
(1972) 05 AHC CK 0002
In the Allahabad High Court
Case No : Sp. A. No. 746 of 1965

Fateh Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 19-05-1972

Acts Referred:

Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27(3)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 21(1)(c), 232
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Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 21(1)(c), 232

Citation : (1972) 42 AWR 508

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : G.N. Verma, for the Appellant;

Final Decision : Allowed

Judgement

Satish Chandra, J.—This appeal arises out of proceedings for restoration of possession u/s 20/232 of the UP ZA and LR Act. The Appellant claimed that he was recorded in 1356 F. and became an adhivasi Under Clause (i) of Sub-section (b) of Section 20. He was, in virtue of a compromise arrived at in some criminal proceedings made to relinquish possession of the land. Since he had become an adhivasi, he was entitled to be restored to possession. This application was contested by Respondents Nos. 4 to 8, who were the tenants in chief. They alleged that Respondents Nos. 1 and 2, the Zamindars, had, in a suit u/s 171 U.P. Tenancy Act, ejected them. They in due course applied for restoration of possession u/s 27(3) of the U.P. Tenancy Amendment Act (No. 10), 1947. That application was allowed and on 27-3-1951, they were restored to possession over the plots in dispute. Thereafter some original litigation ensued between the

parties, which ended in a compromise, whereunder the Appellant relinquished possession of the land in favour of the Respondents tenants by an application dated 15-3-1952. Since the Applicant voluntarily relinquished possession, he was not entitled to restoration of the possession. The Appellant's case that he had become an adhivasi was also contested.

2. The trial court rejected the Appellant's claim. It was held that the Appellant had not been ejected from the plots and hence, the application for restoration of possession was incompetent. On appeal, however, it was held that the Appellant was recorded as an occupant in 1356F he became an adhivasi and since he was not in actual possession, when he made the application, it was maintainable. The appeal was allowed and the application was granted.

3. The Respondents preferred a revision before the Board of Revenue. The Board held that the Appellant became an asami u/s 21(1)(c) of the Act. His claim that he had become an adhivasi was incorrect. On this finding, the application made by the Appellant was dismissed.

4. A learned Single Judge dismissed the writ petition. He held that the Appellant did not become an adhivasi. Alternatively, he held that the writ petition was incompetent, because of non-impleadment of heirs of Bhajan Lal, one of the tenants who had instituted the revision before the Board of Revenue, but died during the pendency of the revision.

5. It appears that while the writ petition was pending, the Appellant made an application for correction of the memorandum of the writ petition by according out the name of Bhajan Lal and introducing in its place the name of Har Bilas. The learned Single Judge, however, did not pass any orders on this application. He doubted whether Har Bilas was the only heir of Bhajan Lal. Since this fact was not clearly stated in the application for amendment, he refused to act on the basis as if Har Bilas was the sole heir. He held that the writ petition was improperly constituted for lack of heirs of Bhajan Lal. This was an additional ground for dismissing the writ petition.

6. In the memorandum of appeal, Har Bilas has been impleaded as Respondent No. 8. For the Appellant, an application has been moved, stating that the Board of Revenue had impleaded only Har Bilas as the heir of the deceased Bhajan Lal. Under the circumstances, the application for amendment made by the Appellant on 20-10-1965, deserved to be allowed. In any event, if the learned Single Judge was doubtful, he should have asked the parties to clarify the position rather than leaving the matter vague. We are satisfied that there was a bonafide mistake in the typing of the memorandum of the writ petition. We consequently allow the amendment application dated 20-10-1965. With this amendment, the technical defect in the writ petition stands removed.

7. On merits, the plea taken by the Respondents that, since the Appellant had voluntarily relinquished possession as a result of a compromise, he was not entitled to maintain the petition for restoration of possession u/s 20/232 of the

ZA Act, has no substance. A Full Bench in Harj Nath v. R.P. Singh 1968 AWR 65 has held that the Explanation to Section 232 does not preclude the institution of an application even in those cases where the Applicant lost possession by voluntarily giving it up before the date of vesting. In the present case, the relinquishment of possession took place on 15-3-1952, namely, prior to the date of vesting. In view of the above Full Bench decision, the application made by the Appellant was maintainable.

8. It is not disputed that in proceedings u/s 27(3) of the Act (No. 10) of 1947, the Respondents were re-instated as tenants. No one was declared to be a sub-tenant of the land within meaning of the proviso to Section 27(3). It is also undeniable that the Appellant was recorded in possession in the revenue papers of 1356 F. The question is whether he comes within the purview of Clause (i) of Section 20(1)(b) or Clause (c) of Section 21(1) of the ZA Act. Both the Clauses relate to "land referred to in Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947." A person, who, on the date immediately preceding the date of vesting, occupied or held, land as a sub-tenant, referred to in the proviso to Sub-section (3) of Section 27, becomes an asami u/s 21(1)(c). It is no one's case that the Appellant occupied or held land as a sub-tenant within meaning of the aforesaid proviso. The provision applies to a person, who is declared a sub-tenant for a period of three years. Admittedly, no such declaration had ever been made in the case of the Appellant. The Appellant could not become an asami.

Section 20(1)(b)(i) reads:

Every person who-

(b) was recorded as occupant:

(i) of any land other than grove-land or land to which Section 16 applies or land referred to in the proviso to Sub-section (3) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947, in the Khasra or Khatauni of 1356 F. prepared Under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901, or...shall, unless he has become a bhumidhar of the land Under Sub-section (2) of Section 18 or an asami Under Clause (h) of Section 21, be called adhivasi of the land....

9. Clause (b)(i) applies to the record as an occupant, in respect of land other than the three categories of land mentioned in it. The first category is grove-land. A person who is recorded as an occupant of a grove land does not become an adhivasi. The second similar exception is in respect of land to which Section 16 applies; and the third exception is in respect of land referred to in the proviso to Section 27(3), namely, in respect of which a declaration of sub-tenancy in favour of some persons has been made. The result is that if a person has been declared a sub-tenant of any land under the proviso to Section 27(3), then, in respect of that land, any person who is recorded as an occupant does not become an adhivasi, because in respect of such land the sub-tenant becomes an asami u/s 21(1)(c). The scheme underlying these provisions is that if courts have declared a person to be a sub-tenant under the proviso, he will become an asami

and no one else would become an adhivasi in respect of that land, even though he may have been recorded in the revenue papers of 1356 F. But, if there was no such sub-tenant and there is only a reinstated tenant u/s 27(3), then a person who had been recorded as an occupant of such land will become an adhivasi Under Clause (b)(i). The erstwhile re-instated tenant shall lose his right.

10. In this light, it is not quite correct to say that the land referred to in the proviso to Sub-section (3) of Section 27 is equivalent to land mentioned in Section 27(3). It is true that the plot of land is the same. But different persons are in occupation of it. The incidence and impact of the provisions of the ZA and LR Act are different according to the fact whether a sub-tenant is in possession or the tenant in chief. Keeping in view the different consequences, the fact of recording being of the tenant in chief, or the sub-tenant, is material and relevant. We are hence unable to agree with the learned Single Judge that the phrase "land referred to in the proviso to Section 27(3)" means the land referred to in Section 27(3) itself.

11. In the present case, the land in dispute was not one which could have reference to the proviso (because there was no sub-tenant on it). The land not falling within one of the exceptions Clause (b)(i) would apply. Since the Appellant was recorded as occupant thereof in 1356 F., he became anadhivasi.

12. In the result, the appeal succeeds and is allowed. The judgment of the learned Single Judge is set aside. The judgment of the Board of Revenue is quashed and that of the Addl. Commr. restored. As no one has appeared on behalf of the Respondents, there will be no order as to costs.