

(1995) 09 SC CK 0030

In the Supreme Court Of India

Case No : Civil Appeal No. 3689 of 1984

Brighu Nath Sahay Singh and Others

APPELLANT

Vs

Md. Khalilur Rahman and Others

RESPONDENT

Date of Decision : 04-09-1995

Acts Referred:

Bihar Land Reforms Act, 1950 — Section 2, 4, 6

Citation : (1995) 9 JT 601 : (1996) 1 PLJR 65 : (1995) 5 SCALE 356 : (1995) 5 SCC 687 : (1995) 3 SCR 315 Supp

Hon'ble Judges : K. Ramaswamy, J;B. L. Hansaria, J

Bench : Division Bench

Advocate : Tapas Ray and D.P. Mukherjee, Adv B.B. Singh, for the Appellant;

Final Decision : Dismissed

Judgement

1. Substitution allowed.

2. This appeal by special leave arises from the judgment and decree dated November 7, 1983 of the Patna High Court made in A.A.D. No. 132 of 1973. The appellants claimed themselves to be the proprietors of the land of 4 Bighas, 15 Kathas 10 Dhurs of an old Tauzi No. 1298 [New Tauzi No. 8655] situate in Saraunja village in District Begusarai in Bihar. Their plea was that they had title to and were in possession of the said land and that the respondents have no right to the possession of the said land. The Trial Court decreed the suit for possession holding that they had the title. On appeal, it was confirmed but in the second appeal, the High Court reversed the same holding that after the Bihar Land Reforms Act, 1950 [for short, 'the Act'] had come into force on September 25, 1950, the appellants had no title to the property and, consequently, they cannot recover possession from the respondents. Thus, this appeal by special leave.

3. Pursuant to the notice issued by this Court on Decemblers, 1994, Shri B.B. Singh, learned Counsel for the State, has placed before us the notification issued

by the State Government acquiring the lands in question by publication of the notification u/s 4 of the Act in the Gazette. Consequently, it is clear that the lands in question have been vested in the State free from all encumbrances but subject to the provision of the Act from the date of the notification, viz., January 26, 1955.

4. The question thus arises whether the appellants can claim title to the property and recover possession thereof from the contesting respondents. The effect of the vesting under the Act was considered by this Court in *Labanya Bala Devi (Smt) Vs. State of Bihar Patna Secretariat, Patna and Another*, . It was held that by operation of Section 4 such estates or tenures including the interests of the proprietor in such an estate or tenure and his interests in trees forests, fisheries etc. and all other sairati interests as also his interest in all sub-soil, rights including any rights in mines and minerals etc other than the interests of the raiyats or under-raiyats shall with effect from the date of vesting, vest absolutely in the State free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interests expressly saved by or under the provisions of Section 6 of the Act which provides that "on and from the date of vesting, all lands used for agriculture or horticulture purposes which were in khas possession of an intermediary on the date of such vesting, including land used for agriculture and held in direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock... shall, subject to the provisions of Sections 7-A and 7-B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner."

5. Khas possession has been defined u/s 2(k) of the Act which reads as under:

"Khas possession" with reference to the possession of a proprietor of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure holder by cultivating such lands or carrying on horticultural operations thereon himself with his own stock or by his own servants by hired labour or with hired stock.

6. A reading of Section 2(k) read with Sections 4 and 6 of the Act, clearly envisages that the intermediary must, as on the date of vesting, be in possession of the land used for agricultural purpose or horticulture purpose as a tenure holder by cultivating such land or carrying on horticulture operations thereon by himself with his own stock or by his own servants or by hired labour or with hired stock.

7. In view of the findings recorded by the courts below that the respondents have been in self cultivation of the land, the appellants cannot claim any rights as they were not in khas possession of the lands vested in the State u/s 4 of the

Act. Therefore, the appellants cannot claim to be in Khas possession of the lands in question. As a consequence, they cannot claim any rights in the land. The rights of the appellants, if any, on the date of the vesting, i.e., January 26, 1955, shall cease in them and shall stand vested in the State free from all encumbrances subject to the rights, if any, held by the contesting respondents that would be decided by the Government in an appropriate form.

8. The appeal is accordingly dismissed but without costs.