
Mohi Uddin Vs Board of Revenue and Others

C.M.W.P. No. 1893 of 1973

Court: Allahabad High Court

Date of Decision: Jan. 7, 2004

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 " Section 3(10)#Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 " Section 18(1), 3(14)

Citation: (2004) 2 AWC 1060 : (2004) 96 RD 281

Hon'ble Judges: Yatindra Singh, J

Bench: Single Bench

Advocate: S.S. Ali and Sahid Masood, for the Appellant; Subhash Rathi and A.N. Misra, S.Cs. and H.S.N. Tripathi, K.B. Garg and O.P. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

Yatindra Singh, J.

The only question involved in this writ petition is, "whether any rights are conferred on Khudkast holder under the U. P.

Zamindari Abolition and Land Reforms Act, 1950 (the Z. A. Act) Act, whose land was submerged in a river on the date immediately preceding

the date of vesting."

The Facts

2. The petitioners filed a suit on 15.5.1965 for declaration that they are bhumidhar of the plots mentioned in list A of the plaint. List A included four

plots namely plot No. 18/13/1, 8/24, 8/25 and 8/39. There is a list B also. It includes 67 plots. However, it is not clear as to why these plots were

mentioned as no relief is claimed in respect of plots of list B. In this writ petition, I am also concerned with plots of list "A" only. In substance the

plaint allegations are that:

* The petitioners were Khudkast holder of the plots in list "A".

* The plots submerged in the river Ganges sometime after 1356 F and re-emerged in 1372 F.

* The petitioners are deemed to be Khudkast holder on the date immediately preceding the date; of vesting and have become bhumidhar.

* The records be corrected and possession be delivered to them.

3. The trial court dismissed the suit on 2.2.1965 but the petitioners appeal against the same was allowed on 17.12.1966 and the case was

remanded for impleading necessary parties. The trial court by its judgment dated 7.8.1967 decreed the suit in respect of plot No. 8/18 of List "A"

only. The trial court held that the petitioners were in possession over this plot before it was submerged in water. The suit was dismissed in respect

of all other plots.

4. Two appeals were filed. One was filed by the petitioners and the other by the private respondents who are claiming land by allotment from the

Gaon Sabha. The appellate court by the common judgment dated 10.6.1970 dismissed the appeal filed by the private respondents but allowed the

appeal of the petitioner in respect of three other plots of list A also. The appellate court recorded following findings in respect of plots of list "A" :

* The plots of list "A" were Khudkast of the petitioners in 1355F.

* The three plots of list "A" for which the suit was dismissed by the trial court were recorded Jadid in 1357F but petitioners were in possession

over them before their submersion in the river.

* The plots were in possession of the petitioner before they submerged in water in 1358 F and re-emerged in 1372 F when the present suit was

filed.

* The petitioners would be deemed to be Khudkast holders of plots of list "A" on the date immediately preceding the date of vesting and they are

its bhumidhar.

5. The respondents filed second appeals. These appeals were allowed on 5.12.1972 and the suit of the petitioners was dismissed. The second

appellate court gave following reasons for allowing the appeal.

* The plot were not cultivated by the petitioner on the date immediately preceding the date of vesting and could not be their Khudkast.

* The land submerged in the river was not land within the meaning of U. P. Tenancy Act, 1939 (the Tenancy Act) or the Z.A. Act and no rights

can be conferred on the petitioners under the Z. A. Act.

* The land was watercourse on the date of vesting. It vested in the State and then on Gaon Sabha, who was competent to allot it.

The Petitioner's Submissions

6. The counsel for the petitioner submitted that:

* Khudkast land does not lose the character of Khudkast merely because it is not cultivated in some years. The counsel cited following cases in

support of this submission.

(i) Sahdeo Pandey v. State of U. P. and Ors. 1966 RD 131 ;

(ii) Ram Dayal v. L. Misri Lal 1972 AWR 232 ;

(iii) Darshan v. Board of Revenue 1968 ALJ 38 ;

The first two rulings relates to Khudkast whereas the third one relates to tenancy rights.

* The petitioners have become bhumidhar under Sub-clause (1) (a) of Section 18 [18 (1) (a)] of the Z. A. Act. It includes actual physical

possession as well as constructive possession. The counsel cited following cases in support of this submission. Shiv Raj Singh v. Civil Judge.

Sitapur 1977 RD 317 and Dharam Prakash v. D.D.C. 1970 ALJ 193.

* In case the land is submerged in water, then the possession is deemed to be the possession of the rightful owner. The counsel cited following

cases in support of this submission. Mahadeo and Others Vs. Baleshwar Prasad and Others, ; Ramsunder Rai and Others Vs. Ramasray Rai and

Others, Kapildeo v. Harnarain 1965 RD 50 and Chandra Mauli v. Bhagelo and Ors. 1969 RD 477. As they are the rightful owners they would be

deemed to be in possession.

* The word "held" in Section 18 of the Z. A. Act means lawfully held. The counsel cited Bhudan Singh and Another Vs. Nabi Bux and Another, ,

in support of his submission. The petitioners are lawfully holding the land.

* The case is governed by 5th clause of Regulation 4 of the Bengal Alluvion and Diluvion Regulations, 11825 as held by the first appellate court.

Decision

7. In view of my reasons for the decision, I do not consider it necessary to record any finding on the aforementioned submissions.

8. Chapter II of the Z. A. Act provides acquisition of the interest of intermediaries and its consequences. After enforcement of the Z.A. Act, all

rights and title of everyone have been abolished and vested in the State. It is so provided by Sections 4 to 8 of the Chapter II of the Z. A. Act.

Sections 9 to 25 onwards to Chapter II of the Z. A. Act provide for conferment of new rights on individuals. The petitioners are claiming

conferment of bhumidhari rights u/s 18 (1) (a) of the Z. A. Act. The relevant part of Section 18 is as follows ;

Section 18 (1). Settlement of certain lands with intermediaries or cultivators as bhumidhar.--(1) Subject to the provisions of Sections 10, 15, 16

and 17, all lands.

(a) in possession of or held or deemed to be held by an intermediary as sir, Khudkast or an intermediary's grove.

On the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, (lessee,

tenant, grantee or grove-holder), as the case may be, who shall subject to the provisions of this Act, be entitled to take or retain possession as a

bhumidhar thereof.

9. Section 18 (1) (a) of the Z. A. Act confers bhumidhari rights on person in possession or deemed to be in possession of Sir, Khudkast, or an

intermediary grove. The first condition of this section is that there should be "land". Section 18 starts with it. Subsection (10) of Section 3 [Section

3 (10)] of the Tenancy Act defines the land as follows :

3 (10) "'land'" means land which is let or held for agricultural purposes, or as grove land or for pasturage. It includes land covered by water used

for the purpose of growing singhara or other similar produce, it does not include land for the time being occupied by dwelling houses or

manufactures, or appurtenant thereto.

Sub-section (14) of Section 3 [Section 3 (14)] of the Z. A. Act is as follows :

Section 3 (14). "'Land'" except in Section 109, 143 and 144 and Chapter VII means land held or occupied for purposes connected with

agricultural, horticulture or animal husbandry which includes pisciculture and poultry.

10. The land under the Tenancy Ad: means the land that is held for growing crops, or as grove land or for pasture. It also includes land covered by

water for growing Singhara or other produce. It does not include any land, which is occupied by building or appurtenant thereto. Similar is the case

under the Z.A. Act. It is true that it has inclusive definition so far as land covered by water is concerned. However, the use of the words "for the

purpose of growing singhara or other produce" indicates that in case land is covered by water, then the water should be used for growing some

crop, i.e. It should be used for agriculture. In my opinion, if the land covered by water is neither used nor could it be used for growing anything--as

is the case of a river--then such land is not included in the definition of the word "land" under the Tenancy Act or the Z. A. Act : It is riverbed.

11. The courts below have recorded finding that all plots were submerged in water in 1358F and continued to be submerged till 1372 F. The date

of vesting is 1.7.1952 (1360 F). The date immediately preceding the date of vesting is 30.6.1952 (1359 F). The plots were submerged in river in

1359 F. They were neither used for growing any crop nor could they be used, they were not "land" within the meaning of the Tenancy Act. They

were also not land within the meaning of the Z. A. Act. There were no reasons to believe that plots would become land in the near future. As a

matter of fact, they continued to be riverbed till 1372 F when they re-emerged. As the basic condition u/s 18 was not satisfied, no rights can be

claimed by the petitioner on the basis of Section 18(1) (a) of the Z. A. Act. There is no illegality in the judgment of the Board of Revenue.

12. The property in dispute was part of the riverbed on the date immediately preceding the date of vesting. Only State has got right over riverbed.

The property vested in the State and then on the Gaon Sabha u/s 117 of the Z. A. Act. The property in dispute should be recorded in the name of

Gaon Sabha. In case it has been let out by the Gaon Sabha to anyone in accordance with law, then they may be recorded as Asami over the

property in dispute.

Conclusions

13. My conclusions are as follows :

(i) The property, was submerged in the river on the date immediately preceding the date of vesting and was not land within the meaning of the

Tenancy Act and no rights can be claimed on the basis of Section 18 (1) (a) of the Z. A. Act.

(ii) The property in dispute vested in the State and thereafter in Gaon Sabha. It should be so recorded in the revenue papers. In case it has been let

out to anyone in accordance with law, then those persons may be recorded as Asami of the Gaon Sabha.

14. In view of my conclusions, the judgment of the second appellate court does not suffer from any illegality. The writ petition has no merits and it

is dismissed with the aforesaid observations.