

(1981) 01 AHC CK 0088

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 122 of 1971

Dwarika Singh

APPELLANT

Vs

Deputy Director of Consolidation and Others

RESPONDENT

Date of Decision : 07-01-1981

Acts Referred:

North Western Provinces Tenancy Act, 1901 — Section 29, 29(7)

Uttar Pradesh Tenancy Act, 1939 — Section 3, 3(11), 40, 41(2)

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 10(2), 154, 157, 157(1), 16

Citation : (1981) AWC 213

Hon'ble Judges : Satish Chandra, C.J.; R.M. Sahai, J.; R.B. Misra, J.; K.M. Dayal, J.; Gopi Nath, J

Bench : Full Bench

Advocate : S.P. Srivastava, for the Appellant; K.G. Srivastava, for the Respondent

Final Decision : Disposed Of

Judgement

Satish Chandra, C. J.

1. In view of the majority opinion our answer to the question referred is:

The benefit of Section 21(1)(h) of the UP ZA and LR Act is available to the land-holder on the date of vesting, if the same land-holder or his predecessor existing on the material dates was a person or persons belonging to one or more of the classes mentioned in Sub-section (1) of Section 157,

Let the papers of the case be remitted to the referring Judge with this opinion and answer.

Satish Chandra, C. J.

1. A learned Single Judge of this Court felt that the three Judge Full Bench decision in Smt. Maya v. Raja Dulajji, 1970 AWR 272 required reconsideration. He has referred the involved question for consideration by a larger Full Bench.

That is how this matter has come up before this larger Bench.

The question of law referred for our consideration is:

Whether the benefit of Section 21(1)(h) of the UP ZA and LR Act is available to successor-in-interest of a landholder who was entitled to the benefit of Section 21(l)(h) of the Act, and, if so, in what circumstances

2. The material and relevant findings of the consolidation authorities are that the plots in dispute were sir of one Ganga Prasad. He died and was succeeded by his widow Kaushal Kuer. Kaushal Kuer sublet different plots to Respondents 4 to 18. Kaushal Kuer, after having sublet the plots, died on June 5, 1947. She was succeeded by the present Petitioners. They are not disabled persons.

3. Consolidation proceedings commenced in the village. In the basic year the petitioners' names were recorded. The Respondents filed objections. They claimed that they were entitled to be recorded as Adhivasis/sirdars after expunging the names of the Petitioners. They pleaded that though the plots were sublet to the objectors by a widow, i.e. Smt. Kaushal Kuer, a disabled person within the meaning of Section 157 of the UP ZA and LR Act but since on the date preceding the date of vesting, the present Petitioners were the landholders and they were not disabled persons, Section 21(1)(h) was not applicable. The objectors became Adhivasis u/s 20 of the ZA Act and subsequently they acquired sirdari rights. The objection was repelled by the Consolidation Officer. The objectors appealed. The Settlement Officer found that the subletting was done by the widow. She died on June 5, 1947. The successors were not disabled persons. Clause (h) of Section 21(i) of the ZA Act was not applicable. The objectors became Adhivasis and then sirdars. The Petitioners filed revisions which failed. They have filed the present writ petition.

4. The question whether the objectors opposite-parties are Adhivasis or Asamis depends upon the interpretation of Clause (h) of Section 21(i) of the ZA Act. This clause was introduced in the ZA Act by Amending Act No. 16 of 1953. It was added with retrospective effect from the date of vesting, namely, July 1, 1952.

5. Section 21 dealt with Asmai rights. Clause (h) as introduced by the Amending Act of 1953 ran as follows:

21. Non-occupancy tenants, sub-tenants of grove lands and tenants mortgagees to be Asami. (1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting occupied or held land as

(a) to (g).....

(h) A tenant of sir or land referred to in sub-clause (a) or Clause (i) of the Explanation u/s 16, a sub-tenant or an occupant referred to in Section 20 where the land-holder or if there are more than one land-holder, all of them were persons or person belonging, both on the date of letting and on the date

immediately preceding the date of vesting, to any one or more of the classes mentioned in Sub-section (2) of Section 10 or Clause (e) of Sub-section (I) of Section 157 shall be deemed to be Asami thereof.

Section 21 confers on the classes of persons mentioned in it, a subordinate status, namely, that of an Asami.

6. One of the conditions mentioned in Clause (h) is that the land-holder should belong to one or more of the classes mentioned in Section 10(2) or Clause (e) of Section 157 (1). These Clauses mention various classes of disabled persons namely widow, minor, etc. Clause (h) applied if the land-holder was a disabled person both on the date of letting and on the date immediately preceding the date of vesting, namely June 30, 1952.

7. The Amending Act No. 20 of 1954 retrospectively amended Clause (h). After amendment, Clause (h) of Section 21(1) read as follows:

21. Non occupancy tenants, sub-tenants of grove lands and tenants mortgagees to be Asami. (1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting occupied or held land as :

(a) to (g)...(h) a tenant of sir of land referred to in sub-clause (a) of Clause (i) of the Explanation u/s 16, a sub-tenant referred to in sub-clause (ii) of Clause (a) of Section 20 or an occupant referred to in sub-clause (i) of Clause (b) of the said section where the landholder or if there are more than one landholder, all of them were person or persons belonging :

(a) if the land was let out or occupied prior to the ninth day of April, 1946 both on the date of letting or occupation as the case may be, and on the ninth day of April 1946 and,

(b) if the land was let out or occupied after the ninth day of April, 1946 on the date of letting or occupation to any one or more of the classes mentioned in Sub-section (1) of Section 157 shall be deemed to be an asami thereof.

It will be seen that the dates when the landholder should be a disabled person were changed. Previously the landholder had to be a disabled person on the date of letting and on the date immediately preceding the date of vesting. After the amendment of 1954, the position was different.

8. If the land was let out prior to April 9, 1946 then the landholder was required to be disabled person both on the date of letting and on ninth day of April, 1946. If the land was let out after ninth April, 1946, the landholder had to be a disabled person only on the date of letting or occupation.

9. Section 21 applies to the actual occupant of the land on the date immediately preceding the date of vesting. A person who fulfilled the conditions laid down in the various Clauses of Section 21(1) becomes, on the date of vesting, an Asami. Clause (h) inter alia, laid down the condition that the landholder should be a

disabled person on the given dates.

10. The question arose whether the land-holder who had let out should, in addition, to being a disabled person on the mentioned dates, continue to exist as a landholder on the date of vesting. In *Dulare v. Rajeshwari*, 1966 ALJ 199 and *Hasine Bibi v. Ram Deen*, 1966 AWR 779 it was held that the landholder mentioned in Clause (h) of Section 21(1) is the person who was a disabled landholder on the material dates and continued to be the landholder on the date immediately preceding the date of vesting, though his disability may have ceased on or before the date of vesting. The matter was referred to Full Bench in *Smt. Maya v. Raja Dulajji* (supra). The Full Bench held that in view of the amendments introduced by the Amending Act of 1954 it was clear that the landholder need not be a disabled person on the date of vesting. Section 21(1)(h) would apply even though the disability of the landholder may have ceased on the date of vesting or before, provided he was a disabled person on the material dates. The question which arose for consideration before that Full Bench was whether the landholder or landholders should be the same person or persons both on the date of letting and on the date of vesting or whether Clause (h) would still apply even where they are different persons from the original landholder, in other words, whether the identity of the landholder should continue till the date of vesting.

11. The Full Bench in *Smt. Maya's* case held that the crucial words used in the section are "where the landholder or if there are more than one land holder all of them were person or persons belonging....." It was held that the legislature has used the word "are" in the section which is significant. It is in the present tense and denotes the existence of a certain position of state of affairs obtaining "on the date immediately preceding the date of vesting" which are the opening words of this section. The legislature has also obviously used a past tense verb, namely "were" closely following the preceding verb "are". The words "person or persons belonging" mentioned in the section obviously refer to the person or persons who let out the land and were disabled persons on the material dates. It is manifest that Section 21(1)(h) contemplates the landholder or landholders, satisfying both conditions, the one relating to the present, i. e. the date immediately preceding the date of vesting and the other relating to the past, namely being a disabled landholder who originally let out the land and suffered from a disability on the material dates. Such a combination of attributes is possible only when the identity of the landholder or landholders on the date of letting as well as the date immediately preceding the date of vesting is the same. In case the landholder on the date immediately preceding the date of vesting are different from those who let out the land, the words "all of them" would not bear the correct and consistent meaning unless the words "or their predecessors in interest" are added before "all". Thus, in order to confer the benefit of Section 21(1)(h) on a fresh set of landholders different from the original landholders who let out the land, considerable violence will have to be done to the natural meaning of the words of the section.

12. It was held that the word "are" and the word "them" together with the word "were" in the aforementioned phrase clearly show that the intention vesting the landholder should be the very person who was the landholder on the relevant dates, to earn the benefit of Clause (h) of Section 21(1).

13. It was observed that Section 21(1)(h) can bear the interpretation suggested by the learned Counsel for the Appellant only if we substitute the word "be" for "are" and add the words "Or their predecessors-in-interest" after the words "all of them" in the phrase "all of them were person or persons belonging" occurring in Section 21(1)(h).

14. With great respect, we are unable to agree. The term "landholder" has not been defined in the Act. Section 3 of the Act is the definition section. None of its Clauses defines the term "landholder". Clause (26) provides that words and expressions "landholder....."not defined in this Act and used in the U.P. Tenancy Act, 1939 shall have the meanings assigned to them in that Act. Similarly Clause (27) refers to certain words and expression not defined in this Act and used in the Land Revenue Act, says that they shall have the meanings assigned to them in that Act.

15. The term "landholder" was defined in Clause (11) of Section 3 of the U.P. Tenancy Act, 1939. The first clause of Section 3 is relevant and material. It provides :

3(1) AU words and expression used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise shall be deemed to include the predecessors and successors in right, title or interest of such person.

Clause (11) of Section 3 defines "Landholder" to mean the person to whom rent is, or, but for the contract express or implied would be payable.

16. The land-holder is clearly the possessor of right, title or interest inland. Clause (1) of Section 3 was applicable to a landholder. The term "landholder" included the predecessor and successor in right, title or interest of such person. Thus "the meaning assigned" to the term "landholder" under the U.P. Tenancy Act of 1939 expressly included the predecessor and successor. The term "landholder" in virtue of Clause (26) of Section 3 of the ZA Act shall have the same meaning when used in the ZA Act. In the result, the expression "landholder" used in the ZA. Act shall be deemed to include the predecessors and successor in the right, title and interest of the landholder. In view of this statutory provision, no violence need be done to the meaning of the word "landholder"" occurring in Clause (h) of Section 21(1). In its natural meaning it includes the predecessor or successor. In Smt. Maya's case, the Full Bench observed:

In case of landholders on the date immediately proceeding the date of vesting are different from those who let out the land, the words "all of them" would not

bear a correct and consistent meaning unless the words "or their predecessors-in-interest" are added before "all".

17. The predecessors-in-interest is deemed to be included. It does not have to be added by any process of interpretation. The legislature has done it.

18. The use of the word "are" in the phrase "where the land-holder or if there are more than one landholder all of them were person or persons belonging" is ambiguous. According to a Seven-Judge Full Bench "of this Court in *Mata Badal Pandey v. Board of Revenue, U.P.*, 1974 UPTC 570 where there appears to be some doubt or ambiguity in the authorised text in English language of an Act enacted in Hindi by the Legislature of U.P., then for resolving the ambiguity or doubt and for ascertaining the correct meaning thereof reference can be made to the corresponding Hindi text and reliance placed thereon.

19. In the Hindi version, the phrase used is "jab chetrapati ya yadi ek se adhik chetrapati hon to ve sab". The word "are" does not properly translate the word "hon". The better translation would be "be" or "were". The word "hon" is a past tense verb. If the intention was to use a present tense verb, the appropriate word be "hain" to read "jab chetrapati ya yadi ek se adhik chetrapati hon to ve sab".

20. Further in Hindi version corresponding to the phrase "were person or persons belonging to one or more clause of Section 157(1), the words are "dhara 157 (ci updhara (i) men ullakhit vargo men se kisi ek ya adhik vergo ke antargat rohe hon". Here also the past tense verb "hon" has been used which was correctly translated as "were".

21. To accord with the Hindi version of Clause (h), the correct English translation should be "where the landholder or if there be (or were) more than one landholder all of such person or persons belonging....."

22. The clause standing as it is, uses the word "are" to refer to the plurality of landholder, i. e. more than one landholder. It does not qualify the word "landholder". If the Legislative intent was to signify the present, namely, the situation as obtaining on the date immediately preceding the date of vesting, then the word "land-holder" would also have been qualified by the word "is". But as it is clear from the Hindi version, the legislative Intent was to identify the condition of the land-holder on the material dates to be that of a disabled person. They must be disabled persons on the mentioned dates. If so, Clause (h) would apply. The only qualification which the land-holder has to satisfy related to his being a disabled person, with reference to certain mentioned dates. By the 1954 amendment, the legislature specifically deleted the condition that the land-holder should be a disabled person on the date immediately preceding the date of vesting. The land-holder may or may not be a disabled person on the date of vesting. In either case, Clause (h) would apply, other conditions being there. If the only qualifying condition, namely, of being a disabled person, was neither relevant nor material with reference to the date of vesting, there is no reason to

hold that nevertheless the same person should be the land-holder on the date of letting, April 9, 1946 and the date of vesting.

23. The scheme of Section 21(1)(h) is new and different than the provisions of the previously operating Tenancy Acts. The ? provisions with regard to disabled land-holder of the previous Tenancy Acts hence afford no guidance to a correct interpretation of Clause (h). The thrust of Clause (h) is on the land-holder being a disabled person on the material dates. The factor whether the land-holder who is in existence on the date of vesting was a disabled person on the material dates as well as the aspect whether he himself was the land-holder on the material dates, were both considered by the Legislature to be immaterial and irrelevant. In our view, Smt. Maya's case did not lay down the correct law. Clause (h) will apply where the land-holders on the material dates was a disabled person. The persons who is or are land-holders on the date immediately preceding the date of vesting, need not be the same person or persons who let out the land. They need not be the persons who were the land-holders on the material dates. They need not be disabled person.

24. If the land-holder, on the material dates, was a disabled person (or where more than one land-holder existed on the material dates then all of them were on those dates disabled persons), Clause (h) would apply.

25. Our answer to the question referred is:

The benefit of Section 21(1)(h) of the UP ZA & LR Act is available to the land-holder on the date of vesting, if the same land-holder or his predecessor existing on the material dates was a person or persons belonging to one or more of the classes mentioned in Sub-section (1) of Section 157.

26. Let the papers of the case be remitted to the referring Judge with this opinion and answer.

R.B. Misra, J.

27. I have had the advantage of perusing the judgments prepared by Hon. The Chief Justice and the one prepared by brother Sabal, J. As there is difference of opinion between them, I would like to add a few sentences of my own.

28. The point for consideration in this case is regarding the construction of Section 21(1)(h) of the UP ZA and LR Act (hereinafter referred to as the Act).

29. The material facts have already been given by Hon. The Chief Justice in his judgment and it is no use repeating the facts all over again.

30. Section 21(1)(h) was introduced in 1953. In so far as it is material for the purposes of this case, it reads:

21.(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of visting occupied or held land as

(a) to (g).....

(h) a tenant of sir land referred to in sub-clause (a) of Clause (1) of the explanation u/s 16, a sub-tenant of an occupant, referred to in section 20, where the land holder or if there are more than one land holder, all of them, were person or persons belonging both on the date of letting and on the date immediately preceding the date of vesting to any one or more of the Clauses mentioned in Sub-section (2) of Section 10 or Clause (e) of Sub-section (1) of Section 157 shall be deemed to be asami.

31. New status to the old tenure holders was conferred on the date of vesting, i. e. on 1st July, 1952 by the Act. Section 18 conferred the rights of a bhumidhar. Section 19 conferred the rights of a sirdar. Section 20 conferred the rights of an adhivasi and Section 21 conferred the rights of an asami.

32. In the present case, we are concerned with the conferment of asami right u/s 21(1)(h) of the Act. A bare perusal of the section shows that it overrides other provisions of the Act, including Section 20. In order to get asami rights, the following conditions are necessary:

The person occupying the land should be either-- (i) a tenant of sir, as contemplated by sub-clause (a) of Clause (1) of the Explanation u/s 16, (ii) a sub-tenant or occupant referred to in Section 20(iii) and the land holder or if there are more than one land holder all of them were disabled persons as contemplated by Sub-section (2) of Section 10 or Clause (c) of Section 157 on the date of letting and on the date immediately preceding the date of vesting.

33. According to this section, the land holder should be disabled on two dates i. e. on the date of letting and on the date immediately preceding the date of vesting.

34. This Section was, however, amended by Amending Act No. 20 of 1952. The amended Section reads:

21(1). Notwithstanding anything contained in the Act, any person who, on the date immediately preceding the date of vesting occupied or held land as a tenant of sir or land referred to in sub-clause (a) of Clause (1) of Explanation u/s 16, a sub-tenant referred to in sub-clause (ii) of Clause (a) of Section 20 or an occupant referred to in sub-clause (1) of Clause (b) of the said section where the land holder or if there are more than one land holder, all of them were person or persons belonging (a) If the land was let out or occupied prior to the 9th April, 1946, both on the date of letting or occupation, as the case may be, and on the 9th day of April, 1946.

35. The only change brought in by the Amending Act No. 20 of 1954 was that in order to get the benefit of section 21(1)(h), the land holder or if there are more than one land holder, all of them were disabled on the date of letting or occupation and on the 9th April, 1946 if the letting or occupation had been done before 9th April, 1946. Disability on the date immediately preceding the date of vesting was done away with.

36. A dispute arose as to whether Section 21(I)(h) conferred a personal benefit to a land-holder who was a disabled person on the two relevant dates and who continued to exist on the date immediately preceding the date of vesting. In other words, whether the identity of the disabled land-holder should continue upto the date immediately preceding the date of vesting in order to get the benefit of Section 21(1)(h) of the Act.

37. This section came up for consideration in *Dulare v. Rajeshwari*, 1966 ALJ 199 and *Hasina Bibi v. Ram Deen*, 1966 AWR 779. In these cases, it was held that the land-holder mentioned in Clause (h) of Section 21(I) is the person who was disabled land-holder on the material dates and continued to be the land-holder on the date immediately preceding the date of vesting though his disability may have ceased on or before the date of vesting.

38. On account of the apparent conflict in the aforesaid cases, the question was referred to a Full Bench in *Smt. Maya v. Raja Ram Dulajjl (Supra)*. The Full Bench, however, found no real conflict in the decisions of the two cases and held that in view of amended section, the land holder should be disabled person on the material dates and not on the "date immediately preceding the date of vesting. It, however, went on further to hold that on the date of vesting, the land holder should be the very same person who was the land holder on the relevant dates i.e. on the date of the letting or occupation and on 9th April, 1946. In other words, the identity of the land holder should continue to be the same on the date of vesting.

39. The reasons which weighed with the Full Bench for holding that the identity of the land holder should continue to be the same on the date of holding are as follows:

(i) The wordings of Section 21(1)(h) indicate that the Legislature intended to confer a personal protection on the disabled tenure holder letting out his or her land.

(ii) The natural and grammatical meaning of Section 21(1)(h) is consistent only with the interpretation that the land holder on the date of vesting must be the same person who let out the land and suffered from disability on the date of letting and also on the 9th April, 1946 in case the letting is before that date.

(iii) In case the land holders on the date immediately preceding the date of vesting are different from those who let out the land, the words "all of them" would not bear a correct and consistent meaning unless the words "Or their predecessor-in-interest" are added before "all".

(iv) In order to confer the benefit of Section 21(1)(h) on a fresh set of landholders, different from the original land holder who let out the land, considerable violence will have to be done to the natural meaning of the words of the section.

(v) A historical survey of the parallel provision contained in the preceding

tenancy law also warrants the interpretation made by the Full Bench viz. Section 29(7) of the Agra Tenancy Act, 1926 and Section 41(2) of the U.P. Tenancy Act, 1939. Protection was granted to the very individual who let out the land as a disabled land holder and the protection ceased to be available when the identity or personality of that land holder changed vide Section 29(7) of the Agra Tenancy Act and Section 41(2) of the U.P. Tenancy Act.

With profound respect of the opinion of the Full Bench, some of the reasons, which weighed with them does not bear scrutiny.

40. The first four reason, referred to above, are based on the wordings of Section 21(1)(h). If the Full Bench was alive that the term "land holder" is a defined term and includes within its fold the predecessor-in-interest also, it might not have come to the conclusion that it did. It will be apparent from the observations made by the Full Bench itself. It observed "In case the landholders on the date immediately preceding the date of vesting are different from those who let out the land, the words "all of them" would not have been a correct and consistent meaning unless the words "or their predecessor-in-interest" are added before "all"." The aforesaid observation, undisputedly, indicates that the Full Bench took the view only because the definition of the term "land holder" as given in the U.P. Tenancy Act, which has been adopted in the UP ZA and LR Act, was not brought to the notice of the Full Bench.

41. Section 3(26) of the UP ZA and LR Act provides words and expressions, land holder, permanent tenure holder, etc. not defined in this Act and used in the UP Tenancy Act, 1939 shall have the meaning assigned to them in that Act. Section 3(11) of the UP Tenancy Act, 1939 defines land holder. It reads:

3(11) "land holder" means the person to whom rent is or, but for a contract express or implied, would be payable, but except in Chapter VII and Chapter XIII does not include an assignee of rent or a person who has lost the proprietary or other interest by virtue of which rent became payable to him.

Section 3(1) of the UP tenancy Act provides:

3. In this Act, unless there is something repugnant in the subject or context:

(1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors in right, title or interest of such person.

42. The provisions were not brought to the notice of the Full Bench and, therefore, the Full Bench took the view that it did in utter oblivion of these provisions. This is evident from the observation of the Full Bench itself. The Full Bench observed:

In case the land holder on the date immediately preceding the date of vesting are different from those who let out the land, the words "all of them" would not bear a correct and consistent meaning unless the words "or their predecessor-in-

interest" are added before "air.

43. In fact, there is no need to add the words "or their predecessor-in-interest". They are already implicit in the word "land holder" which is a defined term.

44. It is undisputed that the disability of the land holder should be only on the date of letting or occupation and on 9th April, 1946 and not on the date immediately preceding the date of vesting. If "B" is the land holder on the date of vesting and his predecessor "A" was the disabled land holder on the relevant date i.e. on the date of letting or occupation and on 9th April, 1946 the requirements of Section 21(1)(h) are fulfilled if the term "land holder" is deemed to include his predecessor also.

45. In interpreting a provision created by legal fiction, the Court has to ascertain for what purpose the fiction is created and after ascertaining this, the Court is to assume all those facts and circumstances which are incidental or inevitable corollaries to the giving effect to the fiction but in so construing the fiction is not to be extended beyond the purpose for which it is created. After ascertaining the purpose, full effect must be given to the statutory fiction and it should be carried to its logical conclusion.

In the of quoted passage, Lord Asquith stated:

If you are bidden to treat on imaginary state of affairs as real, you must surely, unless prohibited from doing, so also imagine as real the consequence and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. The statute says that you must imagine a certain state of affairs, it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs.

46. The purpose of the deeming clause in Section 3(i) of the U.P. Tenancy Act is that the rights and liability of the title holder will equally apply to his predecessor-in-interest.

47. In this view of the matter, if the term "landholder" is deemed to include the predecessor-in-interest there is no escape from the conclusion that identity of the same landholder is not essential on the date of vesting. The words of the Section 21(1)(h) do not warrant such a conclusion.

48. The first and primary Rule of construction is that the intention of the Legislature must be found in the words used by the Legislature itself. The question is not what may be supposed to have been intended but what has been said. If the words have plain meaning, the Courts are not to busy themselves with supposed intention or with the policy underlying the law.

49. Much emphasis was laid on the use of the words "are" and "were" in Clause (h) of Section 21(1) of the Act. The material portion reads:

Where the landholder or if there "are" more than one landholder, all of them

"were" disabled persons on material dates.

50. It was said that the use of the word "are", in the present tense shows that the disabled landholder on the relevant dates should continue to be the same on the date of vesting. There again appears to be a fallacy. If once it is accepted that the term "landholder" includes predecessor-in-interest also, it must be read in that sense in Section 21(1)(h) also. Read in that light, there is no warrant for the conclusion that the same disabled landholders on the relevant dates must continue to exist on the date of vesting.

51. Besides the word "are" used in Clause (h) of Section 21(1) of the Act is in sense of (he). This is evident from the Hindi version of the section, which reads:

21 (1) (Ja) Jab Chetrapati ya yadi ek se adhik Chetrapati hon to sub..... (Ka) Yadi Bhumi 9 April 1946 se pahile uthai gai thee ya kabje men thee to yatha-stithi bhumi uthane y a kabje men ane ke dinank pir tur 9 April 1946 ko dono hi dinank par aur (kha)...

52. By the amendment brought in 1954 the disability of the landholder on the date of vesting has been done away with. Once it is accepted that the disability of the landholder should not exist on the date of vesting, all that is required to be found out is whether the landholder was disabled on the relevant dates i. e. on the date of letting or occupation and on 9th April 1946. If the term "landholder" is deemed to include predecessor-in-interest in view of Section 3(l) of the U. P. Tenancy Act, requirement of Section 21(l)(h) of the Act is fully satisfied and the status of the person occupying the land will be only that of an asami. There is no question of doing any violence to the natural meaning of the words of the section if one keeps in mind that the term "landholder" includes predecessor-in-interest.

53. The other reason given by the Full Bench is that historical survey of the parallel provisions of the Agra Tenancy Act and U.P. Tenancy Act also warrants the conclusion that protection was granted only to the very individual who let out the land as a disabled landholder and the protection ceased when the identity or personality of that landholder changed. Reference was made to Section 29(7) of the Agra Tenancy Act or Section 41(2) of the U.P. Tenancy Act. Section 29 of the Agra Tenancy Act deals with the manner and duration of leases by various class of tenants. Section 29 of the Agra Tenancy Act provides:

29 (1). No ex-proprietary or occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding five years or within five years or any portion of such holding being held by a sub-tenant.

(2) A statutory tenant shall not except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding three years or within three years of any portion of such holding being held by a subtenant.

(3) The heir of a statutory tenant shall have the same right to sub-let as a statutory tenant;

Provided that the period of a sub-lease given by an heir of a statutory tenant shall not exceed beyond the termination of the period for which such heir is entitled to hold as tenant.

(4) A sub-lease for a term exceeding one year, or from year to year shall be made by a registered instrument only.

(5) No non-occupancy tenant shall, except with the written consent of the landholder, sub-let the whole or any portion of his holding for a term exceeding one year or within a year of any portion of such holding being held by a sub-tenant.

(6). A female, a minor, a lunatic, an idiot, a person incapable by reason of blindness of practising agriculture, or a person in the military service of the Government otherwise than as a reservist shall not be subject to the restrictions laid down in sub-Sections (1), (2) and (5);

Provided that this Sub-section shall not apply in the case of a joint family tenancy unless all the joint tenants are of one or more of the descriptions specified.

(7). A sub-lease which would be invalid but for the provisions of subsection (6) shall not remain in force for more than five years after the lessor either dies or ceases to come within any of the descriptions given therein.

54. Section 40 of the U.P. Tenancy Act deals with restriction on subletting. Section 41 of the U.P. Tenancy Act deals with the exemption from restrictions on sub-letting by a disabled person. Section 41 reads:

41(1). The restrictions imposed by section 40 on the sub-letting of a holding or portion of a holding shall not apply when the lessor is a female, a minor, a lunatic, an idiot, or a person incapable of cultivating by reason of blindness or physical infirmity or because he is in the military, naval or air service of the Government Provided that in the case of a holding held jointly by more persons than one the provisions of this Sub-section shall not apply unless either such persons are incapable of cultivating because one or more of them is in the military, naval or air service of the Government or all such persons are of one or more of the remaining descriptions specified therein.

(2). A sub-lease which would be invalid but for the provisions of subsection (1) shall not remain in force for more than three years after the lessor dies or ceases to come within any of the descriptions specified therein.

55. On an analysis of the two provisions in the earlier tenancy laws, viz. Agra Tenancy Act, 1926 and the U.P. Tenancy Act, 1939 it is evident that the two provisions viz. Section 29(7) of the Agra Tenancy Act and Section 41(2) of the U.P. Tenancy Act, were so worded that they conferred personal rights. Section 29(7) of the Agra Tenancy Act as well as Section 41(2) of the U.P. Tenancy Act clearly enjoin that "a sub-lease shall not remain in force for more than five years

after the lessor either dies or ceases to come within any of the descriptions given therein and in the second case "a sub-lease shall not remain in force for more than three years after the lessor dies or ceases to come within any of the descriptions specified therein," respectively. These two provisions confer personal rights because of the words used therein.

56. Such is not the position with Section 21(1)(h) of the UP ZA and LR Act. The words used therein do not, in my opinion, warrant a conclusion that it proposed to confer personal rights. In this view of the matter, no assistance can be had from Section 29(7) of the Agra Tenancy Act 1926 or Section 41(2) of the U.P. Tenancy Act in interpreting Section 21(1)(h) of the UP ZA and LR Act.

57. Brother Sahai, J. in his judgment has observed that if the term "land holder" used in section 21(I)(h) is deemed to include predecessor-in-interest the section cannot operate. With profound respect, I do not find anything which makes the section inoperative. If the definition of "land holder" as given in Section 3(11) read with Section 3(1) of the U.P. Tenancy Act includes predecessor-in-interest, it cannot be read in any other sense. To do so would be against the well recognised canons of interpretation.

58. Brother Sahai, J. accepted the principle enunciated in the earlier Full Bench decision in *Smt. Maya v. Raja Dulajji* (supra) also on the basis of stare decisis. It is true that the Courts must always hesitate to overrule decisions, which are not manifestly erroneous and mischievous which have stood for many years unchallenged and which from their nature may reasonably be supposed to have affected the conduct of a large portion of the community in matters relating to rights of property. If, however, the earlier decision has been given in utter oblivion of a particular provision, the decision cannot be allowed to stand merely on the principle of stare decisis. On the own observation of the learned Judge, who spoke for the Court, he came to the conclusion on the assumption that there was nothing in the Act to show that the predecessor in interest of the landholder was also intended in Section 21(1)(h) of the Act. If it had been brought to the notice of the Court that the definition of the term "land holder" in the UP ZA and LR Act as given in Section 3(11) read with Section 3(1) of the U.P. Tenancy Act then the term "land holder" would be deemed to include the predecessor-in-title also. Read in that light, there was no question of adding predecessor-in-interest of the land holder in Section 21(1)(h) inasmuch as the predecessor-in-interest was Implicit in the term land holder on account of the deeming clause viz. Section 3(1) read with Section 3(11) of the U.P. Tenancy Act. The decision of the earlier Full Bench, therefore, cannot be supported on the principle of stare decisis.

59. For the aforesaid discussion, I respectfully agree with the view taken by Hon. the Chief Justice and my answer to the question referred is as under:

The benefit of section 21(1)(h) of the UP ZA and LR Act is available to the land holder on the date of vesting if the same land holder or his predecessor existing on all material dates was person or presone belonging to one or more of the

Clauses mentioned in Sub-section (1) of Section 157 of the Act.

Gopi Nath, J.

60. I have perused the judgments prepared by Hon''ble the Cheif Justice and Hon''ble Rule B. Misra, J. With profound respect to my learned brethren, I regret I am unable to agree with the view expressed.

61. The facts have been set out in detail in the judgment of the Hon''ble the Chief Justice, and it is unnecessary to repeat them. For the purposes of the question referred, it may be stated that the writ petition arises out of consolidation proceedings. The plots in dispute were the Sir of one Ganga Prasad who was succeeded by his widow. She was a disabled person within the meaning of section 157 of the UP ZA. and LR Act (hereinafter referred to as "the Act") on the relevant dates as mentioned in section 21(1)(h) of the Act. She sub-let the plots to the objectors. On the date immediately preceding the date of vesting, the present Petitioners, who were the successors-in-interest of Smt. Kaushal Kuer, were the land-holders. They were not disabled persons of one or more of the Clauses mentioned in Sub-section (1) of Section 157 of the Act. A question arose before the Consolidation authorities whethere the objectors were the Asamis or the Sirdars of the land in dispute. The Settlement Officer and the Deputy Director of Consolidation held that the objectors were the Sirdars. The Petitioners filed the writ petition against the order of the Deputy Director (Consolidation). A learned Single Judge has referred the following question for answer to the Full Bench:

Whether the benefit of Section 21(l)(h) of the UP ZA and LR Act is available to successor-in-interest of a land holder who was entitled to the benefit of Section 21(1)(h) of the Act, and if so, in what circumstances ?" k Section 21(1)(h) of the Act, after its amendment by Act No XX of 1954 retrospectively reads: (Section 21 (1) (h) quoted--Editor) Section 21 (1) (h) thus creates a tenure of an asami in favour of a person who held or occupied land as a tenant, a sub-tenant or an occupant where the land holder on the date of letting or occupation if it occurred before the ninth day of April 1946 on that date and on the ninth day of April 1946 was a disabled person, and if it occurred after the ninth day of April 1946, a disabled person on the date of letting or occupation. The tenure was thus attached to the disability of the land holder on the relevant dates. It was the personal condition of the land holder on those dates which conferred a tenure of asami on the person who held or occupied the land on the date immediately preceding the date of vesting as a tenant, sub-tenant or occupant. In other words, the tenure was the result of the disability of the land holder on the relevant dates. It was the consequence of the personal condition of the land holder. Thus the inferior tenure created in favour of a tenant, sub-tenant or an occupant could be claimed only by a class of land holder who suffered from the disability mentioned in Section 157 of the Act on the dates referred to in Section 21 (I) (h). For an asami tenure u/s 21(1)(h), the letting had to be done by a disabled land holder on the relevant date, and the occupation as well was to be

in respect of holding of a disabled land-holder. Disability of the land-holder as such was the basic condition leading to the creation of an asami tenure. If this personal condition was not available to a land-holder on the relevant dates, he, on the date immediately preceding the date of vesting was not such a land-holder as could claim that a tenant, sub-tenant or occupant of his holding was an asami. Since the disability was a condition attached to the personality of the landholder, it was not descendable, and the benefit arising therefrom was confined only to that class of land-holders, who suffered from the disability, and not to the general body of land-holders. The tenure was attached to disability, as would be evident from the provisions of Section 202(f) of the Act which provides for a suit for ejectment and states:

If a right is connected with a personal condition, it constitutes a status of the persons in whom it vests as opposed to his estate. A distinction has been made between proprietary and personal rights. "The aggregate of man's proprietary rights constitutes his estate, his assets, or his property in one of the many senses of that most equivocal or legal terms. The sum total of a man's personal rights, on the other hand, constitutes his status or personal condition, as opposed to his estate (Salmond on Jurisprudence, Twelfth Edition, page 238) "A right is inheritable if it survives its owner, uninheritable if it dies with him. This division is to a large extent though far from completely, coincident with that between proprietary and personal rights. The latter are in almost all cases so intimately connected with the personality of him in whom they are vested, that they are incapable of separate and continued existence." (Salmond on Jurisprudence, Twelfth Edition, page 442). The right of ejectment conferred u/s 202(f)(ii) on the determination of the disability appears to point towards the continuation of the identity of the land-holder.

62. The Act creates new tenures with effect from the date of vesting i e. 1-7-1952 on the basis of state existing on the date immediately preceding the same. This scheme is followed by the provisions creating the tenures, and Section 21(1)(h) of the Act is in line with it. It states:

Notwithstanding anything contained in this Act every person who, on the date immediately preceding the date of vesting occupied or held land as a tenant of sir land referred to in sub-clause (a) of Clause (i) of the Explanation u/s 16, a sub-tenant referred to in sub-clause (ii) of Clause (a) of Section 20 or an occupant referred to in sub clause (i) of Clause (b) of the said section where the landholder, or if there are more than one land-holder, all of them were person or persons belonging.....to any one or more of the Clauses mentioned in Sub-section (1) of Section 157 - shall be deemed to be an asami thereof.

The land-holder or land-holders mentioned in the section, refer to the persons who were such persons on the date immediately preceding the date of vesting. This is so because a tenant or sub-tenant as referred to in the Sub-section has to be a tenant or sub-tenant of a land-holder on the date immediately preceding the date of vesting, and the creation of a tenure of an asami is in favour of the

tenant, sub-tenant or occupant vis-a-vis such a land-holder, i. e. the person who is a land-holder on the date immediately preceding the date of vesting. The word land-holder thus refers to the land-holder on the date immediately preceding the date of vesting see--Dularey v. Rajeshwart, 1966 ALJ 199 and Hasain Bibi v. Ram Din, 1967 ALJ 27. In order to obtain the benefit of the provisions of Section 21(I) (h) of the Act, the land-holder or land-holders must belong to a class suffering from a disability of the nature contemplated by section 157 on the relevant dates. The provision, accordingly, is confined to a particular class of land-holder as distinguished from the general body of persons who are called land-holders under the Act. This particular class consists of persons with whom a personal condition is attached on the relevant dates. The words "belonging to" as occurring in Clause (h) of Sub-section (1) of Section 21 of the Act clearly points to the classification made by the Legislature, and confines the tenure to a limited class of land-holders. Thus, if a land-holder or if there were more than one land-holder, all of them did not belong to the class contemplated by section 21(1)(h) of the Act on the date of vesting they would not derive the benefit of that provision. This could lead to the conclusion that the land-holder who claimed the benefit of the provision on the ground of his disability on the relevant dates, has to continue as a land-holder on the date immediately preceding the date of vesting. In that view of the matter if the identity of the land-holder has changed, and he is succeeded by a person who, on the date immediately preceding the date of vesting, is not a land-holder who suffered from the disability on the relevant dates, he would not be entitled to the benefit of the provisions. This was the view taken in Smt. Maya v. Raja Dulajji, 1970 AWR 272. It has been challenged on the ground that the Sections relating to the definition of the word "land-holder" in the Act and the U.P. Tenancy Act, by aid of the provisions relating to the interpretation of the words and expressions used in the two Acts lead to a different conclusion. I shall, accordingly examine those provisions.

63. Section 3 of the Act deals with definitions and states, in this Act,

Unless there is anything repugnant in the subject or context....." sub section (26) then provides:

Words and expressions, land-holder, permanent tenure-holder, thekadar, permanent lessee in Avadh, grove-holder, rent cess sayar, sir, tenant, hereditary tenant, khudkasht, fixed rate tenant, rent free grantee, ex-proprietary tenant, occupancy tenant, non-occupancy tenant, sub-tenant holding any crops, not defined in this Act and used in the United Provinces Tenancy Act, 1939 shall have the meaning assigned to them in that Act.

In the U.P. Tenancy Act, 1939 the word "land-holder" has been defined as follows:

Section 3(11). "land holder" means the person to whom rent is or, but for a contract, express or implied, would be payable, but except in Chapter VII and Chapter XIII does not include an assignee of rent or a person who has lost the

proprietary or other interest by virtue of which rent became payable to him."

Section 3(1) of the Act states:

In this Act, unless there is something repugnant in the subject or context (1) all words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such person.

64. It was urged that by aid of Sub-section (1) of Section 3 of the U.P. Tenancy Act, the land-holder shall include the predecessor and successor in right, title or interest of such person. Accordingly the land-holder or land-holders talked of in Section 21(1)(h) of the Act shall include their predecessors in right, title or interest. Thus the successor of a disabled land-holder at the relevant dates referred to in section 21(1)(h) would be a land-holder for the purposes of the benefit of that provision. This contention, to my mind, is not sound. Before a definition or a provision relating to interpretation is applied, it must itself be interpreted first--see *I. L. M. Cadt ja Umma v. Don Manis Appu*, AIR 1939 PC 63. Section 3(1) of the U.P. Tenancy Act merely provides that the possessor of any right, title or interest shall be deemed to include the predecessors or successors in right, title or interest of such person. The successor of the landholder, under this provision shall be entitled to the right, title or interest of such person as a land-holder. The right, title or interest of a land-holder in the land is a matter different from his personal characteristics as a land-holder. They relate to incidents attaching to an estate, and not to the personal conditions of the person holding the same. The U.P. Tenancy Act under its various provisions refers to the right, title and interest of the land-holder and it is only those matters which are contemplated by Section 3(1). Section 6 of the Zamindari Abolition Act also talks of right, title and interest. These also relate to incidents attaching to an estate, and not to the personal status or condition of the person holding the same. If there is a woman land-holder her son as a successor would only be a land-holder but not a female land-holder. If a land-holder is a blind person, his successor may have a right to be treated as a land-holder but not as a blind land-holder. If a land-holder is a lunatic, his successor cannot be treated as a lunatic by the aid of this provision. If a land-holder was an unmarried woman, her successor would not be treated as an unmarried woman. If a land-holder was a minor, his successor would not be treated as a minor by the aid of Sub-section (1) of Section 3 of the aforementioned Act. Personal conditions attaching to a land-holder would thus not pass to his successor by calling in aid the provisions of Sub-section (1) of Section 3. A successor may claim to be a land-holder by virtue of Sub-section (1) of Section 3 of the U.P. Tenancy Act but he cannot be held to belong to a particular class of land-holder by virtue of that provision. The effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places of the Act in which the word occurs, yet it does not follow that the thing defined shall have annexed to it every incident which may seem to be attached to it under a provision of an Act or other Acts of the

legislature--see *Umachurn Bag v. Ajadannlssa* "Bibee, ILR 12 Cal 430 . The intention of the legislature must control the legislative definition. If a legislative intent cannot be given effect to because of the legislative definition the legislative intent must prevail over the legislative definition and the latter should not be allowed to control the former--see *Kuriakose Kurian Vs. Saramma Chacko and Others*, . A definition like anyother word in a statute has to be read in the light of the context having regard to the scheme of the Act and if the scope of the enactment and the context in which the defined term is used has provided only for a limited operation the word used can only have a limited meaning--see *Kassimiah Chati-ties v. Madras State Wakf Board* AIR 1964 Mad section: "Even where an Act contains a definition section it does not necessarily apply in all the contexts in which a defined word may be found. If a defined expression is used in a context which the definition will not fit, the context must be allowed to prevail over the "artificial conceptions" of the definition clause..."

(Maxwell Interpretation of Statutes 11th Edn. page 30) words used in a statute "are more or less elastic, and admit of restration or expansion to suit the subject matter" (Maxwell Interpretation of Statutes, 11th Edn. page 58). The same words may be used in different senses in the same statute and even in the same section... (Maxwell Interpretation of Statutes, 11th Edn page 312).

Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced....."(Craies Statute Law, 7th Edn. page, 170) "..... the meaning of ordinary words will vary according to the subject of occasion on which they are used....." (Craiesin Statute Law 7th Edn. page 172). In *Shamrao Vishnu Parulekar Vs. The District Magistrate, Thana*, it was observed. "..... it is proper if sufficient reasons can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act."

.....A construction is preferred which is either strict or liberal with reference to the purposes and objects of the statute.....a statute is liberally construed when the letter of the statute is extended to include matters within the spirit or purpose of the statute and a statute is strictly construed when the letter of the statute is narrowed to exclude matters which if included would defeat the policy of the legislation....." (Sutherland Statutory Construction, Third Edition Volume, 3 Section 5505). Jurisprudentially a right is an advantage or benefit or a power, privilege or immunity conferred upon a person by a Rule of law. Title is the defacto antecedent of which right is the dejure consequence and interest from the subject of the rights but are different from them. Further a condition leading to the creation of a tenure is not a right, title or interest in land possession by a land-holder.

65. On a true construction of Section 21(1)(h) of the Act what has to be seen first is, who was the landholder on the date immediately preceding the date of vesting and then to find out whether he belonged to the class of disabled persons

as contemplated by Section 157 of the Act on the relevant dates. This construction is fully borne out by the use of the words "are" and "were" in Section 21(1)(h). The material part reads as follows:

(h).....where the landholder, or if there are more than one landholder all of them were person or persons belonging to:

(a) if the land was let out or occupied prior to the ninth day of April, 1946 both on the date of letting or occupation, as the case may be, and on the ninth day of April, 1946 and

(b) if land was let out or occupied on or after the ninth day of April 1946, on the date ,of letting or occupation, to any one or more of the Clauses mentioned In Sub-section (1) of Section 157.

(1) * * *

shall be deemed to be an asami thereof.

The legislature has said what it intended. The use of the words "ho" and "hon" in the Hindi text make no difference. "Ho" has to be read with reference to the date immediately preceding the date of vesting. So read the section shall provide as follows:

Notwithstanding anything contained in this Act, every person who on the date immediately preceding the date of vesting occupied or held land as a tenant, sub-tenant or occupant..... where the landholder, or if there (be) more than one landholder all of them were person or persons belonging to anyone or more of the Clauses mentioned in Sub-section (1) of Section 157. The word "be" or "hon" herein when read with the word "if would only mean that if there are more than one landholder on the date immediately preceding the date of vesting.

66. It was submitted that the legal fiction introduced in Section 3(1) of the U.P. Tenancy Act widened the scope of the term "landholder" in Section 21(1)(h) of the Act. A legal fiction operates only in the field of its operation and does not travel beyond it. It should be limited to the purposes for which it is created, and should not be extended beyond that legitimate field--see *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, *The Commissioner of Income Tax, Bombay City I, Bombay Vs. Amarchand N. Shroff, by his heirs and Legal Representatives*, and *Commissioner of Income Tax, Madras Vs. Express Newspapers Ltd., Madras*, . Further it seems to me that no legal fiction has been created by the use of the words shall be deemed to include in Section 3(1) of the U.P. Tenancy Act. The word "deemed" is used a great deal in modern legislation in different senses, and it is not that a deeming provision is every time made for the purpose of creating a fiction. It is often made to include what is obvious or what is uncertain--see *Consolidated Coffee Ltd. and Another Vs. Coffee Board, Bangalore*, . The words "shall be deemed to include the predecessors and successors in right, title or interest of such persons" in Section 3(1) of the U.P. Tenancy Act have been used to make it plain that the predecessors and

successors of a landholder can also be regarded as landholder under that Act. This, however, does not mean that a predecessor or successor shall be deemed to be a particular landholder or as one belonging to a particular class of landholders. To be treated as a landholder is not to be held as a particular landholder or as one belonging to a particular class. The predecessors or successors talked of in Section 3(I) are persons concerned with a legal estate. They are not concerned with the personal conditions or qualifications or disqualifications of those possessing the right, title or interest. In this view of the matter, no legal fiction has been created by the use of the words "shall be deemed to include" in Section 3(1) of the U.P. Tenancy Act. These words have only put beyond doubt what might otherwise have remained uncertain.

67. It was then suggested that the disability of the landholder need not exist on the date of vesting in view of the amendment made in Section 21(l)(h) by Act No. XX of 1954 and that would lead to a conclusion that the identity of the landholder need not continue till the date of vesting. The suggestion is not sound. The fact that the disability has not to continue does not lead to a result that the landholder or landholders have not to belong to the class of landholder referred to in Section 21(1)(h) on the relevant dates. The process required is first to find out who were the landholder on the date of vesting, and then to see, whether they are the persons who suffered from the disability contemplated by Section 157 on the relevant dates. On this approach, the identity of the landholder has to continue till the date of vesting for the conferment of Asami right on the tenant, subtenant; or occupant. A successor in interest would, in this view of the matter, be excluded from the term "landholder" as occurring in Section 21(1)(h). This would be discussed further after a suggestion is noticed. It was pointed out that by the amendment in Section 21(1)(h) by Act No. XX of 1954 the scope of the word "landholder" has been enlarged as the disability of the landholder need not subsist on the date of vesting. The amendment in Section 21(1)(h) was made with a view to allowing the benefit of that section to those disabled landholder whose disability had ceased before the date of vesting and who, u/s 41(2) of the U.P. Tenancy Act could maintain a sub-lease only upto three years of the ceasing of the disability. The legislature thought that it would be unfair to such disabled landholders to deprive them of the benefit of Section 21(1)(h) and hence the amendment provided that the disability need not continue upto the date of vesting. This, however, did not mean that if during the relevant dates u/s 21 (1) h) and the date of vesting the erstwhile disabled landholder whose disability had ceased, had transferred his right to a non-disabled person or persons, the benefit under the Sub-section would be derived by the successors-in-interest as well. It may be noticed that under Sub-section (2) of Section 41 of the U.P. Tenancy Act, a sub-tenancy came to an end after three years of two different dates (i) the date of death of the disabled land-holder and (ii) the date of cessation of the disability. These were two different events. Section 21 has provided for Asami right in case of cessation of disability only and not in case of death. In case of death, the land-holder or land-holders on the date of vesting would necessarily

be persons different than those who were the land-holder on the date of letting and on 9th April 1946. The Legislature has not provided for any benefit to the heirs or successors of the erstwhile land-holder or landholders who had died before the date of vesting. This would point to a conclusion that successors-in-interest were not contemplated in the term "landholder" as used in Section 21(1)(h). It was then suggested that successors-in-interest who themselves belonged to one or more of the Clauses mentioned in Sub-section (1) of Section 157, could be included in the term "land-holder" on the ground that they were themselves disabled persons and the benefit u/s 21(1)(h) would not be denied to them and if the same was denied, it would work a hardship on them. The first question is whether a successor-in-interest was contemplated in the expression "land-holder" as used in Section 21(1)(h). I have already held that the word "land-holder" in Section 21(1)(h) does not include a successor or predecessor-in-interest. Even where an Act contains a definition clause, it does not necessarily apply in all the context in which a defined word may be found used. Once the word "land-holder" in Section 21(1)(h) does not include his successor or predecessor-in-interest it would not be reasonable to hold that the same expression would in certain circumstances include a successor or predecessor and in others it would not. Hardship or inconvenience cannot alter the meaning of the language employed by the legislature. Examples of hardship can be cited on either side, and when the words of a statute carry a particular meaning, questions of fairness and hardship are not relevant considerations. In *Martin Burn Ltd. Vs. The Corporation of Calcutta*, it was held:

A result flowing from a statutory provisions is never an evil. The Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.

In *Commissioner of Agricultural Income Tax, Bengal Vs. Sri Keshab Chandra Mandal, Das, J.* observed:

Hardship or inconvenience cannot alter the meaning of the language employed by the legislature if such meaning is clear on the face of the statute of the rules.

See also *Emperor v. Benorai Lal*, AFR 1945 PC 48 ;. It would, therefore, not be proper to give two different meanings to the word "land-holder" as occurring in Section 21(1)(h) namely, a narrow one and a broad one, at the same time.

68. The disability of the land-holder on the date of vesting is not relevant. What is relevant is the fact of disability on the date of letting or occupation or on 9th April 1946. It would, therefore, not be correct to consider the disability of a successor on the date of vesting in order to confer the benefit of Section 21(1)(h) on him. It seems that the legislature contemplated particular land-holder or land-holders to be conferred with the benefit under the section. The disability of a successor could not constitute the personality of a predecessor-in-interest. Further, if a successor-in-interest claimed the benefit as being a land-holder on

the date of vesting, and the letting had been done by this predecessor on the relevant dates, the successor would not get the benefit as the condition-relating to letting had not been fulfilled by him. To be entitled to the right, title or interest of a predecessor is not equal to performing an act which was required to be performed under the Act and had actually been performed by the predecessor. This would point to a conclusion that a successor is not included in the term "land-holder" as occurring in Section 21(1)(h). Other examples may be considered. If a holding passes through three hands; the letting being done on the relevant date by a disabled person he thereafter being succeeded by a non-disabled person and the latter transferring the holding again to a disabled person, who continues to be the land-holder on the date of vesting the disabled land-holder, on the date of vesting would not get the benefit u/s 21(1)(h). Further if a land-holder who was a disabled person on the relevant date, is succeeded by two persons one of whom is disabled and the other is not, the disabled successor may claim the benefit of the section on the suggestion made, while the non-disabled would not. They being co-sharers, an anomalous position would arise, and none would be able to claim the benefit. In the same way, if two or more disabled land-holders had let out a holding on the relevant dates and they were succeeded by persons some of whom were disabled while others were not the same as normally would arise. It was suggested that if the successors-in-interest were themselves disabled on the relevant dates, they would be able to obtain the benefit. The same difficulty may arise in this situation as well viz. if some of the successors are disabled while the others are not the interest being joint, the disabled ones cannot exclude the non-disabled ones in the benefit, and since the non-disabled successors cannot obtain the benefit, none would be able to claim it.

69. For the reasons discussed, it seems to me that the expression "landholder" in Section 21(I)(h) was confined to particular land-holder, and did not include a predecessor or successor-in-interest. In this view of the matter, the identity of the land-holder must continue till the date of vesting in order to enable him to obtain the benefit u/s 21(1)(h).

70. My answer to the question referred, accordingly, is as follows:

The benefit of Section 21(1)(h) of the Act is available to a land-holder who on the date of vesting was a person belonging to any one or more of the Clauses mentioned in Sub-section (1) of Section 157 on the relevant dates as mentioned in Section 21(1)(h) and not to his successor-in-interest.

R.M. Sahai, J.

71. I have gone through the order proposed by Hon''ble Chief Justice carefully more so, because in our discussion after arguments in his chamber I had persuaded myself to the view which has been proposed by him. But the lurking doubt which I had during hearing gradually fortified and ultimately I decided to record my own reasons which unfortunately is more in line with the earlier Full

Bench.

72. It is not necessary to narrate the facts as they are brief and have been mentioned in the proposed order. Admittedly Petitioners are successors of Smt. Kaushal Kunwar, the disabled land-holder, who died before date of vesting. According to earlier Full Bench decision in Smt. Maya v. Raja Dulaji, 1970 AWR 272 a successor was not entitled to benefit of Section 21(1)(h) and tenant or recorded occupant in such case becomes adhivasi u/s 2(1) what is claimed by Petitioner is that as the definition of landholder given in U.P. Tenancy Act is applicable to ZA and LR Act the benefit of section 21(1) (h) could be available to successor of the disabled landholder as well, in other words for considering whether a person is asami or not it is immaterial whether the disabled landholder who let out the land on the material dates was alive or dead on the date of vesting.

73. Before considering whether benefit of section 21(1)(h) of UP ZA and LR Act I of 1951 is available to the landholder, whose predecessor was a person or persons belonging to one or more of the classes mentioned in subsection (1) of section 157 on the material dates by engrafting definition of landholder in U.P. Tenancy Act by Sub-section (21) of Section 3 UP ZA and LR Act I of 1951 read with Section 3(i) and 3(ii) of U.P. Tenancy Act it is necessary to have a look back on the background in which this provision was enacted and the purpose it sought to achieve. Prior to abolition of Zamindari there existed a large number of tenure holders who were grouped together according to their status in U.P. Tenancy Act and were made bhumidhars and sirdars under Sections 18 and 19 of the Act. Apart from these there was a subservient class of tenants who were known as non occupancy tenants, sub tenants, tenants of Sir etc. These were again grouped in two and those who were subtenants and tenants of sir were given adhivasi rights u/s 20 whereas those who were non-occupancy tenants of mortgagees etc. were made asamis u/s 133 of the Act. To the class of sub-tenants and tenants of sir a further class was added who were described as recorded occupant of 1356 F. The adhivasis were not to be one of the classes of tenures contemplated under ZA and LR Act. But the important feature of this class, unlike asamis, was that they were declared immune from ejectment and if they were out of possession they were entitled to regain it u/s 232. The reason for this immunity from ejectment and the right to regain possession was historical. In U.P. Tenancy Act they were the actual tillers of the soil. It was their sweat and labour which was exploited by the intermediary. They formed the bulk of actual cultivators yet it were they who were exposed to bane of ejectment nearly every year. Even before intermediaries were abolished the Legislature had come to rescue of this poor peasantry and by Act X of 1947 made them immune from ejectment and in cases of illegal ejectment empowered them to claim reinstatement. Under ZA and LR Act all such persons were made adhivasis u/s 20 which was directed towards achieving the legislative objective of doing away with intermediary and securing land to actual tillers of the soil. While doing so the legislature however appears to have lost sight of those tenants who were

disabled when Tenancy Act was in operation. There was a provision in section 41 of Tenancy Act which permitted a tenant who was a female, a minor, an idiot or a person incapable of carrying on cultivation due to physical infirmity or blindness to let out his land and to such letting the restriction contained in section 40 did not apply. All such tenants of sir, sub-tenants or recorded occupants who were holding land from disabled persons became adhivasis. This resulted in grave injustice as even such landholder who could not carry on cultivation due to their disability and to whom protection was given under the Tenancy Act lost their land although the Scheme contained in section 41 was continued in Sections 154 and 157 of UP ZA and LR Act, and a disabled landholder was permitted to let out. To remove this anomaly the Legislature intervened and introduced section 21(h) of Act 16 of 1953. An exception was carved out of section 20 and those tenants of sir, subtenants or recorded occupants who held or occupied the land of a person who was disabled on the date of letting and on the date of vesting were declared to be asamis. A right of ejectment was also conferred u/s 202. Soon it was felt that the desired objective was not achieved and the clause requiring the landholder to be disabled on date of vesting also extended those landholder whose disability determined between date of letting and date of vesting. To extend the benefit to such persons also the section was amended in 1954.

74. In this background it may now be examined if the argument of Petitioner can stand scrutiny on any principle of construction or interpretation grammatical or otherwise. While adding section 21(h) it was provided in section 20 "Every person (a)(i)....(ii)....(b)....shall unless he has become an asami under Clause (h) of Section 21 be called adhivasi."

Section 21(h) therefore, was introduced as an exception to section 20. The purpose of an exception is to carve out something out of the general. But for the exception the thing excepted shall remain part of that from which it is taken out. From its very nature therefore it has to be construed strictly and should be confined to its own limits. Nothing should be added to it by analogy nor its scope extended. It may be that by virtue of Sub-section (21) of Section 3 of UP ZA and LR Act read with sub-clause (i) of Section 3 of Tenancy Act the terms "landholder" may include predecessor or successor but the question is whether it is permissible to do so while interpreting the word "landholder" in section 21(h). While detailing historical background of the section it has been seen that the intention appeared to confine the benefit to the landholder who let out the land, it may now be seen if different interpretations can be given to it on the language of the section itself. For this it is necessary to examine the section itself. From section 21(h) quoted in the judgment of Hon'ble Chief Justice as introduced originally it is apparent that the requirement for asmai rights were:

Every person who on the date immediately preceding the date of vesting occupied or held land as

(ii) (a) a tenant of sir (b) or land referred to in sub-clause (9) of Clause (i) of the

Explanation u/s 16(c) a subtenant (d) or an occupant referred to in section 20

(iii) where the land-holders or if there are more than one land-holder all of them were persons belonging

(iv) both (a) on the date of letting (b) and on the date immediately preceding the date of vesting to any one or more of the classes mentioned in subsection (1) of section 157.

It shall be seen that conditions nos. 1 and 2 related to tenants whereas conditions nos. 3 and 4 related to land-holder. Before land-holder could claim that the person mentioned in conditions nos. 1 and 2 acquired asami rights he was required to prove that he was land-holder and was disabled on the date of letting and on date of vesting. If the words, "land-holder would have been understood as including successor then the section could not operate as the condition of being disabled on the date of letting and on the date immediately preceding the date of vesting could not have applied. The intention therefore was to confer benefit on disabled land-holder only. It would not have been possible to extend it to successors. It may not be considered what change was made in 1954. It shall be seen that the first part of the section that is upto "were person or persons belonging" was retained without any alteration or variation. In place of condition No. 4 the date of letting was substituted by Clause (a) and (b) to Clause (h) and the words "immediately the date of vesting" was dropped. This did not however bring about any change in the meaning of the word "land-holder". It was argued that once Legislature dropped the word on the date immediately preceding the date of vesting it was clear that for purposes of section 21(h) what had to be seen was whether the land-holder of the tenant or recorded occupant was disabled on material dates. And if that was so then the Act does not require that the same land-holder should be alive on the date of vesting. In other words the Sub-section operated in the past. According to learned Counsel so long the requirement of the land-holder being disabled on the date of vesting was there the word land-holder could have been understood as the person who let out the land but once it was dropped there is no reason to exclude successor from the word land-holder. The argument proceeds on misconception. It omits from consideration that the entire phraseology of the original section was retained. In that it was not possible to read word successor in place of or along with the word land-holder. It would have made the section unworkable. If at that time the word "are" could not be understood as denoting plurality of landholders then by no process of construction it can be understood in that sense now. And as the word "are" was consistent with use of the word "land-holder" (without including successor) there appears to be no reason to read it differently so as to extend its benefit to successor as well. In fact the word "land-holder" in Section 21(h) is not susceptible to that meaning as such therefore it is suggested to read word "are" as "be" and "were" and thereby operate the section in past and it is by this process that inclusion of successor and predecessor is being made consistent. This, however, is not permissible on

any principle of construction. If the phrase "land-holder" or if there are more than one land-holder all of them were..... is replaced by the words "successor or predecessor or if there are more than one successor or predecessor all of them were" it is obvious that the section becomes inconsistent with words "are" and "were". It is not therefore possible to read the word "land-holder" as including successor and predecessor by engrafting the definition of Tenancy Act. The setting of the section negatives such interpretation.

75. It may now be seen if the use of word "hon" in Hindi version of the Act in place of word "are" can help in including that the word "landholder" should be read as including successor. In Hindi "hon" is plural of "hona" which means *astitva rakhna*, *upasthith hona ya maujud hona* (Sansipt Hindi Shabdsagar Kashi Nagri Pracharni Sabha Sam 2008). Thus it is not necessarily indicative of past. Whether it has been used in present or past tense or it can be read as "be" or "were" depends in the context it had been used. It shall be seen that the word "hon" has been used for "are" and "rahen hon" for "were". This indicates that "hon" has been used in present tense and "rahen hon" in the past. It is true that if the word "hon" would have been used it would have been much better but the use of words "hon" and "rahen hon" for "are" and "were" dispels any doubt "that Legislature used the word "hon" in present tense. The translation in English therefore of word "hon" as "are" and of "rahen hon" as "were" was correct. There is no ambiguity in it. Reading the section as where the landholder or if there be (or were) more than one landholder shall amount to changing the entire meaning of it. It would not be interpreting or constructing it but rewriting it.

76. From what has been stated above it is clear that the word landholder in Section 21 (h) cannot be read as including successor. This conclusion has been reached both on the language and on principle of interpretation. There is yet very strong reason for not disagreeing with the view taken by the earlier Full Bench. Section 21(h) was introduced in 1953. The first decision available on it by this Court is in 1966 and since then it has always been held that the benefit conferred on the landholder is personal in nature. It has not been brought to notice that the High Court or the Board of Revenue in any case has taken a view contrary to the view expressed in 1966 ALJ. After a lapse of 28 years it would not be advisable now to give a different interpretation to the section than what it has been understood in the entire State and shake rights and title of tenant and recorded occupant which had been based on conviction that interpretation given by this Court was legal and proper. The principle of *stare decisis* has become settled by series of decisions. It is based on expediency and public policy. A departure from settled law should be made only if the interpretation accepted as good for long years results in grievous wrong. It has been seen above that interpretation of the Sub-section by earlier Full Bench was more in keeping with Legislative policy. Even if it be assumed that another view is possible this Court should refrain from unsettling the law and introducing uncertainty. In *Bromsea Haven Properties v. Poole Corporation*, 1953 Ch. 574 (603) (CA) it was observed by Lord Evershed M.R.:

There is a well established authority for the view that a decision of long standing on the basis of which many persons will in the course of time have arranged their affairs should not lightly be disturbed by a superior Court not strictly bound itself by the decision.

For all these reasons and with great reluctance it is not possible to agree with the proposed view of Hon''ble The Chief Justice.

77. The answer to the question referred is "The benefit of Section 21(1)(h) of UP ZA and LR Act I of 1951 is available to that landholder only who was disabled on the material dates and was alive on the date of vesting. The word landholder in the sub-clause does not include successor or predecessor."

K.M. Dayal, J.

78. I had the advantage of perusing the judgments of Hon''ble the Chief Justice, Hon''ble Rule B. Mishra, Hon''ble Gopi Nath, Hon''ble Rule M. Sahai, JJ. As almost every aspect of the matter has been considered in the aforesaid judgments, no useful purpose will be served by my repeating the same. I agree with the view of Hon''ble Rule B. Mishra, J. and adopt his reasoning and the answer given by him. Consequently I also agree with the conclusion arrived by Hon''ble the Chief Justice. My answer to the questions referred is as under :

The benefit of Section 21(1)(h) of the UP ZA and LR Act, 1950, is available to the landholder on the date of vesting, if he or his predecessor-in-interest was a person or persons belonging to one or more of the classes mentioned in Sub-section (1) of Section 157 of the Act in case the letting was prior to 9th April, 1946, both on the date of letting and occupation and on 9th April 1946; and if, the land was let out or occupied after 1946 on the date of letting. It is not necessary that on the date of vesting the landholder should belong to the classes mentioned in Sub-section (1) of Section 157 of the Act.