

(1970) 01 AHC CK 0005

In the Allahabad High Court

Case No : Sp. A. No. 1255 of 1969 connected with Sp. As. No's. 1444, 1210 and 1212 of 1969

Chunni Lal and Others

APPELLANT

Vs

Chief Settlement Commissioner and Others

RESPONDENT

Date of Decision : 27-01-1970

Acts Referred:

Administration of Evacuee Property Act, 1950 — Section 18(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 4

Citation : (1970) 40 AWR 191

Hon'ble Judges : V.G. Oak, J;S.N. Singh, J

Bench : Division Bench

Advocate : V.K.S. Chaudharys, for the Appellant;

Final Decision : Dismissed

Judgement

S.N. Singh, J.—These Special appeals arise out of two writ petitions filed by Chunni Lal Farming Society through Chunni Lal and others and Rajan Farming Society through Chunni Lal and others. The facts giving rise to these special appeals which arise out of the two writ petitions are that one Sami Uddin was the proprietor of village Mujhara Bhaga, Pergana Pooranpur, district Pilibhit. This Sami Uddin migrated to Pakistan and the whole of his Zamindari property was taken over by the Custodian, Evacuee Property. It appears that in April 1952 the Custodian, Evacuee Property, Uttar Pradesh made allotments of extensive area of plots measuring about 300 acres in one case and about 216 acres in another to the Petitioners. These allotments were made in respect of Jungle Khair and Banjar land. After these allotments the Petitioners moved applications before Sri R.P. Singh, the Assistant Custodian who by his order of 1-3-1955 accepted the Petitioners to have become sirdars of the land in dispute. Later on it appears that the Evacuee Department was of the opinion that being merely allottees of the land in dispute the Petitioners could not become sirdars and since they had not conformed to the terms of the allotment by paying the price of land at the rate of Rs. 450/- per standard acre they were liable to ejectment. Having arrived at this

conclusion the Evacuee Department took proceedings for the ejectment of the Petitioners. Thereafter the Petitioners filed writ petitions in this Court in 1958. Later on according to the case of the Petitioners since some compromise had been arrived at between the Petitioners and the Evacuee Department they withdrew their writ petitions and this Court by an order dated 27-1-1961 permitted the writ petitions to be withdrawn. Again it appears that the Evacuee Department changed its stand and threatened to evict the Petitioners under the provisions of the Administration of the Evacuee Property Act which necessitated the filing of the two writ petitions.

2. By these two writ petitions the Petitioners prayed for a writ of mandamus or any other suitable writ or order or direction requiring the Appellants of the Sp. A. No. 1210 of 1969 to desist from taking any action under the Administration of Evacuee Property Act, 1950 or otherwise from dispossessing the Petitioners or interfering with their rights over the land in dispute or from taking any action on the basis that the land in dispute was evacuee property. These writ petitions were contested by the Evacuee Department who denied the right of the Petitioners as sirdars and claimed the right to hold and manage the property in dispute. They also denied the possession of the Petitioners over the entire land allotted.

3. Previous to the filing of these two writ petitions some other persons who were also allottees like the Petitioners and who had also been similarly treated by the Evacuee Department came to this Court and filed writ petitions on identical facts with the same prayers as have been made in the two writ petitions out of which these appeals arise. Their writ petitions were dismissed. Whereupon they filed Sp. As. Nos. 520 of 1965 and 528 of 1965--Sardhana Cooperative Farming Society v. Custodian General Evacuee Property and others. These special appeals were allowed by a Division Bench of this Court of which one of us was a member by the order dated 11-5-1967. The Division Bench held that after the abolition of zamindari the Custodian lost whatever right he had acquired under the Administration of Evacuee Property Act in respect of the property in dispute and that the Petitioners of those cases who were in possession by virtue of the allotment order could not be evicted under the provisions of the Evacuee Property Act. The Bench passed an order directing the Respondents in these cases (i.e. the Appellants of the Sp. A. No. 1210 of 1969) not to evict the Petitioners under administrative orders or through the special provisions of the Administration of Evacuee Property Act 1950. It was further ordered that the Respondents of those cases would be at liberty to file suits against the Petitioners for their eviction in competent civil or revenue courts.

4. When these writ petitions came up for hearing before a learned Single Judge of this Court he felt bound by the above Division Bench case and following the decision of the Division Bench allowed the two writ petitions and directed the Appellants of Sp. A. No. 1210 of 1969 not to evict the Petitioners under the Administrative orders or through the special provisions of the Administration of

Evacuee Properly Act 1950. The learned Single Judge directed that it was open to the Appellants to file suits against the Petitioners for their eviction in civil or revenue courts as advised.

5. Against the decision of the learned Single Judge appeals Nos. 1210 of 1969 and 1212 of 1969 have been filed by the Chief Settlement Commissioner-cum-Custodian General, Evacuee Property and others on behalf of the Evacuee Department challenging the decision of the learned Single Judge inasmuch as a writ of mandamus has been issued. Special Appeals Nos. 1255 of 1965 and 1444 of 1969 have been filed by the Petitioners aggrieved with the orders of the learned Single Judge by which he permitted the Evacuee Department to file suits against the Petitioners for their eviction in the civil or revenue courts as advised.

6. The two special appeals filed on behalf of the Evacuee Department were admitted on the submission of the learned Solicitor General of India appearing on behalf of the Evacuee Department that the earlier Division Bench case--Sardhana Cooperative Farming Society v. Custodian General Evacuee Property Mussoorie UP and Ors. 1969 AWR 755 required reconsideration.

7. We have heard at great length the learned Solicitor General and Sri N.D. Pant on behalf of the Evacuee Department and Sri V.K.S. Chaudhary learned Counsel for the Petitioners in support of their respective cases. But the learned Solicitor General and Sri Pant have not been able to persuade us to take a different view than that held by the earlier Division Bench. In our opinion the decision of the learned Single Judge should be upheld in its entirety.

8. The learned Solicitor General and Sri Pant on behalf of the Evacuee Department submitted the following points for our consideration:

(1) On the passing of the UP Zamindari Abolition and Land Reforms Act (hereinafter to be called Zamindari Abolition Act) the proprietary right of the evacuee which vested in the custodian under the Administration of Evacuee Property Act (hereinafter which will be referred to as Evacuee Property Act) did not vest in the State of UP and the right of the Custodian to manage that property remained intact.

(2) Even if the proprietary right vested in the State of UP the control and right of management of the Custodian in respect of the proprietary land was retained by the Custodian by virtue of Section 18(2) of the Evacuee Property Act read with Schedule 5 appended to the Zamindari Abolition Act.

(3) Before granting relief to the Petitioners the Petitioners right should have been determined rather than that of the Appellants. In case the Petitioners right and title which is a disputed one is not established or could not be established the writ petitions should have been dismissed.

9. We now proceed to discuss these points:

Re : 2--10. Administration of Evacuee Property Act came in force in the year

1950. By virtue of the provisions of this Act zamindari property as well as non zamindari property of an evacuee vested in the Custodian. After this Act Zamindari Abolition Act was passed. This Act extended to the whole of UP except the areas mentioned in Sub-clause (2) of section (?) of the Zamindari Abolition Act. By Section 2, Zamindari Abolition Act was made applicable to certain areas with certain modifications. At the time of the passing of the Zamindari Abolition Act no exception was made with regard to the applicability of this Act to the evacuee property. By Act XX of 1954 Ch. II was introduced in the Zamindari Abolition Act which made the provisions of the Zamindari Abolition Act applicable to the evacuee property subject to the modifications set out in Schedule 5 of the Zamindari Abolition Act with the result that the principal Zamindari Abolition Act read with Schedule 5 of that-Act applied to the evacuee property. By virtue of Section 4 of the Zamindari Abolition Act all estates situate in UP vested in the State. By virtue of Section 6 Sub-clause (a) all rights, title and interests of the intermediaries in every estate including land cultivable or barren, grove land, forest...ceased and vested in the State of UP free from all encumbrances. By virtue of Section 6 Sub-clause (b) all grants and confirmation of title of or to land in any estate so acquired...determined.

11. It is contended on behalf of the Evacuee Department that although the rights and interests of the intermediaries vested in the State of UP the right of the Custodian was not taken away and was not affected by Section 6 of the ZA Act. It was also contended that Custodian was a statutory authority and not an intermediary. So his right and interest remained intact and could not vest in the State of UP. We find it difficult to accept this submission.

12. It has rightly been contended by Sri V.K.S. Chaudhary learned Counsel for the Petitioners that on the passing of the ZA Act by virtue of Sections 4 and 6 the proprietary interest of the Zamindari even in evacuee property vested in the State of UP whether before the passing of the Act it was owned by the Evacuee or the Custodian. The position of the Custodian vis-a-vis the evacuee property is either that of an owner or a manager.

13. Our attention was drawn to the definitions of the words "intermediary" and "proprietor" which read as follows:

"Intermediary" with reference to any estate means a proprietor, under-proprietor, sub-proprietor, Thekedar, permanent lessee in Avadh and permanent tenure-holder of such estate or part thereof.

"Proprietor" means as respects an estate a person owing,, whether in trust or for his own benefit, the estate and includes the heirs and successors-in-interest of a proprietor.

14. At the time of the passing of the ZA Act if Sami Uddin is held to own the zamindari property in view of the two definitions mentioned above he will be the intermediary and his interest vested in the State of Uttar Pradesh. If the interest of Sami Uddin, the evacuee which was Under the management of the Custodian

disappeared there was nothing left for the Custodian to manage. He was only entitled to receive compensation in lieu of the zamindari property from the State of Uttar Pradesh. In case under the Evacuee Property Act the Custodian is held to be the owner of the zamindari property Custodian will be deemed to be intermediary in view of the above two definitions and his interest in the proprietary right will be deemed to have vested in the State of Uttar Pradesh. In either view of the matter the zamindari interest which once belonged either to Sami Uddin or to the Custodian vested in the State of Uttar Pradesh and the zamindari interest ceased to be evacuee property from the date of vesting. The above is the affected of Sections 4 and 6 of the ZA Act. There is nothing in Schedule 5 which prevents the consequences following from Sections 4 and 6 of the ZA Act. It is true that Custodian is a statutory authority and exercises control over the evacuee property. But this control can be exercised only in respect of evacuee property so long it subsisted. On the extinction of the evacuee property this control automatically disappeared.

Re : 2--IS. With reference to this point it was argued on behalf of the Evacuee Department that once an eya cuee land has been allotted by the Custodian to any person or has been leased out by the Custodian to any person the Custodian is entitled to exercise his right over that property notwithstanding the passing of the ZA Act. Reference was made to Section 18 Sub-clause (2) of the Evacuee Property Act and Section 3 of Schedule 5 appended to the ZA Act. A literal interpretation of these two sections does lend support to the argument. But again Sri V.K.S. Chaudhary is right when he submits that those two provisions cannot be read in isolation of Sections 4 and 6 of the ZA Act. It is rightly contended that these provisions will only apply to the property which after the passing of the ZA Act survived as evacuee property. Before the passing of ZA Act the agricultural properties which belonged to the evacuees and vested in the Custodian can be classed as follows:

- (1) Zamindari interest of the evacuees.
- (2) Sir and Khudkasht having the character of sir.
- (3) Ordinary Khudkasht of evacuees.
- (4) Groves of evacuee zamindars.
- (5) Tenancy Khatas held by evacuees.
- (6) Evacuee tenants' groves.

On the passing of the Zamindari Abolition Act the first class disappeared but the remaining five classes survived and continued to be evacuee property. It is in respect of allotments and leases of the last five classes that Section 18(2) of the Evacuee Property Act and Section 3 of Schedule 5 of the Zamindari Abolition Act apply. These two sections have to be interpreted harmoniously along with Sections 4 and 6 of the Zamindari Abolition Act. Thus interpreted it is clear that the Custodian lost all interest so far as the zamindari land is concerned. We have

also examined all the eight sections of Schedule 5 and we are satisfied that they are applicable to the cultivatory or non-proprietary right which an evacuee possessed before the passing of the Zamindari Abolition Act. There is nothing in those sections which would show that the control of the Custodian was retained in respect of zamindari right in the land which before the date of vesting was owned by the evacuee, or the Custodian. The land in dispute was Ban jar or forest land. On the passing of the Zamindari Abolition Act such land vested in the State of Uttar Pradesh. No right was given in such land to the intermediary as is clear from Chapter II of the Zamindari Abolition Act. In this view of the matter it cannot be said that the Custodian retained control over this kind of property after the passing of the Zamindari Abolition Act.

Re : 3--16. It was contended for the Evacuee Department that the Petitioners being merely allottees were only licensees and no right could accrue in their favour under the Zamindari Abolition Act and certain authorities were cited to show that their position will be that of licensees. It was further contended that this case can be distinguished from the previous Division Bench case inasmuch as in that case the possession of the allottees was admitted to the Department, whereas in the present case the Department does not admit the possession of the Petitioners. As against this submission the Petitioners claimed to be sirdars of the property in dispute by virtue of their continued possession and payment of land revenue to the State of Uttar Pradesh. The question of possession and acquisition of right of the Petitioners is disputed and the State of Uttar Pradesh is not a party so we do not consider it proper or advisable to embark on an enquiry about the right and title of the Petitioners. Suffice it to say that on the admitted case of the parties the Petitioners are the allottees of the property in dispute and they are entitled to seek protection of this Court from being illegally evicted from the land in dispute which had once been validly allotted to them. Even though their possession over the entire land allotted is not admitted still their possession over at least a portion of it is admitted to the Evacuee Department. We see no difference between the previous cases and this case in this respect. Moreover, in Northern India Caterers Private Ltd. and Another Vs. State of Punjab and Another, the Petitioners who were lessees and whose term of lease had expired filed a petition Under Article 226 of the Constitution praying that the State of Punjab be directed not to evict them under the impugned Act which according to them was void being violative of Articles 14 and 19 of the Constitution. The Supreme Court entertained the writ petition and granted relief to the Petitioners.

17. In view of the above discussion we are of the opinion that the Petitioners could maintain the writ petitions and the learned Single Judge has rightly allowed the writ petitions.

18. We have also considered the appeals filed by Sri V.K.S. Chaudhary on behalf of the Petitioners. After hearing Sri Chaudhary we are of opinion that the order passed by the learned Single Judge needs no variation. In the present case the Petitioner's file has not been decided and the possibility of a settlement between

the State Government and the Evacuee Department cannot be ruled out, as such the order passed by the learned Single Judge is an appropriate order in conformity with the previous Division Bench Case and calls for no variation.

19. In the result all the four appeals fail and are hereby dismissed but without any order as to costs.