
(1973) 02 AHC CK 0004

In the Allahabad High Court

Case No : C.M. Writ No. 4292 of 1969 connected with C.M. Writ No. 302 of 1970

Bhagwati Singh

APPELLANT

Vs

Board of Revenue, at Allahabad and others

RESPONDENT

Date of Decision : 21-02-1973

Acts Referred:

Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27(3)

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

Citation : (1973) 43 AWR 600

Hon'ble Judges : Satish Chandra, J;N.D. Ojha, J

Bench : Division Bench

Judgement

Satish Chandra, J.—A learned single Judge has referred the following question of law to a Bench:

Whether the Respondents became Adhivasis of the land in dispute under the latter part of Clause (b) of Section 20 ZA and LR Act?

2. It appears that the Respondents trespassed on the land in dispute on or about 12-12-1939. The land-holder instituted a suit for the ejectment of the Respondents u/s 180 of the U.P. Tenancy Act on 7-2-1942. The suit was decreed on 28-3-1943. In execution of the decree the landholder took possession on 21-5-1943. After coming into force of the U.P. Tenancy (Amendment) Act, 1947 (hereinafter referred to as the Act of 1947) the Respondents made an application for being reinstated u/s 27(1)(a) thereof. The application was at first dismissed at the trial stage but in appeal the Collector allowed it on 28-3-1951 by passing an order of reinstatement. Since in the meantime the Petitioner had been inducted as tenant by the land-holder, the Collector declared him to be subtenant entitled to remain in possession for three years. The question is whether the Respondents became adhivasis u/s 20(b) of the UPZA and LR Act hereinafter referred to as the Act. Section 20 of the Act so far as is relevant for the purposes of the present case reads as under:

20. Every person who--

(a)...(b) was recorded as occupant,--

(i) of any land other than grove land or land to which Section 16 applies or land referred to in the proviso to Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947 in the khasra or khatauni of 1356F, prepared Under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof Under Clause (c) of Sub-section (1) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947, or

(ii) shall, unless he has become a bhumidhar of the land Under Sub-section (2) of Section 18 or an asami Under Clause (h) of Section 21, be called adhivasi of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

Explanation I--"Where a person referred to in Clause (b) was evicted from the land after 30-6-1948, he shall notwithstanding anything in any order or decree, be deemed to be a person entitled to regain possession of the land.

3 On a plain reading of the Section it is apparent that the first part of Clause (b) (i) applies to land other than three categories of land:

(1) grove land; (2) land to which Section 16 applies; and (3) land referred to in proviso to Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947.

4. A person recorded in 1356F gets, Adhivasi rights if the land on which he was recorded is land other than of these three categories. In the second part, which refers to Clause (c) of Sub-section (1) of Section 27 of the 1947 Act a reference has been made to land by using the word "thereof.

5. The principal controversy raised before the learned Single Judge and upon which he referred the question mentioned above was in regard to the interpretation of the word thereof. The word thereof in the phrase entitled to regain possession thereof obviously refers to land. The question is to which land this word refers to Whether it refers to land to which first part of Section (b)(i) applies or to land referred to in Section 27(1)(c) of the Act of 1947. The word thereof means "of that" namely, referred to earlier. In Clause (b)(i) of Section 20 of the Act, there is no reference before the word "thereof to land referred to in Section 27(1)(c) of the Act of 1947. Though the two parts of Clause (b)(i) of the Act deal with different situations yet they have been enacted as parts of the same clause. In the first part it refers to land other than the three categories of land mentioned above and in the latter part it refers to land by using the word "thereof which obviously refers to the same category of land as contemplated by the first part. If the Legislature had a contrary intention it would not have used the word "thereof and in its place would have at the end used the words "of land referred to therein". This clause would have then read:

Who was on the date immediately, preceding the date of vesting entitled to

regain possession Under Clause (c) of Sub-section (1) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947 of land referred to therein.

6. The matter can be looked at from another point of view. A sub-tenant referred to in the proviso to Sub-section (8) of Section 27 of the Act of 1947 becomes an asami of the land occupied or held by him on the date immediately preceding the date of vesting u/s 21(1)(c) of the Act notwithstanding anything contained in Section 20. Section 200 of the Act makes him immune from ejectment except as provided in this Act. The provision in this behalf is contained in Section 202 of the Act under which he has been made liable to ejectment on the suit of the landholder and if there is no land-holder on the suit of the Gaon Sabha, if he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year. The Legislature wanted such a person to be ejected only by the land-holder or the Gaon Sabha as the case may be.

7. Land-holder in view of Section 3(26) of the Act has the meaning assigned to this word in the U.P. Tenancy Act and in the context of a sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of the Act of 1947 would mean the person who had let out the land before 1-9-1946 in the contingency contemplated by the said proviso to the person who becomes a sub-tenant by virtue of the proviso. The right to eject such a sub-tenant was not intended to be given to any person other than the land-holder or the Gaon" Sabha. The right to file a suit for ejectment u/s 209 of the Act was given to one of the three tenure-holders recognised by the Act, namely, Bhumidhar, Sirdar or Asami but the right to file a suit u/s 202 was not given to even these tenure-holders. It was specifically reserved for the land-holder. This would be clear on a plain reading of the phraseology of the two sections. A suit u/s 202 could therefore be filed only by such person who was landholder irrespective of the nomenclature which may have been given to him under the Act. The right to file a suit under this section was not only not given to the three tenure-holders under the Act but also not to an Adhivasi. It was for this reason that the land occupied by a sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of the Act of 1947 was excluded from the first part of Section 20(b)(i) specifically and from its second part by using the word thereof. For otherwise the person on whom Section 20(b) (i) of the Act conferred Adhivasi rights would have by virtue of his being entitled to regain possession under the said section become, as a necessary corollary, entitled to eject such a subtenant and that too forthwith irrespective of the fact whether the term for which the sub-tenant was holding the land had expired or not or the other requirements of Section 202 had been fulfilled or not the restrictions placed by Section 202 being applicable only to a suit filed by the land-holder under the said section and not to a proceeding initiated by an Adhivasi for recovery of possession. It would also create an anomalous situation wherein the right to eject the sub-tenant would stand confirmed simultaneously on two persons--on the Adhivasi u/s 20 and on the land-holder u/s 202 of the Act. Here this anomaly would be glaring as the Respondents are admittedly not the land-

holder of the sup-tenant referred to in the proviso to Sub-section (3) of Section 27 of the Act of 1947. This corroborates the view that the word "thereof in the second part of Section 20(b)(i) refers to that very land which falls within the purview of its first part and no Adhivasi rights were intended to be granted either under the first part or under the second part of Section 20(b) of the Act in respect of a land held by a subtenant referred to in the proviso to Sub-section (3) of Section 27 of the Act of 1947.

8. So far as the present case is concerned there yet another ground on which the Respondents cannot be held to have become Adhivasis u/s 20(b)(i) of the Act. As already pointed out, on an application made by them u/s 27(1)(c) of the Act of 1947, an order was passed by the Collator on 28-3-1951 for their reinstatement and the Petitioner was declared to be a sub-tenant entitled to remain in possession for a period of three years. This period, had not expired till the date immediately preceding the date of vesting and was a fact to expire on 28-3-1954. As such the Petitioner was entitled to remain in possession on the date immediately preceding the date of vesting and the Respondents obviously could not be deemed to be the persons who were, entitled to regain possession on the said date. Whether they had a right to regain possession at any subsequent stage or not would be immaterial because of the specific words "who was on the date immediately preceding the date of vesting entitled to regain possession thereof used in Section 20(b)(i) of the Act.

9. We would, therefore, answer the question referred by saying that the Respondents did not become Adhivasis u/s 20(b)(i) of the UPZA and LR Act. Let the papers be laid before an appropriate single Judge for disposal of the writ petition with this answer and opinion.