
(1964) 02 AHC CK 0002
In the Allahabad High Court
Case No : Second Appeal No. 1538 of 1957

Gajadhar Singh	Vs	APPELLANT
Harnandan Singh and Others		RESPONDENT

Date of Decision : 25-02-1964

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240B

Citation : AIR 1964 All 442 : (1964) RD 109

Hon'ble Judges : M.C. Desai, C.J;R.S. Pathak, J;B. Dayal, J

Bench : Full Bench

Advocate : Surendra Narain Singh and K.P. Singh, for the Appellant; Ram Surat Singh, for the Respondent

Judgement

Desai, C. J.

1. I agree with the conclusions drawn by my brother Bishambhar Dayal in his judgment.

2. What is required under Sections 240-A and 240-B of the Act is that the land should be held "or be deemed to be held" by an adhvasi. "Held" in this context means "owned by", "belonging to", "included in the holding of". A person can own land, or land can be included in the holding of a person, without his being in actual possession of it; whether he owns the land or it is included in his holding is essentially a question of title quite distinct from the question, of possession. Title may synchronise with possession but can also be in one person while the possession is in another. Sections 240-A and 240-B do not take possession at all into consideration; if a person has title as an adhvasi over the land it is within their scope irrespective of whether he is in actual possession or not. If the legislature had intended that the land should, not only be held by an adhvasi but also, be in his possession one would have expected it to use some additional words.

In the law of tenancy the word "hold", Goes not include the idea of possession.

Of course there must be title, i.e., it must not have been extinguished such as by the lapse of time within which possession may be recovered. A person having an adhivasi right over a land but not in possession of it is entitled to recover possession either by an application u/s 232 or by a suit u/s 209 read with Section 232-A. Section 209 permits a bhumidar, sirdar or asami to eject a trespasser by a suit and Section 232-A added by Section 48 of the Act No. XX of 1954 confers such a right upon an adhivasi also. So since 1954 an adhivasi dispossessed from his holding has a remedy against the trespasser by a suit to be brought within, the prescribed period of limitation. Adhivasi rights were conferred by the Act even upon persons who were not in actual possession on 1-7-1952 and Section 232 gave them a right to be put in possession by an application made within a certain time.

If an adhivasi entitled to make an application u/s 232 or to file a suit u/s 209 did not make the application or file the suit within the prescribed period of limitation his right was extinguished, Section 210 extinguishes the title of bhumidar, sirdar or asami who does not file a suit u/s 209 against his trespasser within the prescribed period of limitation. This section is not expressly made applicable to an adhivasi, but this was only a lacuna on the part of the legislature. An adhivasi has no tenure such as a bhumidar, sirdar or asami has and the only right conferred upon him by the Act is to remain in possession subject to all the rights and liabilities to which he was subject on 30-6-1952, vide Section 231. An adhivasi who was in possession on that date got no better right than merely to continue to be in possession and an adhivasi who was not in possession got only the additional right to be put into possession by an application u/s 232; otherwise his rights and liabilities remained as they were before.

When the legislature decided to determine the tenure of a bhumidhar, sirdar or asami on account of his failure to bring a suit u/s 209 within the prescribed period of limitation it would not have intended, that an adhivasi should retain, his right as such in spite of his failure to bring a suit u/s 209 within the prescribed period of limitation. Limitation Act applies to proceedings under this Act (vide Section 341), but Section 28 of the Limitation Act does not apply because Section 29 of the Limitation Act itself makes it not applicable. So reliance cannot be placed upon Section 28 for holding that on the expiry of the period of limitation for a suit u/s 209 by an adhivasi his right is extinguished but the extinction of his right to be put into possession must be held to amount to extinction of his adhivasi rights. In any case it can be said that after the lapse of the prescribed period of limitation the land cannot be said to be "held" by him. In the result I find that land was held by an adhivasi within the meaning of Sections 240-A and 240-B not only when he was in actual possession of it but also when he was out of possession provided that his right to recover possession or to be put into possession had not become barred by time.

3. It is not quite clear why the legislature used the words "deemed to be" in Sections 240-A and 240-B. There is no provision in the Act under which a person

is deemed to be an adhivasi or land is deemed to be held by an adhivasi. There are persons deemed to be bhumidhars, sirdars and asamis but no provision lays down which persons are deemed to be adhivasis. It may be that the legislature used the words to mean a person to whom adhivasi rights were conferred without his being in possession on 1-7-1952, Since he was not in possession on 1-7-1952 it might be , argued that though adhivasi rights were conferred upon him the land could not be said to be "held" by him and to prevent such an argument the legislature might have added the words. Another explanation offered is that under the U. P. Land Reforms (Supplementary) Act No. 31 of 1952, which came into force on 7-11-1952, a person who was in cultivatory possession of the land in 1359 Fasli became an adhivasi with effect from 1-7-1952 [if he did not become a bhumidhar, sirdar or asami) and that the words "deemed to be" were used with reference to him. Since he became an adhivasi on 7-11-1952 with retrospective effect from 1-7-1952 he could be said to be deemed to be an adhivasi from 1-7-1952.

4. I do not see any significance in the fact that Section 240-A uses the words "deemed to be held by an adhivasi" while Section 240-B uses the words "deemed to be an adhivasi". They convey the same idea. Land is held either by an adhivasi or by a person deemed to be an adhivasi and in the latter case it can be said to be deemed to be held by an adhivasi. There is no difference between "land held by a person deemed to be an adhivasi" and "land deemed to be held by an adhivasi". The legal fiction attaching to an adhivasi is transferred to the land when one speaks of land. When land is held by a person deemed to be an adhivasi the effect is exactly the same as if it was held by an adhivasi and since actually it is not held by an adhivasi (because the person is actually not an adhivasi) it can be said to be deemed to be held by an adhivasi. As Section 240-B refers to a person the words "deemed to be an adhivasi" are the only words that can appropriately be used with reference to him, A person is an adhivasi or is not an adhivasi but is deemed to be an adhivasi; similarly land is held by an adhivasi or is not held by an adhivasi but is deemed to be held by an adhivasi.

5. If I am right in saying that the legislature used the words "deemed to be held by an Adhivasi" in Section 240-A to mean the land in respect of which adhivasi rights were created in a person not in possession of it at the moment it means that Section 240-A did not require actual possession and applied even if the person on whom adhivasi rights were conferred was not in possession.

6. There was no apparent reason for the legislature to distinguish between an adhivasi who was in actual possession and an adhivasi who was not in actual possession when deciding whether the interest of the land-holder in it should cease and vest in the State and whether the adhivasi should become sirdar or not. The question whether the adhivasi was in possession or not had no relevance to the question whether the land-holder's rights should cease and vest in the State or not. If a land-holder's rights ceased and vested in the State when his adhivasi was in possession there was no reason for not extinguishing and

vesting in the State another land-holder's rights simply because his adhvasi had been dispossessed either by himself or by a third person. It would have been anomalous if by his own wrongful act of dispossessing his adhvasi he could have prevented his interest from ceasing and vesting in the State, Once a land-holder's rights ceased and vested in the State the adhvasi became a sirdar as a consequential measure. If one adhvasi got sirdari rights u/s 240-B because he was in possession another could not reasonably be deprived of sirdari rights merely because he was wrongfully dispossessed either by his land-holder or by a stranger, if the remedy to recover possession was not lost by lapse of time.

7. Section 14 of the Land Reforms (Amendment) Act No. 18 of 1956 supports the view that an adhvasi in order to become a sirdar u/s 240-B did not have to be in actual possession on 29-10-1954. The provision contemplates conferment of sirdari rights u/s 240-B upon an adhvasi, who was not in possession on that date. A suit for recovery of possession u/s 232 would have been pending on 29-10-1954 only if the adhvasi was not in possession on that date. If he had to be in possession on that date there would not have been pending on the date a suit for recovery of possession u/s 232 and Section 14 would not have been necessary at all. The section was enacted just to give remedy to an adhvasi who was not in possession on 29-10-1954. After becoming sirdar u/s 240-B he could not continue the suit as an adhvasi under Section, 232 and he could not sue u/s 209 because it is prospective and applies to dispossession, after acquisition of sardari rights. That the section applies only to a person acquiring adhvasi rights u/s 20 (b) is besides the point; its real significance lies in its contemplating an adhvasi's acquiring sirdari rights u/s 240-B without being in actual possession of the land.

8. With great respect to my brother Bishambhar Dayal I do not agree that there cannot be under the Act two or more competing adhvasi's in the same land. Adhvasi rights are created u/s 20 in different ways but the ways are not so mutually exclusive that two or more persons cannot claim adhvasi rights over the same land. If A was recorded as an occupant of certain land in the khasra or khatauni of 1356 .Fasli, B was in possession of it in 1359 Fasli and C was on 30-6-1952 entitled to regain possession of it u/s 27 (1) (c) of the U. P. Tenancy (Amendment) Act 1947 they all acquired adhvasi rights. In such a case the question would arise which of them acquired sirdari rights u/s 240-B and -it could reasonably be said that whichever of them was in actual possession acquired them. This is what I said in *Manhoo Mal Vs. Mulloo and Others*, . In *Juthan Singh v. Badri*, 1962 All LJ 870, Broome, J. held that a person acquiring adhvasi rights under the. U. P. Land Reforms (Supplementary) Act, 1952 is entitled to possession of the land in preference to a person who acquired adhvasi rights in it u/s 20 of the Zamindari Abolition and Land Reforms Act. An Adhvasi in actual possession acquired sirdari rights u/s 240-B without any doubt. It is obvious that the legislature did not contemplate two or more competing persons acquiring sirdari rights. The adhvasi who was in actual possession could not be ejected at the instance of another adhvasi. So no useful purpose was to

be served by conferring sirdari rights upon other adhivasi's who were not in possession and could not get possession by ejecting "the one in possession. It would follow that the legislature did not contemplate that an adhivasi not in possession should acquire sirdari rights but it was only when another adhivasi had acquired them. Some adhivasi's rights could have been extinguished by 30-10-1954 by their failure to sue for possession but not the right of an adhivasi referred to in Section 20 (b), who had 30 months since 1-7-1952 to sue for possession u/s 232. In the instant case, however, we are not called upon to decide which of the competing adhivasi's if any, acquired sirdari rights u/s 240-B.

9. It was contended that if an adhivasi not in possession on 30-10-1954 acquired sirdari rights he might claim a fresh period of limitation even though only a few days were left for his filing a suit as an adhivasi. This is not a matter to be considered by the courts; if the legislature has granted a fresh period of limitation to an adhivasi not in possession it is not for them to say that it was unjustified and to import words, which do not exist, into the statute.

10. With great respect to Mithan Lal, J. who formulated the question. I am unable to understand how the distinction between actual possession and constructive possession is relevant at all. The question does not arise out of the facts in the instant appeal. Even a Full Bench cannot be called upon to write a commentary on a given topic of law or to answer questions not arising out of the case referred to it. It cannot be asked to decide other cases not referred to it. Any pronouncement that it makes on a question not arising in the case before it is sheer obiter dictum and cannot govern the decision of other cases. I also do not realise the significance of "temporary dispossession;" dispossession is dispossession so long as it lasts. Not only does a trespasser not indicate the period for which he would continue the trespass but also how long after 29-10-1954 the trespass lasted is wholly irrelevant to the question of the effect of the adhivasi's. being out of possession on that date. As it was not necessary for an adhivasi to be in actual possession in order to claim sirdari rights u/s 240-B the question whether he was dispossessed by his land-holder or a third person is irrelevant. I would answer the question referred to the Full Bench as follows:-

"It was not essential for an adhivasi or a person deemed to be an adhivasi to be" in actual possession of the land on 29-10-1954 in order that he should acquire sirdari rights u/s 240-B of the Zamindari Abolition and Land Reforms Act provided that his adhivasi rights were not extinguished before that date by lapse of time or otherwise. If he was out of possession on that date while still retaining the rights it did not matter whether he was! dispossessed by his landholder or by a stranger or for what period his dispossession lasted."

11. My answer to the question referred in the associated Second Appeal No. 2679 of 1960 would be;-

("Yes, yes.")

12. The second appeals may be returned to the bench concerned with these

answers.

B. Dayal, J.

13. Two connected appeals have been referred to this Full Bench because of a common question of law that has arisen in both of them. A second question has also been referred to this Bench in Second Appeal No. 1538 of 1957. The common question is in the following words;-

"Whether for the purpose of conferment of sirdari right on adhivasi's or persons who are deemed to hold the land as adhivasi's, it was necessary that such persons should have been in possession of the land held by them as adhivasi's on 30th October, 1954. If, so, whether such possession should be actual or constructive. If constructive, whether temporary dispossession by a trespasser would amount to constructive possession. Will it make any difference if the dispossession is done by an act of the landholder."

In Second Appeal No. 2679 of 1960, the Question was framed as follows:-

"Whether, upon the finding that the plaintiff was not in possession of the plot of land, but had become an adhivasi u/s 39 (b) (1) of the U. P. Zamindari Abolition and Land Reforms Act, 1950 and an application u/s 232 of that Act filed by him was pending on October 30, 1954, the plot was "land held or deemed to be held" by an adhivasi within the meaning of Section 240-A of the said Act, and did the plaintiff become a sirdar u/s 240-B (3) of the said Act."

14. It will thus be noted that the principal point which arises for decision in these questions is whether an adhivasi should be in actual or constructive possession of the land in dispute or at least should have made an application for obtaining possession before the 30th of October, 1954, in order to be able to obtain sirdari rights u/s 240-B (a) of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter referred to as the Act).

15. The second question which arises only in Second Appeal No. 1538 of 1957 is as follows:--

"Whether a person who had become an adhivasi under the provisions of Section 20 of the U. P. Zamindari Abolition and Land Reforms Act and who had been temporarily dispossessed on the date immediately preceding the appointed date that is 30th October 1954, shall be deemed to hold the land as an adhivasi if (a) his right to recover possession has not been lost by lapse of time and (b) if such right has been lost by lapse of time either before or after the 30th of October, 1954".

This question is a corollary to the main question mentioned above and is necessarily linked up with it. If on the 30th of October 1954 an adhivasi had lost his right by lapse of time he would not be an adhivasi on the said date and would not acquire sirdari right. If on that date he had not lost that right only then he would be able to acquire sirdari right.

16. I shall now proceed to consider the two relevant sections of the Act. The main Sections which need interpretation are Sections 240-A and 240-B, the relevant parts of which are as follows :

"240-A. (1) As soon as may be after the commencement of the U. P. Land Reforms (Amendment) Act, 1954, the State Government may, by notification, published in the official Gazette, declare that as from a date to be specified therein, the rights, title and interest of the landholder in the land which, on the date immediately preceding the said date, was held or deemed to be held by an adhvasi, shall as from the beginning of the date so specified (hereinafter called the appointed date), shall cease and vest, except as hereinafter provided, in the State free from all encumbrances.

(2)

240-B. Where a notification u/s 240-A has been published in the official Gazette, then, notwithstanding anything contained in Ch." 11 and IX of this Act but save as otherwise provided, the following consequences shall ensure in the area to which the notification relates, namely :

(a) every person who, on the date immediately preceding the appointed date, was or has been deemed to be an adhvasi shall with effect from the appointed date, become sirdar of the land referred to in Section 240-A and held by him as such and shall have all the rights and be subject to all the liabilities conferred and imposed upon sirdars by or under this Act.

.....

On a reading of these two sections, it is apparent that while Section 240-A speaks of land, which is the subject-matter of the Notification issued under it, Section 240-B (a) indicates the person who acquires sirdari rights in that land. Now u/s 240-A [and "which.....was held by or deemed to be held by an adhvasi" is vested in the State. Prima facie two classes of land are specified (i) land which is "held" and (ii) land which is "deemed to Be held" by an adhvasi. There is, however, no provision in the Act specifying which land would be deemed to be held by an adhvasi. Thus it appears, this phrase has been used merely by way of abundant caution so that it may not be said on any technical interpretation that a particular land was, in fact, not held by an adhvasi though in law adhvasi right had accrued in that land. Moreover, in Section 240-B (a) rights of a sirdar accrue in respect of land "referred to in Section 240-A and held by him as such.....".

As stated above, in Section 240-A two kinds of land were apparently mentioned but in. Section 240-B (a), rights are acquired only in land "held" by him as such and not in land "deemed to be held" by him as such. It is, therefore, clear that the phrase "deemed to foe held by an adhvasi" is not intended to indicate any separate class of land apart from the land "held by an adhvasi". Similarly, in Section 240-B rights accrue in favour of a person who "is or has been deemed to

foe an adhivasi." There being no express provision of law under which a person though not an adhivasi, shall be deemed to be an adhivasi, this deeming clause also has been used by way of abundant caution like the deeming clause used in the earlier section. It may be noted again that u/s 240-A (1) land in respect of which a notification can be issued has to be "held" by an adhivasi and there is no mention of a person who "has been deemed to foe an adhivasi". On a combined reading of the two sections therefore, the position is that a notification is to be issued under the first section, in respect of land "held by an adhivasi" and that person who was the adhivasi in that land acquires rights of a sirdar under the subsequent section.

17. The next question then arises, whether a land can be said to be "held by an adhivasi" only when he is in some sort of possession of the land or it can also be said to be "held by an adhivasi" if an adhivasi has in law the rights of an adhivasi in the land and he has a remedy open to take back possession of the land by due process of law, as an adhivasi. To my mind, the phrase "held by an adhivasi", in the connection in which it has been used, clearly refers to legal rights vested in a person and has no reference to the possession of the land.

18. There seems to be no point in conferring rights of a sirdar only on those adhivasis who were in some kind of possession over the land on 30th of October, 1954 and leaving others to remain adhivasis and recover possession as such. The policy of the legislature in enacting this new Ch. IX-A in the Act was to do away with the classes of adhivasis which was originally intended to be only a temporary class of tenure holders. All other tenure-holders have been given specific rights in the land of which they are the tenure-holders but with regard to adhivasis all that has been said in Section 231 of the Act is :

"An adhivasi shall continue to have all the rights and the liabilities which he possessed, or was subject to in respect of the land on the date immediately preceding the date of vesting, (1st of July, 1952)".

The adhivasi was thus a residuary class in which all the persons who did not acquire rights as bhumidars or sirdars or asamis were lumped together as adhivasis and they were to continue to have the rights which they had in the land before the date of vesting. Such a class, for obvious reasons, could not continue for a long time and it was for the purpose of liquidating this class that the new Ch. IX-A was added. So all the existing adhivasis on 30th of October, 1954 were intended to become sirdars.

19. In *Harjas v. Radha Kishan* ILR 8 AN 256, interpreting the phrase "land held by him as Sir" Straight Chief Justice observed :

"The words "land held by him as sir" must be construed to mean land belonging to him or to which he was entitled as sir".

In my opinion the phrase used in the present section, "held by an adhivasi" is almost verbatim the same which was interpreted by the learned Chief Justice

aforesaid, 1, respectfully agreeing with that interpretation, come to the conclusion that the phrase in Section 240-A "held by an adhivasi" means belonging to him or to which he is entitled as an adhivasi. In a recent Full Bench case of this Court Budhan Singh v. Nabi Bux 1961 All LJ 536 : AIR 1952 All 43 (FB), it was decided that the word "held" referred to title as opposed to mere possession.

20. If the legislature had intended to confer sirdari rights only upon those adhivasis who were in actual cultivatory possession of the land as adhivasis, the legislature would have made it quite clear by using clear language such as was used by it in Act No. XXXI of 1952 (Section 3) when conferring adhivasi rights upon a person in actual cultivatory possession of a particular land in 1359-F.

21. That the legislature intended to confer sirdari rights upon persons who were not in actual physical possession over the land and had merely a right to get back possession is supported by Section 14 of the U. P. Land Reforms (Amendment) Act No. XV111 of 1956 which provides that an adhivasi, who had filed an application u/s 232 for the recovery of possession and such a proceeding was pending on the appointed date, would become a sirdar and will also be entitled to continue that proceeding for recovery of possession. If some kind of possession on the 30th of October, 1954 was an essential requisite for acquiring rights of a sirdar, all persons on whose behalf such proceedings were pending and who were not in actual possession would not be entitled to get sirdari rights and the proceeding should have been dismissed.

22. The next contention that an adhivasi who had merely filed an application u/s 232 of the Act before the 30th of October, 1954 would become a sirdar but not a person who could and was intending to file such a proceeding on the 1st of November, 1954 would not get that right, cannot possibly be justified on the phraseology of Sections 240-A and 240-B of the Act.

23. It was suggested that sirdari rights were conferred on those who were in possession because under the U. P. Zamindari Abolition and Land Reforms Act there could be several competing claims of adhivasi rights over the same land, and therefore, the legislature intended that only those adhivasis could acquire sirdari rights who were in actual cultivatory possession of the land. I am unable to see any merit in it.

24. In the first place, I think that it is impossible to hold that the legislature had brought into existence two or more competing adhivasis of the same land at the same time, paying rent to the land-holder, for the same land. If there is any such apparent conflict in the law it has to be harmonised on some legal basis and the rightful adhivasi found. Secondly that in a question between two adhivasis as to which of them is the rightful adhivasi under the law and not a question as to which of the two adhivasis gets sirdari rights. Sirdari rights under the sections, now in controversy, have been conferred on the rightful Adhivasi and, therefore, whenever such a question of competing claims arises it has to be decided not on

the basis of the two sections now under consideration but on the basis of the law relating to adhivasi, and therefore, I do not consider it proper to enter into that question in these cases. Moreover, if the legislature had under consideration such competing claims it would have provided for extinction of adhivasi rights of those who were not in possession.

25. It was also contended that a person who requires sirdari rights, if the section is so interpreted, will have an extended period of limitation for obtaining possession of land, as a fresh period of limitation would start from the date he acquires sirdari rights and, therefore, the section should not be so interpreted. I am unable to see any force in this contention. There is no provision in the Act providing for a fresh period of limitation to obtain possession in favour of such sirdars and I do not see why the period of limitation for a suit to obtain possession would not continue to arise from the date from which the right to obtain possession as an adhivasi had arisen. In any case, even if the result is such, I do not see why the legislature could not have intended that a person who acquires higher right will have a larger period to obtain possession over his land in which he acquires such rights. The rules of limitation and of jurisdiction of courts, are merely auxiliary laws for enforcement of rights and they cannot govern or alter substantive rights of the parties, in my opinion, such considerations should not weigh while deciding questions of title.

26. Two decisions of this Court were brought to our notice in which the observations appeared to the contrary. In Civil Misc. Writ No. 3198 of 1961 (All) Smt. Maharani Kunwar v. Smt. Ram Sri, a Division Bench of this Court summarily dismissed the writ petition under Article 226 of the Constitution. The petitioner under Article 226 of the Constitution claimed adhivasi rights in the land in dispute. The right was negative by the revenue courts right upto the Board of Revenue as the petitioner was held not to have been in possession and she had not moved the revenue courts for getting back possession u/s 232 of the Act. The Division Bench summarised the decision of the Board of Revenue as follows;-

"That right was negative by the Board of Revenue on the ground that the petitioner was not in possession and had not moved the appropriate courts for recovery of possession within the period of limitation, prescribed by law."

Apparently in that case the right to recover possession as an adhivasi had been lost and on that basis the Board of Revenue negative that right, and the Division Bench held :

"We are unable to find that this view taken by the Board of Revenue is in any way incorrect."

27. Another decision of a learned single Judge in Second Appeal No. 3749 of 1961, Moti Lal v. Sahdso, decided on 16-2-1962 (All) was brought to our notice. The learned Judge stated the facts as follows;-

"The lower appellate court has recorded the finding that the plaintiffs were never

in possession of the disputed plot even though their father's name was recorded as "occupant" in the village papers of 1356-F".

Although it was observed at one place. "As the plain tiffs were not in possession of the land, it cannot be said to be held by them" yet the alternative position was also considered and it was held at the end.

"When the plaintiffs were not sirdars or even if they were sirdars had no right to sue for ejectment of the land-holder, they have no right to file a suit with regard to the land not held by them."

That was a suit for injunction and damages and obviously no suit for injunction" could be decreed in favour of the plaintiffs who had never been in possession. Further the question whether the plaintiffs had a right to claim possession on the date when they filed the suit was really irrelevant But the learned single Judge considered that aspect only as an academic question and observed :

"In the present case, the plaintiffs were not in possession of the plot and no application u/s 232 had been made, and, consequently, even though they could become adhivasis u/s 20, they could not regain possession of the land."

While interpreting Section 240-A of the Act, it was no doubt observed that the plaintiffs not being in possession of the land it could not be said that it was held by the plaintiffs but that observation must be read subject to the finding already given that the plaintiffs had lost their right to acquire possession over the land. Upon the facts both those decisions were distinguishable and, in any case, the observations to the contrary were not based on any detailed examination of the questions.

28. My answer, therefore, to the two questions referred to the Full Bench in Second Appeal No. 1538 of 1957 is:

"A person who had become an adhivasi under the provisions of Section 20 of the U. P. Zamindari Abolition and Land Reforms Act and who had been dispossessed either temporarily or permanently on the date immediately preceding the appointed date, 30th of October, 1954, shall be deemed to hold the land as an adhivasi if his right to recover possession has not been lost by lapse of time or otherwise before the 30th of October, 1954. For the purpose of conferment of sirdari rights on adhivasis it is not necessary that such persons should have been in possession of the land held by them on the 30th of October, 1954, whether actual or constructive."

My answer to the only question referred to us in Second Appeal No. 2679 of 1960 is as follows;-

"Upon the finding that the plaintiff was not in possession of the plot of land, but had become an adhivasi u/s 20(b)(1) of the U. P. Zamindari Abolition and Land Reforms Act 1950 and an application u/s 232 of that Act filed by him was pending on October 30, 1954 the plot was land held by an adhivasi within the

meaning of Section 240-A of the said Act, and the plaintiff became a sirdar u/s 240-8 (a) of the said Act.

29. In this Second Appeal, the learned counsel also wished to argue a further point that the plaintiff-appellant who claimed to be an adhivasi did not acquire adhivasi rights at all. But I do not think it necessary to go into that Question as it has not been referred to this Full Bench. That matter may if possible be raised before the learned single Judge, who will ultimately decide the case after receiving answers to the question referred.

30. Let the cases be returned to the Bench concerned with the above answers.

Pathak, J.

31. I have had the advantage of perusing the judgments of my Lord the Chief Justice and my brother Bishambhar Dayal and for the purpose of answering the questions referred to us I do not think I can usefully add to what they have already said. I agree that it was not necessary that an Adhivasi should have been in possession on the date immediately preceding the appointed date, October 30, 1954, in order to acquire Sirdari rights. Reference may also be made to Section 14 of the U. P. Land Reforms (Amendment) Act, 1956 which declares;

"14. u/s 240-B of the "Principal Act every person including an Adhivasi, to whom Clause (b) of Section 20 of that Act applied, became a Sirdar of land of which he was an Adhivasi on the date immediately preceding the appointed date....."

32. The conferment of Sirdari rights is not dependent upon whether the Adhivasi is in possession; but an Adhivasi out of possession should not, before October 30, 1954, have lost his right to recover possession. " The considerations that the possession of an Adhivasi is only constructive and that an Adhivasi in constructive possession has been temporarily dispossessed by a trespasser or even by the landholder are wholly immaterial. The two questions in Second Appeal No, 1538 of 1957 are answered accordingly.

33. The question framed in Second Appeal No. 2679 of 1960 must be answered in the affirmative. The land, in respect of which the plaintiff sued, fell within the description of the land referred to in Section 240-A, and the plaintiff became Sirdar of that land u/s 240-B (a).

34. The cases should now be returned to the Bench concerned with these answers. BY THE COURT:

35. Our answer to the questions referred to the Full Bench is as follows:-

"It was not essential for an adhivasi or a person deemed to be an adhivasi to be in actual possession of the land on 29-10-1954 in order that he should acquire sirdari rights u/s 240-B of the Zamindari Abolition and Land Reforms Act provided that his adhivasi rights were not extinguished before that date by lapse of time or otherwise. If he was out of possession on that date while still retaining

the rights it did Rot matter whether he was dispossessed by his landholder or by a stranger or for what period his dispossession lasted."

This case may be returned to the Bench concerned with the answer.