(2012) 04 AHC CK 0193

Allahabad High Court

Case No: Civil Miscellaneous Writ Petition No''s. 3825 and 3826 of 1976

State of U.P.		APPELLANT
	Vs	
IV th Ditional District Judge and Others		RESPONDENT

Date of Decision: April 13, 2012

Acts Referred:

- Forest Act, 1927 - Section 10, 11, 11, 12, 13
- Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 - Section 10(2)
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 129, 143, 154, 155, 156

Citation: (2012) 5 ADJ 584 : (2012) 5 AWC 5416

Hon'ble Judges: Arun Tandon, J

Bench: Single Bench

Advocate: S.C. and Lalji Sinha, for the Appellant; V.K. Singh, Bhagwati Prasad Singh, H.P. Misra, R.N. Singh, V.K. Singh and Vivek Kumar Singh, for the Respondent

Final Decision: Allowed

Judgement

Hon''ble Arun Tandon, J.

Heard Sri V.K. Singh, learned Additional Advocate General, assisted by Sri V.K. Chandel, learned Standing Counsel for the State-petitioner and Sri R.N. Singh, and Sri B.P. Singh, learned Senior Advocates assisted by Sri Vivek Kumar Singh, Advocate on behalf the contesting respondent, in both the writ petitions. These two writ petitions raise common question of law and facts and have, therefore, been clubbed together and are being decided together by means of this common order. Civil Misc. Writ Petition No. 3825 of 1976 has been treated to be the leading writ petition.

2. The State of Uttar Pradesh has filed this writ petition for quashing of the orders dated 22nd March, 1961 passed by the Forest Settlement Officer, Mirzapur, dated 28th October, 1961 passed by the Commissioner Varanasi as also the order dated

28th May, 1976 passed by the IVth Additional District Judge, Mirzapur.

3. Facts in short leading to the present writ petition as are follows:

Notification u/s 4 of the Indian Forest Act, Act, 1927 (hereinafter referred to as the "Act, 1927"), was issued by the State of Uttar Pradesh on 19th December, 1955, which included amongst other the areas of village Babura Raghnath Singh and Katra Tappa Upraudh, District Mirzapur. To the said notification, objections were filed by Raj Vishwa Nath Pratap Singh u/s 6 of Act, 1927. On the objection so filed, it appears that an order was passed excluding the plots in question from the limits of the proposed reserved forest on 22nd April, 1957. Subsequently, however, order dated 22nd April, 1957 was recalled under order of the Forest Settlement Officer dated 20th December, 1957. As a result whereof, objections u/s 6 of Act, 1927 stood restored.

4. During the pendency of the aforesaid proceedings, Vishwa Nath Pratap Singh is stated to have deposited 10 times of the land revenue and to have obtained Bhumidhari Sanad of the land covered by the notification u/s 4 of the Act, 1927, with reference to the provisions of U.P. Agriculture Tenants (Acquisition of Privileges) Act, 1949 (hereinafter referred to as the ''Act, 1949'') read with the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereafter referred to as the ''Act, 1950''). Immediately, after obtaining Bhumidhari Sanad, Sri Vishwa Nath Pratap Singh executed a gift deed of the area covered by notification u/s 4 of the Act, 1927 in favour of Daiya Charitable Society on 21st June, 1959.

5. The objections filed by Vishwa Nath Pratap Singh were not pressed. Thereafter Daiya Charitable Society made an application for impleadment in place of Vishwa Nath Pratap Singh, which was allowed on 22nd July, 1959 by the Forest Settlement Officer. The Daiya Charitable Society instead of pursuing the objections filed by Vishwa Nath Pratap Singh filed its own objections. The objections filed by the Daiya Charitable Society were admitted.

6. Under the order dated 22nd March, 1961, the Forest Settlement Officer framed four issues for determination, namely, (a) whether the transfer made by Vishwa Nath Pratap Singh in favour of the objector i.e. Daiya Charitable Society is valid and in accordance with law or not, (b) whether the land in dispute was a jungle or waste land on the date of vesting or not, (c) whether the objector has acquired any right over the land in dispute and (d) what relief, if any, objector is entitled?

7. The Forest Settlement Officer vide order dated 22nd March, 1961 held that since the entire land in dispute was recorded as the holding of Vishwa Nath Pratap Singh in the records of 1359 Fasli Khasara, question of its vesting after abolition of Zamindari does not arise. He went out to hold that it might be a farzi holding in the village records but this question cannot be decided in the proceedings u/s 4 of Act, 1927. The plots in dispute were not entered in the list of plots transferred to Forest Department as they constituted a holding in the pre-vesting days. The order refers

to the local inspection made twice, the report whereof is on File No. 237/349/36. It discloses that only a small area of the notified plots is under actual cultivation and that the remaining major part of it was forest and waste land on the date of vesting. The land has not vested in the Government being recorded in the holding coming down since pre-vesting period. He then proceeded to hold that since Vishwa Natha Pratap Singh was recorded as tenant-in-chief of the land in question and after depositing 10 times of the land revenue he has acquired Bhumidhari rights the gift deed executed by him in favour of Daiya Charitable Society was valid.

8. So far as the issue Nos. 3 and 4 are concerned it was held that the objectors have become bhumidhar of the land as per the decision of issue Nos. 1 and 2. The objector was entitled to utilize the entire holding in the way he was legally entitled. Claim of the objector was allowed and the Divisional Forest Officer was advised to take necessary action to acquire the land in dispute u/s 11 of Act, 1927, if so required.

9. Not being satisfied with the order passed by the Forest Settlement Officer dated 22nd March, 1961, the State of Uttar Pradesh filed an appeal under the Act, 1927 before the Commissioner, Varanasi Division, Varanasi. The appeal was dismissed by the Additional Commissioner vide order dated 28th October, 1961 only on the ground that on record there is Khasara entry of 1359 Fasli, which records that the land in dispute was recorded as kastkari of Vishwa Nath Pratap Singh and such a land will not become the propriety of the State Government even after abolition of Zamindari. The transfer of the land in dispute in favour of Daiya Charitable Society was also upheld.

10. Against the order of the Additional Commissioner, the State of Uttar Pradesh preferred a revision before the District Judge, Mirzapur being Civil Revision No. 85 of 1966. The revision has also been dismissed by the IVth Additional District & Sessions Judge, Mirzapur vide order dated 28th May, 1976 after recording that from Khatauni Extract of 1359 Fasli, it is evident that Raja Vishwa Nath Pratap Singh was recorded under ziman as a hereditary tenant of the plots in question. After enforcement of Act, 1951, the land shall be deemed to have been settled by the State Government with Raja Vishwa Nath Pratap Singh, who became entitled to retain possession as Sirdar u/s 19 of the Act. He has become Bhumidhar by depositing 10 times the rent under the Act, 1949.

11. The learned Additional District & Sessions Judge has recorded that the land in question was part of the holding within the meaning of U.P. Tenancy Act, 1939 (hereinafter referred to as the ''Act, 1939), it was not possible for the State Government to constitute a reserved forest qua such land, and therefore, the notification u/s 4 of Act, 1927 was not competent and without jurisdiction. The learned Additional District & Sessions Judge went out to consider Sections 4 and 6 of Act, 1950 as well as definition of land as provided u/s 3 (8) of Act of 1939. The contention of the State of Uttar Pradesh that since the land was not occupied for any

purpose mentioned in the aforesaid definition, it cannot be said to be part of ''holding'' within the meaning of its definition u/s 3 (10) read with Section 3 (8) of Act, 1939 was repelled on the ground that even if Raja Vishwa Natha Pratap Singh i.e. hereditary tenant could not cultivate the land even for years together, he would not be deprived of his right as hereditary tenancy. It has been explained that merely because the land is not being cultivated and was lying as waste will not effect the rights of the tenure-holder. Accordingly the revision filed by the State of Uttar Pradesh was dismissed.

12. In order to keep the record straight, it may be noticed that while the aforesaid proceedings were pending, the State authorities issued notice u/s 10 (2) of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 (hereinafter referred to as the ''Act, 1960'') including the land in question alongwith other land in the year 1975-1976. Objections filed were considered and the ceiling limits were determined by the Prescribed Authority under order dated 17th November, 1976. Against the same revenue appeals were filed before the District Judge, Allahabad, wherein transfers made were accepted. The IVth Addition District Judge vide order dated 10th February, 1977 held that 1990 bighas and 2 biswa of Mauja Babua Raghu Nath Singh and 746 bighas and 17 biswas of Mauja Katra of District Mirzapur was surplus in the hand of the tenure-holder. According to the respondents, the ceiling proceedings have become final between the parties. In the matter of compensation for the trees and other developments, which were standing over the surplus land, revenue appeal No. 188 of 1981 were filed by the Daiya Charitable Society. The appeal was allowed by the District Judge, Allahabad vide order dated 29th August, 1981. Writ petition filed by the State against the said order being Civil Misc. Writ Petition No. 2362 of 1982 was dismissed by the High Court on 21st May/June, 1984. Thereafter, Special Leave to Appeal (Civil) No. 9119 of 1985 was filed by the State of Uttar Pradesh before the Hon''ble Supreme Court of India, it was also dismissed vide order dated 31st October, 1985.

13. Daiya Charitable Society is stated to have filed Original Suit No. 36 of 1973 in the matter of determination of number of trees and its valuation. The suit was decreed by the Civil Judge, Mirzapur vide order dated 8th November, 1976 determining the value of trees at Rs. 15,34,300/-. First appeal filed by the State Government against the said valuation is pending before the High Court being First Appeal No. 42 of 1977. In respect of trees existing over the land within the District of Allahabad first appeal No. 178 of 1975 which has been decided and the valuation of trees has been modified.

Contentions of State-petitioner:

14. In the aforesaid factual background, the learned Additional Advocate General on behalf of the State-petitioner submitted that there has been complete miscarriage of justice at the hand of the authorities under the Act, 1927. He explains that u/s 3 of Act, 1927 as amended in the State of Uttar Pradesh, the State Government has been

conferred a power to construe any forest land or waste land or any other land (not being land for the time being comprised in any holding or in any village Abadi), which is the property of the Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, as reserved forest in the manner provided in the Act. Under Explanation to the said Section, holding has been assigned the same meaning as is assigned to the word "holding" under the U.P. Tenancy Act, 1939. According to the learned Additional Advocate General, Section 3 contemplates three categories of land, which are the State property or over which the State has proprietary rights i.e. (a) forest land, (b) waste land and (c) any other land. According to him, so far as the forest and waste lands are concerned, the power to constitute a reserved forest is absolute. The conditional exclusion clause applies to other land i.e. the third category (c). The State Government gets a right to constitute the forest/waste land as is a reserved forest, if it is the property of the State or the State has proprietary rights over the same.

15. He submits that the authorities have misread the provisions of Section 3 of Act, 1927 and have proceeded on misconception of law in applying the conditional exclusion Clause, in the case of land, which is forest and waste land also. It is the case of the State Government that the authorities under Act, 1927 have also failed to take note of the law as declared by the Supreme Court of India in the case of Mahendra Lal Jaini Vs. The State of Uttar Pradesh and Others, . According to him, the Supreme Court of India has laid down that any land to which the provisions of Act, 1950 apply after the enforcement of the said Act would become property of the State Government and the State shall have proprietary right over the entire land covered by the Act, 1950. The Apex Court has explained that a bhumidhar has a better right than a Sirdar and the Sirdar has a better right than a Asami, yet all are mere tenure-holder under the State and the State has the proprietary right over the land. Even in respect of the land of which a person claims to be Bhumidhar, Chapter II of Act, 1927 would apply. Learned Additional Advocate General, therefore, submits that in the facts of the case, what was required to be seen by the authorities, under the Forest Act was as to whether the land was forest or waste land and whether State had the proprietary rights over the same.

16. The fact that the land in question is covered by Act, 1950 is admitted to the respondents, inasmuch as it is their own case that they had obtained Bhumidhari sanad with reference to the provisions of Act, 1950 and that it is only because of the Bhumidhari Sanad granted in his favour, that Vishwa Nath Pratap Singh had executed a gift deed in favour of Daiya Charitable Society, which has stepped into its shoes and is contesting the proceedings. It was neither the case of Vishwa Nath Pratap Singh nor it is the case of the society that the land is outside the scope of Act, 1950. Learned Additional Advocate General explains that all the authorities/ Courts below have recorded a concurrent finding of fact based on spot inspection that the major portion of the land was forest and waste land, only small portion was under

cultivation. Thus according to the learned Additional Advocate General, land being covered by Act, 1950 and most of it being forest and waste land, could be declared to be reserved forest, (on simple reading of Section 3 of Act, 1927) by adopting the procedure of Section 4 of the Forest Act. Orders impugned therefore, cannot be legally sustained and the objection of the Daiya Charitable Society is liable to be rejected.

Contentions of contesting respondent:

17. Sri R.N. Singh, learned Senior Advocate on behalf of Daiya Charitable Society submits that if any land is part of the holding of an hereditary tenant and if such person has subsequently obtained Bhumidhari Sanad after abolition of zamindari, by deposit of 10 times the land revenue, then such land, even though, it may be forest or waste land, on the date of vesting, cannot be declared as reserved forest. For the purpose a heavy reliance has been placed upon the use of the words "not being land for the time being comprised in any holding" subsequent to the words "any other land" in Section 3 of Act, 1927. According to Sri Singh, word "holding" as per Explanation to Section 3 of Act, 1927 has been assigned the same meaning as has been assigned to the same word u/s 3 (7) of Act, 1939.

18. Section 3 (7) of the Act, 1939 defines "holding" to means a parcel or parcels of land held under one lease, engagement or grant or in the absence of such lease, engagement or grant under one tenure.

19. From the record, it was established that Vishwa Nath Pratap Singh was recorded as the tenant-in-chief over the land in 1369 Fasali khasara entry. The land was, therefore, comprised in the holding of Viswanath Pratap Singh. In respect of such land, the State Government had no power to constitute any reserved forest. He has placed reliance upon the judgment of the Supreme Court in the case of State of U.P. Vs. Smt. Sarjoo Devi and Others, , for explaining the meaning of the word "holding". According to him, it is not necessary that every piece of land, part of the holding must actually be used for cultivation all the time. He then placed reliance upon the Division Bench judgment of this Court in the case of Subedar Dalip Singh Karki v. State of U.P., 1974 RD 227, for the proposition that even Banjar land can form part of the holding of an hereditary tenant, over which Sirdari rights will accrue u/s 19 of Act, 1950 and later bhumidhari rights can be granted on satisfaction of the conditions required. Reference is also made to the judgment this Court in the case of Ram Pati and others v. District Judge, Mirzapur, 1985 (RD) 448, for the proposition that it is the intention, as borne out from the lease is to be seen as to for what purpose, the land is being held, actual growing of crops is not a sine qua non or a condition precedent for examining the said issue.

20. Sri B.P. Singh, learned Senior Advocate on behalf of Daiya Charitable Society in furtherance of what has been stated by Sri R.N. Singh, contended that Section 7 of Act, 1950 saves the rights of the tenant and for that purpose Section 19 (iv) of Act,

1950 and Section 5 (29) of the Act, 1939 are also referred to. According to him, rights of the intermediaries have been taken over by the State Government under Act, 1950 but the rights of the tenant have not been so taken over, and therefore, the rights of Vishwa Nath Pratap Singh and the Daiya Charitable Society, who are the tenants are not adversely effected, in any manner because of the enforcement/applicability of Act, 1950 in the area concerned.

21. It is further contended by both the learned counsels for the respondents that the present writ petition has practically become infructuous because of the recognition of the rights of Vishwanath Pratap Singh as the Bhumidhar by the State Government by granting Bhumidhari Sanad in his favour and in view of the orders passed by the authorities under Act, 1960 as well as the order passed by the Civil Court in the matter of determination of compensation for the trees standing on the land in question. They submit that once the State authorities themselves have admitted the Daiya Charitable Society as the holder of the land for the purposes of ceiling and owner of the trees being the bhumidhar of the land in question, it is no more open to the State Government to contend that the same was not a part of the holding within Section 3 of Act, 1927, so as to issue a notification u/s 4 of Act, 1927.

22. I have considered the submissions made by the learned counsel for the parties and have examined the records of the writ petitions.

23. For appreciating the controversy raised on behalf of the parties, it would be worthwhile to reproduce Section 3 of Act, 1927 as applicable in the State of Uttar Pradesh, it reads as follows:

"STATE AMENDMENT

Uttar Pradesh.--For Section 3, substitute the following section, namely :

"3. Power to reserve forests.--The State Government may constitute any forest land or waste land or any other land (not being alnd for the time being comprised in any holding [****] or in any village abadi) which is the property of Government, or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest in the manner hereinafter provided.

Explanation.--The expression "holding" shall have the meaning assigned to it in U.P. Tenancy Act, 1939, and the expression Village abadi'' shall have the meaning assigned to it in the U.P. Village Abadi Act, 1947."

24. From a simple reading of Section 3 of Act, 1927, it would be clear that the State Government has been granted power to constitute a reserved forest in respect of three categories of land, if it is the property of the State Government or the Government has proprietary rights over it, (a) forest land (b) waste land and (c) any other land (not being land for the time being comprised in any holding or in any village abadi). Other parts of section are not relevant for our purposes. Right of the

State Government to constitute reserved forest in respect of forest and waste land is not circumscribed by the exclusion clause as applicable to other lands i.e. not being land for the time being comprised in any holding or in any village Abadi.

25. In respect of forest land and waste land, which is the property of the State Government or over which it has proprietary rights, the power of the State to constitute a reserved forest is absolute. In respect of forest and waste land only two facts are to be satisfied for constituting a reserved forest i.e. (the land is forest or waste land and (b) it is the property of the State or the State has proprietary right over the same.

26. Conclusion so drawn by this Court is well supported by a Division Bench judgment of this Court in the case of Raghu Nath Singh and another v. The State of Uttar Pradesh and another, 1960 (RD) 337, wherein after reproducing the provisions of Act, 1927, it has been explained as follows:

"A careful examination of the provisions of the Indian Forest Act would show that the power of the State Government to constitute any land as a reserved forest is circumscribed by three conditions as laid down in Section 3. Firstly, it can constitute such forest land or waste land to be reserved forest as is the property of Government. Secondary it can do so if the proprietary rights in the land vest in Government, or thirdly where it (the Government) is entitled to the whole or any part of the forest produce of any land. The Sections of the Act after Section 3 prescribe the manner in which any land can be constituted a reserved forest."

27. The Division Bench has further held that the action of the State Government in constituting the leased lands as reserved forest can be upheld, if any, of the three conditions are proved to exist.

28. In respect of the land in question with the enforcement of the Act, 1950, proprietary rights have vested in the State Government. It is admitted on record that most of the land qua which notification u/s 4 of Act, 1927 had been issued was forest and waste land. Therefore, condition No. 1, as pointed by the Division Bench stands satisfied.

29. So far as the contention raised on behalf of the respondents qua the land being under the tenancy of Vishwanath Pratap Singh, and it being part of his holding qua which Bhumidhari Sanad had been issued, therefore, the State Government could not exercise power of declaring such forest and waste land as reserved forest u/s 3 of Act, 1927 is concerned, suffice is to reproduce paragraphs- 26, 27 and 29 of the judgment of the Apex Court in the case of Mahendra Lal Jaini (Supra), relevant portion of paragraphs 26, 27, and 29 read as follows:

"(26) It is necessary therefore to I look at the scheme of Chap. II of Forest Act, which contains Sections 3 to 27 and deals with reserved forests. Section 3 provides that the State Government may constitute any forest land or waste land which is the

property of Government or over which the Government has proprietary rights, or to the whole or any part of the forest produce of which the Government is entitled, a reserved forest. Section 4 provides for the issue of a notification declaring the intention of the Government to constitute a reserved forest. Section 5 bars accrual of forest rights in the area covered by notification u/s 4 after the issue of the notification....."

(27) It is clear from this review of the provisions of Chapter II that it applies inter alia to forest land or waste land, which is the property of the Government or over which the Government has proprietary rights. By the notification u/s 4, the Forest Settlement Officer is appointed to inquire into and determine the existence, nature and extent of any rights alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.....

..... It will be clear therefore that Chap. II contemplates that where forest land or waste land is the property of Government or over which the Government has proprietary rights, the Forest Settlement Officer shall proceed to determine subordinate rights in the land before a notification u/s 20 is issued making the area a reserved forest In the determination of these rights, the Forest Settlement Officer has the same powers as a civil Court has in the trial of suits, and his order is subject to appeal and finally to revision by the State Government. Section 5 also shows that after a notification u/s 4, no further forest rights can accrue. It appears, however, that after the Abolition Act came into force, it was felt that more powers should be taken to control forests than was possible u/s 5 as under the Abolition Act all lands to which the- Abolition Act applied had vested in the State and become its property.....

29..... It is next urged that even if Sections 38-A to 38-G are ancillary to Chapter II, they would not apply to the petitioner''s land, as Chapter II deals inter alia with waste land or forest land, which is the property of the Government and not with that land which is not the property of the Government, which is dealt with under Chapter V. That is so. But unless the petitioner can show that the land in dispute in this case is his property and not the property of the State, Chapter II will apply to it. Now there is no dispute that the land in dispute belonged to the Maharaja Bahadur of Nahan before the Abolition Act and the said Maharaja Bahadur was an intermediary.'' Therefore, the land in dispute vested in the State u/s 6 of the Abolition Act and became the property of the State. It is however, contended on behalf of the petitioner that if he is held to be a bhumidhar in proper proceedings, the land would be his property and therefore Chapter V-A, as originally enacted, if it is ancillary to Chapter II would not apply to the land in dispute. We are of opinion that there is no force in this contention. We have already pointed out that u/s 6 of the Abolition Act all property of intermediaries including the land in dispute vested in the State Government and became its property. It is true that u/s 18,

certain lands were deemed to be settled as bhumidhari lands, but it is clear that after land vests in the State Government u/s 6 of the Abolition Act, there is no provision therein for divesting of what has vested in the State Government, It is however urged on behalf of the petitioner that he claims to be the proprietor of this land as a bhumidhar because of certain provisions in the Act. There was no such proprietary right as bhumidhari right before the Abolition Act. The Abolition Act did away with all proprietary rights in the area to which it applied and created three classes of tenure by Section 129; bhumidhar, sirdar and asami, which were unknown before. Thus bhumidhar, sirdar and asami are all tenure-holders under the Abolition Act and they hold their tenure under the State in which the proprietary right vested u/s 6. It is true that bumidhars have certain wider rights in their tenures as compared to a sirdars similarly sirdars have wider rights as compared to asamis, but nonetheless all the three are mere tenure holders - with varying rights - under the State which is the proprietor of the entire land in the State to which the Abolition Act applied It is not disputed that the Abolition Act applies to the land in dispute and therefore the State is the proprietor of the land in dispute and the petitioner even if he were a bhumidhar would still be a tenure-holder. Further, the land in dispute is either waste land or forest land (for it is so far not converted to agriculture) over which the State has proprietary rights and therefore Chap. II will clearly apply to this land and so would Chapter V-A. It is true that a bhumidhar has got a heritable and transferable right and he can use his holding for any purpose including industrial and residential purposes and if he does so that part of the holding will lie demarcated u/s 143. It is also true that generally speaking, there is no ejectment of a bhumidhar and no forfeiture of his land. He also pays land revenue (Section 241) but in that respect he is on the same footing as a sirdar who can hardly be called a proprietor because his interest is not transferable except as expressly permitted by the Act. Therefore, the fact that the payment made by the bhumidhar to the State is called land revenue and not rent would not necessarily make him of a proprietor, because sirdar also pays land Revenue though his rights are very much lower than that bhumidar. It is true that the rights which the bhumidar has to a certain extent approximate to the rights which a proprietor used to have before the Abolition Act was passed; but it is clear that rights of a bhumidhar are in many respects less and in many other respects restricted as compared to the old proprietor before the Abolition Act. For example, the bhumidhar has no right as such in the minerals under the sub-soil. Section 154 makes a restriction on the power of a bhumidhar to make certain transfers. Section 155 forbids the bhumidhar, from making usufructury mortgages. Section 156 forbids a bhumidhar, sirdar or asami from letting the land to others, unless the case comes u/s 157. Section 189 (aa) provides that where a bhumidhar lets out his holding or any part thereof in contravention of the provisions of this Act, his right will be extinguished. It is clear therefore that though bhumidhars have higher rights than sirdars and asamis, they are still mere tenure-holders under the State which is the proprietor of all lands in the area to which the Abolition Act applies. The petitioner therefore even if he is presumed to

be a bhumidhar can of claim to be a proprietor to whom Chap. II of the Forest Act does not apply, and therefore Chapter V-A, as originally enacted, would not apply : (see in this connection, Mst. Govindi Vs. The State of Uttar Pradesh,). As we have already pointed out Sections 4 and 11 give power for determination of all rights subordinate to those of a proprietor, and as the right of the bhumidhar is that of a tenure-holder, subordinate to the State, which is the proprietor, of the land in dispute, it will be open to the Forest Settlement officer to consider the claim made to the land in dispute by the petitioner, if he claims to be a bhumidhar. This is in addition to the provision of Section 229B of the Abolition Act. The petitioner therefore even if he is a bhumidhar cannot claim that the land in dispute is out of the provisions of Chapter II and therefore Chapter V-A, even if it is ancillary to Chapter II, would not apply. We must therefore uphold the constitutionality of Chapter. V-A, as originally enacted, in the view we have taken of its being supplementary to Chap. II, and we further hold that Chapter Hand Chapter V-A will apply to the land in dispute even if the petitioner is assumed to be the bhumidhar, of that land."

30. Thus, it will be seen that the Supreme Court has laid down that Bhumidhars have certain wider rights in their tenure-holding as compared to Sirdars. Similarly, Sirdars have wider rights as compared to Asamis, but nonetheless all three are mere tenure-holders with holding rights over the land, the proprietary right whereof is with the State. The Apex Court has gone on to hold that although Bhumidhars have higher rights than Sirdars and Asamis, they are still mere tenure-holders under the State, which is proprietor of all lands in the area to which Abolition Act applies i.e. Act, 1950. Petitioner even if presumed to be Bhumidhar cannot claim to be proprietor of the land to whom Chapter II of the Forest Act does not apply.

31. It has, therefore, to be held that Vishwanath Pratap Singh was merely a Sirdar and subsequently with the grant of Sanad, a bhumidhar in respect of land, which has been found to be forest and waste land of which the State Government, was the proprietor in view of application of Act, 1950 to the area. He or for that purpose the society cannot contend that the State Government has no power to declare the forest land and waste land as reserved forest u/s 4 of Act, 1927. Bhumidhari rights are subordinate to the proprietary rights of the State Government. In view of provisions of Section 3 of Act, 1927, the power of the State Government to declare the forest and waste lands of which it has the proprietary as reserved forest is not diluted in any manner, merely because Vishwanath Pratap Singh is held to be the Sirdar and thereafter Bhumidhar.

32. This Court is not called upon to enter into the issue as to whether the forest land and waste land subject matter of Section 4 notification formed part of the holding of Vishwanath Pratap Singh or not, inasmuch as, as already noticed above, exclusion, which has been provided u/s 3 of Act, 1927, applies to other lands only and not to the forest and waste lands, which, in the opinion of the Court, form a separate class

u/s 3 of Act, 1927.

33. Most of the land is forest or waste land and that Act, 1950 applies in the area is admitted on record, both in view of pleadings and evidence before the authorities under the Forest Act as well as before this Court. The State could exercise its power u/s 4 of the Act, 1927 in the facts of the case. The contention raised by the learned Additional Advocate General finds favour with this Court and is upheld.

34. This Court may now deal with the other objection, which has been raised on behalf of the respondents, namely, that these proceedings under Act, 1927 have become redundant in view of subsequent proceedings i.e. grant of Bhumidhari Sanad, ceiling proceedings taken under Act, 1960 and because of orders passed by the competent Civil Court in the matter of determination of valuation of trees standing on the land in question.

35. This Court may record that ceiling limits are determined with regard to the land held by a recorded tenure-holder. Such determination of the ceiling limits does not divest the State Government of proprietary rights over the land, which is forest land and waste land nor its power to constitute the forest land and waste land as reserved forest is lost because of such ceiling proceedings. Both Acts operate in different field. Whatever may have been the decision in the proceedings under Act, 1960, the exercise of powers u/s 4 of Act, 1927 by the State will not be diluted or adversely affected.

36. There is another reason for this Court to not to accept the said contention, namely, that grant of Bhumidhari Sanad and the initiation of proceedings under Act, 1960, has all taken place after the issuance of notification u/s 4 of Act, 1927. Issuance of Bhumidhari Sanad only results in respondent getting certain better rights as tenant only. The ceiling proceedings being subsequent to the notification u/s 4 of Act, 1927 would always abide by the outcome of the proceedings u/s 4 of Act, 1927 and even otherwise are entirely for a different purpose.

37. Reference may also be had to Section 5 of Act, 1927 which reads as follows:

"STATE AMENDMENT

Uttar Pradesh.--For Section 5, substitute the following section, namely :

5. Bar of accrual of forest rights.-- After the issue of a notification u/s 4, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right was vested when the notification was issued; and no fresh clearings for cultivation or for any other purpose shall be made in such land, nor any tree therein felled, girdled, lopped, tapped, or burnt, or its bark or leaves stripped off, or the same otherwise damaged, nor any forest-produce removed therefrom, except in accordance with such rules as may be made by the [State Government] in this behalf. (Vide Uttar Pradesh Act 23 of 1965)"

38. A Division Bench of this Court has held that status quo has to be maintained once a notification u/s 4 of Act, 1927 has been issued and no fresh rights in the land covered by Section 4 notification can be created (Reference Liyakat Ali Khan v. State of U.P. and others; 1990 AWC 210).

39. So far as the orders passed in Civil Suit are concerned, suffice is to record that right to the property in the trees is based on the fact that the plaintiffs were the Bhumidhars of the land in question and not because of any other title vested in them over the land.

40. As already noticed above, merely because the petitioner became the Bhumidhar because of issuance of Bhumidhari Sanad in his favour, proprietary rights of State and its power under Sections 3/4 of Act, 1927 is not diluted. Grant of Bhumidhari Sanad or orders passed in the ceiling proceedings or orders passed by the Competent Civil Court in the matter of determination of valuation of trees would not adversely reflect upon the competence of the State to issue the notification u/s 4 of Act, 1927.

41. It was then contended that since the land in question was not transferred to the forest department by the revenue department, it is to be treated as part of the holding and therefore, could not be part of the notification u/s 4 of Act, 1927.

42. Contention so raised on behalf of respondents does not appeal to the Court, mere non-transfer of the land by the revenue department to the forest department will not vitiate the notification u/s 4 of Act, 1927.

43. At this stage, learned counsel for the respondents submits that from the finding recorded by the authorities under Act, 1927, it was admitted that a small portion of the land was actually under cultivation and therefore, such land could not be treated to be forest or waste land. It would fall in category ''c'' as aforesaid. No demarcation of the area in that regard has been done. Therefore, the State Government must at least be directed to exclude the land, which was under cultivation, as it was part of the holding excluded u/s 3 of Act, 1927.

44. Contention so raised on behalf of respondents has force. There is a finding, on the basis of spot inspection that in small area of the land covered by the notification u/s 4 of Act, 1927, cultivation was being done and therefore, that part of the land, which was under cultivation, no notification u/s 4 of Act, 1927 could have been issued treating it to be forest or waste. Such land under cultivation would be covered by the definition of other land i.e. category (c) as aforesaid. Being part of the holding of a Sirdar/Bhumidhar, it could not be included in the notification u/s 4 of Act, 1927, specifically in view of definition of "holding" under the Explanation to Section 3 of Act, 1927.

45. Let the Forest Settlement Office identify the area over which cultivation was being done as per the reports available in the original records of File No. 237/

349/36 and exclude the same from the notification issued u/s 4 of Act, 1927.

46. For the remaining land covered by Section 4 notification, the objections of the respondents are rejected.

47. For the aforesaid reasons, order dated 22nd March, 1961 passed by the Forest Settlement Officer, Mirzapur, order dated 28th October, 1961 passed by the Commissioner Varanasi as also order dated 28th May, 1976 passed by the IVth Additional District Judge, Mirzapur are hereby quashed.

48. Let the authorities proceed in accordance with law under the Act, 1927 in terms of the notification issued u/s 4 of Act, 1927 with due diligence subject to the direction issued above. Both the writ petitions are allowed subject to the observations made above.