oak, S.N. Dwivedi and Gangeshwar Prasad, JJ.
25.05.1955. 19.05.1967

JUDGMENT

Oak, J.

I have read the judgment prepared by my learned brother Dwivedi, J. I agree that the three questions of law framed by him should be answered in the manner indicated by him.

S. N. Dwivedi, J.

These two appeals and the writ petition have been referred to a larger Bench for decision. During the hearing the parties Counsel agreed that the Bench should decide three main questions of law arising in these cases and send back the reference to the learned Judges referring the cases for decision of the cases. Accordingly, we propose to express our opinion on the three main questions arising in these cases. One of these questions is common to all these cases, the second question arises only in Second Appeal No. 1443 of 1961; while the third question arises only in the writ petition. These questions are:

1. Whether, in view of the law declared by the Supreme Court in the cases of *Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman,* [1] and *Amba Prasad v. Mahboob Ali Shah,* [2] the decision or the Full Bench in the case of *Ram Dular Singh v. Babu Sukhu Ram,* [3] is not good law?

2. Whether an entry of sub-tenancy over a part of the holding in the khasra of 1356 F. could confer the adhivasi rights under Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act, and further whether it is open to the plaintiff to show that such entry was erroneous or not binding and he was actually the subtenant of the whole of the holding?

3. Can this Court interfere in a petition under Article 226 of the Constitution with the orders of the Consolidation authorities after the confirmation of the statement of proposals under Section 23 of the Consolidation of Holdings Act by the Settlement Officer (Consolidation)?

4. The referring order in the writ petition does not formulate any specific question for decision and refers the whole case to the larger Bench. But, as already stated, it is agreed at the Bar that this Bench may formulate questions and answer them only. Accordingly, we have formulated the three questions in the light of the referring order.

5. It is not necessary to state the facts of the cases referred to us for deciding the first question. It is a pure question of law and will have to be determined on a careful juxtapositional scrutiny of the Full Bench decision of this Court and two decisions of the Supreme Court. Section 20 (b) of the Zamindari Abolition and Land Reforms Act provides that a person recorded as an occupant of a certain land in the khasra or khatauni of 1356 F. shall become adhivasi. The majority decision in the Full Bench case was that a person recorded in the column of sub-tenant in the khasra or khatauni of 1356 F. was not an occupant within the meaning of Section 20 (b).

6. The judgment of the majority was delivered by Sri Chief justice Desai, and Sri Justice Pathak agreed with him. Accordingly, I shall refer to the judgment of the Chief Justice. The reasoning of the Chief Justice is this:

> (1) "Having regard to the provisions of the Land Records Manual in force in 1356 F., the phrase 'recorded as occupant' occurring in Section 20 (b) of the Act must mean recorded as qabiz or dawedar qabiz as provided in these provisions.
> (2) The entries made in columns 5 and 6 were not entries of the occupation at all and only the entries in the remarks column made with the words 'dawedar qabiz' or 'qabiz' were entries of occupation and they are the entries referred to in Section 20 (b)."

It is now to be seen whether these two reasoning's remain intact after the decisions of the Supreme Court in 1961 All LJ 27 and 1964 All LJ 805 . There is no reference to the first case in the Full Bench judgments. In the first case 1961 All LJ 27 , Upper Ganges Sugar Mills Ltd. was the thekedar of the proprietary rights of the respondent zamindar. During the term of the theka the company brought certain lands under its cultivation. The theka expired in June 1948. The company, however, continued in possession. Consequently, the respondent instituted a suit for its ejectment. It was resisted by the company on various grounds but was eventually decreed. This matter was taken over in appeal to the Supreme Court. The argument in the appeal was that the company has become an adhivasi of the land under Section 20 (b) of the Act. The phrase 'recorded as occupant' in Section 20 (b) fell for construction by the Supreme Court. The Supreme Court observed:

> "The word 'occupant' used in this part of the Act is not a term of art and has not been defined anywhere in the Act or in the U. P. Tenancy Act or in the Land Revenue Act. It must, therefore, be given its ordinary dictionary meaning which is a person in occupation'."

It may be mentioned here that the company was recorded as the thekedar in the khasra and khatauni of 1356F. According to the reasoning of the Chief Justice in the Full Bench case the company could not be held to be an adhivasi in view of this entry. Nevertheless the majority of the Supreme Court has held that the company was an adhivasi within the meaning of Section 20 (b), Sri Justice Wanchoo said:

> "On the landlord's own showing in this case, the company was not in possession as a thekedar as the theka had expired before 1356 F. Under the circumstances we are of opinion that company was recorded as an occupant in 1356 F..... Therefore, the company would be entitled to adhivasi rights."

The meaning given to the phrase 'recorded as occupant by the Supreme Court and the holding of the Supreme Court that the company, although recorded as a thekedar in the revenue records of 1356 F., has become an adhivasi under Section 20 (b) cut across tile two reasoning's in the judgment of the Chief Justice in the Full Bench case. I cannot see how it is possible to reconcile these reasoning's with the view of the majority of the Supreme Court.

7. The phrase 'recorded as occupant' in Section 20 (b) again fell for construction by the Supreme Court in the second case. Sri Justice Hidayatullah observed:

> "Before we proceed to decide whether the answering respondents satisfy the above tests we must consider what is meant by the terms 'occupant' and 'recorded'. The word 'occupant' is not defined in the Act. Since khasra records possession and enjoyment the word 'occupant' must mean a person holding the land in possession or actual enjoyment. The khasra, however, may mention the proprietor, the tenant the subtenant and other person in actual possession, as the case may be. If by 'occupant' is meant the person in actual possession, it is clear that between a proprietor and a tenant, the tenant, and between a tenant and the sub-tenant, the latter and between him and the person recorded in the remarks column as 'Dawedar Qabiz', the dawedar qabiz are the occupants. This is the only logical way to interpret the section which does away with all intermediaries."

It was further held that Section 20 (b) eliminates enquiries into disputed possession by accepting the records in the khasra or khatauni of 1356 F. It is clear from these observations that the phrase 'recorded as occupant' is not confined to a person whose name is entered as qabiz or 'dawedar qabiz' in the remarks column of the khasra of 1356 F. According to these observations a person whose name is recorded in the column of sub-tenant is also an occupant within the meaning of Section 20 (b). These observations also cut across the reasoning’s of the learned Chief Justice in the Full Bench case.

8. It has been argued at the Bar that although the second decision of the Supreme Court expressly refers to the Full Bench case, it does not expressly overrule it. Accordingly, it cannot be said that this decision impliedly overrules the Full Bench decision. It has also been pointed out that the observations of Sri Justice Hidayatullah, which I have quoted earlier, are obiter inasmuch as in that case the occupants were, in fact, recorded as 'qabiz' in the revenue records of 1356 F. It is no doubt true that the occupants in that case were recorded as 'qabiz' in the records of 1356 F. But we do not agree that the observations which we have quoted earlier are obiter. In order to decide whether a person entered as 'qabiz' in the records of 1356 F. was an occupant it was necessary that the true meaning of the phrase recorded as occupant' should be

determined. The observations, which we have quoted earlier, are accordingly not obiter dicta. It has been said that even an obiter dictum of the Supreme Court is binding on us.

9. Sri Justice Hidayatullah has referred to the Full Bench decision in his judgment for showing that this Court and the Board of Revenue have consistently been taking the view that a mere entry of a person's name as an occupant in the khasra or khatauni of 1356 F. is sufficient for holding that he has become an adhivasi and that the Courts will not go behind that entry to find out whether the person was really in possession in 1356 F. The Full Bench decision was not referred to for the purpose of interpreting the meaning of the phrase 'recorded as occupant'. I have already shown that it is not possible to reconcile the reasoning's of the learned Chief Justice in the Full Bench decision with the two judgments of the Supreme Court. Accordingly, I am of opinion that it should be held that the two Supreme Court decisions impliedly overrule the Full Bench decision.

10. Various arguments have been addressed to us to show that the Full Bench decision is correct Counsel have also relied on certain provisions of the Land Records Manual and on certain decisions. It is not necessary to refer to those arguments and to those provisions and the decided cases for I have already held that the two decisions of the Supreme Court have overruled the Full Bench decision. The matter is no more res integra and the decisions of the Supreme Court are being binding on us.

11. I shall now take up the second question referred to us. The second question may be split up into two parts:

> (1) Whether an entry of sub-tenancy over a part of the holding in the khasra of 1356 F. could confer the adhivasi rights under Section 20 (b)?
> (2) Whether it is open to the plaintiff to show that such an entry was erroneous or not binding and he was actually the subtenant of the whole of the holding?

12. The answer to the first part of the question will depend on the language of Section 20 (b) of the Zamindari Abolition and Land Reforms Act. Section 20 (b), in so far as it is material, reads:

> "Every person who was recorded as an occupant -

(i) of any land other than grove land or land to which Section 16 applies or land referred to in the proviso to sub-section (3) of Section 27 of the U. P. Tenancy (Amendment)

Act in the khasra or khatauni of 1356 Fasli..... or

(ii) of any land to which Section 16 applies, in the khasra or khatauni of 1356 F....., shall. ....., be called adhivasi of the land....."

It will appear that a person who is recorded as an occupant of any land becomes an adhiyasi of that land and no more. Accordingly, if a person is recorded as an occupant of a part of a plot, he will become an adhivasi of only that part of the plot and no more.

13. It has already been held by the Board of Revenue, by this Court and by the Supreme Court that for deciding whether a person has become an adhivasi we should look only to the entry in the khasra or khatauni of 1356 F. and that we cannot go behind that entry to find out whether the person so entered was in actual possession in 1356 F. If a person, who is entered as a sub-tenant of a part of the holding, wants to show that he is actually the subtenant of the whole of the holding for getting the rights of an adhivasi under Section 20 (b), he cannot be permitted to do so. It will be open to him to show that he is the sub-tenant of the entire holding for purposes other than the purpose of becoming an adhivasi under Section 20 (b).

14. I am unable to understand how Section 240-B (c) is opposed to my view that a person recorded as occupant of a part of a plot will become the adhivasi of only that part and no more. Section 233, on the other hand, seems to contemplate a case where a person becomes an adhivasi of a part of the plot. In such a case the rent payable by the adhivasi shall be determined in a particular manner in accordance with the rent computed at hereditary rates applicable to the land.

15. I shall now take up the third question. Section 52 of the Consolidation of Holdings Act, in so far as it is relevant, provides as follows :-

"(1) As soon as may be after fresh maps and records have been prepared under

> Section 27, the State Government shall issue a notification in the official 'Gazette' that the consolidation operations have been closed in the unit and the village or villages forming part of the unit shall then cease to be under consolidation operations.....
> (2) Notwithstanding anything contained in sub-section (1), any order passed by a Court of competent jurisdiction in cases of writs filed under the provisions of the Constitution of India, or in cases or proceedings pending under this Act on the date of issue of the notification under sub-section (1), shall be given effect to by such authorities as may be prescribed and the consolidation operations shall, for that purpose, be deemed to have not been closed.

It may be mentioned here that the Consolidation of Holdings Act has been amended several times. Section 52 was amended in 1963. I have quoted Section 52 as it stands after its amendment in 1963. The writ petition arises out of a consolidation proceeding which was initiated in accordance with the provisions of the Consolidation of Holdings Act as it stood before its amendment in 1958.

16. Sub-Section (1) of Section 52 has, however, not undergone any material change. Sub-Section (2) of Section was brought into existence by the amendment in 1963.

17. A notification under sub-section (1) of Section 52 is published after the records have been prepared after possession of the allotted land has been delivered to the allottees. Possession is delivered to the allottees that the statement of proposals has been confirmed. The statement of proposals is confirmed by the Settlement Officer under Section 23. The confirmed statement becomes final. In this case the writ petition was filed after the confirmation of the statement of proposals. Hence it is argued that this Court has got no power to entertain the writ petition. It is said that the finality attached to the statement of proposals after its confirmation by the Settlement Officer precludes this Court from interfering with any order of the consolidation authorities thereafter.

18. Section 23 as it stood before 1958 read:

> "where no objections are filed on the statement of proposals within the time specified in Section 20 or where such objections are filed and have been disposed of under Section 21 or 22 the Settlement Officer (Consolidation) shall, after such modification or alteration as may be necessary in view of the order passed under Section 21 or 22, confirm the statement and thereupon the

statement so confirmed shall become final and be published in the village." Section 23 was amended in 1958. On amendment it consisted of three sub-sections. It is not necessary to reproduce sub-sections (1) and (3). Sub-section (2) is, however, material and reads as follows:

"The Statement of Proposals so confirmed shall be published in the unit and shall, except as otherwise provided by or under this Act, be final."

Section 23 was again amended in 1963. Sub-section (2), however, remained unmodified in substance. Section 48 deals with the power of revision of orders. Before 1958 it read as follows :-

"The Director of Consolidation may call for the record of any case if the Officer . . .... by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit."

Section 48 was amended in 1958. On amendment it read as follows :-

"The Director of Consolidation may call for the record of any case decided or proceedings taken, where he is of the opinion that a Deputy Director, Consolidation, has

(i) exercised jurisdiction not vested in him in law, or

(ii) failed to exercise the jurisdiction vested in him, or

(iii) acted in the exercise of his jurisdiction illegally or with substantial irregularity and as a result of which substantial injustice appears to have been caused to a tenure-holder, and he may, after affording reasonable opportunity of hearing to the parties concerned, pass such order in the case or proceeding as he thinks fit". Section 48 was again amended in 1963. Now it consists of three sub-sections. Subsection (i) is material for our purpose. It is as follows:

"The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose or satisfying himself as to the regularity of the proceedings, or as to the correctness, legality or propriety of any order passed by such authority in the case or proceeding and may, after allowing the parties concerned an opportunity of being heard, makes such order in the case or proceedings as he thinks fit".

The Settlement Officer (Consolidation) is an authority subordinate to the Director of Consolidation. Up to 1958 an order made by the Settlement Officer (Consolidation) was revisable by the Director of Consolidation under Section
48. Accordingly when Section 23 declared that the statement of proposals confirmed by the Settlement Officer shall become final, it made the confirmed statement of proposals immune from an attack in revision under Section 48. The word 'final' in Section 23 would preclude a revision under Section 48. Of course, no appeal lay against the order of the Settlement Officer. In 1958 the power of revision was confined to the order made by a Deputy Director of Consolidation. No revision could be filed against the order of a Settlement Officer (Consolidation). Accordingly the statement of proposals confirmed by the Settlement Officer could not be revised under Section 48. Consequently, the confirmed statement of proposals became final for the purposes or the Consolidation of Holdings Act. On the amendment of Section 48 in 1963 the Director of Consolidation could revise an order of any subordinate authority. So after 1963, the statement of proposals, even though confirmed by the Settlement Officer, became revisable under Section 48. Now subsection (2) of Section 23 itself states that the statement of proposals confirmed by the Settlement Officer shall become final except as otherwise provided by or under the Consolidation or Holdings Act. Section 48 provides for a revision of his order by the Director of Consolidation.

19. It cannot be held that the word 'final' in sub-section (2) deprives this Court of the power under Article 226 of the Constitution. The power of this Court under Article 226 is a power derived from the paramount law of the land. Section 23 (2) is a law made under this paramount law. It cannot take away this Court's power under the paramount law: *Asiatic Engineering Co. v. Achhruram,* [4] This view is further strengthened by Article 227 of the Constitution. Article 227 provides that all Courts and tribunals situate within the territorial jurisdiction of High Court are subject to the superintendence of the High Court. The consolidation authorities, who act as tribunals under the Consolidation of Holding Act, are subject to the superintendence of this Court, and this Court can issue an appropriate writ, order or direction to them in an appropriate case.
I am of opinion that even if the statement of proposals has been confirmed, this Court is, speaking generally, not deprived of the power to interfere with the orders of consolidation authorities under Article 226 of the Constitution. The power to interfere remains intact. Although this Court retains the power to interfere with the orders of the

Consolidation authorities in spite of Section 23 (2), it may decline to interfere on a consideration of the circumstances of a particular case. Power under Article 226 is discretionary, and naturally discretion will be moulded by the facts and circumstances of each case.

20. Sub-section (2) of Section 52 also suggests that this Court may issue appropriate writs, orders or directions to the consolidation authorities even after the statement of proposals has been confirmed. It provides that the orders of this Court made under Article 226 shall be implemented by the authorities as may be prescribed. But it has been argued that subsection (2) of Section 52, which came into being in 1963, will not apply to the present case which arises out of the provisions of the Consolidation of Holdings Act as it stood before its amendment in 1958. For this purpose our attention has been drawn to Section 47 of the U. P. Consolidation of Holdings (Amendment) Act, 1963 which introduced sub-section (2) in Section 52. Section 47, in so far as it is material, reads:

> "(1) In units notified under Section 4 of the principal Act, prior to the date on which this Act comes into force,....., all work in regard to or connected with consolidation operations -
> (i) beyond the stage of publication of the statement of proposals under Section 20 of the principal Act, where, on or before the said date, that statement had already been published; and
> (ii) up to and inclusive of the stage of confirmation of the Statement of Principles under Section 18 of the principal Act, where, on or before the said date, notices under Section 9 of the principal Act, as if this Act has not come into force: ....
> (2) All other work, to which the provisions of sub-section (1) do not apply, shall be conducted and concluded in accordance with the provisions of the principal Act as amended by this Act.....
> (3) Notwithstanding anything contained in sub-section (1) or (2), the provisions of Clause (1) of Section 49 of the Uttar Pradesh Consolidation of Holdings (Amendment) Act, 1958, shall continue to apply to proceedings covered by that clause . . ." Clause (1) of Section 49 of the U. P. Consolidation of Holdings (Amendment) Act, 1958 reads as under:
> "Notwithstanding the amendment of the principal Act by this Act all proceedings commenced prior to, and pending on, the date on which this Act

when comes into force - (1) relating to correction of records under Section 7 of the principal Act shall be completed in accordance with the provisions, contained therein, and shall be deemed to be proceedings taken under Sections 7 and 8 of the principal Act as amended by this Act. All future proceedings thereafter shall be conducted and concluded in accordance with the provisions of the principal Act as amended by this Act."

The combined result of Sections 47 (1) and (3) and Section 49 (1) is that the proceedings started under the provisions of the Consolidation of Holdings Act as it stood before 1958 will be conducted in accordance with the provisions of that Act as it then stood. Accordingly Section 52 (2) will not apply to those proceedings. But this does not conclude the matter. Sub-section (2) of Section 47 clearly provides that all other work to which the provisions of sub-section (1) do not apply shall be conducted and concluded in accordance with the provisions of the Consolidation of Holdings Act as amended by the Consolidation of Holdings (Amendment) Act, 1963. It seems to me that the expression 'All other work' in sub-section (2) would include the work of implementing the orders of this Court made under Articles 226 and 227 of the Constitution. If that is so, as I think, then sub-section (2) of Section 47 applies sub-section (2) of Section 52 to a proceeding governed by the Consolidation of Holdings Act as it stood before 1958.

21. In *Atar Singh v. Dhoop Singh,* [5] the Settlement Officers (Consolidation) dismissed an appeal under Section 21 of the Consolidation of Holdings Act on the ground that the notification under Section 52 of the said Act had already been published in the Gazette. His order was impeached in a writ petition. The learned single Judge, who heard the petition, agreed with the view of the Settlement Officer (Consolidation) and dismissed the petition. His judgment was upheld in appeal by a Division Bench. There was no argument before the Division Bench or before the single Judge that this Court could not issue a writ, order or direction under Article 226 where statement of proposals has been confirmed by the Settlement Officer (Consolidation). There is no discussion on this point in either judgment.

22. In *Smt. Natho v. Board of Revenue,* [6] also there was no argument that this Court could not exercise its power under Article 226 where the statement of proposals has been confirmed by the Settlement Officer (Consolidation).

23. In *Smt. Ramrati v. The Regional Deputy Director of Consolidation,* [7] a writ

petition was filed against an order of the Deputy Director of Consolidation passed in an objection under Section 12 of the Consolidation of Holdings Act. The learned single Judge, while declining to interfere, said: The writ petition arises out of an objection under Section 12 of the Act. Even if the writ petition was to be allowed and the objection under Section 12 is remitted for further hearing, all that the petitioners can hope is to get the objection under Section 12 dismissed. But such dismissal will have no effect on the statement under Section 23 of the Act. It is, therefore, futile to remit the objection under Section 12 of the Act for further hearing. In view of the developments in the case, the writ petition may be dismissed." It would appear from this passage that the learned Judge considered that it was not a fit case where the Court should exercise discretion for interfering with the order of the Deputy Director of Consolidation. The learned Judge did not dismiss the petition on the ground that after the confirmation of the statement of proposals, this Court cannot act under Article 226 of the Constitution. It may also be noticed that the petitioner did not ask for the relief that the statement of proposals itself may be quashed.

24. In *Gayatri Devi Misra v. District Deputy Director of Consolidation,* [8] also there was no argument that the confirmation of the statement of proposals by the Settlement Officer (Consolidation) precludes the exercise of this Court's power under Article 226. The petition was dismissed on the merits.

25. In *Bansidhar v. Deputy Director of Consolidation,* [9] a person filed an objection under Section 9 of the Consolidation of Holdings Act as it stood after its amendment in 1958 before the Consolidation Officer. The Consolidation Officer held on his objection that his name should be entered as a trespasser in the revenue records. He filed an appeal. It was dismissed. Then he filed a revision which met the same fate. Then he filed a writ petition against the orders of the Consolidation authorities. During the pendency of the writ petition the statement of proposals was confirmed. Then the respondents in the petition raised a preliminary objection that the petition could not be heard. The learned Judge, who heard the petition, upheld the objection and dismissed the petition. It was argued on behalf of the petitioner that this Court could issue an appropriate writ, order or direction by virtue of sub-section (2) of Section 52 of the Consolidation of Holdings Act. While not accepting this argument, the learned Judge said:

> "It does not appeal to me that Section 52 (2) is of any assistance. The order of

> this Court in the writ petition will be given effect to. But that does not help in deciding the question whether the discretionary power of issuing a writ should be exercised in favor of the petitioner. Further, it appears to me that as allotment of chaks had taken place the petitioner would not get any relief even if the writ petition was decided in his favor."

It would appear from this passage that the learned Judge dismissed the petition for he took the view that it would not be a proper exercise of discretion to interfere with the orders of the Consolidation authorities in the circumstances of that case. It was not held by the learned Judge that after the confirmation of the statement of proposals under Section 23 this Court cannot exercise power under Article 226.

26. *Kishan Singh v. Deputy Director of Consolidation,* [10] is a case of the different type. In this case one of the arguments of counsel for the petitioner-appellant before the Division Bench in appeal was that the statement of proposals having been confirmed under Section 23, as it stood after its amendment in 1958, the Deputy Director of Consolidation could not interfere in revision with the order of the second appellate authority. In support of his argument counsel relied on Atar Singh's case. The Division Bench distinguished that case for the reason that it proceeded on the provisions of Section 23 as it stood before its amendment in 1958. I have already quoted the provisions of Section 23 (2) as it stood after amendment in 1958. Relying on the words "except as otherwise provided by or under this Act" in sub-section (2) of Section 23, the learned Judges held that the Deputy Director could interfere in revision even after the confirmation of the statement of proposals. The learned Judges said :

> "Therefore, it was contemplated that the statement of proposals confirmed under Section 23 (1) would be final unless there was an order under some other provision of the Act detracting from that finality. Now an order passed under Section 48 of the Act would, in my opinion, be an order which would govern the finality of the statement of proposals."

27. None of these cases go to the length of holding that the hand of this Court is frozen on the confirmation of the statement of proposals. It may be made clear that the correctness of none of these decisions was questioned before us and I should not be deemed to have expressed any opinion about it this way or that way.

28. To sum up, my answers to the three questions are as follows :-

> Q. 1. - In the light of the decisions of the Supreme Court in 1961 All LJ 27 and 1964 All LJ 805 , the decision of the Full Bench in 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) is not good law.
> Q. 2 (a). - If the name of a person is entered in the column of sub-tenant in respect of a portion of the plot in the khasra of 1356 F., he would become adhivasi of that portion only and no more under Section 20 (b).
> (b) For the purpose of showing that he is an occupant within the meaning of Setion 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act it will not be open to the person mentioned in question No. 2 (a) to show that he was actually the sub-tenant of the entire holding. It will be open to him to show that he was the subtenant of the entire holding for any other purpose.
> Q. 3 - The confirmation of the statement of proposals under Section 23 of the Consolidation of Holdings Act does not deprive the Court of its power under Article 226 of the Constitution. The power remains intact, but the exercise of the power being discretionary, the Court may mould its discretion according to the facts and circumstances of each case.

29. The cases should now go back to the learned Judges who have referred them for decision on other points.

Geshwar Prasad, J.

30. I have had the benefit of reading the judgment of my learned brother Dwivedi, and I concur with him on all the three questions formulated by him. I, however, wish to make some observations of my own.

31. Question 1. : In the Full Bench case of 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) the appellants claimed that they became Adhivasi of the disputed land under the provisions of Section 20 (a) (ii) of the U. P. Zamindari Abolition and Land Reforms Act and then became Sirdars under Chapter IX-A of the Act Alternatively, they claimed that they became Adhivasis under Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act and thereafter became Sirdars under Chapter IX-A of the Act Question 2 before that Full Bench related to the first claim of the appellants and question 3 to the second claim made by them in the alternative. Desai, C. J., who

delivered the majority judgment, proceeded to answer question 3 after answering question 2 in the affirmative and holding that the appellants became Adhivasis under Section 20 (a) (ii) of the U. P. Zamindari Abolition and Land Reforms Act and subsequently Sirdars under Chapter IX-A of the Act. Obviously, if the appellants became Adhivasis under one provision of Section 20, it was wholly unnecessary for item to invoke the aid of any other provision of the section in support of their claim. The learned Chief Justice, however, examined the alternative claim also, and expressed his opinion on the question whether the appellants who were recorded as sub-tenants in the Khasra and Khatauni of 1356-F. could be said to have been recorded as 'occupants' within the contemplation of Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act.

32. In arriving at his conclusion on the above question the learned Chief Justice adopted two methods of approach. Firstly, he determined the meaning of the word 'occupant' in Section 20 (b) with reference to the Land Records Manual. Secondly, he confirmed the result of the first and the primary approach by an examination of other provisions of the U. P. Zamindari Abolition and Land Reforms Act for ascertaining whether the benefit of Section 20 (b) was intended to be conferred upon persons who were recorded as tenants or subtenants in the relevant records.

33. The first approach was based on the ground that "in order to understand what is meant by recorded as 'occupant' in Section 20 (b) one must necessarily refer to the provisions of the Land Records Manual in force in 1356 Fasli because entries in Khasras and Khataunis were to be made in accordance with its provisions." In 1961 All LJ 27 the Supreme Court has, however, held that the word 'occupant' as used in Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act "is not a term of art and has not been defined anywhere in the Act or in the U. P. Tenancy Act or in the Land Revenue Act" and that "it must, therefore, be given its ordinary dictionary meaning which is 'a person in cultivation'." This pronouncement of the Supreme Court precludes the determination of the meaning of the word 'occupant' with reference to the provisions of the Land Records Manual and lays down in clear terms what the word means. In view of the above pronouncement and in view of the scope of the first question which this Bench is answering it is not necessary to discuss how far the provisions of the Land Records Manual support the interpretation put upon the word occupant' in the majority judgment in Ram Dular Singh's case 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB). But, I may briefly draw attention to certain matters in that

connection. Firstly, Paras. 82, 83, 84 and 86 of the Land Records Manual which have been referred to in the said judgment did not use the word 'occupant' in relation to the persons with whom they dealt and described such persons in a different manner. Secondly, the entries of 'Dawedar Qabiz' and 'Qabiz' which, according to the majority judgment, were the entries contemplated by Section 20 (b), were two distinct kinds of entries required to be made in two different situations; indeed, Paras. 84 (c) and (d) and 85 provided for three types or entries. viz. 'Ghair Qabiz Dawedar Qabiz', 'Qabiz Dawedar' and 'Qabiz' for three different situations, and it does not seem to be possible to say that the word 'occupant' was used in Section 20 (b) to denote only persons in respect of whom any entry of any of these three types was made and to denote no others. Thirdly, if the persons in respect of whom any of the above types of entries were made in the relevant records were the only persons intended to be treated as being recorded as 'occupants' for the purpose of Section 20 (b) the legislature could have easily made its intention known by using the above-mentioned words or, if that was inconvenient, by referring to the relevant paragraphs of the Land Records Manual. Fourthly, column 6 of the Khasra was meant not only for sub-tenants and certain kinds of tenants but also for "occupiers of land without consent of the person entitled to admit as sub-tenant", and the three types of entries mentioned above which were to be made in certain situations only did not cover all kinds of trespassers.

34. Now as to what I have described as the second approach adopted by Desai, C. J. His Lordship observed that the rights of tenants and sub-tenants were dealt with by other provisions of the Uttar Pradesh Zamindari Abolition and Land Reforms Act and Section 20 (b) must, therefore, be regarded as not meant to confer Adhivasi rights on tenants and sub-tenants, and as excluding them from the category of persons 'recorded as occupants', even though they were recorded in the records spoken of in that provision and were also in occupation. A somewhat similar method of approach appears to have been adopted in the argument on behalf of the landlords in 1961 All LJ 27 and not to have found favor with the Supreme Court. In that case, if the Company concerned had in fact been a thekedar it would have been entitled to the benefit of Section 12 of the U. P. Zamindari Abolition and Land Reforms Act, but the benefit of that section was not available to the Company as the theka in its favour had expired and the Company was not a thekedar although it was recorded as such. The question was whether the Company was entitled to the benefit of Section 20(b). Dealing with the argument on behalf of the landlords Wanchoo, J. (as his Lordship then was), who delivered the majority judgment of the Supreme Court, observed:

> "What is contended on behalf of the landlords is that as the Company was recorded as a thekedar in 1356-F., it is not open to the court to go behind that entry and therefore it must be held that the Company was in occupation as a thekedar in that year and thus was in occupation on behalf of the landlords and not on its own behalf. In this connection we may point out that the Company claimed that it was entitled to possession not only as an Adhivasi under Section 20 but also as hereditary tenant under Section 12, which provides that a thekedar under certain circumstances becomes a hereditary tenant. To meet the Company's case under Section 12 the landlords contended that the Company was not a thekedar in 1356-F because the theka expired on June 30, 1948. The landlords were thus taking contradictory positions for the purposes of Sections 12 and 20; in opposition to the claim under Section 12 they said that the Company was not their thekedar in 1356-F. while in opposition to the claim under Section 20, they said that the Company was not in possession on its own behalf but as their thekedar."

The fact that Section 12 deals with the results of a thekedar was not regarded by his Lordship as a reason for holding that a person recorded as a thekedar is not covered by Section 20 (b). The conclusion that seems to follow from the above decision is that the fact that certain kinds of tenants and sub-tenants have been dealt with under Section 20 (a) does not lead to the result that Section 20 (b) does not apply to persons recorded as tenants or subtenants. Just as Section 12 deals with persons who were in fact thekedars, Section 20 (a) deals with persons who were in fact tenants or sub-tenants or would be deemed to have been tenants or sub-tenants, irrespective of entries and possession. Section 20 (b), on the other hand, deals with those who were recorded as occupants in the Khasra and Khatauni of 1356 F. and there is nothing in it to show that it does not include also those persons who could have claimed Adhivasi rights under Section 20 (a). It will be noticed that sub-clauses (i) and (ii) of Clause (a) of Section 20 open with the words 'except as provided in sub-clause (i) of Clause (b)'. Clauses (a) and (b) confer the same kind of right, and if the persons dealt with by them belonged to mutually exclusive categories the words 'except as provided in sub-clause (i) of Clause (b)' were unnecessary. I may here mention that Section 20 as originally enacted contained no such words that they were introduced with retrospective effect as a combined result of U. P. Act 17 of 1953 and U. P. Act 20 of 1954. These words give Section 20 (b) a priority over and an overriding effect on Section 20 (a), and the

natural consequence is that Section 20 (a) cannot be read as limiting the scope of Section 20 (b) and the latter provision cannot be so interpreted as to exclude from its ambit persons recorded as tenants or sub-tenants. In fact the process of application of Section 20 would, in my opinion, be that it has first to be ascertained whether a person became an Adhivasi under Section 20 (b) by virtue of being recorded as an occupant in the relevant records, and it is only when he does not satisfy this simple requirement that the question will arise whether he became an Adhivasi under Section 20 (a). It is another matter that a person who acquired higher rights than those of an Adhivasi may dispense with the benefit of Section 20 (b) and that if Section 20 (b) is not read as being prior to Section 20 (a) a person who became an Adhivasi under Section 20 (a) does not need the help of Section 20 (b) for the same purpose. But, if a person was not a tenant or subtenant, it cannot be said that he loses the benefit of both Sections 20 (a) and 20 (b); of the former by not having in reality been a tenant or a sub-tenant on the date immediately preceding the date of vesting, and of the latter on account of the fact that although he was recorded as in occupation in the Khasra or Khatauni of 1356 Fasli he was recorded as a tenant or a subtenant. As I have said above, an argument on this line was advanced before the Supreme Court on behalf of the landlords in the case of the Upper Ganges Sugar Mills Ltd., 1961 All LJ 27 but was not accepted, and in spite of the fact that the Company concerned was recorded as a thekedar it was held to have acquired Adhivasi rights under Section 20 (b). The position is not different in the case of a person recorded in the revenue records of 1356 Fasli as a tenant or a subtenant, and on the basis of the decision of the Supreme Court it must be held that he did acquire Adhivasi rights under Section 20 (b).

35. It was urged in the course of argument before this Bench that if the entry in 1356 Fasli relating to the Company had been regarded as amounting to the Company having been recorded as an 'occupant' it would have been unnecessary for the Supreme Court to enquire into the question whether the Company was in fact a thekedar, and it was suggested that if the Company had really been a thekedar the Supreme Court would not have held that it was recorded as an "occupant". The enquiry was, however, necessary, because if the Company had in fact been a thekedar two consequences would have followed. Firstly, the Company would have been deemed to have become a hereditary tenant under Section 12 of the U. P. Zamindari Abolition and Land Reforms Act as claimed by it in the first instance. Secondly, it would then have been in 1356-F. an intermediary as defined in Section 3 (12) of the Act and could not have therefore been regarded as an 'occupant' on account of Explanation IV to Section 20

(b).

36. In the light of the decision of the Supreme Court in the case of Upper Ganges Sugar Mills Ltd., 1961 All LJ 27, that portion of the majority judgment in Ram Dular Singh's case, 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) which deals with question 3 of that case cannot be said to be good law. The later decision of the Supreme Court in 1964 All LJ 805 , however, deals in explicit terms with the position of persons recorded as tenants or sub-tenants in the Khasra or Khataunis of 1356 Fasli for the purpose of Section 20 (b) and it has the effect of overruling Ram Dular Singh's case, 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) in so far as it was held in that case that a person recorded as a tenant or a subtenant was not recorded as an "occupant" for the above purpose.

37. The submissions that were made with regard to Amba Prasad's case, 1964 All LJ 805 were two. First; as, in that case, the persons concerned were recorded as Qabiz the observations of the Supreme Court were in the nature of obiter and are, therefore, not binding. Second; an observation made in that case too indicates that persons recorded as tenants or sub-tenants cannot be treated as having been recorded as 'occupants'. Neither of these submissions, however, has any force.

38. The persons concerned in the above case were entered as Qabiz and for deciding the question whether they could be treated as having been recorded as 'occupant' the Supreme Court elaborately discussed the meaning of the expression 'occupant' in Section 20 (b). The observations made by the Supreme Court in that connection cannot, therefore, be said to be in the nature of obiter. Even if, however, they are in the nature of obiter they amount to a declaration of law under Article 141 of the Constitution and have a binding force.

39. The second submission is based on the following observation of the Supreme Court:

> "The word "occupant" thus signifies occupancy and enjoyment. Mediate possession, (except where the immediate possessor holds on behalf of the mediate possessor), is of no consequences.
> ". It has been contended on the basis of the above observation that a tenant held on behalf of a proprietor and a sub-tenant on behalf of a tenant and neither of

> them could consequently be an 'occupant'. The contention appears to me to be misconceived. The observation quoted above necessarily implies that two persons may stand in relation to each other as mediate possessor and immediate possessor in a variety of situations, and that holding of a land by the immediate possessor on behalf of the mediate possessor is only one of such situations. For instances of various types of mediate and immediate possession and their distinguishing features reference may be made to Salmond on Jurisprudence (Twelfth Edition) page 282, Roscoepound's Jurisprudence Vol. V page 110 and Paton's Text Book of Jurisprudence (1946 Edition) page 437.

The types, it would appear, represent not a rigidly fixed demarcation but only a round and a frequently overlapping classification. To which type the relationship between the mediate and the immediate possessor in a particular case belongs has to be determined in the light of the distinctive features of that relationship. Whether an immediate possessor holds on behalf of the mediate possessor depends upon the nature and extent of their respective interests, enjoyment, control and power of exclusion etc. in respect of the object of possession. The possession of a person having a derivative interest is not necessarily on behalf of the person from whom the interest is derived. A tenant and a sub-tenant derived their interest from a proprietor and a tenant respectively, but they remained in possession in their own right and for their own benefit. Their rights arose both under contract and under statute. So long as their interest subsisted they could exclude the person from whom they derived their interest. They were not liable to ejectment except in accordance with the procedure prescribed by law and the person from whom they derived their interest could not put an end to their possession without recourse to prescribed legal proceedings. It thus appears to be clear that even though the proprietor and the tenant remained respectively in mediate possession of what was held by a tenant and a sub-tenant in immediate possession, the latter did not hold on behalf of the former. The observation of the Supreme Court quoted above does not, therefore, lend support to the proposition that tenants and sub-tenants in immediate possession were not 'occupant', and the real occupants were the mediate possessors, i.e. the proprietor and the tenant respectively. Such an interpretation is in fact ruled out by the earlier observations that "it is clear that between a proprietor and a tenant the tenant, and between a tenant and the subtenant the latter and between him and a person recorded in the remarks column as Dawedar Qabiz, the Dawedar Qabiz are the occupants".

40. The position therefore, is that the decision in Ram Dular Singh's case, 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) on the question whether a person recorded as a tenant or a sub-tenant in Khasra or Khatauni of 1356 Fasli is to be treated as an occupant for the purpose of Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act is not good law in view of the two Supreme Court decisions.

41. Question 2. : It is well settled now that Section 20 (b) is not concerned with the interest or actual possession of the person spoken of in that provision and its sole concern is with the existence of a particular kind of record relating to him in the Khasra or Khatauni of a particular year. The record alone and by itself constitutes the basis of acquisition of the right conferred by the said provision. It naturally follows that the right depending upon the record extends as far as the record goes and that it extends no further. A person who claims that he became an Adhivasi of the land although he was not recorded as an occupant in respect of it in the Khasra or Khatauni of 1356 Fasli may base his claim on Section 20 (a) but he cannot rely on Section 20 (b).

42. It will be seen that Section 20 (b) speaks of 'any land' and not of 'any holding' or any plot of land. A holding was a unit created by an 'engagement' and a plot of land was a unit created by revenue records. But Section 20 (b) has no reference to and does not contemplate either of such units. It seems, therefore, obvious that a person recorded as an occupant over a part of a plot of land would be entitled to the benefit of Section 20 (b) in respect of that part, and would not be entitled to the benefit of the said provision in respect of any other part of that plot.

43. Question 3. : It is indisputable that the extent of finality provided by Section 23 of the U. P. Consolidation of Holdings Act cannot exceed the powers of the legislature which enacted the section. The section cannot, therefore, either exclude or control the jurisdiction of the High Court under Article 226 of the Constitution. It is another matter altogether that the High Court may in a particular situation decline after the consolidation proceedings have gone beyond Section 23 stage to exercise the extraordinary jurisdiction conferred upon it by Article 226, but that would be not because of any limitation placed upon the exercise of that jurisdiction by Section 23 but because of the inherent nature of that jurisdiction and the considerations which have to be taken into account in exercising it.

44. Since, unlike Section 52 of the U. P. Consolidation of Holdings Act, as it now stands, Section 23 does not lay down what effect an order of the High Court passed in a writ petition under Article 226 will have upon the consolidation operations, it seems necessary to say a few words about Section 52. For the reasons which have been exhaustively dealt with by my learned brother Dwivedi J., I too think that the said provision applies also to proceedings governed by the U. P. Consolidation of Holdings Act as it stood before 1958. But even if it were not so, Section 52 as it stood before the amendment could not have operated as a bar to the exercise of the jurisdiction vested in the High Court under Article 226 or to the implementation of the orders passed by it under that Article. It is true that the Act in its old form did not provide for carrying such orders into effect, but that could neither prevent the High Court from exercising its jurisdiction under Article 226 nor render the exercise of the jurisdiction ineffective and nugatory. Even if Section 52 had stood in its unamended form the result, in my opinion, would not have been different from what it is now under the amended form of the Section. It may be that it would then have been necessary for the High Court to pass some other directions or orders calling upon the appropriate authority to take suitable steps for implementing the orders, but it appears to be undeniable that if the jurisdiction of the High Court could not be taken away or curtailed directly by any provision in the Act, it could not be taken away or curtailed by reason of the fact that the consolidation operations had closed. The implementation of the orders of the High Court would have required the reopening of certain matters which were regarded as settled, and what will be done now under Section 52 (2) would have been done even then. I may here refer to the decision of the Supreme Court in *Raj Krushna Bose v. Binod Kanungo* [11] which furnishes a complete answer to the argument based on the difficulty of reopening closed proceedings and also a solution of the difficulty. The decision dealt with a case under the Representation of the People Act. Section 105 of the Act provides that every order of the Tribunal under that Act shall be final and conclusive. Dealing with the effect of that provision on the powers of the Supreme Court under Article 136 and those of the High Courts under Article 226 the Supreme Court observed:

> "Our power to make such an order was not questioned but it was said that when the legislature states that the orders of a Tribunal under an Act like the one here shall be conclusive and final (Section 105), then we should not interfere. It is sufficient to say that the powers conferred on us by Article 136 of the Constitution and on the High Courts under Article 226 cannot be taken away or

whittled down by the legislature. So long as these powers remain, our discretion and that of the High Courts is unfettered".

The Supreme Court did observe that Tribunals constituted under the Act were 'ad hoc' bodies and remand could not easily be made as in ordinary course of law, but it passed an order to the following effect:

> "We set aside the order of the Tribunal and remit the case to the Election Commission with directions to it to reconstitute the Tribunal which tried this case and to direct the Tribunal to give its findings on all the issues raised and to make a fresh order". In the light of this decision it must, I think, be held that Section 52, even as it stood before the amendment, could not stand in the way of the exercise of the power given to the High Court under Article 226 or make the exercise of the power ineffective. What the amendment in Section 52 has done is only this that it has embodied in a statutory form the result which would have followed even without the amendment. If consolidation operations could have been reopened after they had closed under Section 52 of the Act, they can certainly be reopened after they have crossed the stage of Section 23. It is immaterial that Section 23 does not make provision for effectuating orders passed by the High Court under Article 226 as Section 52 (2) does.

45. There is another consideration in support of this view. Orders passed under the provisions of the Act are subject to appeal, by special leave, to the Supreme Court under Article 136 of the Constitution, and no provision in the Act, by conferring finality upon any of them, can take away the power vested in the Supreme Court under the said Article. The consolidation authorities are bound to give effect to the orders passed by the Supreme Court in appeal and yet, it will be noticed, even the amended Section 52 has not provided as to how the orders of the Supreme Court passed in appeal would affect consolidation operations. It is not possible to urge that while an order passed in cases of writs filed under the provisions of the Constitution will have the effect of reopening consolidation operations an order passed by the Supreme Court in appeal under Article 136 against an order passed in consolidation proceedings would have the consolidation operations unaffected and would not have the effect of reopening them in order to give effect to the order. The fact that Section 23, unlike Section 52, does not provide for the reopening of maters which have been confirmed under that section is not, therefore, a matter of any consequence in determining the power of the High Court to interfere, under Article 226, with the orders of the

consolidation authorities even after consolidation operations have crossed the stage of Section 23.

46. Further, even when consolidation operations have proceeded beyond the stage of Section 23 they are liable to be reopened or disturbed, under the terms of the section itself, as a result of an appeal or a revision before the consolidation authorities. It cannot, therefore, be said that an interference by the High Court upon a writ petition filed before it under Article 226 would unsettle what has become settled and immune from being disturbed.

47. The powers exercisable by the High Court under Article 226 are certainly of a different land from those exercisable by the Supreme Court in appeal under Article 136 or by the consolidation authorities in appeal or revision under the provisions of the Act itself, but the existence of that power cannot be disputed. It cannot also, in my opinion, be disputed that if the High Court does exercise that power the orders passed by it in the exercise of the power have to be carried into effect and implemented, because a power that remains ineffective is no power at All. The answer to question 3 must, therefore, be in the affirmative.

48. BY THE COURT : These three cases were referred to this Bench for decision. The Bench formulated three main questions which arose for decision. One of these questions is common to all these cases; the second question arises only in Second Appeal No. 1443 of 1961; while the third question arises only in the writ petition. The questions formulated by this Bench are:

> (1) Whether, in view of the law declared by the Supreme Court in the cases of 1961 All LJ 27 and 1964 All LJ 805 , the decision of the Full Bench in the case of 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) is not good law?
> (2) Whether an entry of sub-tenancy over a part of the holding in the khasra of 1356-F. could confer the adhivasi rights under Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act, and further whether it is open to the plaintiff to show that such entry was erroneous or not binding and he was actually the sub-tenant of the whole of the holding?
> (3) Can this Court interfere in a petition under Article 226 of the Constitution with the orders of the Consolidation Authorities after the confirmation of the statement of proposals under Section 23 of the Consolidation of Holdings Act

by the Settlement Officer (Consolidation)?

49. Our answers to these questions are as follows:

Answer to Q. 1. In the light of the decisions of the Supreme Court in 1961 All LJ 27 and 1964 All LJ 805 the decision of the Full Bench in 1963 All LJ 667 : AIR 1964 Allahabad 498 (FB) is not good law.

Answer to Q. 2. (a) If the name of a person is entered in the column of sub-tenant in respect of a portion of the plot in the khasra of 1356-F, he would become adhivasi of that portion only and no more under Section 20 (b).

(b). For the purpose of showing that he is an occupant within the meaning of Section 20 (b) of the U. P. Zamindari Abolition and Land Reforms Act it will not be open to the person mentioned in question No. 2 (a) to snow that he was actually the sub-tenant of the entire holding. It will be open to him to show that he was the subtenant of the entire holding for any other purpose.

Answer to Q. 3. The confirmation of the statement of proposals under Section 23 of the Consolidation of Holdings Act does not deprive the Court of its power under Article 226 of the Constitution. The power remains intact, but the exercise of the power being discretionary, the Court may mould its discretion according to the facts and circumstances of each case.

50. The cases should now go back to the learned Judges who have referred them for decision on other points.

Answered accordingly.

Cases Referred.

1. 1961 All LJ 27
2. 1964 All LJ 805
3. 1963 All LJ 667: AIR 1964 All 498 (FB)
4. AIR 1951 All 746 (FB) at p. 768
5. 1963 All LJ 975
6. 1966 All LJ 563
7. 1963 RD 165
8. 1965 RD 31

9. 1967 RD 51
10. 1965 RD 298
11. AIR 1954 SC 202