
(1994) 05 AHC CK 0029

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15388 of 1994

Ramdin and Others

APPELLANT

Vs

Board of Revenues and Others

RESPONDENT

Date of Decision : 10-05-1994

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4F), 195, 198, 209

Citation : (1994) 05 AHC CK 0029

Hon'ble Judges : S.P.Srivastava, J

Final Decision : Dismissed

Judgement

S. P. Srivastava, J.—The petitioner claiming to be of Scheduled Caste and asserting that they were continuing to be in the occupation for a period of 15 years of plot No. 653 which vested in the Gaon Sabha, submitted an application on 26121990 before the SubDivisional Officer, requesting that since the plot in dispute was in their occupation from before 30th June, 1985, their names be recorded as Bhumidhars with nontransferable rights under Section 122B (4F) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as Act"). This application was shown to be an application under Section 122B (4F) of the Act.

2. On the basis of the aforesaid application, the SubDivisional Officer appears to have called for a report wherein the Lekhpal reported on 1211991 that the plot in dispute was the property of the Gaon Sabha which was continuing to be in the occupation of the applicants for about 12 years. In his report the Lekhpal pointed but that five different subdivisions of the plot were in occupation of the applicants separately. Lekhpal recommended for extending to the applicants benefits available under Section 122B (4F) of the Act and for the recording of their names as bhumidhars with nontransferable rights in respect of the different subdivisions indicated in the report. The report was endorsed even by the NaibTehsildar on 1691991 on the ground that the applicants were continuing to be in possession over the land in dispute for about 12 years and were eligible for

the extension of the benefits to them, contemplated under the aforesaid provision. The NaibTehsildar further endorsed the report that the orders may be issued for recording the applicants as Bhumidhars with nontransferable rights over the different sub divisions of plot No. 653 which were in their independent possession. The SubDivisional Officer vide the order dated 2311991 accepting the .proposal, issued the direction as prayed for.

3. The State of U.P. feeling aggrieved by the order of the SubDivisional Officer preferred a revision. The Additional Commissioner vide his order dated 2491993 made a reference to the Board of Revenue for accepting the revision and setting aside me order passed by the SubDivisional Officer. The Additional Commissioner noticed that the Land Management Committee vide its resolution dated 11111990 had resolved to allot the land in dispute to eligible persons other than the petitioners and the proposal contained in the resolution had been sent for approval of the SubDivisional Officer, Sadar. It was further noticed that in the mean time, the application dated 26121990 was filed by the applicants claiming to be Bhumidhars with nontransferable right and seeking an order that they be so recorded in the revenue re"ords. The Additional Commissioner on an appraisal of evidence on record came to the conclusion that the application in question and the recommendations of the Lekhpal made thereon were collusive and based on incorrect facts. It was also indicated that the order passed by the SubDivisional Officer was illegal and liable to be set aside.

4. The Board of Revenue, respondent No. 1 held that the cryptic order, passed by the SubDivisional Officer which was merely to the effect that "accepted as proposed could not be deemed to be in accordance with law. The Board of Revenue also endorsed the view of the Additional Commissioner that the entire proceeding culminating in the order of the .SubDivisional Officer in question was collusive. The Board also expressed the view that there was no finding as to the exact duration of possession of the applicants and the Lekhpal had expressed total ignorance of the fact as to when the applicants had entered into possession of the land in dispute.

The Board of Revenue accordingly accepted the reference and quashed the order passed by the SubDivisional Officer.

5. Feeling aggrieved the petitioners have now approached this. Court by means of the present writ petition seeking redress, praying that the order passed by the Board of Revenue, respondent No. 1 as well as the order passed by the Additional Commissioner be quashed.

6. I have heard Sri S. D. Pathak, the learned Counsel for the petitioners and learned Standing Counsel representing the respondents No. 1, 2 and 4 as well as the learned Counsel representing the Gaon Sabha, respondent No. 3 and have perused the record.

7. The learned Counsel for the petitioners has urged that taking into consideration the report of the Lekhpal and the recommendation of the

NaibTehsildar, the petitioner had been rightly held to be entitled to the benefits available under Section 122B (4F) of the Act and the order passed by the Sub Divisional Officer for recording the names of the petitioners in the revenue records of right as "Bhumidhars with nontransferable right" was in accordance with law which could not be interfered with in revision by the respondent No. 1. The learned Counsel for the petitioner has strenuously contended that the provision contained in Section 122B (4F) of the Act provides for a statutory fiction whereunder the persons falling in the category stipulated in the aforesaid provision, on fulfilling the requisite conditions contemplated therein, have to be deemed to have become Bhumidhars with nontransferable right and this statutory fiction necessarily required the respondent authorities to record the names of the petitioners as Bhumidhars with nontransferable right in respect of the land in their occupation. In such, circumstances, it was urged that the order passed by the SubDivisional Officer had to be treated to be in conformity with the aforesaid legal fiction which was sought to be implemented and consequently, it is pointed out, that no interference was called for in the order passed by the SubDivisional Officer.

8. The learned Standing Counsel on the other hand has urged that the application filed by the petitioners on 26121990 Itself was not maintainable and could not be entertained at all. It is further urged that the statutory fiction contemplated under Section 122B (4F) of the Act referred to above was a legal fiction of a very limited scope and could come to the rescue of a particular category of an unauthorised occupant of a land vesting in the Gaon Sabha to successfully resist only a proceeding for the eviction of such an occupant initiated under Section 122B of the Act. The learned Standing Counsel further urged that the deeming clause contained in Section 122B (4F) of the Act could not override the provisions other than Section 122B of the Act which specifically dealt with the creation or the conferment of Sirdari/Bhumidhari with nontransferable right envisaged under the Act specially in view of the fact that it had been made clear in Section 122B (4F) of the Act itself that the said provision was to be given effect to notwithstanding anything in the foregoing subsections.... which clearly expressed the legislative intent that , the operation of "the aforesaid legal fiction was to remain confined to the proceedings under Section 122B of the Act and by virtue of this fiction in spite of the requisite conditions contemplated under Section 122B (1) (2) and (3) having been satisfied a person against whom the proceedings under Section 122B of the Act had been initiated could not be either evicted from the land or held liable to pay any amount of compensation for damages, misappropriation or wrongful occupation as the case may be.

"9. It was also urged that in the facts and circumstances of the case the "rule of harmonious, construction has to be adopted and to preserve the benefits secured under the provisions of the Act, the operation of the fiction contemplated under Section 122B (4 F).of the Act in question has to be treated as limited" in its operation to the proceedings under Section 122B of the Act alone.

10. The learned counsel for the Gaon Sabha, adopting the submissions made by the learned Standing Counsel has urged that the Gaon Sabha itself had passed a resolution for allotment of the land in dispute in accordance with the provisions contained" in Section 198 of the Act to eligible persons other than the petitioners. It was urged that legal fiction relied upon by the petitioners could not come to their rescue as the non obstante clause contained in Section 122B (4F) of the Act could not be deemed to affect the priorities, stipulated under Section 198 of the Act and the restrictions envisaged under Sections 131 and 198 of the Act.

11. I have given my anxious consideration to the rival contentions put forward by the learned counsel for the parties. Section 131 of the Act is to the following effect:

131. Bhumidhar with nontransferable rights. Every person belonging to any of the following classes shall be called a bhumidhar with nontransferable rights, and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhar by or under this Act, namely :

(a) every person admitted as a sirdar of any land under Section 195 before the date of commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977, or as a bhumidhar with non transferable rights under the said section on or after the said date ;

(b) every person who in any other manner acquires on or after the said date, the rights of such a bhumidhar under or in accordance with the provisions of this Act ;

(c) every person who is, or has been allotted any land under the provisions of the Uttar Pradesh Bhoodan Yagna Act, 1952 ;

(d) with effect from July 1, 1981 every person with whom surplus land is or has been settled under Section 26A or subsection (3) of Section 27 of, the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960.?

12. The provisions contained in Section 195 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 stipulate that the Land Management Committee with the previous approval of the Assistant Collector Incharge of the SubDivision shall have the right to admit any person as Bhumidhar with nontransferable rights to any land (other than land falling in any of the classes mentioned in Section 132) where the land is vacant land, the land is vested in the Gaon Sabha under Section 117, or the land has come into the possession of Land Management Committee under Section 194 or under any Other provisions of the Act. The provisions contained in Section 198 of the Act prescribe the order of preference in admitting persons to land as bhumidhars with nontransferable rights or as asami as the case may be under Section 195. In the order of priorities/preference,, landless widow, sons, unmarried daughters or parents residing in the circle, of a person who had lost his life by enemy action while in active

service in the Armed Forces of the Union comes at the top and a person residing in the circle who has become wholly disabled while in active service in the Armed Forces of the Union is put in the next category. The landless" agricultural labourer residing in the circle and belonging to a Scheduled Caste or Scheduled Tribe is placed in third category and any other landless agricultural labourer residing in the circle in the fourth category. There are other lower categories with which we are not concerned in the present case. In the explanation added to Section 198 "agricultural labourer" means a person whose main source of livelihood is agricultural labour. It is also provided that the land that may be allotted under Section 198 of the Act shall not exceed the prescribed limit which is up to 1.26 hectares or 3.125 acres together with the land held by a person falling in clause (c) as bhumidhar or asami.

13. Section 122B of the Act provides that where any property vested under the provisions of the Act in a Gaon Sabha or a local authority is damaged or misappropriated or where any Gaon Sabha or local authority is entitled to take or retain possession of any land under the provisions of the Act and such land is occupied otherwise than in accordance with the provisions of this Act, the Land Management Committee or Local Authority, as the case may be is authorised to get the occupant evicted and is also authorised to recover amount of compensation for damage, misappropriation or wrongful occupation from such an occupant.

14, The provisions contained in Section 122B (4D) of the Act provide that any person aggrieved by the order of the Assistant Collector, or Collector in respect" of any property under that section may file a suit in a court of competent jurisdiction to establish the right claimed by him in such property. However, Section 122B (4E) of the Act stipulates that no such suit shall lie against an order of the Assistant Collector if a revision is preferred against the order of the Collector passed under subsection (4A).

15. Section 122B (4F) of the Act which contains the legal fiction in question is to the following effect:

(4F) Notwithstanding anything in the foregoing subsections, where any agricultural labourer belonging to a Scheduled Castes, or Scheduled Tribes is in occupation of any land vested in Gaon Sabha under Section 117 (not being land mentioned in Section 132) having occupied it from before June 30, 1985 and the land so occupied together with land, if any, held by him from before the said date as bhumidhar, sirdar or asami does not exceed 1.26 hectares (3.125 acres), then no action under this section shall be taken by the Land Management Committee or the Collector against such labourer, and it shall be deemed that he has been admitted as bhumidhar with nontransferable rights of that land under Section 195.?

(Emphasis supplied)

16. The question which arises for consideration in this case is as to whether an

application claiming benefit envisaged under Section 122B (4F) of the Act and seeking correction in the entries in the records or right i.e. Khatauni is maintainable and whether the legal fiction contemplated under the aforesaid provision is to be treated to be limited in its operation to the proceeding initiated by the Gaon Sabha or the local authority under Section 122B of the Act.

17. From the scheme underlying the various provisions of the U.P. Zamindari and Land Reforms Act to which a reference has been made above, it is apparent that every person admitted as a sirdar of any land under Section 195 of the Act before the date of commencement of the U.P. Land Laws (Amendment)"

Act, 1977 or as a bhumidhar with nontransferable rights under the said section on or after the said date as well as every person who in any other manner acquires on or after the said date, rights of such bhumidhar under or in accordance with the provisions of the Act is to be called a bhumidhar with nontransferable rights and shall have all the rights and be subject to all the liabilities conferred or imposed upon such bhumidhar by or under the Act. However, the admission of a person to" land as Bhumidhar with non transferable rights is permissible only subject to the restrictions contained in Section 195 read with Section 198 of the Act.

18. In the Rules framed under the U.P. Zamindari Abolition and Land Reforms Act, Rules 175 and 176 lay down the procedure for admission to land as bhumidhar with nontransferable rights and obtaining of approval to the admission of a person as such by the competent authority. The provisions contained in Section 142 (2) of the Act provide that a bhumidhar with nontransferable rights shall subject to the provisions of the Act, have the right to exclusive possession of all land of which he is "such bhumidhar and to use such land for any purpose connected with agriculture, horticulture or animal husbandry which includes pisciculture, poultry farming and social forestry.

19. However, the provisions contained in Section 198A of the Act provide that where any person is admitted as a bhumidhar with nontransferable rights of any land under Section 195 and any person other than the allottee is in occupation of such land in contravention of the provision of the Act, the Assistant Collector may of his own motion and shall on the application of the allottee or lessee as the case may be, put him in possession of such land.

20. This provision and the machinery provided therein secures the rights conferred in favour of a person to enter upon and continue to remain in possession over the land in respect whereof allotment is made on the basis of the priority/preference over and above any agricultural labourer envisaged under Section 122B of the Act.

21. The provision contained in Section 209 (b) of the Act vests the Gaon Sabha with a right to seek ejectment of a person from the land where such land does not form the part of the holding of a bhumidhar and the possession is taken or retained without the consent of the Gaon Sabha on its filing a suit for the

purpose.

22. The contention of the learned counsel for "the petitioners is that in case, the requisite conditions contemplated under Section 122B (4F) of the Act are fulfilled any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe has to be deemed to be admitted as bhumidhar with nontransferable rights of the land in his occupation under Section 195 of the Act notwithstanding the provisions contained in Section 198 of the Act or the Rules prescribed under the Act regulating the manner in which a person could be admitted as a bhumidhar with non transferable rights in respect of land vesting in the Gaon Sabha.

23. In the present case, however, I the petitioners in their application I came up with the case that they I belonged to the Scheduled Caste and were in the occupation of the plot in dispute since before 30th June, 1985. They did not even allege that they were agricultural labourers. On their own showing these persons fell in the fourth category stipulated in Section 1198 of the Act and in the normal course could not have a right to be admitted in the presence of any person falling in the first three categories in the order of preference stipulated in Section 198 of the Act. The Additional Commissioner has noticed that even the Gaon Sabha did not find these persons to be eligible for being admitted as bhumidhar with nontransferable rights vide its resolution dated 11111990 and the persons other than the petitioners had been found eligible for admission as such.

24. It is well settled that in determining either the general object of the Legislature or the meaning of its language in a particular .passage, the intention which appears to be most in accord with convenience, reason, justice and legal principles should in. all cases of doubtful significance be presumed to be a true one. Further statutes should be construed not a theorems of euclid but with some imagination of the purposes which lie behind them. It should not be lost sight of that the words used in a Statute cannot be read in isolation. Their colour and content are derived from their context and therefore every word in a statute must be examined in its context which is of. great importance in their interpretation.

25. The non obstante clause of Section. 122B (4F) of the Act specifically refers to the foregoing subsection of Section 122 B, meaning thereby that this nonobstante clause can have application to Section 122B (1), (2), (3), (4), (4A), (4B), (4C), (4D) and (4E) only. Further, Section 122B (4F) refers to any agricultural labourer belonging to a Scheduled Caste or Scheduled Tribe which person falls in the third category of the order of preference prescribed under Section 198 of the Act. If the non obstante clause is confined to the provision contained in Section 122B only, it is obvious that it cannot supersede the first two categories in the order of preference prescribed under Section 198 of the Act and in no case any agricultural stipulated under Section 122B (4F) even if he satisfied the requirements contemplated therein can be deemed to be admitted as a bhumidhar with nontransferable rights in the presence of an eligible person willing to take the land who falls within the first two categories stipulated in

Section 198 of the Act. In this connection it may further be pointed out that a statute must be read as a, whole and one provision of the Act should be construed with reference to the other provision of the same Act so as to make a consistent enactment of the whole Statute. Such a construction has the merit of avoiding any inconsistency or repugnancy between a section and other parts of the Statute, It should not be lightly assumed that "Parliament had given with one hand what it took away with other" as pointed out in the case of *Dormer v. New Castleon Tyne Corporation*, (1940) 2 All. E.R. 41. Further as emphasised by the Apex Court in its decision in the case of *Venkataramana Devaru v. State of Mysore*, AIR 1958 SC 255 at p. 268 the rule of construction is well settled that when there are in an enactment two provisions, which cannot be reconciled with each other they should be so. interpreted that if possible, effect should be given to both and this is that is known as the rule of harmonious construction.

26. Further, the admission as a bhumidhar with nontransferable rights under Section 195 of the Act could only be in accordance with the provisions contained in Section 131 of the Act. Section 131 (a) of the Act stipulates that for becoming a bhumidhar with nontransferable rights after the date mentioned in that subsection, the admission has to be in accordance with Section 195 of the Act which necessarily implies the obtaining of the prior approval of the labourer Assistant Collector and also that the procedure prescribed under Rules 175 and 176 of the Rules has to be complied with. However, it may be noticed that Section 131 also stipulates that a person who in any other manner acquires on or after the date mentioned in Section 131 (a), the rights of such bhumidhar under or in accordance with the provisions of the Act may also become a bhumidhar with nontransferable rights.

27. The learned counsel for the petitioners has tried to support this submissions by placing reliance on Section 131 (b) of the Act. In this connection it has been contended that the statutory fiction envisaged under Section 122B (4F) of the Act is more than sufficient to bring the petitioners' case within the ambit of Section 131 (b) of the Act and the petitioners having fulfilled the requirements of Section 122B (4F) of the Act, it has to be deemed that they have acquired rights of bhumidhar with nontransferable rights "in any other manner" as envisaged under Section 131 (b) of the Act.

28. Having considered the aforesaid submission with care, I have come to a definite conclusion that it is totally misconceived and is not at all acceptable.

29. It may be noticed that under the Scheme of the Act the provision dealing with conferment or accrual of the bhumidhari with nontransferable fights other than Section 195 are contained in Sections 204 and 210 of the Act. Apart from these provisions previously, Section 196 of the Act also provided admission of intermediary as sirdar in vacant land in certain cases. Under that provision where any land became vacant land under subclause (ii) of clause (b) of subsection (2) of Section 13, and if such land belonged on the date immediately preceding the date of vesting to an intermediary in whose sir hereditary rights had accrued

under Section 10, Land Management Committee on the application of such intermediary had to admit the applicant as sirdar to such land or portion thereof, so however, that the applicant did not, as a result of such admission become entitled to land which together with land if any, held by him would in the aggregate exceed 50 acres in Uttar Pradesh. This provision was, however, omitted by U.P. Act No. 8 of 1977 with effect from 2811977.

30. In the circumstances, therefore, the deeming clause contained in Section 122B (4F) of the Act providing that it shall be deemed that the occupant had been admitted as bhumidhar with nontransferable rights of the land in his occupation under Section 195 has to be treated to be confined in its operation to the proceedings contemplated under Section 122B of the Act as the words "notwithstanding anything in the foregoing subsection" as occurring therein cannot be overstretched so as to supersede the other provisions in, the Act dealing specifically with the creation/conferment of the right of bhumidhar with transferable right with the various restrictions and limitations.

31. The word "deemed" is normally used to create a statutory fiction. While interpreting a provision creating a legal fiction it has to be ascertained as to for what purpose a fiction is created and it is only after ascertaining this all those facts and consequences which are incidental or inevitable corollaries to the giving effect to the fiction have to be assumed. As clearly pointed out by the Apex Court in its decision in the case of Commissioner of Income Tax, Delhi v. 5 Teja Singh, AIR 1959 SC 352 it is well settled that in construing the scope of legal fiction it would be proper and even necessary to assume all those facts on which alone the fiction can operate.

32. It is, therefore, obvious that ordinarily while using the word "deemed" the object normally is to render certain that which might otherwise be uncertain. This word is apt to include the obvious, the uncertain and the impossible Further it is not permissible to contradict the statutory fiction as in that case the very purpose for which the fiction is created may stand defeated. Thus, where a deeming provision is made in statute the state of things will have to be assumed, though such things do not exist and the rights of the parties will have to be determined on such imaginary things, keeping in mind that legal fictions are created for some definite purpose and are always to be limited to the purpose for which they are created and should not be extended beyond that legitimate field, which position of law , is well settled. See *Cambay Electric Supply Industrial Co. L.d. v. The Commissioner of Income Tax, Gujarat* II, (1978) 2 SCC 644, *K. S. Dharmadatan v. Central Govt. and others*, (1979) 4 SCC 204.

33. It can, however, not be lost sight of as pointed out by the Apex Court in its decision in the case of *State of Travancore Cochin and others v. Shanmugha Vilas Cashewnut Factory*, AIR 1953 SC 333 at p. 342, that when a statutory provision creates a fiction it is first necessary to find out the purpose for which it was created in order to understand the scope and implications of the fiction. In this case, the Hon"ble Supreme Court had quoted with approval the following

principle from *In re: Coal Economising Gas Company*, (1875) 1 Ch. D 182, ? Where the Legislature provides that some thing is to be deemed other than it is we must be careful and see within what bounds and for what purpose it is to be so deemed.

34. In its decision in the case of *Radhakissan v. Durga Prasad*, AIR 1940 PC 167, it was emphasised that the legal fiction must be limited to the purpose indicated by the context and cannot be given large effect. This decision in view of the provisions contained in Section 8 of the Privy Council Jurisdiction Act, 1949 read with Article 374 (2) of the Constitution of India continues to have a binding effect under Article 141 of the Constitution of India. Further, as observed by the Apex Court in its decision in the case of *State of Travancore Cochin and others v. Shanmugha Vilas Cashewnut Factory* (supra) when a legal fiction is created, for what purpose, one is led to ask at once, it is so created. In another case of *Exparte Walton*, *In re, levy* (1881) 17 Ch. D. 746 at 756, James L J observed when a Statute enacts that something shall be .deemed to have been done, which in facts and in truth was not done, then the court is entitled and bound to ascertain for what purpose and between that persons the statutory fiction is to be resorted to. These observations were, quoted with approval in the decision in the case of *Arthur Hill v. East India Dock Co.* (1884) 9 AC 448.

35. There .is yet another aspect of the matter which cannot be lost sight of. The conjunction "and" as occurring in Section 122 B (4F) of the Act appears to have been used for the purpose of enacting that the two parts of the section were cumulative and operated in respect of the same set of circumstances. Obviously, therefore, the word and in the context ought to be construed only as rendering the fiction to be the part and parcel of the first part of the section in question as unless the first part is satisfied, the second part relating to fiction would not be attracted and must be read as an integrated provision and the use of the word "and" merely connects the two parts of Section 122B (4F). I am clearly of the view that the word "and" in question has been used in cumulative sense joining together all the conditions.

36. It may be usefully noticed at this stage that as indicated by the Apex Court in its decision in the case of *Bidya Charon v. Khub Chand*, AIR 1964 SC 1099, in order that the second part might be held to be independent of the first part it should itself be complete and capable of operating independently. In the present case, I am clearly of the opinion that the legal fiction in question cannot operate independently bereft of the first part of the section under consideration.

37. Taking into consideration, the scheme and the police underlying the various provisions of the Act referred to hereinbefore, I am of the confirmed opinion that the right conferred under the deeming clause contained under Section 122B (4F) of the Act has to be taken as to confer a right only made available to an unauthorised occupant of the land"envisaged under Section 122B, who satisfied the eligibility criteria prescribed . therein to protect his possession and does not create a title in him. It merely operates as a bar to the claim of the Gaon Sabha

or the local authority either for the ejectment of the person concerned or for recovery of the amount of compensation for damage, misappropriation or wrongful occupation from such person as provided thereunder. This provision in spite of the conditions mentioned in Section 122B having been fulfilled debars the Gaon Sabha or the local authority on account of the statutory fiction from enforcing its rights secured in its favour under the aforesaid provision. The unauthorised occupant envisaged under Section 122B (4F) of the Act only gets a right to protect his possession which may be regularised. on the grant of the lease under Section 198 of the Act but this fiction cannot be deemed to create such right or title on such an occupant which can only accrue on the grant of the lease in accordance with the procedure prescribed under Section. 198 of the Act. It is thereafter that such person can get the revenue entries in the record of right (Khatauni) corrected and, not merely on the basis of the statutory fiction in question.

38. The Board of Revenue in one of its decision rendered by a Division Bench in the case of *Rahit v. Rajaram* 1982 AWC 75 (Revenue) after elaborately considering the various aspects has held that if a person is not recorded in the revenue papers he is not entitled to get his name recorded as a tenure holder by filing an application under Section 122B (4F) of the Act. It was also observed that the fiction contemplated under Section 122B (4F) of the Act does not mean that the person claiming to be of the category as stipulated in the aforesaid provisions can be declared to be a tenure holder simply on a Misc. application moved in the aforesaid section. The aforesaid view of the Board of Revenue appears to be in conformity with the policy and the scheme underlying the provisions contained in the Act.

39. ;The learned counsel for the petitioner has heavily relied upon a decision of this Court in the case of *Smt. Ram Pyari and another v. Board of Revenue and others*, 1991 RD 192 In the aforesaid decision it was observed that the provision contained in subsection 122B (4F) reflected the policy of the Legislature to achieve the social justice and this provision was a piece of beneficent legislation for the benefit of a particular class of person that is agricultural labourers belonging to Scheduled Castes and scheduled Tribes. The learned Counsel has tried to" support the claim of the petitioners on the observation made in the aforesaid decision to the effect that on the conditions contemplated under Section 122B (4F) of the Act being satisfied ?a suit for declaration of bhumidhari rights can be decreed and a person satisfying the requisite conditions contemplated therein would acquire bhumidhari rights and therefore, cannot be ejected. This stray observation occurring in the aforesaid decision cannot be read in isolation. As pointed out by the Hon"ble Supreme Court in its decision in the case of *State of Orissa v. Sudhansu Sekhar Misra and others*, AIR 1968 SC 647, a decision is only an authority for what it actually decided. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. It has further been observed in that case that it is not a profitable task to extract a sentence here

and there from a judgment and build upon it.

40. The observations occurring in the decision of the learned Single Judge in the case of Smt. Ram Piyari (supra) on which strong reliance has been placed by the learned Counsel for the petitioner falls in the category of a decision passed subsilento as observed in the decision of the Apex Court in the case of State of U.P. v. M/s. Synthetic and Chemical Limited, JT (1991) 3 SC 268. It was observed by the Hon'ble Supreme Court therein that a decision passes subsilento, in the technical sense that has come to be attached to that phrase, when, the particular point of law involved in the decision is not perceived by the Court or present to its mind. Noticing the decision in the case of Lancaster Motor Company (London) Ltd. v. Bremith Ltd., (1941) 1KB 675, it was observed that the Court did not feel bound by earlier decision as it was rendered without reference to the crucial words of the rule and without any citation of the authority. The Apex Court clearly observed that a declaration or conclusion preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent.

41. From a perusal of the decision in the case of Smt. Ram Piyari (supra) it is apparent that the learned Single Judge has at one place noticed that the plaintiff in that case had also obtained a lease from the Gaon Sabha. In spite of it he was sought to be ejected by the Gaon Sabha and also by the petitioners of that case on the basis that the petitioners had obtained some lease deed which was unauthorised and it was in these circumstances, that a declaration was sought for. The observation occurring in the aforesaid decision to the effect that in case, the conditions contemplated under Section 122B (4F) of the Act are fulfilled, the person concerned would acquire bhumidhari rights and he cannot be ejected, have been made without assigning any reason whatsoever, entirely overlooking the crucial words occurring in Section 122B (4F) of the Act and the implications arising under the decisions which continue to have their binding efficacy contemplated under Article 141 of the Constitution of India. The petitioner therefore, cannot derive any advantage out of the aforesaid solitary observation specially in view of the position in law which emerges on a consideration of the various provisions of the U.P. Zamindari Abolition and Land Reforms Act itself examined in the light of the decisions of the Apex Court to which a reference has already been made herein above.

42. In the circumstances therefore, taking into consideration the provisions contained in Sections 122B, 122B (4F), 131, 142 (2), 198, 198A and 209 of the Act and Rules 175, 176, 176A of the Rules framed thereunder it is obvious that in case, the requisite conditions contemplated in Section 122B (4F) are satisfied in any particular case, the Gaon Sabha or the Local Authority as the case may be is debarred from taking any action under Section 122 B against such labourer deeming him to have been admitted as bhumidhar with nontransferable rights of the land in his occupation under Section 195 of the Act. However, this could not come in the way of the regular allotment of the land as contemplated under

Section 198 of the Act or in the way of the filing of the suit under Section 209 of the Act against such a person subject to the exception contemplated under Section 122B (4E) of the Act.

43. In the facts and circumstances of the case, I am clearly of the view that there could be no escape from the conclusion that the application filed by the petitioners was not at all maintainable and no orders for the correction of the revenue record of rights could be made on its basis. I am further of the view that in the facts and circumstances of the case, no justifiable ground has been made out for interference in the impugned order.

44. The writ petition" is clearly devoid of merits and is hereby dismissed.