

(1965) 05 AHC CK 0005

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 1703 of 1965

Pir Khan

APPELLANT

Vs

Dy. Director Consolidation Distt Kanpur and others

RESPONDENT

Date of Decision : 03-05-1965

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 20(b)(ii)

Citation : (1965) 35 AWR 404

Hon'ble Judges : V. Bhargava, J;S.D. Khare, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Bhargava, J.—We have heard learned Counsel for the Petitioner and are unable to find any error of law in the decision of the Deputy Director of Consolidation. The Petitioner was no doubt entered as a sub-tenant in 1355 Fasli and continued as such in 1357 Fasli. In 1358 Fasli and 1359 Fasli he ceased to be the sub-tenant. The question is whether in these circumstances the Petitioner acquired any rights. He could not become an Adhivasi u/s 20 (b) (ii) of the U.P. Zamin-dari Abolition and Land Reforms Act because in 1359 Fasli his entry was in the capacity of a subtenant and not as an occupant and he was also, in fact, a subtenant.

2. Learned counsel for the Petitioner on this point has relied on the decision of the Supreme Court in *Amba Prasad v. Mahboob Ali Shah* (1)(1964 AWR 541). In that case it has been held by the Supreme Court that by the word "occupant" is meant the person in actual possession, and consequently it is clear that between a proprietor and a tenant the tenant, and between the tenant and a sub tenant the latter and between him and a person recorded in the remarks column as Dawedar Qabiz the Dawedar Qabiz are the occupants. The Court held that this is the only logical way to interpret the section which does away with all intermediaries. The Court, however, further proceeded to make the following qualification:

The word "occupant" thus signifies occupancy and enjoyment. Mediate possession (except where the immediate possessor holds on behalf of the mediate possessor is of no consequence. The question is whether the case of the Petitioner is covered by this qualification laid down by the Supreme Court.

3. In this connection we may take notice of the remarks made by the Supreme Court in the earlier case of *Upper Ganges Sugar Mills Ltd. v. Khalil-ul-feahman and Ors.* (2) (1961 AWR 78). In that case also this very principle was applied that a person cannot be treated as an occupant in case he is in possession on behalf of another. That was a case where a thekedar whose theka had expired was claiming Adhivasi rights on the basis of being an occupant. The Supreme Court accepted the contention of the thekedar on the ground that in 1356 Fasli the thekedar had in fact ceased to be a thekedar and to hold the land in that capacity, so that he was no longer holding on behalf of the proprietor. His possession was consequently independent of the proprietor and he, therefore, satisfied the requirement of being entered as an occupant as laid down in section 20 (b) of the U.P. Zamindari Abolition and Land Reforms Act. In dealing with this aspect their Lordships of the Supreme Court pointed it out "hat the thekedar had become an occupant only because his theka had expired and his capacity as thekedar had ceased to exist. It was implied that a thekedar, if he is in possession under a valid and running theka, would be held to be a person holding the land on behalf of the proprietor from whom he had obtained the theka, and in such a case he could not be treated as an occupant.

4. This very principle has been accepted again in the subsequent case of *Amba Prasad* (1) (supra). In the case before us the question, therefore, that arises for decision is whether a sub-tenant can be said to be a person holding on behalf of the Chief tenant or not. We find no difficulty in holding that a sub tenant must be held to be a person holding on behalf of the chief tenant. There are various transfers under which a transferee can hold on behalf of his transferor. One is a case where there may be a mortgage executed by a zamindar who was holding the land as his khudkasht. On execution of the usufructuary mortgage the mortgagee comes into possession and starts cultivating the land. In such a case Section 14 of the U.P. Zamindari Abolition and Land Reforms Act makes a specific provision that the mortgage would cease to exist. The mortgagee would acquire no right and it is the mortgagor who would acquire bhumidhari rights. If in such a case it were to be held that a mortgagee holds in his own right by virtue of the transfer made to him under the mortgage deed, the mortgagee could claim to be an Adhivasi on the principle laid down in these cases. Thus the case of a mortgagee has to be held to be clear case where he holds the land on behalf of the proprietor from whom he holds the mortgage and not in his own right.

5. The second is the case of a Thekedar, who also obtains a Theka and at the same time as a Thekedar gets possession of land which was the Khudkasht of the proprietor executing the Theka. The Thekedar then comes into possession and cultivates the land. While his Theka is still running he holds the land on

behalf of the proprietor even though the rights are conferred on him by execution of a delft of Theka which actually transfers some of the proprietary rights of the proprietor to the Thekedar.

6. Similar is the case of a tenant. A tenant holds on the basis of a lease from the proprietor, and is thus a transferee of some of the rights which constitute the bundle of rights known as proprietary rights. A tenant cannot be deemed to be holding otherwise than on behalf of his lessor. That is why in the case of tenants a separate provision has been made in other sections of the U.P. Z.A. and L.R. Act indicating what rights they would acquire depending upon the nature of the tenancy rights. If we were to hold that a tenant does not hold on behalf of his lessor it would mean that a tenant would acquire double rights one would be the right by virtue of his being a tenant under, say, Section 19, if he was a non-occupancy tenant, and, in addition, he would also become an Adhivasi u/s 20 in the capacity of being recorded as occupant in 1356F. Clearly this could not have been contemplated.

7. Lastly comes the case of a subtenant. A sub tenant, no doubt, is the occupant qua his chief tenant, but his occupation is also on behalf of the chief tenant. That is precisely why in the case of a sub tenant also separate provision has been made for acquisition of rights by him u/s 20 (b) (ii) of the Act. Sub-tenants acquire rights under that provision and not as occupants. This provision was necessitated only because sub-tenants had to be deemed to be holding on behalf of their chief tenants in exactly the same manner in which a chief tenant holds on behalf of his lessor and Thekedar or a mortgagee holds on behalf of the proprietor from whom he has obtained the Theka or the mortgage. This case, therefore, comes within the exception laid down by their Lordships of the Supreme Court themselves in the case of Amba I'd (1) (supra). The entry in 1356 F. in favour of the Petitioner as a sub tenant, when he was in fact the sub-tenant, cannot, therefore, entitle him to acquire Adhivasi rights. Of Course, if the finding had been that he was not a sub tenant at all and was in fact not holding under any right transferred to him by the other persons entered in the records, he would have been the occupant and could have claimed the benefit of Section 26(1)(b) of the Act. On the basis of the entry of 13(sic)6 Fasli, therefore, even according to the latest decision of the Supreme Court, the petitioner did not acquire any right.

8. So far as his rapacity as a sub-tenant is concerned, the finding of fact is that after 1357 Fasli he ceased to be a subtenant. Subtenants have been given rights only in cases where they were still sub tenants on the date immediately preceding the date of vesting, i.e., at the end of the year 1359 Fasli. In this case the finding of fact is that subsequent to the two years, 1356 Fasli and 1357 Fasli, the Petitioner lost his sub tenancy rights and he was not in possession of the disputed land.

Consequently u/s 20 (a) (ii) also the Petitioner did not acquire any rights. The decision given by the consolidation authorities is correct.

9. There is no force in this petition. It is dismissed.