

(1972) 01 AHC CK 0022

In the Allahabad High Court

Case No : Special Appeal No.658 of 1966, connected with Writ Petition No.5396 of 1970

Kesho Ram

APPELLANT

Vs

Board of Revenue U.P., Allahabad and others

RESPONDENT

Date of Decision : 18-01-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 23
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 11(5), 27, 27(2), 52
Uttar Pradesh Tenancy Act, 1939 — Section 243
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 240J(2)

Citation : (1972) 01 AHC CK 0022

Hon'ble Judges : SATISH CHANDRA, J and K.N.SETH, J

Final Decision : Dismissed

Judgement

Sattsh Chandra, J.

1. This special appeal is directed against an order dismissing a writ petition filed by the appellant. It arises out of proceedings under Chapter IXA, U.P. Zamindari Abolition and Land Reforms Act, holding that the respondents had become adhvasis. The connected writ petition is directed against an order of the Board of Revenue staying the hearing of two second appeals.

2. Smt. Bhagwati, the predecessor of Kesho Ram appellant, held the land in dispute as her sir. She let it out to the respondents on 1421944 for five years on an annual rent of Rs.264/ Soon after the expiry of the period of lease, she instituted a suit for ejectment of the respondents under Section 175/179, U.P. Tenancy Act. The erstwhile tenants contested the suit. They pleaded that they had paid Rs.2,000/ to the plaintiff as a loan on the understanding that the loan would be set off against the rent of the land; and so they were entitled to remain in possession till the loan was discharged. They also pleaded that they had become hereditary tenants because the plaintiff paid more than Rs.25/ per year as abwab. The trial Court held that the plaintiff paid less than Rs.25/ per year as abwab. The defendants did not become hereditary tenants. The suit was decreed

for the ejectment of the defendants on 831949. The tenants went up in appeal. During its pendency the Zamindari Abolition and Land Reforms Act came into force, on 1st July, 1952. The tenants took a plea that they had become adhvasis under Sec.20(a)(i) of the Zamindari Abolition Act. The Additional Commissioner upheld this plea, and allowing the appeal, dismissed the suit for ejectment on 6th August, 1953.

3. Smt. Bhagwani, the plaintiff, went up to the Board of Revenue in second Appeal. The Board of Revenue

held that since the landholder, namely the plaintiff, was a woman, the tenants became asamis under Section 21(1)(h) read with Section 10(2)(i) of the Zamindari Abolition Act. The Board, however, remanded the suit to the Additional Commissioner for deciding the appeal on the merits. After remand when the appeal came up for hearing, it was urged on behalf of the defendants that plaintiff was not a disabled landholder because her husband did not suffer from any physical infirmity. The plaintiff contended to the contrary. There being no evidence on this point, the Additional Commissioner remanded the case to the trial Court for decision, after allowing parties to lead evidence. In consequence of this order of remand dated 22nd March, 1955, the trial Court heard the matter and decreed the suit on 8th November, 1955. The defendants again filed an appeal. The Additional Commissioner held that the plaintiffs husband did not suffer from the relevant disqualifications and the plaintiff was not a disabled landholder. The defendants became adhvasis and as such were not liable to ejectment. He by his order dated 11th July, 1956, reversed the decree and dismissed the suit.

4. Nearly 10 years later Smt. Bhagwani the plaintiff made an application for the setting aside of the appellate order dated 11th July, 1956. This application was dismissed on 21111966. The plaintiff, however, moved another application on 30th March, 1967, under Section 151, C.P.C. The Additional Commissioner held that in view of the provisions of the Consolidation of Holdings Act, the hearing of the appeal ought to have been stayed. On this ground he on 1081967 recalled his order dated 11th July, 1956, and decided the appeal "in terms of the orders passed in consolidation proceedings." Against this order the defendants preferred an appeal before the Board of Revenue. This appeal is still pending.

5. While the suit was pending before the Board of Revenue before its remand, a notification under Section 4, U.P. Consolidation of Holdings Act, was issued on 26th June, 1954, in respect of the land in dispute. Smt. Bhagwani the plaintiff filed objections. The Consolidation Officer accepted them and held that the defendants were asamis. In appeal the settlement officer held that the erstwhile tenants/defendants were adhvasis of the land. The matter was taken in revision to the Assistant Director, who, on 3121955 held that the decision in the title suit is binding and that the consolidation authorities could not go behind it. He took notice of the Judicial Officers order dated 8th November, 1955, and also of the fact that an appeal therefrom was pending. He held that the parties may apply to

the Settlement Officer for the modification of the entries after the decision of the appeal. In view of this order the Settlement Officer on 411956 directed that the parties may apply for the correction of the records when the suit was finally decided. At that time the respondents were recorded as adhivasis in the consolidation records.

6. It appears that somewhere in 1958 Smt. Bhagwani made an application to the SubDivisional Officer for correction of the consolidation records. This application was dismissed on 12th August, 1959, on the finding that the village having been denotified under Section 52 of the Consolidation of Holdings Act on 1111958, he no longer had any jurisdiction to correct the consolidation entries. The remedy of the parties was to get a declaration made through a competent Court.

7. Soon after, the statement of compensation under Chapter IXA of the Zamindari Abolition Act was published. It showed that the respondents were the adhivasis of the plots in dispute. Smt. Bhagwani filed an objection praying that the respondents be entered as asamis. The respondents contested. These objections were rejected by the SubDivisional Officer on 1171960. The appeal as well as the second appeal filed by Smt. Bhagwani were also dismissed on the merits. Aggrieved. Smt. Bhagwani filed a writ petition (No.2983 of 1963) in the High Court which was also dismissed on 19th September, 1966. The present special appeal filed by Kesho Ram (the adopted son of Smt. Bhagwani) is directed against the order of the learned single Judge dismissing the writ petition.

8. Smt. Bhagwani along with her adopted son Kesho Ram filed yet another suit for ejectment under Sec.202/229B, Z.A. Act. Smt. Bhagwani died on 2711962. Kesho Ram continued the suit. The suit was contested by the respondents principally on the ground that the suit was barred by res judicata and by the provisions of the Consolidation of Holdings Act and that the defendants were adhivasis. The trial Court repelled the pleas in bar and held that the order of the Board of Revenue Dated 1781954 operated as res judicata. Under it, the defendants were asamis. The suit for ejectment was decreed. The decree was, on appeal, affirmed by the Additional Commissioner on 11th September, 1967. The defendants went up to the Board of Revenue in second appeal.

9. This appeal came up for hearing along with the earlier appeal filed by the plaintiff against the Additional Commissioners order dated 1081967 passed in the suit for ejectment under the Tenancy Act. The Board of Revenue by its order dated 30th July, 1970, held that the findings given in proceedings under Chapter IXA were material and relevant in the

regular suits. The hearing of both the appeals was staved pending disposal of the present special appeal, which was directed against the order of the Board of Revenue. Arising out of proceedings under Chapter IXA of the Zamindari Abolition Act. Kesho Ram challenges this order of stay in the connected writ petition (No.5396 of 1970).

10. Mr. K.C. Saxena, appearing for Kesho Ram appellant, challenged the findings

recorded in proceedings under Chapter IXA by the Board of Revenue. Mr. N.S. Singhal, appearing for the respondents, submitted that under Chapter IXA the Revenue Courts have no jurisdiction to decide whether a person is an adhivasi or an asami. Smt. Bhagwanis objection was incompetent. The Board of Revenue was justified in dismissing Smt. Bhagwanis claim.

11. The position regarding the scope and efficacy of statements published and orders passed under Chapter IXA of the Act has now been settled. A Division Bench of this Court in Jagdamba Prasad Misra v. Refiuddin, 1967 All LJ 308, held that Chapter IXA of the Act does not contemplate adjudication of disputes regarding adhivasis or sirdari rights. A Full Bench of this Court in Maqbool Raza v. Joint Director of Consolidation, 1968 All LJ 89 : (AIR 1969 All 26 (FB)), confirmed this view and held that subsection (2) of Section 240J of the Act provides that the statement signed and sealed shall become final; but those statements are final only in respect of the liability of the land to be acquired, the amount of compensation payable for it and the person to whom it is payable. The statement does not create a bar of res judicata and is not conclusive. In view of these authorities, the position is that Smt. Bhagwani was not competent to institute objections regarding the status of the defendantrespondents. The revenue authorities had no jurisdiction to go into the merits of the dispute whether the respondents were asamis or adhivasis. Any decision given by them will not operate as res judicata in other title proceedings and shall not be binding on the parties. The Revenue Courts rightly dismissed the objection of Smt. Bhagwani. The special appeal is liable to fail.

12. In the writ petition, learned counsel for Kesho Ram urged that the Board of Revenue was in error in staying the hearing of the two appeals arising out of the ejectment suits filed under the tenancy Act and Section 202, Zamindari Abolition Act, because the proceedings under Chapter IXA were of no value or relevance in a title suit. This submission is, in view of the authorities mentioned above, justified.

13. Learned counsel for the parties, however, urged that since the matter was before us and several complicated questions of law arise, we should adjudicate the merits of the title dispute instead of leaving the matter for decision by the Board of Revenue. At the hearing the learned counsel took an adjournment and filed copies of several judgments which had not been filed originally, as also copies of the statements of witnesses given in the suit under the Tenancy Act. In view of the fact that the parties have been litigating for the last 30 years without the title being finally decided, and the fact that the writ petition is directed against the order of the Board of Revenue staying both the appeals, we acceded to this joint request and heard them on the merits of the problems raised in the two appeals.

14. Of the two, one appeal arose out of the ejectment suit under the Tenancy Act and the other out of the suit under Section 202, Zamindari Abolition Act.

15. The question whether the defendants were adhivasis or asamis had been raised in both suits. The decision of this point given in the earlier suit under the Tenancy Act will operate as res judicata in the later suit.

16. The submissions of the learned counsel for the parties raise the following interesting questions:

(1) Whether the judgment of the Board of Revenue dated 17th August, 1954, is binding and operative between the parties?

(2) What is the effect of the orders passed by the consolidation authorities? Was the order on review dated 10/8/1967 justified?

(3) Whether the revenue authorities have jurisdiction to correct entries made during consolidation operations?

17. It has been seen that in the suit for ejectment under the Tenancy Act the Additional Commissioner had held that the defendants had become adhivasis under Section 20(a)(i) of the Zamindari Abolition Act. This finding was overruled by the Board of Revenue in its order dated 17th August, 1954. The Board held:

"The Qabuliat executed by defendantrespondents was in favour of Jhandu Mal who worked as the Mukhtaram of plaintiff appellant. Thus it was plaintiff appellant who was the real proprietor of the land and Jhandu Mai worked as his Mukhtaram. As plaintiffappellant is woman, she comes under clause (i) of subsection (2) of Section 10, U.P. Z.A. and L.R. Act and defendantrespondents acquired the status of Asami under clause (b) of subsection (1) of Section 21, U.P. Z.A. and L.R. Act.

The lower appellate court decided the appeal holding that defendantrespondents were adhivasis. The remaining issues were not considered by him. It is, therefore, necessary to remand the appeal to the

lower appellate court for considering on merits."

Presumably, the Board of Revenue remanded the matter because there was no finding by the lower appellate Court on the plea that the defendants had given Rs.2,000/ to the plaintiff as loan to be adjusted against the rent. It appears that after remand, this plea of loan was not pressed by the defendants. When the appeal was taken up for hearing by the Additional Commissioner, they pleaded that in view of Section 157 of the Zamindari Abolition Act, the plaintiff was not a disabled landholder and so the defendants would not become asamis under Section 21. In his order dated 22nd March, 1965, the Additional Commissioner dealt with this plea as follows:

"Under the Zamindari Abolition and Land Reforms Act as amended by Act XX of 1954 the defendant appellant, apparently, acquired Adhivasi rights under Section 20(a)(i) of the said Act as the plaintiff not being a widow is by no means a disabled landholder. But, today her counsel has filed an application before me stating that her husband was a disabled person by reason of physical infirmity

within the meaning of Section 157(d) of the Zamindari Abolition and Land Reforms Act on the date of letting, namely, 24th February, 1944 and also on 2nd April, 1946 and, therefore, the defendant has only become an Asami vide Section 21(1)(h) of the said Act. This point is to be decided by the lower Court after allowing both the parties to adduce their evidence."

In this view, the Additional Commissioner remanded the suit to the trial Court.

18. The judicial Officer took evidence of the parties, and held that the plaintiffs husband was not a disabled person and so the defendants became adhivasis and not asamis. He, however, held that since the plaintiff was a bhumidhar, her rights were superior to those of an Adhivasi and they would prevail. On this ground, he decreed the suit for ejectment of the defendants.

19. On appeal by the defendants, the Additional Commissioner on 11th July, 1956, affirmed the finding that the plaintiffs husband was not a disabled person and the defendants became adhivasis. He overruled the trial Courts view that the plaintiffs bhumidhari rights would prevail and, setting aside the decree, dismissed the suit.

20. The Board of Revenue relied upon the provisions of the Act as were in operation on 17th August, 1954. The learned Additional Commissioner was referred to the provisions as they stood after the amendment of the Act by Amending Act XX of 1954.

21. Before dealing in detail with this aspect, we may notice a preliminary objection. It was urged that the defendants did not file any appeal against the remand order of the Board dated 17th August, 1954. The Board had definitely found that the defendants had become asamis. This finding having become final was binding between the parties.

22. Section 105(2), C.P.C. provides a complete answer to this submission. Under this provision, a party aggrieved by an order of remand, from which an appeal lies, does not appeal therefrom, is thereafter precluded from disputing its correctness. Obviously, if no appeal lies from a remand order, its correctness can be disputed in the same suit subsequently. The Board of Revenue passed the order of remand in proceedings under Section 175/179, U.P. Tenancy Act, 1939. Neither the Tenancy Act nor the Code of Civil Procedure provides an appeal against an order of remand passed by the Board of Revenue. Since no appeal lay, the aggrieved party could not be precluded from later on disputing its correctness. Such an order of remand would not become final for all times.

23. It was urged that Section 105(2), C.P.C. does not apply to proceedings under the Tenancy Act. That is not so. Section 243, U.P. Tenancy Act, 1939, makes the Code of Civil Procedure, 1908 applicable to all suits and proceedings under that Act subject to the following exceptions:

"(a) provisions inconsistent with anything in this Act, so far as the inconsistency extends,

(b) provisions applicable, only to special suits or proceedings, outside the scope of this Act, and

(c) the provisions contained in List I of the Second Schedule."

24. The U.P. Tenancy Act does not contain anything inconsistent with Section 105(2), C.P.C., Section 105(2), C.P.C. is a general provision. It is not applicable only to special suits or proceedings, outside the scope of the Tenancy Act. Lastly, Section 105(2), C.P.C. is not included in the Second Schedule of the Tenancy Act. None of the exceptions mentioned in Section 243, U.P. Tenancy Act, being attracted, Section 105(2), C.P.C. was clearly applicable to the order of remand passed by the Board of Revenue.

25. It was then urged that the order of remand passed by the Board of Revenue was binding on the Additional Commissioner and the Judicial Officer who were authorities subordinate to the Board of Revenue. These subordinate authorities could not question the view taken by the Board of Revenue. This is true. But this proposition would not hold good in case the Legislature changed the law interpreted by the Board of Revenue, retrospectively, and in such a manner as if the law which was considered by the Board of Revenue

had never been enacted or brought on the statute book; with the vanishing of the law, the interpretation placed thereupon by a Court would vanish. In this connection the decision of one of us in *Deep Chand Jain v. Board of Revenue*, 1966 All LJ 113 : (AIR 1966 All 412), is relevant and apposite. It was held:

"The Courts while deciding cases do not make law. When the Courts interpret any law they only explain what the preexisting law is. They do not create or impose it. The Courts do not possess the power to say that its view of the law will hold good from a date of its choice or for a period of time set by itself. That will in substance amount to amending the law from time to time. That is a power which vests exclusively in the lawmaking authority and not in the Courts.

The true rule appears to be that the Courts declaration is coextensive with the life of the law. It is effective for the whole of the time that that law remains in force."

26. So, the view taken by the Board of Revenue in its order of remand would remain good law only so long as the provisions interpreted by it remained in existence. But if they were repealed in a way as if they had never been enacted, the substratum of the Boards order would disappear; and in view of the changed law, the Court to which the suit had been remanded by the Board of Revenue, would be entitled to decide the merits of the case in view of the legal position then obtaining. In this situation, if the subordinate authorities after remand took note of the change in law, it cannot be said that they went behind the order of the Board of Revenue or sought to question or overrule it. Every Court is bound to take notice of a retrospective amendment in law.

27. The Board of Revenue held Section 10(2)(i) read with Section 21(1)(h) of the

U.P. Zamindari Abolition and Land Reforms Act as applicable. After remand the Additional Commissioner in his order dated 22nd March, 1955, held Section 157(d) of the Zamindari Abolition Act to have a material bearing on the question of title at issue. In our opinion both these authorities were justified in the view they took.

28. Section 21 of the Zamindari Abolition and Land Reforms Act (1 of 1951) as originally enacted did not contain clause (h). The Amending Act 16 of 1953 introduced clause (h) with effect from the coming into force of the Principal Act, namely 1st July, 1952. As so introduced, clause (h) ran as follows:

"(h) a tenant of sir or land referred to in subclause (a) of the Explanation under Section 16, a subtenant or an occupant referred to in Section 20, where the landholder or if there are more than one landholder, 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 classes mentioned in subsection (2) of Section 10 or subclause (e) of subsection (1) of Section 157."

29. Thus the question whether a person of the categories mentioned in the opening part of this clause became an asami, depended on the status of the landholder being, inter alia, of one or more of the classes mentioned in Section 10(2) of the Act.

30. Section 10(2) of the Act mentioned six categories of persons of whom "a woman" was one. Thus under clause (h) as it then stood, if the landholder was a woman simpliciter, her tenant of Sir would become an asami. This is why the Board of Revenue declared that the defendantrespondents had become as amis.

31. The Amending Act No.20 of 1954, which came into force on 10th October, 1954, changed the position. It by Section 5 repealed and reenacted cl.(h). Subsection (2) of Section 5 of the Amending Act provided that for clause (h) of subsection (1) the following shall be and be deemed to have been substituted with effect from the date of the commencement of the principal Act. Thus, the substitution and reenactment was made in such a way as if clause (h) as introduced by the Amending Act No.16 of 1953 had never been enacted, and that clause (h) as enacted by the Amending Act of 1954 had always been in force, ever since the commencement of the principal Act on 1st July, 1952.

32. In view of this retrospective amendment, the view taken by the Board of Revenue was no longer efficacious; because cl.(h) as introduced by the Amending Act of 1954, did not refer to the landholder as belonging to one or more of the classes mentioned in Section 10(2) or clause (a) of subsection (1) of Section 15; but instead, it provided that the landholder should belong to "any one or more of the classes mentioned in subsection (1) of Section 157."

33. Clause (a) of Section 157(1) of the Act did not provide for a woman simpliciter as Section 10(2) did. It provided:

"(a) an unmarried woman, or if married, divorced or separated from her husband

or whose husband suffers from any of the disqualifications mentioned in cl.(c) or (d), or a widow."

Clause (d) provided for a person incapable of cultivating by reason of blindness, or other physical infirmity. So, if the landholder was a married woman, whose husband was alive, she would come within the purview of clause (h) only if her husband

suffered from the disqualifications mentioned in clause (c) or (d).

34. Smt. Bhagwani, the plaintiff, was admittedly a married woman. It was agreed between the parties that her husband Jhandumal was alive in March, 1955, when the appeal was taken up for hearing by the Additional Commissioner after remand. That is why the plaintiff herself took up the plea that she was a disabled landholder as her husband was incapable of cultivating, because he was suffering from physical infirmity, within the meaning of clause (d) of Section 157(1).

35. The Amending Act 20 of 1954 repealed the relevant provisions of cl.(h) retrospectively from the date of its enactment. The reenacted clause (h) was operative ever since the enactment of the principal Act from the enactment of original clause (h). The Board of Revenue had relied upon the unamended clause (h) because on 17th August, 1954, it was on the statute book; but, when the matter came up for consideration before the Additional Commissioner, the old clause (h) had been completely obliterated and substituted by a new one. This legislative exercise completely demolished the older basis for acquisition of asami rights. In this situation, on basis of Deep Chandras case, 1966 All LJ 113 : (AIR 1966 All 412), the Additional Commissioner was justified in ignoring the finding recorded by the Board of Revenue and in entertaining the plea based upon the new provision.

36. It may be noticed that the plaintiff never took up this objection either before the Additional Commissioner or before the Judicial Officer after remand.

37. In any event, the view of the Board of Revenue will not bind the High Court which is a superior Court. We can look into the matter on its merits.

38. The view taken by the Judicial Officer as well as the Additional Commissioner, in the later suit for ejectment under Section 202 of the Z.A. Act, that the order of the Board of Revenue dated 17th August, 1954, had become final and binding between the parties is erroneous and unsustainable.

39. The question whether the plaintiffs husband suffered from the relevant infirmities was gone into and decided by the Courts in the suit for ejectment under the Tenancy Act. The trial Court as well as the first appellate Court held that the plaintiffs husband did not suffer from the relevant infirmities. It was held that the plaintiff not being a disabled landholder, the defendants became adhivasis and not asamis. The appellate order dated 11/7/1956 was, on review, set aside by the Additional Commissioner on 10/8/1967. The validity of this order was challenged by the defendants before the Board of Revenue in second appeal,

and also before us.

40. Mr. Saiyed Husain, the Additional Commissioner, in his order dated 10th August, 1967, held that the order of his predecessor dated 11th July, 1956, was without jurisdiction in view of the ruling reported in *Bahadur v. Bachai*, 1962 All LJ 817 : (AIR 1963 All 186). On this finding he allowed the application and set aside that order. He also held that the Consolidation Officer had held the defendants to be *asamis*. The Deputy Director of Consolidation by his order dated 3121955 confirmed the order of the Consolidation Officer. On this view he, after setting aside the earlier order, decided the appeal "in terms of the final order of the consolidation authorities." This view of Sri Saiyed Husain was accepted and affirmed by the trial Court as well as the Additional Commissioner on appeal in the suit for ejectment under Section 202 of the Zamindari Abolition Act.

41. Sri Saiyed Husain the Additional Commissioner, not only betrayed a palpable ignorance of the legal position, but he misconstrued the orders passed by the consolidation authorities.

42. In the present case the notification under Section 4, U.P. Consolidation of Holdings Act, was in respect of the plots in dispute published on 26th June, 1954. The Consolidation of Holdings Act as it then stood, did not contain any provision requiring revenue or civil Courts to stay the hearing of title suits or appeals pending before them. The Amending Act 24 of 1956 which came into force on July 3, 1956, repealed and reenacted Section 5 of the Consolidation of Holdings Act. Under the reenacted clause (b) thereof, all proceedings "for the correction of revenue records" pending before any Court or authority were to be stayed. This Amending Act introduced, *inter alia*, subsection (5) in Section 11 of the Principal Act. Subsection (5) provided:

"(5) Upon the publication of the statement under Section 11, all suits or proceedings in the Court of first instance, appeal, reference or revision, in which the question of title in respect of any plot mentioned in the statement with reference to clause (c) of subsection (1) of Sec.11 has been raised, shall be stayed to the extent it relates to such plot and shall thereafter be disposed of in the manner prescribed."

43. The manner prescribed meant the manner laid down in the rules framed under the Act. The Amending Act 24 of 1956 came up for consideration before the Supreme Court in *Baljeet Singh v. Risal Singh*, 1962 All LJ 604 (SC). In that case the notification under Section 4 of the Consolidation of Holdings Act was issued in July, 1954, when appeals arising from suits for ejectment under S.175 of the U.P. Tenancy Act were pending before the Supreme Court. Reliance was placed upon

subsection (5) of Section 11 as introduced by the Amending Act of 1956 and it was urged that the appeals had become infructuous. Raghubar Dayal, J. speaking for the Court observed:

"It is for the first time that such suits and proceedings in the various Courts had to be stayed in which a question of title in respect of any plot mentioned in the statement with reference to Cl.(c) of subsection (1) of Section 11 had been raised and that these stayed suits or proceedings were to be decided subsequently in the manner prescribed, i.e., in the manner laid down under rules framed under the Act. These provisions of subsection (5) do not affect the appeals as they were prospective in operation and could apply to those cases only in which statements under Section 11 were filed after the amendment had been made."

In that case, the statement under Sec.11 was published before the coming into force of the Amending Act of 1956. The Supreme Court held that the appeal pending before it, did not become infructuous.

44. By the Amending Act 38 of 1958, Section 5 of the Consolidation of Holdings Act was again repealed and reenacted. Clause (b)(i) of Section 5 now provided for the stay of all proceedings for correction of records and "All suits for declaration of rights and interest over land", which may be pending before any authority or Court. The Supreme Court held that this provision of the Amending Act of 1958 operated prospectively, i.e. it applied in cases where the notification under Section 4 was issued after the coming into force of the Amending Act of 1958. It was held that the provisions introduced by the Amending Act of 1958 did not render the appeals pending before them infructuous.

45. This Supreme Court decision is directly applicable to the present case. Here the statement under Section 11(1)(c) of the Consolidation of Holdings Act must have been published before 2181955, the date when the Consolidation Officer decided the objections of the parties; because under the act, it is after the publication of that statement, that parties file objections which are to be disposed of by the Consolidation Officer. So, it is clear that the relevant statement under Sec.11(1)(c) was published before the Amending Act of 1956 came into force on 3rd July, 1956. Consequently, Section 11(5) was not attracted and the appeal which was disposed of by the Additional Commissioner on 11th July, 1956, was not liable to be stayed.

46. Sri Saiyed Husain the learned Additional Commissioner relied upon the decision of this Court in 1962 All LJ 817 : (AIR 1963 All 186). This decision was distinguishable. In that case the notification under Section 4 was issued on 2761961 and the second Appeal was decided on 17081961. At that time the Amending Act of 1958 had come into force and under Section 5(b)(i) the second appeal had to be stayed. This is all that the Bench of this Court decided in Bahadurs case. They did not, and had no occasion to, advert to the legal position prevailing prior to the coming into force of the Amending Act of 1958.

47. The position is that the Additional Commissioner validly decided the appeal on its merits on 11th July, 1956. Sri Saiyed Husain was in error in setting aside that order.

48. Sri Saiyed Husain held that the Assistant Director had affirmed the order of the Consolidation Officer and on this view he decided the appeal "in terms of the final orders of the consolidation authorities." This was not merely an erroneous view. It betrays negligence.

49. In consolidation proceedings the matter was finally decided by the Assistant Director in revision on 3121955. That revision was filed by the plaintiff Smt. Bhagwani against an order of the Settlement Officer holding that the tenants had become adhivasis and sirdars of the land. The Assistant Director held:

"The Settlement Officer does not have any authority to override the orders passed by a court of competent jurisdiction and I, therefore, hold that the order passed in proceedings for the determination of the rights of the opposite party before the judicial officer will stand and the entry shall be made accordingly. It is, however, for the opposite party to apply, if it so desires, to the Settlement Officer who by virtue of Section 5 of the Act maintains the records of rights, to stay modification of the entries until such time as the appeal is decided. I, therefore decide this revision accordingly."

50. This order was passed by the Assistant Director on 3121955. On that day the position was that the trial Court had on 8111955 disposed of the ejectment suit in consequence of the Board of Revenues remand order. The suit had been decreed. The defendants had on 2121955 filed an appeal, which was pending. The Assistant Director pointedly made reference to the decision of this appeal and directed the parties to apply to the Settlement Officer to stay modification of the entries until the appeal was decided. In view of this direction of the Assistant Director, the tenants made an application before the Settlement Officer requesting the stay of correction of entries. It will be remembered that the Settlement Officer had upheld the claim of the tenants to be Adhivasis. In accordance with that order, they had been entered in consolidation records as Adhivasis. But the Judicial Officer had nonetheless held them an asamis and decreed the suit for their ejectment

In view of that decision, the plaintiff Smt. Bhagwani, wanted the consolidation records to be corrected by expunging the names of the tenants. This was sought to be stayed by the tenants. On 411956 the Settlement Officer passed an order stating:

"In my opinion entries should be corrected only after the final decision of the matter in appeal. At present the entries will remain as they are. It will be open to either party to apply for correction as soon as the dispute has been settled finally."

So, the ultimate and final orders passed by consolidation authorities did not decide the question of title. They decided that the final decision in the pending suit on the question of title shall be binding and effective, and that entries in consolidation records will be made accordingly. In view of these orders, it was meaningless for the Additional Commissioner to have said in his review order

dated 10/8/1967 that the appeal is decided in terms of the final orders of consolidation authorities. This order deserves to be quashed. With the quashing of the order dated 10th August, 1967, the earlier order of 11th July, 1956, revives. By that order the plaintiffs suit for ejectment had been dismissed on the finding that the defendants had become adhvasis and sirdars. This order was not challenged by the plaintiff by filing an available second appeal before, before the Board of Revenue. It had become final and will operate as res judicata in the subsequent suit under Section 202, Zamindari Abolition Act.

51. It was, however, urged on behalf of the plaintiff that it was open to the plaintiff to have challenged the validity of this order in the second appeal arising out of the suit under the Tenancy Act and now pending before the Board of Revenue; and, so he is entitled to question it before us. The second appeal before the Board of Revenue was directed against the order passed on review on 6th August, 1967. We are doubtful whether in that appeal the plaintiff could have questioned the findings given in the order of 11th July, 1956. But without expressing a concluded opinion on this aspect, we have gone into the evidence on the question whether the plaintiffs husband suffered from any of the disqualifications mentioned in Section 157(1)(d), Zamindari Abolition Act. This clause provided for a person "incapable of cultivating by reason of blindness or other physical infirmity". The trial Court as well as the Additional Commissioner on appeal recorded a finding of fact that the plaintiff Smt. Bhagwanis husband was not incapable of cultivating by reason of any physical infirmity, on the relevant dates mentioned in Section 21(1)(h)(i) of the Z.A. Act, namely on the date of letting and 9th day of April, 1946. We have perused the finding as well as the evidence which was placed before us by the parties. We are satisfied that the finding of fact is not vitiated by any error of law. The Board of Revenue could have, in a second appeal, interfered with that finding only if it found that it suffered from an error of law. The position is that the plaintiffs husband was not incapable of cultivating on the relevant dates and, therefore, the plaintiff was not a disabled landholder. Clause (h) of Section 21(1) was not applicable. The defendants were tenants of Sir. They became adhvasis under Section 20(a)(i) of the Zamindari Abolition Act, and later on, sirdars under Chapter IXA of the Act.

52. The third and the last question refers to the view taken by the SubDivisional Officer in his order dated 12th August, 1959. He held that the village having been denotified under Section 52 of the Consolidation of Holdings Act on 11/11/1958, he could no longer correct the entries made by the consolidation authorities.

53. In regard to the dispute between the parties the consolidation operations cannot be deemed to have been closed by the notification under Section 52, Consolidation of Holdings Act. The Assistant Director had expressly directed that the Consolidation records shall be corrected according to the final decision in the title suit then pending. The Settlement Officer had also directed the parties to apply for correction after the final disposal of that suit. Thus the effect of these

orders was that the "case" for the correction of the consolidation records was kept pending till the final disposal of the title suit. Section 52(1) provides that the State Government shall issue a notification that the consolidation operations have been closed in a unit or village. But subsection (2) provides that notwithstanding anything contained in subsection (1), any order passed in "cases" or proceedings pending under the Act on the date of issue of notification under subsection (1) shall be given effect to by such authorities as may be prescribed, and, the consolidation operations shall for that purpose be deemed not to have been closed. Since the consolidation authorities had kept the matter pending, the orders passed in the title suit under the Tenancy Act would have to be given effect to. The SubDivisional Officer was in error in holding that he had no jurisdiction to do so.

54. In the next place, Section 27(2), U.P. Consolidation of Holdings Act, provides that the record of rights prepared under subsection (1), shall be final and conclusive. Subsection (3) thereof lays down that the records prepared under subsection (1) shall be maintained by the Collector. The finality and conclusiveness

of the records is only in respect of their rebuttability. Previous such records were maintained under Section 33, U.P. Land Revenue Act. It was held that the entries made under the Land Revenue Act were not final. They were only presumed to be true until the contrary was proved: see *Bal Mukand v. Nand Ram*, 1944 RD 330, *Trikam Singh v. Ram Singh*, 1955 RD 162 and *Shitalu v. Pashupati Nath*, 1958 RD 15. Section 27(2) changed this position. Under it the entries made in the consolidation records, were final. As seen above, in respect of the land in dispute the consolidation authorities made only tentative entries, which were subject to correction. Such entries could not be deemed final and conclusive. The Revenue authorities, who are now entrusted by Section 27(3) to maintain the records, have to correct the consolidation entries in accordance with the final decision reached in the title suit under the Tenancy Act.

55. In the result the special appeal fails and is dismissed. The connected writ petition is allowed. The order of the Board of Revenue dated 30th July, 1970, staying the hearing of the appeals pending before it is quashed. The order of the Additional Commissioner dated August 10, 1967, and the order of the SubDivisional Officer dated 12th August, 1967, are also quashed. The order of the Additional Commissioner dated 11th July, 1966, dismissing the suit for ejectment under the Tenancy Act is affirmed. The orders of the Revenue Courts decreeing the suit for ejectment under Section 202, Zamindari Abolition Act, are set aside and that suit is dismissed. The two second appeals pending before the Board of Revenue shall be deemed disposed of by this order. Under the circumstances, the parties may bear their own costs in this Court

Order accordingly.