

Maqbool Raza Ghaffar Hussain

Vs.

Joint Director of Consolidation

Civil Misc. Writ No. 3106 of 1962

(Jagdish Sahai, K.B. Asthana and R.S. Pathak, JJ.)

11.09.1967

ORDER

Jagdish Sahai, K.B. Asthana, J.

1. This reference arises out of consolidation proceedings. The consolidation authorities held that the fifth respondent Hasan Raza was the Adhivasi of the land in dispute, being in possession of the same in the years 1356F and 1359F. The main question that arises for consideration in this case is whether it was open to the consolidation authorities to go into the question as to whether Hasan Raza was the Adhivasi or the Sirdar of the land in dispute once a compensation statement had been prepared under section 240-D and had become final under section 240J of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act), in which the petitioner, Maqbul Raza had been shown as the "Adhivasi".

2. The submission of the petitioner is that in view of the provisions contained in Chapter IX-A of the Act once a compensation statement becomes final, the entry in it showing a particular person as "Adhivasi" is conclusive. The case was referred to a larger Bench because it was thought that there was a conflict of authority in this Court inasmuch as the view taken in *Smt. Ashghari Begum v. Deputy Director*¹ of Consolidation, D/d. 3-5-1966 (All) differed from the one expressed in *Smt. Basari Wali v. Board of Revenue*,²

3. *Jagdamba Prasad Misra v. Rafiuddin*,³ to which one of us (Jagdish Sahai, J.) was a party is another decision of this Court relevant for our purposes. The view taken in this decision is that the entry of the name of a person in the compensation statement is not conclusive and his right to be treated as an Adhivasi or Sirdar of the land in respect of

which compensation statement is prepared can be enquired into in a competent court in a subsequent or collateral proceeding.

4. The provisions of Chapter IX-A were introduced in the Act in 1954 by Act 20 of 1954. The act as originally framed did not contain any provision for the acquisition of the rights of a landlord over plots which were held by an Adhivasi. It was confined only to the acquisition of proprietary rights of an intermediary or a land holder.

5. Chapter IX-A is headed as "conferment of Sirdari rights on Adhivasi". The preamble of Act 20 of 1954 reads:

"An Act to amend the U. P. Zamindari Abolition and Land Reforms Act and other laws relating to Land Tenure."

Chapter IX-A contains in all 14 sections. Section 240-A with which Chapter IX-A opens provides for the acquisition of rights title and interest of a land holder in the land held by an Adhivasi. Section 240-B of the Act deals with the consequences that ensue on the acquisition of rights title and interests of a land holder under section 240-A of the Act. Section 240-C provides for payment of compensation to the landlord for the acquisition of his rights, title and interests in the land occupied by an Adhivasi, Section 240-D requires the preparation of a compensation statement and reads:

"240-D. Compensation Statement - For purposes of assessment and payment of compensation for acquisition of rights, title and interest of the landholder in the land referred to in section 240-A the Compensation Officer shall prepare a compensation statement showing -

(a) the name or names of the landholder;

(b) Where the land referred to in section 240-A was on the date immediately preceding the date of vesting,

(i) recorded as sir, khudkasht or fixed rate tenancy of the landholder, or

(ii) included in the holding of a person belonging to any of the classes mentioned in clause (d) of section 18, or

(iii) included in the holding of a person belonging to any of the classes mentioned in section 19, the rent computed at hereditary rates applicable on the said date;

(c) where the land referred to in section 240-A was land other than land

mentioned in clause (b), the rent payable for such land by the tenant thereof on the said date and
(d) such other particulars as may be prescribed".

Section 240-E deals with the manner in which the compensation shall be paid to the landholder. Section 240-F requires the publication of the compensation statement prepared under section 240-D and reads:

"240-F. Preliminary publication of statement. The compensation statement prepared under section 240-D shall be published in the manner prescribed and a copy thereof shall also be sent to the landholder concerned." Section 240-G provides for filing of objections and reads:

"240-G. Filing of objections –

Any person interested or the State Government may in the manner prescribed file before the compensation Officer an objection upon such statement within the period of one month from the date of its publication."

Section 240-H deals with the manner in which the objections would be disposed of and reads:

"240-H. Disposal of objections -

(1) Except as provided in sub-section (2), the Compensation Officer shall after hearing the parties, if necessary, on the objections filed under section 240-G dispose of the objections in the manner prescribed,

(2) Where the objection filed under sub-section (1) -

(a) is that the land is not land referred to in sub-section (1) of section 240-A, the Compensation Officer shall frame an issue to that effect and refer it for disposal to the court, which would have jurisdiction to decide a suit under section 229-B read with Section 234-A in respect of the land and thereupon all the provisions relating to the hearing and disposal of such suits shall apply to the reference as if it were suit;

(b) involves a question of title and such question has not already been determined by a competent court, the Compensation Officer shall, except in cases in which section 240-H applies refer the question for determination to the Court of competent jurisdiction.

Explanation :- Whether a person is or is not an adhvasi shall not be deemed to

raise a question of title within the meaning of this clause. (3) The District Judge shall determine the question referred to him under clause (b) of subsection (2) in the manner prescribed and his decision thereon shall be final."

6. Section 240-HH provides that if a question in respect of title to a land arises the matter shall be referred to an arbitrator. Section 240-I provides an appeal to the Collector and reads :-

"240-I. Appeal to the Collector.

Notwithstanding anything contained in any law, any person aggrieved by the order of the Compensation Officer deciding the objection in so far as it relates to the amount of compensation under section 240-H, may appeal to the Collector, who shall decide the appeal in the manner prescribed and the decision of the Collector shall be final."

7. Section 240-J provides that the statement prepared under Section 240-D shall be published and reads :-

"240-J. Final publication of the statement :-

(1) Where no objection has been filed in regard to the compensation statement published in pursuance of section 240-F, or where such objections are filed and have been finally disposed of, the statement shall where necessary be amended, altered or modified. The Compensation Officer shall sign the statement and affix his seal thereto.

(2) The statement so signed and sealed shall become final.

(3) A copy of the final statement shall be supplied free of charge to the landholder concerned."

8. Section 240-K deals with the cases in which compensation will be paid and section 240-L states that the provisions of Chapter IX-A will not be applicable to evacuee properties. Section 240-M confers on the State Government the power to make rules for the purposes of the Act.

9. An analysis of these provisions reveals that they have been made with a view to acquire the rights, title and interests of a land holder in plots belonging to him but held

by Adhivasis and for payment of compensation to the land holder for the acquisition of his rights in the said land.

10. Chapter II of the Act only deals with the acquisition of proprietary rights of an intermediary or a land holder.

11. Inasmuch as the Legislature decided also to acquire the rights of a land holder in plots occupied by Adhivasis provisions were made for that purpose and Chapter IX-A was introduced in the Act.

12. The marginal note to section 240-D is "for purposes of assessment and payment of compensation for acquisition of the rights, title and interest of the land holder". The text of that section also shows that the only purpose for which it is enacted was to provide a method by which rights of a landholder over a plot or plots held by an Adhivasi could be acquired and compensation paid.

13. Section 240-F requires a copy to be sent to the land holder. There is no such requirement with regard to a person who is recorded as an Adhivasi or one who claims to be such. If the purpose of Chapter IX-A was also to adjudicate upon disputes as to which particular person is the "Adhivasi" or the "Sirdar" of a particular plot, section 240-F would have required a copy of the statement being sent also to the person whose name is recorded as an "Adhivasi" or a "Sirdar". It would also have provided for publication of a general notice so that persons laying a claim could come and file objections. The omission to have such provisions clearly indicates that the provisions of Chapter IX-A were confined only to the question of acquisition of land held by Adhivasis and payment of compensation to the landlord, and the determination of the question as to which particular person is the "Adhivasi" or "Sirdar" of the land is foreign to the scheme of that Chapter.

14. It has been contended by Mr. Bashir Ahmad that the expression 'person interested' occurring in Section 240-G is of the widest amplitude and, therefore, it would also include persons who claim to be Adhivasis. In our judgment, the submission is not well founded for two reasons. Firstly, there is nothing in the provisions falling under Chapter IX-A even to suggest that an adjudication in respect of the matter as to who is the "Adhivasi" of the land is made or can be made by the Compensation Officer. Secondly, the expression 'person interested' has been used in other parts of the Act

also so as to mean the landlord or the intermediary. Chapters II and III, deal with the acquisition of proprietary rights and compensation payable to the landholders. Section 47 occurs in Chapter III and deals with the payment of compensation to intermediaries. It uses the words 'any person interested.' Those words have been used in the sense of any person interested in receiving compensation. In our judgment, in the same sense these words have been used in section 240-G. The context in which these words have been used being the acquisition of a landlord's rights and payment of compensation to him, there is full justification for the view that these words mean persons interested in receiving compensation. It is well settled that a word or an expression derives its meaning from the context in which it is used.

15. In the present case clearly the context is not, the adjudication of the question as to who is the Adhivasi of the land sought to be acquired. Therefore, the words "persons interested" cannot have the meaning of being persons interested in upholding their right or in supporting their claim of being the Adhivasis of the land sought to be acquired. The reason for enacting section 240-G is that if some one who is not recorded as land-holder claims to be the landholder and wants to file an objection, he may do so.

16. It is clear that only two kinds of objections are contemplated by section 240-H of the Act, that is, (1) that the land is not the one to which sub-section (1) of section 240-A is applicable, that is to say, the land is not one which is in the occupation of an Adhivasi and (2) that the person whose name is recorded in the compensation statement is not the landholder and the objectors are the landholders and entitled to receive compensation. A third type of objection is not contemplated.

17. It is clear from clause (b) of section 240-H(1) that if a question of title is raised and such question has not been decided by a competent court, the Compensation Officer shall refer that matter to a competent court for decision. It is elementary that the right of an Adhivasi is not a right to title. It is only a right to occupy. Apart from it, the explanation is categorical that whether or not a particular person is an Adhivasi does not amount to a question of title and cannot be referred to a competent court for decision.

18. No doubt sub-section (2) of Section 240-H provides that in case the objection is to the effect that the land in respect of which the rights of landholder are sought to be

acquired is not one held by an Adhivasi the Compensation Officer shall frame an issue and refer it for decision to a court of competent jurisdiction to decide it as a suit under section 229-B read with section 234-A of the Act. These provisions read :-

"229-B. Suit by an asami for declaration of rights.

(1) Any person claiming to be an asami whether exclusively or jointly with any other person may sue the landholder.

(a) for a declaration that he is an asami of the holding, or

(b) for a declaration of his share therein.

(2) In any suit under sub-section (1) any other person claiming to hold as asami under the landholder shall be impleaded as defendant.

(3) The provisions of sub-sections (1) and (2) shall mutatis mutandis apply to a suit by a person claiming to be bhumidhar or sirdar, as the case may be with the amendment that for the word "landholder" the words "the State Government and Gaon Sabha" are substituted therein."

"234-A. Application of sections 212-B, 212-C and 229-B to 229-D in the case of an Adhivasi - The provisions of sections 212-B, 212-C and 229-B to 229-D shall apply to an adhivasi as if he were an asami."

19. The use of the words "Compensation Officer shall frame an issue to that effect" clearly mean that the issue would be whether or not the land is one which is in the occupation of an Adhivasi. The use of the words "to that effect" rule out the possibility that the issue can be wide enough in its amplitude so as to include in its ambit the question as to which particular person is the Adhivasi of that land. From this it clearly follows that the court to which the matter is referred would not be competent to decide as to which particular person is Adhivasi of that particular land and all that it can decide is, as to whether or not the land is one which is occupied by an Adhivasi whoever he may be.

20. It is clear from section 240-I of the Act that the appeal that can be filed can be in respect of the quantum of compensation only. It clearly follows from the words "deciding the objection in so far as it relates to the amount of compensation under section 240-H." The language of section 240-I cannot permit any other interpretation than that the appeal is confined to the quantum of compensation only. Clearly no appeal can be filed by a person claiming to be an Adhivasi on the ground that he and not the one whose name is recorded in the compensation statement is the Adhivasi of

the land.

21. From what we have said above, the following conclusions clearly follow:

22. The law does not require a copy of the statement being sent to a person who is recorded as an Adhivasi or to one claiming to be as such, nor does it require publication of the statement prepared under section 240-D.

23. That no issue is to be framed on the question as to who is the Adhivasi of the land in dispute.

24. That no right of appeal has been given to a person who claims to be an Adhivasi of the land in respect of which acquisition proceedings are going on.

25. It is, therefore, clear that by enacting Chapter IX-A it was never the intention of the Legislature to provide for a machinery to decide the question as to who is the Adhivasi of a particular plot of land.

26. Mr. Bashir Ahmad has strongly contended that the words "was held or deemed to be held an Adhivasi" occurring in section 240-A of the Act are indicative of the intention of the Legislature that an enquiry is to be made as to who is the person who is the Adhivasi of the land in dispute. We have reproduced the preamble the heading of Chapter IX-A as also the statutory provisions contained in that Chapter. The only purpose for which this chapter was enacted was to provide for the acquisition of the rights of a landholder and for payment of compensation to him.

27. We would also like to point out that even before Chapter IX-A was introduced in the Act, it had in it provisions for deciding disputes between various persons claiming to be Adhivasis. (See Section 229-B and Section 234-A of the Act). Suits under Sections 229-B and 234-A of the Act lie before an Assistant Collector. Inasmuch as the Act had in it provisions (secs. 229-B and 234-A) for the adjudication of disputes between persons claiming to be Adhivasis or Sirdars, it could not have provided for parallel provisions (Chapter IX-A) for the same purpose. We are, therefore, unable to agree with Mr. Bashir Ahmad that the words "was held or deemed to be held an Adhivasi" suggest that in proceedings under Chapter IX-A, the Compensation Officer holds an enquiry and decides as to who is the person entitled to be the Adhivasi of that plot of land.

28. It may be pointed out that in Chapter IX-A the Officer who is to prepare the compensation statement has been described as the "Compensation Officer" and not as an "Assistant Collector" or "Court." A Compensation Officer is not a court. He has no judicial functions to perform. The revenue courts mentioned in the U. P. Land Revenue Act are the Board of Revenue, the Commissioner, the Collector, the Assistant Collector Ist Class and the Assistant Collector second class. A Compensation Officer has not been described as a Court in any Act or Manual. Compensation Officers are creatures of the Act and the functions assigned to them are to prepare compensation statements and pay the compensation. Compensation Officers, no doubt, are appointed from amongst the Assistant Collectors Ist Class. But that does not mean that the two terms are synonymous. It is significant to note that a Compensation Officer has not been given the power even to decide whether or not the land is one held by an Adhivasi. He has to refer that matter to an Assistant Collector. If the Compensation Officer was a court the law would not have required him to make a reference to an Assistant Collector Ist Class empowered to decide a case under Section 229-B read with section 234-A of the Act. That being the position, we are unable to see how the circumstance that the name of a particular person is recorded in compensation statement as an "Adhivasi" can be treated to a judicial adjudication that he in fact and law is the "Adhivasi" to the exclusion of others.

29. Before a dispute can be deemed to have been adjudicated upon there must be a forum competent to decide it. An issue must be framed and a judgment must be pronounced. We have already shown above that the Compensation Officer is not a court. He does not perform any judicial functions. We have also shown above that he cannot frame an issue on the question as to who is the Adhivasi of the land sought to be acquired. He cannot even decide the issue that he is required to frame, as to whether or not the land is held by an Adhivasi. Lastly, there is no provision requiring him to record a judgment or a decision.

30. In that view of the matter we are of the opinion that it is foreign to the scheme of Chapter IX-A to decide the question as to who is the Adhivasi of the land sought to be acquired.

31. All that the sub-section (2) of Section 240-J of the Act provides is that the statement so signed and sealed shall become final. It is final only in respect of the liability of the land to be acquired, the amount of compensation payable in respect of it and the person to whom it is payable. This conclusion is fortified by the following

words used in section 240-J :-

"Where no objection has been filed in regard to the compensation statement . . . or where such objections are filed and have been finally disposed.....The compensation officer shall sign the statement and affix his seal thereto. (2) The statement so signed and sealed shall become final."

The words used are 'no objection has been filed in regard to the compensation statement'. (Underlined (here in ' ') by us.) This would show that compensation statement is confined only to that part of the document which deals with matters relating to compensation and in respect of which objections can be filed. That part of the document in respect of which no objections can be filed does not become final.

32. There being in fact or in law no adjudication and Chapter IX-A not providing for any such adjudication, the compensation statement cannot be treated to be a decision on the question as to who is the Adhivasi of that land. There can, therefore, be no question of its creating either a bar of res judicata or one of conclusiveness.

33. Mr. Bashir Ahmad has placed reliance upon the decision of Dwivedi and Khare JJ. in Civil Misc. Writ No. 1193 of 1966, D/d. 3-5-1966 (All). If that case is treated to be an authority for the proposition that the effect of section 240-J is that the right of the person who is recorded there as an Adhivasi in the compensation statement cannot be challenged in a competent court of law in a separate or collateral proceeding, we would respectfully disagree with our learned brothers. We, however, do not think that the learned Judges have gone to that length 1966 All LJ 771 (supra) is, in our opinion, not a direct authority on the question referred to us.

34. We find ourselves in agreement with the view taken by this Court in 1967 All LJ 308 (supra).

35. It is true that sometimes, though very rarely, the legislature creates rights only on the basis of mere entry. As for example a person, who is recorded as occupant in the Khasra or Khatauni of 1356F, becomes an Adhivasi, but for creation of such a right there must be an express provision to that effect, as section 20 of the Act is. It is elementary that a person can be divested of his vested rights only by a legislative enactment.

36. For the reasons mentioned above we are of the opinion that the consolidation authorities were competent to go into the question as to who was Adhivasi and thereafter the Sirdar of the land in dispute and that the compensation statement sealed and signed under section 240-J did not either create a bar of res judicata or that of conclusiveness.

37. Mr. Bashir Ahmad has submitted that the whole case has been referred to this Bench and that one of the questions that requires determination by us is whether the decision of the consolidation authorities does not suffer from a mistake apparent on the face of the record. The only mistake of law that Mr. Bashir Ahmad has suggested is that the consolidation authorities did not go into the effect of the entries made in the remarks column of the Khasra. In our judgment the entries have been fully considered by the consolidation authorities and no mistake of law much less one apparent on the face of the record has been committed by them.

38. The result is that we dismiss this petition with costs.

Petition dismissed.

Cases Referred.

1. Misc. Writ No. 1193 of 1966
2. 1966 All LJ 771
3. 1967 All LJ 308