

(1977) 07 AHC CK 0049
In the Allahabad High Court
Case No : Sp. A. No. 830 of 1969

Mohan Lal alias Mohan Singh

APPELLANT

Vs

Joint Director of Consolidation and Others

RESPONDENT

Date of Decision : 05-07-1977

Acts Referred:

Uttar Pradesh Land Reforms (Supplementary) Act, 1952 — Section 3
Uttar Pradesh Land Revenue Act, 1901 — Section 28, 33
Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27(1), 27(3)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 10(2), 16, 18, 19, 20
Constitution of India, 1950 — Article 226

Citation : (1977) AWC 494

Hon'ble Judges : P.N. Harkauli, J;K.N. Singh, J

Bench : Division Bench

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

Final Decision : Allowed

Judgement

K.N. Singh, J.—This appeal is directed against the judgment of a learned Single Judge of this Court quashing the orders of the consolidation authorities.

2. The dispute relates to plots Nos. 639, 640, 641, 642 and 406 situate in village Kithot, tahsil Shikohabad, district Mainpuri. In the basic year Mohan Lal Appellant was recorded Sirdar over these plots. Balwant Singh and Chet Singh filed objection before the consolidation authorities against the entry of Mohan Lal's name claiming Adhivasi and Sirdari rights on the ground of their being recorded occupants in 1356 Fasli. Mohan Lal asserted that he had entered into possession of the plots in dispute under a registered lease granted to him in 1949 and he continued to be in lawful cultivatory possession in 1359 Fasli and as such he had acquired Sirdari rights u/s 3 of the U.P. Land Reforms (Supplementary) Act, 1952, hereinafter referred to as the supplementary Act. All the four consolidation authorities, namely, the Consolidation Officer, the Settlement Officer, the Deputy Director of Consolidation and the Joint Director of Consolidation rejected the

claim of Balwant Singh and Chet Singh and upheld the basic year entry. Thereupon, Balwant Singh and Chet Singh Respondents filed a writ petition under Article 226 of the Constitution before this Court challenging the legality of the orders of the consolidation authorities. The writ petition was allowed by a learned Single Judge holding that since Balwant Singh and Chet Singh Respondents were recorded occupants they had acquired Adhivasi and Sirdari rights and the subsequent entry of 1359 Fasli of cultivatory possession in favour of Mohan Lal did not confer any right on him. Aggrieved, Mohan Lal has preferred this special appeal against the judgment of the learned Single Judge.

3. The question which needs determination is whether Adhivasi rights conferred on a person in pursuance of his being in cultivatory possession in 1359 Fasli conferred by Section 3 of the Supplementary Act of 1952 shall prevail over the rights of a recorded occupant. In order to appreciate this question, it is necessary to refer to the material portion of Section 20(b), which reads as follows:

20. 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 Fasli prepared under Sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901 or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under Clause (c) of Sub-section (1) of Section 27 of the U.P. Tenancy (Amendment) Act, 1947, or (ii) any land to which Section 16 applies, in the khasra or Khatauni of 1356 Fasli prepared under Sections 28 and 33, respectively, of the U.P. Land Revenue Act, 1901, but who was not in possession in the year 1359 Fasli, 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 and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof.

Section 20(b) lays down that every person who was recorded as occupant of any land other than grove land in the Khasra or Khatauni of 1356 Fasli shall be Adhivasi of the land and shall be entitled to take or retain possession thereof. The legislature laid down that if a recorded occupant was dispossessed he could regain possession through court and for that purpose it enacted Section 232 in the 1951 Act. This privilege conferred on the recorded occupant is however subject to the provisions of the Act, thus if the suit u/s 232 is filed on the expiry of the period of limitation prescribed therefor, or if some other person acquired Bhumidhari rights or sirdari rights under the provisions of the Act the right of a recorded occupant would be subject to those rights. Section 20(b) has been subject of judicial interpretations on a number of occasions, but now the

controversy has been set at rest by the Supreme Court in *Smt. Sonawati v. Sri Ram* 1968 AWR 1. The Supreme Court held that any person recorded occupant in 1356 Fasli becomes Adhivasi and he is entitled to regain possession and to retain the same. Section 20(b) does not require proof of actual possession, instead a mere entry in the khasra or khatauni of 1356 Fasli in favour of the person concerned confers right of Adhivasi on him. This legal position remains undisputed.

4. Section 3 of the Supplementary Act of 1952 is as under:

3. (1) Every person who was in cultivatory possession of any land during the year 1359 Fasli but is not a person who as consequence of vesting u/s 4 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act I of 1951) (hereinafter referred to as the said Act) has become a bhumidhar, sirdar, adhivasi or asami under Sections 18 to 21 of the said Act shall be and is hereby declared to be, with effect from the appointed date-

(a) if the bhumidhar or Sirdar of the land was, or where the land belongs jointly to two or more bhumidhars or sirdars, all of them were, on the appointed date person or persons referred to in items (i) to (m) of Sub-section (2) of Section 10 of the said Act, an asami from year to year, or

(b) if the bhumidhar or sirdar was not such a person, an adhivasi, and shall be entitled to all the rights and be subjected to all the liabilities conferred or imposed upon an asami or an adhivasi, as the case may be, by or under the said Act.

The above Section 3 also confers right of adhivasi on a person who is found in cultivatory possession of any land during the year 1359 Fasli. Section 3 does not require that the person who may be in cultivatory possession of land in 1359 fasli must be recorded. Once it is found that a person was in cultivatory possession of any land in the year 1359 Fasli he is entitled to the rights of Adhivasi. Section 3 also came up for interpretation in *Sonawati's* (supra). The Supreme Court held that the expression "cultivatory possession" indicates that the possession must be a valid one in accordance with law. A trespasser having no right to be in possession cannot acquire Adhivasi rights under the said section merely because he may have entered upon the land forcibly or surreptitiously and remain in cultivatory possession in 1359 Fasli.

5. So far as Section 20(b) is concerned, possession is not necessary, but in order to acquire Sirdari rights u/s 3, it is necessary to be in cultivatory possession in a lawful manner. The question whether the right of Adhivasi u/s 3 of the Supplementary Act would prevail over that of recorded occupant came up for consideration before a Single Judge in *Jhutan Singh v. Badri* 1952 AWR 690. The learned single Judge held that a person acquiring Adhivasi right under the Supplementary Act was entitled to possession of land in preference to a person who may have acquired Adhivasi rights u/s 20(b) of the 1951 Act. A similar view was taken by another learned Judge in *Tulsi Ram v. Director of Consolidation*

1965 AWR 765. We are in agreement with the view taken in Juthan Singh and Tulsi Ram's case.

6. The 1951 Act conferred right of Adhivasi on a recorded occupant u/s 20(b). In case the recorded occupant was dispossessed, the Act conferred right on the recorded occupant to obtain and retain possession. If the recorded occupant was dispossessed he could file suit for regaining possession u/s 232 of the Act. The Supplementary Act of 1952 was enacted by the State Legislature later in time to confer Adhivasi rights on those persons who were in cultivatory possession of the land in 1359 Fasli. The legislature was conscious that u/s 20(b) of 1951 Act it had conferred rights on the recorded occupants, but in addition to that it conferred Adhivasi Suden rights on these persons found in cultivatory possession of the land in 1359 Fasli. The legislature further laid down that an Adhivasi by virtue of being in possession in 1359 Fasli was entitled to regain and retain possession of the land. It is noteworthy that Section 3 of the Supplementary Act 1952, was given retrospective effect, namely, from the date of vesting. Having regard to these provisions the legislative intent is quite apparent that it gave preference to the person found in cultivatory possession in 1359 Fasli. It is well settled principle that when two provisions are enacted by the same legislature conferring similar rights and if there is any conflict of interest or right, the right conferred by the subsequent legislation would prevail over the right conferred by the earlier legislation. In the absence of specific provision in the Act as to what would happen if there is conflict between the right of a recorded occupant and a person who may be in cultivatory possession in 1359 Fasli, the legislative intent must be given effect. As discussed earlier, the legislative intention is quite clear that the right of Adhivasi as conferred by Section 3 of the Supplementary Act of 1952 should prevail over the right of Adhivasi u/s 20(b).

7. In the instant case, the consolidation authorities have recorded concurrent findings that even though Chet Singh and Balwant Singh were recorded occupants in 1356 Fasli over the plots in dispute but they were not in possession. In fact Chet Singh and Balwant Singh filed a suit u/s 232 of the Act for regaining possession but that suit stood abated on the commencement of the consolidation proceedings. The consolidation authorities have further recorded findings that Mohan Lal was in possession over the plots in dispute in pursuance of a registered lease and he was in cultivatory possession in 1359 Fasli also. Thus in view of the principle laid down by the Supreme Court in Sonawati's case, Mohan Lal acquired Adhivasi and Sirdari rights in preference to the Respondents Chet Singh and Balwant Singh. The consolidation authorities committed no manifest error of law in upholding the Appellant's claim. In our opinion, the learned single Judge was in error in interfering with the orders of the Consolidation authorities.

8. In view of the above discussion, we allow the appeal and set aside the order of the learned single Judge dated 4th April, 1969, and restore the orders of the consolidation authorities. The writ petition filed by Respondents Chet Singh and Balwant Singh stands dismissed. Parties shall bear their own costs.