
(1985) 07 AHC CK 0022

In the Allahabad High Court

Case No : Writ Petition No"s. 882 and 1120 of 1977

Paras Nath

APPELLANT

Vs

Board of Revenue, U.P., Allahabad and Others

RESPONDENT

Date of Decision : 19-07-1985

Acts Referred:

Uttar Pradesh Tenancy (Amendment) Act, 1947 — Section 27(3)

Uttar Pradesh Tenancy Act, 1939 — Section 205

Uttar Pradesh Urban Areas Zamindari Abolition and Land Reforms Act, 1956 — Section 17, 18, 18(2), 19, 19(1)

Citation : AIR 1986 All 111 : (1985) AWC 778

Hon'ble Judges : R.M. Sahai, J;K.P. Singh, J;J.N. Dubey, J

Bench : Full Bench

Advocate : Sankatha Rai, for the Appellant; G.N. Verma, for the Respondent

Final Decision : Allowed

Judgement

R.M. Sahai, J.—Having felt doubtful about the principle of law laid down in Lalit Tewari v. Genda Tewari 1974 Unreported Rev. Cas. 318, that a sub-tenant of a fixed rate tenant with specific authorisation to plant grove would become Asami u/s 21(1)(b) of UPZA & LR Act of 1951 a provision in pari materia with Section 19(b) of U. P. Urban ZA & LR Act (hereinafter referred to as Act), one of us (Hon"ble K. P. Singh, J), referred this petition directed against order of Board of Revenue and others arising out of proceedings started for eviction u/s 202 of the Act for decision by a larger bench.

2. Prior to narration of facts it may be examined who are those persons who would become Asamis under Sub-clause (b) of Section 19 of Act. But before doing so it would be better if import of similar provision in ZA & LR Act (Act 1 of 1951) is understood. It is well known that when Zamindari was abolished the Legislature substituted seven classes of tenants under U. P. Tenancy Act besides Sir and Khudkast holder with three tenure holders known as Bhumidhar, Sirdar and Assami. Bhumidhari rights were conferred on these tenants who under U. P.

Tenancy Act could be termed as superior class of tenants. Under this Act also their status was maintained by granting them absolute rights including right to transfer, gift or will. Sirdari rights were conferred on tenants who were to say second grade tenants. The Act while granting them absolute rights in land did not confer any right of transfer etc. The third category of tenants consisted of those persons to whom the land was let out and they were known as subtenants, tenants of sir or non-occupancy tenants. They had no security of tenure and were exposed to ejectment. Out of this category the Zamindari Abolition Act conferred rights of Adhivasi on tenants of Sir, sub-tenants, recorded occupants of 1356 and those who were in cultivatory possession in 1359. In 1954 even this class was made sirdar. They were rendered immune from eviction and were entitled to retain possession. And in case they were not in possession they were entitled to regain possession u/s 232 of Zamindari Abolition Act. But if they held land of a person who was disabled within the meaning of Section 157 of Zamindari Abolition Act then they were conferred rights of Asami u/s 21 and were liable to ejectment. But no subtenant or recorded occupant of grove land could become adhivasi. Other non-occupancy tenants who were tenants of such lands in which hereditary rights could not accrue under Tenancy Act because they were lands of public utility or pasture land or land covered with water etc. in which casual and seasoned cultivation was done or were mortgagees of superior tenants or non occupancy tenants of intermediary grove land or sub-tenants of grove land were conferred rights of assami u/s 21 of Zamindari Abolition Act. Such persons were liable to ejectment. When Urban Area Zamindari Abolition Act was enacted the same scheme was adhered to. Although the class of Adhivasis was obliterated but by separate Sub-sec. (2) added to Section 19 all those persons who were tenants of Sir or sub-tenants were made Sirdars. Thus Sub-section like Section 20 of Z.A. Act 1 of 1951 provided that a person shall become Sirdar only if he did not become Assami u/s 19. Section 19 of the Act like Section 21 of Zamindari Abolition Act confers right of Assami on a person covered in it irrespective of other provisions of the Act. Therefore, this section has an overriding effect and any person covered in various Sub-clauses of this section shall be conferred with right of Assami. The opening part of the section reads as under : --

Notwithstanding anything contained in this Act, every person, who on the date immediately preceding date of vesting occupied or held in an Agricultural Area as

(a).....

(b) a sub-tenant of grove land.

(c) to (h).....

shall be deemed to be an Asami thereof.

3. In order to attract applicability of this section a person has to satisfy that he was (a) a sub-tenant, (b) of grove land (c) on the date of vesting (d) and he occupied or held the land, (e) in agricultural area. Agricultural area has been

defined in Sub-section (1) of Section 2 of the Act. The procedure of its demarcation etc. has been given in Chap. II of the Act. The land in which rights can accrue under the Act has to be situated in this area. The date of vesting in respect of territory mentioned in part A of the Schedule included in a Municipality is 30th June, 1954. Expression occupied or held is associated with being in possession actual or constructive under some right. The word held used in Section 9 of Z.A. Act has been interpreted by Supreme Court to mean lawfully held. See *Buddhu Singh v. Bani Bux* 1969 R.D. 407, *K.K. Handique Vs. Member, Board of Agricultural Income Tax, Assam*, . It excludes trespasser from it. It has to be understood in this Act in same sense. The word "occupy" means possession. But it having been used with word "held" it takes its colour from it consequently both these words have to be understood as denoting a person who has been in lawful possession. Groveland has to be understood according to Sub-section (16) of Section 3 of the Act in the sense it was understood in U. P. Tenancy Act which meant any specific piece of land in Mohal or Mohals having plantation thereon with such number that they preclude or when full grown will preclude, the land or considerable portion thereof from the use primarily for any other purpose in the column of grove. "Grove holder" is defined in Section 205 of U. P. Tenancy Act as a person who has planted a grove on land which was let or granted to him by the landlord for the purpose of planting a grove. Another class of persons who could become grove holders were those who planted grove with written permission of the landlord or were entitled to plant on land let out to them in accordance with local customs. But from this class were excluded sub-tenant, permanent tenure holders, fixed rate tenants etc. So grove land and grove holder under U.P. Tenancy Act were two different concepts. The one could not be confused with another. Grove land as a matter of law may not present any difficulty. But as a fact it depended on number of trees, their location and nature etc. sub-tenant has not been defined in the Act. But by virtue of Sub-section (16) of Section 2 of the Act it has to be understood in the same sense in which it was understood under U. P. Tenancy Act. In that it was defined in Sub-section (22) of Section 3 as a person who holds land from tenant thereof other than a permanent tenure holder or from a grove holder or from a rent free grantee or from a grantee at favourable rate of rent and by whom the rent is, or but for a contract express or implied, would be payable by a person who was entitled to let out. That is he must have been inducted over the land by a person who was entitled under U. P. Tenancy Act to let out. Sub-section (22) of Section 3 of Tenancy Act specifically debarred certain persons from inducting a sub-tenant. But a fixed rate tenant did not suffer from this disability. He could, therefore, let out land or grove land to a subtenant. On the (sic) sub-tenant to whom the land was let out could plant trees either under permission or otherwise in such number that cultivation was precluded from it and it becomes grove land. Where grove was planted with permission the sub-tenant did not become grove holder. He continued to be sub-tenant as he had not committed breach of any term of his lease. That was the situation in *Lalit Tewari's case* 1974 URC 318 (supra). The sub-lessee was specifically authorised by the lease itself to plant grove,

therefore, the Division Bench held the lessee to be a sub-tenant of grove land. But what happens when the sub-tenant in contravention of terms of lease or without permission of lessor plants the grove. Does he become a sub-tenant of grove land ? or to put it differently could a person who was inducted as sub-tenant continue to be sub-tenanted become a subtenant of grove land by planting trees on it? In *Shyam Behari v. Consolidation Officer* 1974 U.R.C. 317 the trees were planted by the subtenants presumably without permission of the land holder. It was held that plantation of trees did not extinguish tenancy and, therefore, he continued to be sub-tenant of land. To examine its correctness it has to be seen if a sub-tenant could plant trees or not and its effect. Did the Sub-tenancy stand extinguished by planting of trees? u/s 3(11) of Agra Tenancy Act planting of trees by a tenant amounted to improvement. But this was omitted from Section 3(8) of U.P. Tenancy Act. Therefore, planting of trees by a tenant in the holding ceased to be improvement. Section 80, however, permitted a tenant other than a non-occupancy tenant to plant trees on his holding. A sub-tenant, therefore, was debarred from planting trees. But if he did so that is acted contrary to provisions of Section 80 then the Act contemplated his ejectment as it amounted to acting in a manner detrimental to land or amounted to violating condition of the lease within meaning of Section 172. But it did not result in extinction of his sub-tenancy. It only rendered him liable to ejectment as sub-tenant and not as trespasser. If it is held that tenancy extinguished or possession of such a tenant became contrary to law, then such a person could acquire rights u/s 180(2) of UP. Tenancy Act. And that would be contrary to scheme of the Act. Even a tenant by planting trees in such a manner as to exclude cultivation did not become grove holder obviously because by own act or omission a tenant could not acquire higher or better rights. How could a sub-tenant then become hereditary tenant u/s 180(2). The act of planting trees, therefore, does not extinguish the tenancy nor it brings into any change in his status and he continues to be sub-tenant liable to ejectment.

4. In *Ram Dulare Singh v. Sukkhoo Ram* 1963 R.D. 221 it was held by a Full Bench of this Court that a sub-tenant did not cease to be a sub-tenant by efflux of time. It was held, that if a sub-tenant had a right to remain in possession it could be only in one capacity and that of a sub-tenant. The Bench observed, the interest of a tenant was not extinguished by efflux of the time for which the lease was granted to him. The expiry of the period of the lease had no effect on his tenancy rights. Section 48 provided that when the interest of a sub-tenant was extinguished he was bound to vacate his holding. There is no such provision in respect of extinction of the interest of a tenant. A sub-tenant's interest also was extinguished in the manner laid down in Section 45, i.e., it was not extinguished by efflux of the time for which the Sub-lease was granted to him. The period of the Sub-lease might have expired, but he continued to be a sub-tenant so long as he did not die heirless, did not surrender or abandon the holding, was not ejected in execution of a decree or order of a Court etc. The only effect of the efflux of time was that he became liable to be ejected u/s 175(b) but, so long a

she was not ejected, he continued to be a sub-tenant because his interest was not extinguished. It made no difference that he was required on extinction of his interest to vacate his holding whereas a tenant was not required to vacate his holding on extinction of his interest, because the question whether the holding should be vacated or not did not arise so long as the interest was not extinguished. As far as the question whether the interest was extinguished or not, the U.P. Tenancy Act made no difference between interest of a tenant and interest of a sub-tenant". In Chaudhary Mohd. M. A. Khan v. Board of Revenue 1958 ALJ 904 it was held that a sub-tenant even after ejectment in execution of decree continues to be sub-tenant.

5. For deciding nature of right a person may acquire in grove land under the Act it is the provision of Sections 17, 18 and 19 which have to be read together. It may be pointed out that there is no provision in the Act like Sub-section (2) of Section 21 of U.P. Z.A. and L.R. Act I of 1951, conferring rights of Asami on persons who were occupants of grove land on the date immediately preceding the date of vesting. Under the Act a person is either Sirdar u/s 18 or Asami u/s 19. Section 17 confers rights of Bhumidhari on a grove holder. That is a person covered u/s 205 of U.P. Tenancy Act could claim such right. As has been seen earlier Sub-clause (b) of Section 205 specifically debarred a sub-tenant from planting grove. As a sub-tenant could not become grove-holder he could not acquire rights of Bhumidhari u/s 17. Section 18(vii) confers rights of Sirdar on a sub-tenant referred to in Sub-section (4) of Section 47. It applied to those sub-tenants who held land under valid lease executed on or after 1902 and their lessor, that is, the tenant either died leaving without any heir entitled to inherit or his tenancy stood extinguished by surrender or abandonment. But a sub-tenant of a permanent tenure holder and fixed rate tenant was not granted this protection. Therefore, a sub-tenant of fixed rate tenant even if he satisfied other conditions of Sub-section (4) of Section 47 did not become Sirdar u/s 18. Another class of sub-tenants who were made Sirdar were referred in Sub-clause (b) of Sub-section (2) of Section 18. This is a general clause under which every person who was a sub-tenant of any land on the date of vesting became a sirdar unless he was a sub-tenant referred to in the proviso to Sub-section (3) of Section 27 of U.P. Tenancy (Amendment) Act, 1947 or the land was grove land. Therefore, if a person is a sub-tenant of grove land then he could not become Sirdar. It is these excepted class of persons from Clause (b) of Sub-section (2) of Section 18 who have been conferred rights of Asami u/s 19(1)(b) and (c) of the Act. But if it is held that a sub-tenant continues to be sub-tenant of land then it shall result in conferring on him rights of Sirdar which is a better right under Z.A. Act. And that would be anomalous as if the land due to planting of trees stands converted and becomes grove land on the date of vesting then how could the sub-tenant be deemed as sub-tenant of land. It would also be contrary to scheme of Z.A. Act, as a subtenant or non-occupancy tenant and even an occupier in Z.A. Act of 1951 of grove land have been given inferior rights of Asami. If it is accepted that despite change in nature of land the sub-tenant

continued to be sub-tenant of land then the sub-tenant shall become Sirdar. Therefore, a sub-tenant of land who plants trees either with permission or otherwise and converts land into grove land which continues to be so on the date of vesting then he becomes Asami of it.

6. On law as explained above it may now be examined whether on facts found the petitioner is entitled to any relief. Paras Nath and Kedar Nath were fixed rate tenants. According to them they had planted grove on plots 1367/1, 1367/2 and 1371/1 and these plots were let out to father of Nanak Chand and Raj Deo. According to them they being sub-tenants of grove land were liable to ejectment u/s 202 read with Section 19(b) of the Act, Nanak Chand contested the suit. It was claimed that land was sub-let, to his father and his father planted the trees over the disputed land. Therefore, they were Sirdars. Later on the written statement was amended and it was claimed that trees were planted in plots 1367/1 and 1367/2 and not plot No. 1371/1. There was thus divergence on the controversy of plantation of grove but no issue was framed on it because according to trial Court it was immaterial whether grove was planted by plaintiffs or defendants and what was material was whether land was grove land on the date of vesting or not. According to trial Court as land was grove land and Nanak Chand was its sub-tenant he became an Asami. In appeal the order was modified, as there was ample documentary evidence to prove that plots Nos. 1367/1 and 1367/2 were grove land on relevant date. It was held that as these plots were grove the opposite parties were its Asamis. They, however, did not find that there was any document from which it could be established that plot No. 1371/1 was grove. The Board of Revenue in Second Appeal endorsed the finding of Additional Commissioner. From recital in the order of Additional Commissioner and Board of Revenue it appears Paras Nath had filed a suit u/s 175 U.P. Tenancy Act for ejectment of Nanak Chand. But this suit was abated due to enforcement of Zamindari Abolition Act. It is not clear whether this suit was filed because the term of sub-tenancy had expired or because landholder terminated the lease due to plantation of trees.

7. Some dispute was raised in respect of plot No. 1371/1. The Courts below appeared to have assumed that there were no trees standing over it. The trial Court did not record any clear finding. The Additional Commissioner and the Board of Revenue were under erroneous impression. In any case as the dispute is being referred to Additional Commissioner to be decided again on facts and then to apply law as indicated above, the controversy in respect of this plot shall also be decided again.

8. For the reasons stated above both the writ petitions succeed and are allowed. The order of Board of Revenue and the Additional Commissioner are quashed. The Additional Commissioner shall decide the appeal afresh. Parties shall bear their own costs.