

(1955) 05 AHC CK 0009

Allahabad High Court

Case No: Civil Miscellaneous Writ No. 154 of 1954

Lala Nanak Chand

APPELLANT

Vs

The Board of Revenue and
Another

RESPONDENT

Date of Decision: May 2, 1955

Acts Referred:

- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 20(b)(i), 20(b)(ii)

Citation: (1955) 25 AWR 371

Hon'ble Judges: Chatur Vedi, J; Agarwala, J

Bench: Division Bench

Advocate: S.C. Kkare and H.C. Sharma, for the Appellant; Man Singh and U.N. Chatterji, for the Respondent

Final Decision: Allowed

Judgement

Agarwala, J.

This is an application under Article 226 of the Constitution praying that the order of the Board of Revenue dismissing the applicant's appeal be quashed by the issue of a writ of certiorari or any other suitable direction or order. The facts briefly stated are as follows:

The dispute is about plots Nos. 2473, 2474, 2476, 2480/1, 2480/2, 2481, 2520 and 2521 having a total area of 16 Bighas, 12 Biswas and 5 Biswansis. One Shanker Lal was the proprietor of the aforesaid plots which were his sir. He transferred them to one Bhondhu Mal, opposite party No. 2, by means of a sale deed dated the 7th July 1942. Three days before that date, namely, on the 4th July, 1942 Shanker Lal had executed a lease of the very same plots in favour of the applicant Nanak Chand. In view of the lease, the name of Nanak Chand came to be recorded in the Khatauni as a tenant of the plots in dispute. Sometime in the year 1947 Bhondhu Mal filed a suit

against Nanak Chand in the revenue court u/s 63 of the U.P. Tenancy Act for a declaration that the plots in dispute were his khudkisht and were not the tenancy holding of the applicant. The allegations of Bhondu Mal were that the lease was executed to ward off a preemption suit on account of the sale and was fictitious and that he was actually in possession and was cultivating the land. The defence of the applicant was that the lease was valid and that he himself was in possession as a hereditary tenant and that the land was not khudkasht of Bhondu Mal.

2. During the pendency of the suit, Bhondu Mal made an application that if he be found not to be in possession, possession may also be awarded to him and the Defendant may be ejected u/s 180 of the U.P. Tenancy Act. No amendment was, however, actually carried out in the plaint. The Revenue Officer ultimately held that the lease was fictitious and did not confer any rights of tenancy on the applicant. He also held that the land in dispute had come in the possession of Bhondu Mal and was his khudkasht for sometime, but that the Defendant had entered into possession at some later date, and was liable to be ejected u/s 180, U.P. Tenancy Act. He, therefore, passed a decree for the ejectment of the applicant u/s 180 of the aforesaid Act.

3. This decree of the Revenue Officer was confirmed in appeal by the Additional Commissioner. The applicant went up in second appeal to the Board of Revenue. While the appeal was pending in the Board of Revenue, the Zamindari Abolition and Land Reforms Act came into force and, under Rule 4 of the Rules made under that Act, certain suits were liable to be stayed. Suits u/s 180 were included in the list of suits which were liable to be stayed, but with a proviso that where the Plaintiff

is a tenant or where the land was the sir, khudkasht or grove of an intermediary and in which rights have not accrued to the Defendant u/s 16 or any other section of the U.P. Zamindari Abolition and Land Reforms Act.

the suits were not to be stayed.

4. Rule 5 provided that every suit or proceeding, whether pending in the court of first instance or in appeal or in revision, stayed under Clauses (i) to (iii) and (v) of Rule 4 (suits u/s 180 fell under Clause (v)) shall together with the appeal or revision be abated by the court.

5. An application was, therefore, made by the applicant to the Board of Revenue that under Rule 4 the appeal was liable to be stayed and under Rule 5 it was liable to be abated. This application was rejected by the Board of Revenue on the ground that the case fell within the exception to Rule 4 and was not liable to be stayed. Against this order the applicant came to this Court and invoked its jurisdiction under Article 226 of the Constitution. That application was rejected by a learned single Judge of this Court and we have before us a special appeal against that order.

6. While the special appeal was pending in this Court, the Board of Revenue, whose proceedings had not been stayed by this Court, proceeded to hear the appeal. By an order dated the 24th February, 1954 it dismissed the appeal holding that the applicant, though recorded as an occupant in the year 1356F., was not correctly so recorded, because he was not in possession for seven days in that year from June 23, 1949, to June 30, 1949. It also held that the applicant could not be deemed to have acquired the rights of a hereditary tenant u/s 16 of the Zamindari Abolition and Land Reforms Act or to be an Adhivasi u/s 20 of the said Act, and was, therefore, liable to be ejected.

7. Against this order the applicant has filed the present writ petition and he has urged that there is an error of law on the face of the order and it should be set aside. According to him, on the findings recorded by the Board of Revenue, the applicant was clearly entitled to the rights of an Adhivasi u/s 20, Clause (b)(i) or (ii) of the Act, and the Board committed an obvious error in holding otherwise.

8. We have considered this matter and have come to the conclusion that the contention of the Learned Counsel for the Petitioner is correct.

9. The Zamindari Abolition and Land Reforms Act abolished the zamindari of land-lords, or, as they have been called in the act "intermediaries". It also at the same time declared persons, who were in possession of lands or whose names were recorded in the revenue papers, as occupants of land, to acquire certain rights by the mere fact that they were in occupation or their names were recorded. The rights of occupants under the Zamindari Abolition and Land Reforms Act are spread over several sections. Section 9 of the Act vests on occupant of wells, trees in Abadi and buildings with certain rights. Sections 16, 19 and 20 deal with rights of the occupants in agricultural lands.

10. u/s 16 an occupant of the lands, mentioned therein, is deemed to be a hereditary tenant before the date of vesting under the Zamindari Abolition and Land Reforms Act, which date is the 1st July, 1952. Whoever is deemed to be a hereditary tenant becomes a Sirdar u/s 19. An occupant of certain lands, who is unable to obtain the advantages conferred by Section 16, becomes an Adhivasi.

11. The occupants who are deemed to be hereditary tenants u/s 16 and become Sirdars u/s 19 are, roughly speaking persons who fulfil two qualifications:

(i) They were in actual possession of a holding in the year 1359F.; and

(ii) they were "recorded" as occupants in the khatauni of the year 1356F. or in the settlement record or a corrected version of the same.

12. But certain lands have been excluded from the operation of Section 16. We need not recite them at length beyond saying that these are lands (i) recorded as sir or as khudkasht which has acquired the character of sir, under the provisions of the U.P. Tenancy Act of 1939, provided that the Sirdar or Khudkasht-holder paid Rs. 250 or

less annually as land revenue or a corresponding local rate, or (ii) as grove land or (iii) was included in the holding of certain other persons mentioned in the section. It will be seen that u/s 16 not only an occupant must have his name recorded in the relevant revenue papers, but must also be in possession in the year 1359F. It would further be seen that the khudkasht lands, excluded u/s 16, are only those which have acquired the character of sir under the provisions of the U.P. Tenancy Act, 1939, and belong to a person who paid not more than Rs. 250 as land revenue.

13. The finding of the Board of Revenue is that the applicant, though recorded as an occupant in 1356F., could not be deemed to be in possession in the year 1359F. because his possession was secured on account of a stay order of the Court. This finding has not been challenged before us by Learned Counsel for the applicant. His case, therefore, does not fall u/s 16.

14. Section 20 of the Zamindari Abolition and Land Reforms Act confers rights of an Adhivasi on two classes of occupants. These are given in Clause (b)(i) and Clause (b)(ii) of the section. Clause (b)(i) refers to persons recorded as occupants in the year 1356F. of land other than.

(1) grove land and

(2) land to which Section 16 applies.

15. Section 16 applies to land which is not covered by the Explanation to that section, that is, sir and khudkasht of the kind mentioned in the Explanation and certain other lands. It is not necessary for us to consider the alternative case mentioned in Clause (b)(i).

16. Clause (b)(ii) confers Adhivasi right on a person who is recorded as occupant in the year 1356F. of land to which Section 16 applies, that is, land which is not covered by the Explanation to that section. Such an occupant need not be in possession in the year 1359F., because, if he were in possession in that year, he would acquire the rights conferred on him u/s 16.

17. Thus a person whose name is recorded as an occupant in the year 1356F. of any land other than grove land becomes an Adhivasi either under Clause (b)(i) or under Clause (b)(ii) of Section 20. He need not be in possession in the year 1359F.

18. The question that has been raised before us, however, is whether the mere record of a person as an occupant is enough or whether it is necessary for him to show further that he was in possession in the relevant year. It seems to us that Clauses (b)(i) and (b)(ii) of Section 20 do not require the proof of actual possession in the year 1356F. What they require merely is the entry of a person's name as an occupant in the khasra or khatauni of 1356F. The words of the section are clear.

every person who was recorded as occupant in the khasra or khatauni in 1356F. etc.

19. The words are not "every person who was an occupant in 1356F." not are the words "every person who was recorded as an occupant in the year 1356F. and who was also in possession in that year." There is no warrant for introducing words in the section which are not there. This conclusion is re-inforced by what is stated in Explanations II and III to the section. Explanation II says,

Where any entry in the records referred to in Clause (b) has been corrected before the date of vesting in accordance with the provisions of the U.P. Land Revenue Act, 1901, the entry so corrected shall for the purpose of the said clause, prevail.

And Explanation III says,

For the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent court requiring any correction in records had been made before the said date and had become final even though the correction may not have been incorporated in the records.

20. The effect of Explanations II and III is that where an entry of a person's name as an occupant in the khasra or khatauni 1356F. has been corrected or has been ordered to be corrected by a final order made before the 30th June, 1952, then in those cases not the actual entry of 1356F. but the corrected entry shall be taken as the entry for the year 1356F. This means that unless the entry of the year 1356F. had been corrected or ordered to be corrected before the 1st of July, (sic), it would be taken to be correct. If the contention of the Learned Counsel for the Respondents were correct, that is to say if it were necessary to prove not merely that the occupants' name was recorded, but also that the occupant was in possession in 1356F., it would amount to holding that the entry should be proved to be a correct entry. In that case Explanations II and III would be rendered wholly nugatory as they limit the date of correction upto the 30th June, 1952 only. That the Legislature had the distinction between the record of a person as an occupant and his being in possession of any land, clearly in mind is apparent from a reading of Sections 16 and 20. In Section 16, whereas the record of a person's name in 1356F. as an occupant is mentioned, what is mentioned about 1359F. is a person's possession. Similarly in Section 20(b)(ii), while the record of a person's name in 1356F. is mentioned, for the year 1359F. "possession" is mentioned. It is true that an occupant means a person in possession but Section 20 requires not the fact of a person being an occupant but the fact of his being "recorded" as an occupant.

21. A ruling of the Board of Revenue, holding a contrary view, has been brought to our notice--*Pirthvi Pal Upadhyaya v. Hardeo Bhar* 1955 R.D. 1. With respect we are unable to agree with the view taken in that case.

22. At first sight this interpretation of Section 20(b) may seem to be startling and as conferring an unjust advantage on persons who had wrongly got their names recorded in the year 1356F. as occupants. But it is quite possible that the Legislature in its wisdom thought that to avoid future litigation and uncertainty of tenure it

would be better if the records were deemed to be correct, unless the correction had been ordered to be made before the date of vesting. In any case the courts of law are not concerned with the wisdom of the Legislature. They have to administer the law as they find it. The law is ascertained not by speculation as to what the legislature might have intended but by considering the language employed by the Legislature in the enactment to be construed. Upon the language used in Section 20(b) the only interpretation possible is the one which we have pointed out above. If the Legislature did not intend what we have held to be the effect of the section, it is always open to the Legislature to amend the section and express itself more clearly.

23. We think that there is a clear error of law on the face of the judgment of the Board of Revenue, and that the order must be quashed. As the right of an Adhivasi has accrued to the applicant, the appeal before the Board of Revenue and the suit itself, in which the appeal was pending were liable to be stayed under Rule 4 and then abated under Rule 5 of the Rules framed under the Zamindari Abolition and Land Reforms Act.

24. Accordingly we allow the petition, quash the order of the Board of Revenue and declare that the appeal before the Board of Revenue and the suit itself have abated under Rule 5 of the Rules aforesaid.

25. In the circumstances of the case, however, we do not think that we should award cost to any party. The parties will bear their own costs.