(1995) 10 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous W.P. No. 192 of 1982

Ali Raza Khan and Ors. APPELLANT

Vs

Board of Revenue U.P.Alld.& Ors. RESPONDENT

Date of Decision : 16-10-1995

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 163, 164, 229

Citation : (1995) 10 AHC CK 0032

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Dismissed

Judgement

S.P. Srivastava, J.—A suit filed by the plaintiffpetitioners under Section 229B of the U.P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act) in respect of plot No. 571/1, having an area of 1 acre 17biswa and plot No. 582 having an area of 1 acre which were the bhumidhari holdings claiming a decree against Asha Singh, respondent No. 2 as well as the Gaon Sabha and the State Government was decreed by the trial court declaring the plaintiff to be the Bhumidhars of the land in dispute and in possession thereof. This decree was affirmed in first appeal. However, on a second appeal filed by the defendant Asha Singh, respondent No. 2, the Board of Revenue Respondent No. 1 vide its impugned order dated 7.8.81 upsetting the concurrent decrees referred to above remanded the case to the trial court for taking into consideration the relevant facts, documents and decision in their right perspective and then decide the case according to law.

2. Feeling aggrieved, the plaintiffpetitioners have now approached this Court seeking redress praying for the quashing of the impugned order passed by the Board of Revenue referred to above.

3. I have heard Sri M.D. Singh, learned counsel for the petitioners and Sri N.B. Nigam, learned counsel representing the contesting defendantRespondents and have also carefully perused the record.

4. The facts in brief shorn of details necessary for the disposal of this case lie in a narrow compass. The plots in dispute admittedly constituted Bhumidhari holdings of the plaintiffs. The defendant Asha Singh claimed that the recorded tenureholders of the plots in dispute had executed two documents one on 24.4.63 and the other on 24.8.63 whereunder while accepting Rs. 100/ as earnest money from Asha Singh they had agreed to sell the land in dispute in his favour on a consideration agreed upon and had also put him in possession of the aforesaid plots. Asha Singh, threafter appears to have initiated proceedings under Sections 163/164 of the Act wherein an order dated 7.5.65 had been passed in pursuance whereof the name of Asha Singh was recorded as Bhumidhar of the land in dispute. This order appears to have been challenged in revision before the Additional Commissioner who vide his order dated 23.7.66 passed in reference recommended the Board of Revenue to dismiss the revision as not maintainable. The Board of Revenue vide its order dated 18.11.67 dismissed the revision. Thereafter proceedings under Section 145 of the Code of Criminal Procedure appear to have been initiated in respect of the land in dispute which was attached in those proceedings and was ultimately released in favour of Asha Singh. It was thereafter that the suit giving rise to the present writ petition was filed by the plaintiffs seeking a declaration in regard to their being Bhumidhars in possession of the land in dispute which has now culminated in the impugned order.

5. The trial court came to the conclusion that the order passed in the proceedings under Sections 163/164 of the Act allowing mutation in the name of defendant Asha Singh did not disclose that the right and title of the parties were decided. It also found that the aforesaid order had been passed exparte Considering the circumstance brought on record, the trial Court negatived the contention raised by the defendant to the effect that the decision in the proceedings under Section 163/164 of the Act operated as res judicata. The trial court further found that no sale deed had been executed by the plaintiffs in favour of defendant Asha Singh and consequently the title in respect of the land in dispute continued to vest in the plaintiffs unaffected by the order passed in the proceedings under Sections 163/164 of the Act which order could be challenged in a regular suit. The trial court further found that a mere agreement of sale could not in any manner be deemed to have resulted in transfer of Bhumidhari rights of the plaintiffs in favour of Asha Singh. The trial court noticed that the defendant Asha Singh had not cared even to file the alleged agreements of sale claimed to have been executed by the plaintiffs in his favour. The only documents sought to be relied upon by the defendant Asha Singh in this regard were the alleged receipts dated 24.4.63 and 24.8.63. These documents were found by the trial court to be suspicious having interpolations and over writings. The trial court refused to place reliance on the aforesaid documents and hold on their basis that the defendantAsha Singh had been but in possession of the land in dispute as claimed. The trial court noticed in this connection that the defendant Asha Singh had filed a suit for injunction against the plaintiffs in the court of Munsif and had

also moved an application in the suit seeking an interim injunction. The Civil Court, it was found, had rejected the application seeking interim injunction holding that the land in dispute continued to be in actual possession of the plaintiffs. The oral evidence led by the defendant to prove his possession over the land in dispute was disbelieved. The oral evidence led by the plaintiffs in support of his claim that the plaintiffs continued to be in possession of the land "in dispute was accepted holding the same to be worthy of credit. The trial court proceeded to hold that the documents dated 24.4.63 and 24.8.63 relied upon by the defendant Asha Singh were forged and manipulated. Trial court opined that on the evidence and the materials brought on record the plaintiffs claim to be Bhumidhars in possession of the land in dispute was fully proved. It was also noticed that the defendant Asha Singh had filed a suit for specific performance of contract on the basis of the documents dated 24.4.63 and 24.8.63 but did not proceed with the suit which was returned for presentation before proper court which dismissed the same as barred by time. Holding the documents dated 24.4.63 and 24.8.63 as Farzi, forged and manipulated, the trial court decreed the suit as prayed.

6. The defendant Asha Singh thereafter preferred a first appeal challenging the decree passed by the trial court. The first appellate court endorsed the finding of the trial court to the effect that the documents dated 24.4.63 and 24.8.63 relied upon by the defendant Asha Singh were forged and manipulated on which no reliance could be placed. It also recorded a finding that on the evidence led in the case it was fully established that the aforesaid two documents did not confer any right or title in favour of the defendant Asha Singh. The first appellate court further held that the requisite conditions contemplated under Section 164 of the Act having not been satisfied the defendant could not be deemed to have got any rights under the order of the subdivisional officer passed in the proceedings under Section 163/164 of the Act. The first appellate court was, however, of the view that the ex parte order passed bythe SubDivisional Officer in the proceedings under sections 163/164 of the Act was in the nature of mutation proceedings which did not decide the right of the parties. The first appellate court disbelieved the claim of the defendant Asha Singh that he had been delivered possession of the property in dispute in the proceedings under Section 145, Cr. P.C. The first appellate Court also endorsed the finding of the trial court which had been arrived at on the basis of the appreciation of the oral evidence on the record observing that the trial court was right in holding that the plaintiffs were in possession. In view of its conclusions referred to above the first appellate court dismissed the appeal filed by the defendant Asha Singh. The Board of Revenue in its impugned order passed in second appeal appears to have come to the conclusion that the trial court had dealt with the matter in regard to the implications arising under the order passed in the proceedings under Section 163/164 of the Act in a superficial manner observing that the order dated 7.5.65 had become final extinguishing the rights of the recorded tenureholders and the said order could not just be disregarded saying that it was an order of a

summary nature. The Board of Revenuefurther was of the view that the question relating to the possession had also not been dealt with in the right perspective. It was observed that the copy of the Dakhalnama dated 12.3.67 was on the record which showed that in the proceedings under Section 145, Cr. P.C. on the order of release having been passed in favour of defendant Asha Singh he was put in possession of the attached property.

7. The Board of Revenue further noticed that in the order passed in the proceedings under Section 145, Cr. P.C. the SubDivisional Officer had held Asha Singh to be in possession of the plots in dispute. The Board of Revenue further observed that there were other issues in the case including the value of the receipts dated 4.4.64, 18.3.64, 31.3.64, 16.4.64 and an agreement dated 24.8.63 which required consideration. The Board of Revenue, however, observed that it was not proper or practicable to review the whole evidence and give finding of the second appellate stage. It was observed that since the trial court and appellate court did not give sufficient attention to the title of the plaintiffs in the light of the order under section 164 of the Act and the lower courts went on to discuss the sufficiency and Strength of the title pleaded by the defendant No. 1 based on the agreement to sell, the judgment and decrees passed by the trial court and first appellate court could not be upheld. It was in the aforesaid circumstances, that holding the case to be fit one for being remanded to the trial court for taking into consideration the relevant facts, documents and decisions in their right perspective that the case was sent back to the trial court for being decided afresh.

8. From a perusal of the impugned judgment passed by the Board of Revenue it is apparent that it proceeded to the assumption that the order dated 7.5.65 passed in the proceedings under Section 163/164 of the Act had the effect of extinguishing the rights of the recorded tenure holders and the said order could not be disregarded. In other words, the second appellate court in clearterms reversed the finding of the trial court and the first appellate court on issue No. 7 which was to the effect that whether the suit was barred by principles of res judicata. It appears that the Board of Revenue further proceeded on the assumption that the delivery of possession by the criminal court in the proceedings under Section 145, Cr. P.C. in favour of the person found entitled to get the attached property released is conclusive, in nature and binding on the civil or revenue court. The concurrent finding on the question of possession recorded by the trial Court as well as the first appellate court appears to have been reversed by the Board of Revenue on the strength of the Dakhalnama dated 12.3.67 indicating that the judgments impugned in the second appeal did not show whether the plaintiffs at a subsequent point of time regained possession from the defendant No. 1 observing that in such a circumstance it could not be held that the plaintiffs apart from being bhumidhars were also in possession.

9. The first question which arises for consideration in this case is in regard to the effect of the ex parte order dated 7.5.65 passed by the SubDivisional Officer

Assistant Collector 1st class in the proceedings under Sections 163/164 of the Act initiated by Asha Singh, the defendant. The trial court as well as the first appellate court have found that this order could not have any effect on the right, title or interest of the plaintiffs who were the recorded tenure holders of the land in dispute prior to the passing of the aforesaid order. Both the aforesaid courts had concurrently found that the said order could not have the effect of resjudicata at all. The board of revenue, however, held that the order dated 7.5.65 had the effect of extinguishing the rights of the recorded tenureholders and could not be held to be of a summary nature.

10. Learned counsel for the plaintiffpetitioners has strenuously contended that on the facts pleaded, found and established on the record, the order dated 7.5.65 passed by the SubDivisional Officer was clearly without jurisdiction, null and void and could not affect in any manner the Bhumidhari rights of the plaintiffs. The contention is that the proceeding under Section 163 read with section 164 of the Act can only be initiated by the Gaon Sabha and that too has to remain confined to the extent of contravention contemplated under Section 154 of Section 157A of the Act and consequently an alleged transferee envisaged under Section 164 of the Act has no locus stand or right to seek eviction of the alleged transferor envisaged under Section 164 of the Act from the land which is claimed to be the subject matter of the sale which in the absence of any contravention could not become vacant land as provided for under Section 163 of the said Act. The further contention in this regard is that the Assistant Collector 1st Class has not been vested with any jurisdiction nor can assume jurisdiction to pass an order in the proceedings under Section 163 of the Act initiated at the instance of a person other than Gaon Sabha and further can have no jurisdiction whatsoever to disturb any existing entry in the revenue record in favour of a person showing him to be Bhumidhar in possession thereof unless at the instance of a Gaon Sabha proceeding is initiated under Section 163 of the Act and it is found that the recorded tenureholder has contravened the provisions of section 154 or 157A of the Act on which finding the holding to the extent of contravention will be treated as vacant land which will vest in the Gaon Sabha concerned.

11. In the facts and circumstances of the present case it is urged that the order dated 7.5.65 passed by the Assistant Collector 1st class at the instance of Asha Singh disturbing the existing entry in the revenue record of rights in favour of the plaintiffs could not been passed as admittedly it was no body''s case at any stage that there had been a contravention of Section 154 or Section 157A of the Act by the recorded tenureholders. It has further been urged that the Assistant Collector 1st Class could not be deemed to have jurisdiction to order for the recording of the name of Asha Singh, the defendant after expunging the name of the recorded tenureholders as the ultimate order which could be passed in the proceedings under Section 163 of the Act could be an order holding the land to be vacant to the extent of contravention. The Assistant Collector 1st class in such a circumstance could not be deemed to be vested with any jurisdiction to pass an order in favour of Asha Singh, the defendant in the proceedings under Section

163/164 of the Act directing for the correction of the existing revenue entries and recording the holdings in favour of the alleged transferee.

12. The learned counsel for the contesting defendant Asha Singh has, however, contended that the finding recorded by the trial Court on the issue No. 7 has been rightly set aside by the Board of Revenue holding that the order dated 7.5.65 which had attained finality had the effect of extinguishing the rights of the recorded tenure holders and could not be held to be of a summary nature. It has been urged that the Assistant Collector 1st class stands vested with exclusive jurisdiction to consider the effect of the transfer of any holding or part thereof made by a Bhumidhar resulting in a deemed sale by a legal fiction envisaged under Section 164 of the Act in a proceedings contemplated under Section 163 of the said Act and if in exercise of its exclusive jurisdiction an order is passed by the Assistant Collector 1st class which order is subject to a first appeal and the second appeal as provided for in the second schedule of the Act and attains finality a decision arrived at in such proceedings has the effect of res judicata and the matter cannot be reagitated m a suit under Section 229B of the Act filed subsequently.

13. The learned counsel contends that the trial court and the first appellate court had manifestly erred in treating the order passed by the Assistant Collector 1st class in the proceedings under Section 163 of the Act to be of a summary nature. It is urged that in face of the order dated 7.5.65 it was not open to the revenue court in the suit under Section 229B of the Act to either hold that there was no sale as claimed by the defendant or to disregard the documents relied upon by him in support of his claim to be forged and fictions. The contention is that the revenue entry in the record of rights which had been corrected in favour of defendant Asha Singh pursuant to the order passed by the Assistant Collector 1st class dated 7.5.65 in the proceedings under section 163 of the Act could not be interfered with or disturbed in the manner done by the trial court and the first appellate court in the present case and they were bound to accept those entries as correct and consequently the suit for declaration filed by the plaintiffs was liable to be dismissed on this short ground specially when the criminal court had released the attached property in the proceedings under Section 145 of the Criminal Procedure Code in favour of defendant Asha Singh who was to be deemed to be continuing in exclusive possession of the land in dispute on the date of the filing of the suit under Section 229B of the Act by the plaintiffs. It is also urged that the finding of the criminal court holding defendant Asha Singh to be in possession of the plots in dispute could not be disturbed by the revenue court. In the circumstances it is urged that the order passed by the Board of Revenue did not require any interference by this Court and the writ petition deserves to be dismissed.

14. The provisions contained in Section 164 of the Act is to the following effect:

"164. Transfer with possession by a bhumidhar to be deemed a sale. Any transfer of any holding or part thereof made by a bhumidhar by which possession is transferred to the transferee for the purpose of securing any payment of money advanced or to be advanced by way of loan, and existing or future debt or the performance of an engagement which may give rise to a pecuniary liability, shall, notwithstanding anything contained in the document of transfer or any law for the time being in force, be deemed at all times and for all purposes to be a sale to the transferee and to every such sale the provisions of Sections 154 and 163, shall apply."

15. In the present case the defendant Asha Singh claimed that the recorded tenureholders had agreed to transfer the land in dispute in his favour and after accepting Rs. 100/ as earnest money had put him in possession of the land in dispute in support of which claim he sought to place reliance upon two receipts dated 24.3.63 and 24.8.63. The trial court as well as the first appellate court have concurrently found the aforesaid receipts to be forged, interpolated, fictitious and manipulated. However, the fact remains that the entire defence of Asha Singh, the contesting defendant was based on alleged agreement of sale with delivery of possession. The provisions contained in Section 164 of the Act envisage a transfer of any holding or part thereof made by a Bhumidhar by which possession is transferred to the transferee for the purposes of securing any payment of money advanced or to be advanced by way of loan, existing or future debt or the performance of an engagement which may give rise to a pecuniary liability which action notwithstanding any thing contained in the document of transfer or any law for the time being in force has to be deemed at all times and for all purposes to be a sale in favour of the Transferee. Asha Singh, the defendant had not come up with any such pleading which could lead to an interference that the alleged transfer of possession by the recorded tenureholders was for the purposes of securing any payment of money advanced or to be advanced by way of loan or an existing or future debt or the performance of an engagement which may give rise to a pecuniary liability. Further even according to Asha Singh, the defendant himself, the recorded tenureholders had only entered into an agreement of sale in respect of the property in dispute in his favour. This Court in its decision in the case of Kedar v. District Judge, Banda, 1978 R.D. 307, while considering the implications arising under the provisions contained in Section 164 of the Act had observed that before the said provision could apply the transaction in question has to be a transfer. It was observed further that an agreement to sell cannot be held to be a transfer as contemplated under the said section as no title passes to another person as a result of such transaction. It was further indicated that even if an agreement to sell could be deemed to fall within the purview of section 164 of the Act in the absence of registration no title at all could pass under a mere agreement of sale in case the consideration in the agreement of sale was in excess of Rs. 100/ .

16. It may further be noticed that in its decision in the case of Data Ram v. Additional Civil Judge, 1978 A.L.J. 840, this Court had clarified that although section 164 of the Act speaks of ''any transfer of any holding or part thereof

made by a bhumidhar'' it does not mean that the transfer of holding spoken of thereby may be merely a transfer of possession over land included in the holding. It was emphasised that there must be a transfer of holding in law, such as transfer of some right, title or interest of the tenureholder in the holding. This Court went on to observe" even if there is transfer of pos session under an unregistered agreement there is no transfer of any right, title or interest of the tenureholder in the holding". I respectfully agree with the observations indicated above. In the present case on the own showing of the defendant Asha Singh himself the consideration for the sale contemplated under the agreement relied upon by him was much in excess of Rs. 100/ but the said agreement of sale had not been registered. In the circumstance, there fore, none of the requisite conditions contemplated under Section 164 of the U.P. Zamindari Abolition and Land Reforms Act could be deemed to have been satisfied so as to lead to an inference that the legal fiction in regard to the coming into existence by operation of law a sale as envisaged under Sec tion 164 of the Act came into play. In other words the basic facts on which the legal fiction contemplated under Section 164 of the said Act could operate did not come into existence at all which could justify initiation of any proceeding under Sections 163/164 of the Act. On the facts found and estab lished on the record there can be no manner of doubt that Asha Singh the contesting defendant had no right or locus standi to initiate any proceedings under Section 163 of the Act.

17. The provisions contained in section 164 of the said Act apply Sections 154 and 157A to every sale contemplated therein. This sale may be an actual sale in reality or a deemed sale by virtue of the legal fiction contemplated in the aforesaid provision. In either case the provisions of Sections 157A and 154 are made applicable to such a sale.

18. The provisions contained in Section 163 of the Act are to the following effect:

"163. Transfer in contravention of this Act.(1) Where a transfer of any holding or part thereof has been made in contravention of the provisions of Section 154 or section 157A the transferee shall, notwithstanding anything in any law, be liable to ejectment from such holding or part on the suit of the Gaon Sabha which shall thereupon become vacant land; but nothing in this section will prejudice the right of the transferor to realise the whole or portion of the price remaining unpaid or the right of any other person other than the transferee to proceed against such holding or land in enforcement of any claim thereto.

(2) To every suit for ejectment under this section the transferor shall be made a party."

19. A perusal of the aforesaid provision clearly indicates that it is only in a case where the transfer of any holding or part thereof has been made in contravention of the provisions of Section 154 or Section 157A of the Act that a transferee notwithstanding anything in any law for time being in force becomes liable to ejectment from such holding or part on the suit of the Gaon Sabha which holding

or part thereof shall thereupon become vacant land. The provisions contained in Section 163 (2) require that in every suit for ejectment under the aforesaid section the transferor will have to be made a party.

20. The provisions contained in Section 163 of the Act, therefore, clearly indicate that the proceedings contemplated therein have to be treated as a suit. This conclusion is inescapable in view of the provisions contained in Section 163(2) of the Act which clearly indicates the nature of the proceeding to be that of a suit.

21. However, the scope of the aforesaid suit contemplated under Section 163 of the U.P. Zamindari Abolition and Land Reforms Act is very limited. Such a suit can only be filed by the Gaon Sabha. Further the Gaon Sabha has to establish that the transfer contemplated under the aforesaid provision has been made in contravention of the provisions of Section 154 or Section 157A of the Act. The decree passed in the suit referred to above can only be in respect of that part of the holding which is affected by the contravention and on the decree being passed the holding or its part as the case may be to the extent of contravention is be treated in law as a vacant land.

22. At this stage the provisions contained in Section 154 and 157A of the Act as in force at the relevant time may be usefully noticed.

"154. Restrictions on the transfer by a bhumidhar(1) Save as provided in subsections (2) and (3), no bhumidhar shall have rights to transfer, by sale or gift, any land other than tea gardens to any person (other than an institution established for a charitable purpose), where such person shall, as a result of the sale or gift, become entitled to land which together with land, if any, held by himself or together with his family, will, in the aggregate, exceed 121/2 acres in Uttar Pradesh.

(2) A bhumidhar may transfer by sale or gift any land to any person for a specified industrial purpose provided such land does not exceed the area that may be specified as required by such person for the industrial purpose.

(3) The State Government may authorize a transfer in excess of the limit prescribed in subsection (1) when it is of the opinion that such transfer is in favour of a registered cooperative society, which does not have land sufficient for the needs, or that the transfer is in the interest of the general public.

(4) Where any land transferred for a specified industrial purpose, or any part of such land, which is in excess of the limit prescribed in subsection (1) remains unutilised for the specified industrial purpose for a specified period or such extended period as may be allowed by the State Government, or is directed to any other purpose, the transfer in respect of such excess land shall for the purpose of section 163 be deemed to have been made in contravention of the provisions of this section Explanation I. For the purpose of this section a family shall include the transferee himself, his wife or husband, as the case may be, and his minor children. Explanation IIIn this section ''specified'' means specified in a

certificate granted by the Director of Industries, Uttar Pradesh, in the prescribed form.

157A Restrictions on transfer of land by members of Scheduled Tribes(1) Without prejudice to the restrictions contained in Sections 153 to 157, no bhumidhar, sirdar or asami belonging to a Scheduled Tribe shall have the right to transfer by way of sale, gift, mortgage or lease any land to a person not belonging to a Scheduled Tribe except with the previous approval of the Collector.

(2) On an application being given in that behalf in the prescribed manner, the Collector shall make such inquiries as may be prescribed.

Explanation.In this Chapter, the expression ''Scheduled Tribe'' means a Scheduled Tribe specified in an order made by President under clause (1) of Article 342 of the Constitution.

The provisions contained in Section 154 referred to above indicate the restrictions on the transfer by a Bhumidhar. Similarly Section 157A of the Act also indicate the restrictions on transfer of land by members of Scheduled Tribes. The land which becomes vacant on the decree being passed in a suit contemplated under Section 163 of the Act can be only that land or holding or its part as the case may be which is affected by the transfer to the extent of violation of the restrictions. Section 154(1) of the Act provides that the transfer in respect of land which together with the land if any held by the transferee himself together with his family in the aggregate exceeds 121/2 acres in Uttar Pradesh will be affected by the restriction to the extent of excess to that limit. It is only this extent of land which can become vacant on a suit filed by the Gaon Sabha contemplated under Section 163 of the Act after the ejectment of the transferee from that holding or part thereof as the case may be. There may be a case where the entire subjectmatter of transfer may be in contravention of the restriction. There may, however, be a case where a part of the subjectmatter of transfer may be in contravention of the restrictions. However, in either case the decree passed in the suit under Section 163 of the Act could only be in respect of the part of the subjectmatter of transfer which is found to be in contravention of the restrictions imposed under Sections 154 or 157A of the Act. The Assistant Collector 1st class in the circumstances indicated above cannot be deemed to have been vested with any jurisdiction whatsoever to pass a decree which may have the effect of disturbing an existing entry in the revenue record of rights showing a person as a bhumidhar of a holding by ordering the said holding to be recorded in favour of another person showing him to be a bhumidhar thereof as the only jurisdiction with which the Assistant Collector''s stands vested under the relevant provisions is to pass an order of eviction or ejectment of the transferee from the holding Or any part thereof whereupon the land which has been made the subjectmatter of transfer to the extent of contravention of the provisions contained in Sections 154 or 157A of the Act becomes vacant land and under the provisions of the U.P. Zamindari Abolition and Land Reforms Act will have to be deemed to have vested in the Gaon Sabha after the decree of ejectment is executed. The jurisdiction contemplated under Section 163 of the Act can be exercised only in a proceeding initiated by the Gaon Sabha and none else. This proceeding initiated by the Gaon Sabha has to be registered as a suit which has to be tried as a suit. In the circumstances, therefore, considering the legislative intent underlying the provisions indicated hereinabove there can be no justification for treating the proceedings under Section 163 of the Act which is initiated on a regular basis to be a proceeding of a summary nature. Once a suit contemplated under Section 163 of the Act is decided on assuming jurisdiction at the instance of the Gaon Sabha concerned wherein the transferor is also impleaded and the land or holding or part thereof which is the subjectmatter of the transfer is found to be affected by the restrictions contemplated under Sections 154 or 157A of the Act and becomes vacant to the extent of contravention, the decision in the suit will operate as res judicata and the issues already decided cannot be reagitated all over again in any suit by the transferor or the transferee in any subsequent suit contemplated under the U.P. Zamindari Abolition and Land Reforms Act.

23. However, in the present case what I find is that the suit under Section 163 of the Act had not been filed by the Gaon Sabha concerned. Asha Singh the defendant had no locus standi to initiate any proceeding under Section 163 of the Act and the Assistant Collector 1st class could not under the law assume jurisdiction to pass any order affecting the existing entry in the revenue record of rights in favour of the plaintiffs on the basis of the proceeding initiated by Asha Singh and direct for the recording of his name as a bhumidhar in the revenue record of rights expunging the entry standing in favour of plaintiffs. In any view of the matter the ultimate order which the Assistant Collector 1st Class could pass in a regularly instituted proceeding under Section 163 of the Act could only be a decree of ejectment of the transferee from the land or holding found to have been transferred contrary to the restrictions indicated hereinabove and correct the revenue record directing for the land in dispute being recorded as vesting in the Gaon Sabha. The Assistant Collector could not pass an order or decree for recording any land or holding in the proceedings under Section 163 of the Act in the name of any person other than Gaon Sabha as a vacant land vesting in it. In the circumstances, therefore, the entire proceedings under Section 163 read with Section 164 of the Act initiated by Asha Singh culminating in the order dated 7.5.65 was clearly without jurisdiction, null and void.

24. An order passed without jurisdiction being void it was not necessary for taking any proceeding for obtaining any relief against the same as such order has to be treated as non est. Non est orders can be ignored at any stage. Obviously, therefore, such a decision could not be deemed to operate as res judicata.

25. Further, since such an order is a nullity every proceeding which is founded upon it is also bad and incurably bad.

26. In the aforesaid view of the matter I am of the considered opinion that the

order dated 7.5.65 could not be held by any stretch of imagination to have extinguished the rights of the recorded tenureholders as held by the Board of Revenue and further that the said order could be disregarded not on the ground that it was of a summary nature but as it was clearly without jurisdiction.

27. Learned counsel for the respondents has next contended that the revenue court could not ignore the finding of the criminal court upholding the claim of Asha Singh of his being in possession of the land in dispute and the finding of the criminal court in the proceedings under Section 145 of the Cr. P.C. ought to have been accepted.

28. The submission of the learned counsel for the respondents is without any merit and is not at all acceptable. The orders and the findings of the criminal courts in the proceedings under Section 145, Cr. P.C. are always subject to the findings of the competent court of civil/revenue jurisdiction. In the present case it is not in dispute that during the proceedings under Section 145, Cr. P.C. The property in dispute had been attached. Even if it is assumed that on the basis of the order of release passed by the criminal court the defendant had been put in possession which fact has not been found by the appellate court to be correct, yet such delivery of possession could not come in the way of the revenue court or civil court of competent jurisdiction to arrive at an independent conclusion in regard to the question of possession. The trial court as well as the appellate court after appraisal of evidence on the record came to a defintie conclusion that the defendant had failed to establish that he was in continuous possession of the land in dispute as claimed. The documents dated 24.4.63 and 24.8.63 were found to be forged, fictitious interpolated and manipulated. The finding recorded by the trial Court as affirmed by the lower appellate court on the question of possession which does nto appear to be vitiated in law could not be interfered with by the Board of Revenue while exercising the jurisdiction envisaged under Section 100, C.P.C.

29. In this case the suit had been filed by the plaintiffs in the year 1969. It was decreed in the year 1973 by the trial court and the decree was upheld in first appeal in the year 1974. The second appeal filed in the year 1974 remained pending for about seven years. Considering the facts established on record, the circumstances of the case and my conclusions indicated herein above, I am of the view that it is not necessary at all to remit the case to the Board of Revenue for deciding the second appeal afresh as it will not serve any useful purpose and such an order of remand would amount to just an empty formality which must be eschewed to secure and advance the cause of justice.

30. In the result, the writ petition succeeds. The impugned judgment and decree passed by the Board of Revenue dated 7.8.81, a true copy of which has been filed as Annexure 3 is quashed. The second appeal filed by the defendant giving rise to the impugned decree shall stand dismissed.

31. There shall, however, be no order as to costs.

