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(1978) 05 SC CK 0019

In the Supreme Court Of India

Case No : Civil Appeal No. 4 of 1969

Sher Singh (dead) through L.Rs. — APPELLANT

Vs

Joint Director of Consolidation and others — RESPONDENT

Date of Decision : 05-05-1978

Acts Referred:
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226
United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949 — Section 10(2), 3, 3A(2), 6, 7
United Provi

Citation : AIR 1978 SC 1341

Hon'ble Judges : R.S. Pathak, J;N.L. Untwalia, J;Jaswant Singh, J

Bench : Full Bench

Advocate : R.K. Garg, S.C. Agarwal and V.J. Francis, for the Appellant; B.P. Singh, for the Respondent

Final Decision : Allowed

Judgement

Jaswant Singh, J.—The litigation culminating in this appeal by special leave has a long and chequered history which may be summarised thus:

2. By deed dated July 20, 1945, registered on July 30, 1945, Chaudhary Vijay Kunwar Singh and Virendra Kunwar Singh, Zamindars of Mithanpur (U.P.) leased out ten plots of land admeasuring 6.63 acres situate in Mahal Safed, Mouza Mahendri, Sikandarpur, Pargana Amroha, District Moradabad, which were in their possession as 'khudkhast' (self-cultivating possession) to Sher Singh, the original Appellant, for a period of ten years beginning from the year 1353 Fasli to the end of the year 1362 Fasli. Nearly a month and a half later i.e. on September 6, 1945, the said Chaudhary Vijay Kunwar Singh and Virendra Kunwar Singh along with their mother, Smt. Savitri Kunwar Singh, executed a sale deed in respect of their proprietary right and interest in the aforesaid plots of land in favour of Kaley Singh, Harbans Singh and Nihal Singh, brothers of Sher Singh, and one Chajju Singh. On the basis of this lease deed, Sher Singh claimed to have

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obtained possession of the aforesaid plots of land and was recorded as a hereditary tenant in respect thereof in the revenue record. Asserting their right of pre-emption in respect of the aforesaid transaction of sale on the ground of their being co-sharers in the Mahal in which the said plots of land are situate, Jai Kumar Singh and Roop Kumar Singh, Respondents 2 and 3 herein, brought four suits in the Court of the Munsif, Moradabad, against the aforesaid vendors and vendees and Sher Singh for possession of the land as also for cancellation of the aforesaid lease deed in favour of Sher Singh on the ground that it was fictitious and fraudulent and was executed with a view to defeat their right of pre-emption. These suits were decreed by the Munsif in favour of Respondents 2 and 3 on April 26, 1947. On appeal, the Civil Judge, Muradabad, by his judgment dated November 9, 1948 affirmed the judgment and decree passed by the trial court. Although the vendees, Kaley Singh and Ors. did not prefer an appeal from the pre-emption decree passed against them, Sher Singh did not rest content and took the matter in further appeal to the High Court of judicature at Allahabad in so far as his rights to ejectment from the plots of land in question and cancellation of the aforesaid lease deed in his favour were concerned. By its judgment and decree dated April 13, 1953, the High Court allowed the appeal of Sher Singh holding that the revenue courts alone had jurisdiction to entertain the suit seeking relief of ejectment of the lessee (Sher Singh) and the Civil Courts had no such jurisdiction. The High Court accordingly set aside the decree passed against Sher Singh. Meanwhile the Uttar Pradesh Legislature passed the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) (hereinafter referred to as 'the Act'). Though the Act came into force in the State on January 26, 1951, the issue of notification u/s 4 thereof was made to coincide with the commencement of 1360 Fasli i.e. July 1, 1952. Pursuant to the observations made by the High Court in its aforesaid judgment dated April 13, 1953, disposing of the appeal of Sher Singh, Respondents 2 and 3 filed ejectment suits against Sher Singh u/s 209 of the Act which were dismissed on November 20, 1953. The first appeals preferred against the dismissal of these suits also proved abortive as they were dismissed on September 1, 1959. Respondents 2 and 3 thereupon took the matter in second appeal to the High Court which was stayed on account of the commencement of the consolidation operations in the village in which the plots of land in question are situate. Thereafter Respondents 2 and 3 filed objections u/s 9(2) of the U.P. Consolidation of Holdings Act, 1953 (hereinafter called 'the 1953 Act') disputing the correctness of the entries in the records showing Sher Singh as 'Bhumidar' of the plots of land in question and praying that the latter's name be expunged from the records and in his place, their names be substituted as Bhumidars but the same were rejected by the Consolidation Officer IV at Kanth vide his orders dated December 24, 1961. The order passed by the Consolidation Officer, Kanth, rejecting the objections of Respondents 2 and 3 to the entries in the records was upheld by the Settlement Officer, Consolidation, Amroha, in first appeal as also by the Deputy Director, Consolidation, U.P., Lucknow in second appeal by orders made on April 16, 1962 and August 21, 1962 respectively. Dissatisfied with these

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orders of the Consolidation authorities, Respondents 2 and 3 took the matter in revision u/s 48 of the 1953 Act to the Joint Director of Consolidation, U.P. who allowed the same and set aside the concurrent orders of the Consolidation Officer, the Settlement Officer and the Deputy Director, Consolidation, holding that the lease in favour of Sher Singh was fictitious; that the basis of Sher Singh's title viz. the aforesaid lease being fictitious intended to defraud the pre-emptors, the recorded entries in favour of Sher Singh could confer no title upon him; that Sher Singh's position could be deemed to be only that of an agent carrying on cultivation on behalf of his brothers, the vendees, who were entitled to the land in view of the sale in their favour till it was pre-empted and that 'the effect of his finding would be that the possession of Sher Singh after execution of the Patta shall be deemed to be the possession of the vendees as Sher Singh had himself no title to the land.' Finally holding that the case of Respondents 2 and 3 was covered by Section 18 of the Act and that the possession of the vendees would enure to the benefit of the pre-emptors, the Joint Director ordered their names to be substituted in the relevant records observing that they would be deemed to be holders of the land as 'khudkhast'. It is this order of the Joint Director which was challenged before the High Court by Sher Singh in writ proceedings under Article 226 of the Constitution and on the failure thereof has been impugned before us.

3. Appearing for the Appellants, Mr. Garg has contended that since the jurisdiction exercisable by the Joint Director, Consolidation, u/s 48 of the 1953 Act as it stood on the relevant date was limited to cases of errors of jurisdiction and the orders passed by the Consolidation Officers subordinate to him did not suffer from any such infirmity, the Joint Director. Consolidation, clearly exceeded the limits of his power by reversing the concurrent findings of fact arrived at and the orders passed by them. He has further urged that the finding of the Joint Director that the lease in favour of Sher Singh was fictitious cannot also be upheld as there is no material on the record to sustain that finding and all the authorities below the Joint Director had concurrently held that the lease in favour of Sher Singh was valid and that he had not merely been recorded in the revenue recorded as being in possession of the land in question but was found to be in actual possession thereof pursuant to the lease deed. He has further urged that as Sher Singh actually held the land as a hereditary tenant on the date immediately preceding the date of vesting, he became sirdar of the land u/s 19 of the Act and on deposit to the credit of the State Government an amount equal to ten times the land revenue, in terms of Section 134 of the Act he became a Bhumidhar. He has in the alternative urged that as Sher Singh was in self-cultivating occupation of the land on the date immediately preceding the date of vesting and was recorded as such in the relevant records, he at any rate acquired the right of an adhivasi u/s 20(b)(ii) of the Act.

4. Mr. Lalnarayan Sinha has, on the other hand urged that the subordinate consolidation officers having omitted to determine the vital question of the validity of the lease deed in favour of Sher Singh, the Joint Director of

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Consolidation was justified in going into the same and coming to the conclusion (on the basis of the close relationship of Sher Singh with the vendees and the subsequent transfer by him of the plots of land in question in favour of his nephew) that the transaction of the lease was sham and fictitious. He had further urged that actual physical occupation of the land is not essential to attract the applicability of Section 18 of the Act and the requirement of the section is satisfied even when subsisting right and title to possession over the land on the date of vesting on the basis of decree of preemption as in the instant case is established. He has further urged that the entries in the revenue records in favour of Sher Singh being fictitious and his possession of the plots of land in question being merely on behalf of the vendees, Sher Singh could neither acquire sirdari rights u/s 19 nor adhivasi rights u/s 20(b)(ii) of the Act.

5. The principal question that falls for our determination in this case is whether in passing the impugned order, the Joint Director of Consolidation exceeded the limits of the jurisdiction conferred on him u/s 48 of the 1953 Act. For a proper decision of this question, it is necessary to advert to Section 48 of the 1953 Act as it stood on the relevant date before its amendment by Act No. VIII of 1963:

Section 48 of the U.P. Consolidation of Holdings Act: The Director of Consolidation may call for the record of any case if the Officer (other than the Arbitrator) by whom the case was decided appears to have exercised a jurisdiction not vested in him by law or to have failed to exercise jurisdiction so vested, or to have acted in the exercise of his jurisdiction illegally or with substantial irregularity and may pass such orders in the case as it thinks fit.

6. As the above section is in pari materia with Section 115 of the CPC it will be profitable to ascertain the scope of the re-visional jurisdiction of the High Court. It is now well settled that the re-visional jurisdiction of the High Court is confined to cases of illegal or irregular exercise or non-exercise or illegal assumption of the jurisdiction by the subordinate courts. If a subordinate court is found to possess the jurisdiction to decide a matter, it cannot be said to exercise it illegally or with material irregularity even if it decides the matter wrongly. In other words, it is not open to the High Court while exercising its jurisdiction u/s 115 of the CPC to correct errors of fact howsoever gross or even errors of law unless the errors have relation to the jurisdiction of the court to try the dispute itself.

7. The legal position was succinctly laid down by the Privy Council as early as 1884 in Rajah Amir Hassan Khan v. Sheo Baksh Singh (1884) 11 Ind App 237 in the following words:

The question then is, did the Judges of the lower Court in this case, in the exercise of their jurisdiction, act illegally or with material irregularity. It appears that they had perfect jurisdiction to decide the question which was before them, and they did decide it. Whether they decided rightly or wrongly, they had jurisdiction to decide the case; and even if they decided wrongly, they did not

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exercise their jurisdiction illegally or with material irregularity.

8. Again in Balakrishna Udayar v. Vasudeva Aiyar 44 Ind App 261 : AIR 1917 PC 71 the Privy Council while discussing the scope of Section 115 of the CPC observed:

It will be observed that the section applies to jurisdiction alone, the irregular exercise or non-exercise of it, or the illegal assumption of it. The section is not directed against conclusions of law or fact in which the question of jurisdiction is not involved.

9. In AIR 1949 156 (Privy Council) the Privy Council observed that Section 115 empowers the High Court to satisfy itself on three matters, (a) that the order of the subordinate court is within its jurisdictions (b) that the case is one in which the Court ought to exercise jurisdiction and (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provision of law, or with material irregularity, that is, by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision and if the High Court is satisfied on those three matters, it has no power to interfere because it differs from the conclusions of the subordinate court on questions of fact or law."

10. The above quoted observations made by the Privy Council have been approved and affirmed by this Court in a number of cases, In Manindra Land and Building Corporation Ltd. Vs. Bhutnath Banerjee and Others, ; Vora Abbasbhai Alimahomed Vs. Haji Gulamnabi Haji Safibhai, and D.L.F., Housing and Construction Company (P.) Ltd., New Delhi Vs. Sarup Singh and Others, , this Court, however, drew a distinction between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said court, and errors of law which have no such relation or connection.

11. Again In Pandurang Dhoni Chougule Vs. Maruti Hari Jadhav, this Court held (at p. 155 of AIR):

The provisions of Section 115 of the Code have been examined by judicial decisions on several occasions. While exercising its jurisdiction u/s 115, It is not competent to the High Court to correct errors of fact however gross they may be, or even errors of law, unless the said errors have relation to the jurisdiction of the Court to try the dispute itself. As Clause (a), (b) and (c) of Section 115 indicate, it is only in cases where the subordinate Court has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity that the re-visional jurisdiction of the High Court can be properly invoked. It is conceivable that points of law may arise in proceedings Instituted before subordinate courts which are related to questions of jurisdiction. It is well settled that a plea of limitation or a plea of res judicata is a plea of law which concerns the jurisdiction of the court which tries the proceedings. A finding on

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these pleas in favour of the party raising them would oust the jurisdiction of the court and so, an erroneous decision on these pleas can be said to be concerned with questions of jurisdiction which fall within the purview of Section 115 of the Code, But an erroneous decision on a question of law reached by the subordinate court which has no relation to questions of jurisdiction of that court cannot be corrected by the High Court u/s 115.

12. Again in Shri M.L. Sethi Vs. Shri R.P. Kapur, 9 this Court observed:

The 'jurisdiction' is a verbal coat of many colours. Jurisdiction originally seems to have had the meaning which Lord Reid ascribed to it in Anisminic Ltd. v. Foreign Compensation Commission (1969) 2 AC 147, namely, the entitlement 'to enter upon the enquiry in question'. If there was an entitlement' to enter upon an enquiry into the question, then any subsequent error could only be regarded as an error within the jurisdiction.

13. The position that emerges from these decisions is that Section 115 of the CPC empowers the High Court to satisfy itself on three matters: (a) that the order of the subordinate court is within its jurisdiction; (b) that the case is one in which the court ought to have exercised jurisdiction; or (c) that in exercising jurisdiction the Court has not acted illegally, that is, in breach of some provisions of law, or with material irregularity by committing some error of procedure in the course of the trial which is material in that it may have affected the ultimate decision. and if the High Court is satisfied that there is no error in regard to any of these three matters, it has no power to interfere merely because it differs from the conclusions of the subordinate court on questions of fact or law. A distinction must be drawn between the errors committed by subordinate courts in deciding questions of law which have relation to, or are concerned with, questions of jurisdiction of the said courts, and errors of law which have no such relation or connection. An erroneous decision on a question of fact or of law reached by the subordinate court which has no relation to question of jurisdiction of that court, cannot be corrected by the High Court u/s 115.

14. Applying the tests as extracted above to the facts of the instant case, we have no hesitation in holding that the Joint Director of Consolidation ignored the limitation that existed on his power u/s 48 of the 1953 Act as It stood on the relevant date and illegally assumed jurisdiction which he did not possess.

15. It is not and cannot be disputed that the consolidation authorities subordinate to the Joint Director of Consolidation possessed plenary jurisdiction and competence to go into the question of the correctness or otherwise of the entries in the revenue records relating to Sher Singh's possession over the plots of land in question. That they arrived at a concurrent finding of fact that Sher Singh was in actual possession of the land on his own behalf on the relevant date on the basis of the aforesaid valid lease deed is also evident from the following observations made by the Settlement Officer, Consolidation, Amroha in his aforesaid decision dated April 16, 1962:

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I have carefully gone through the record and also heard the Learned Counsel for the parties at length and also perused the case law. It is admitted that the Appellants have never been able to obtain possession over the disputed land. In the revenue records name of Respondent Sher Singh exists throughout from 1353 F up to the date of vesting and onwards also. Appellants' allegation is that actually the brothers of Sher Singh who purchased the land in dispute are in possession but there is absolutely no oral or documentary evidence in support of this contention. Appellant Jai Kumar Singh himself admits that in the land purchased by Kaley Singh, Chajjoo Singh and Ors. Sher Singh has no interest and these brothers also take food separately. I agree with the learned Consolidation Officer that the simple fact that the proprietary rights have been transferred to the brothers of Sher Singh is not at all sufficient to prove that the lease was a fictitious document executed simply to deprive the Appellants of their rights of pre-emption. It is worth mentioning that the lease was executed in 1945 and zamindari abolished in 1952. It does not appeal to me that anyone could have an idea that the interests of the landlords will be extinguished in this manner and therefore the vendors executed a fictitious deed to deprive the Appellant of his rights of pre-emption...

The vendees Kaley Singh and Ors. had only purchased proprietary interest in the disputed land and they were not its Khudkasht holders... It is obvious that Kaley Singh and Ors. the original vendees purchased the land subject to the possession of Respondent Sher Singh and their proprietary interest would have come to an end at the date of vesting... Considering the entire evidence on record, I hold that the land in dispute could not have been the khudkasht of the original vendees and they could not have acquired Bhumidhari rights u/s 18 of the Z.A. and L.R. Act and therefore the Appellants who stepped into their shoes cannot have better rights... It may also be mentioned that Respondent Sher Singh has not been in possession as a trespasser but on the basis of a valid lease.

16. It may also be noted that the Deputy Director of Consolidation after discussing the entire evidence and holding that Sher Singh was lessee in possession of the land and neither the vendees had ever held the land in question as khudkhast holders nor could they be deemed to be the khudkhast holders thereof dismissed the appeal preferred by Respondents 2 and 3 with the following observations:

The concurrent finding of the lower courts was therefore correct and justified.

17. Thus the subordinate Consolidation Authorities not having acted illegally in exercising their jurisdiction, the Joint Director of Consolidation was not competent to interfere with their decisions.

18. It would be appropriate at this stage to observe that mere relationship of Sher Singh with three out of four vendees on which the Joint Director of Consolidation has relied was not enough to warrant the finding that the aforesaid lease granted in his favour was fictitious. Even the subsequent transfer of the

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land in question in favour of his nephew to which reference has been made in a casual and laconic manner by the Joint Director of Consolidation cannot lead to the conclusion that the lease was fictitious. Our attention has not been drawn to any evidence which may indicate as to when the said transfer was made nor has any material been placed before us to show that the nephew in whose favour the land was transferred was the son of any one of Sher Singh's three brothers who were co-vendees with Chajju Singh. The nature and character of the so-called transfer by Sher Singh in favour of his nephew is also shrouded in mystery. In the circumstances, the finding of the Joint Director of Consolidation that the aforesaid lease in favour of Sher Singh was fictitious cannot be sustained.

19. Let us now see whether Sher Singh acquired the rights of a Bhumidhar, or a Sirdar or an Adhivasi under the Act. It would be apposite for this purpose to refer to the object and a few relevant provisions of the Act. As apparent from its preamble, the Act was designed by the State Legislature principally to do away with the Zamindari system which involved intermediaries between the tiller of the soil and the State in Uttar Pradesh, to provide for the acquisition of their rights, title and interest and to reform the law relating to land tenure consequent upon the aforesaid abolition and acquisition. To attain this object, the Legislature empowered the State Government to declare by means of a notification that as from a specified date, all estates situate in Uttar Pradesh or in specified area or areas thereof shall vest in the State and as from the beginning of that date (which would be called the date of vesting), all such estates shall stand transferred to and vest except as provided in the Act in the State free from all encumbrances. As already stated, though the Act came into force on January 25, 1951, the notification alluded to in Section 4 was issued and published in the Extraordinary issue of the State Gazette on July 1, 1952 which coincided with the commencement of 1360 Fasli.

20. The consequences of the vesting of an estate ensuing from the notification issued u/s 4 are detailed in Section 6 of the Act which, in so far as it is relevant for the purpose of the case, provides as under:

6. Consequences of the vesting of an estate in the State.- When the notification u/s 4 has been published in the Gazette then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification related, namely-

(a) all rights, title and interest of all the intermediaries-

(i) in every estate in such area including land (cultivable or barren), groveland, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, abadi sites, hats, bazaars and melas (other than hats, bazars and melas held upon land to which Clause (a) to (c) of Sub-section (1) of Section 18

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apply), and (ii) in all sub-soil in such estates including rights, if any, in mines and minerals, whether being worked or not; shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;....

(i) all suits and proceedings of the nature to be prescribed pending in any court at the date of vesting, and all proceedings upon any decree or order passed in any such suit or proceeding previous to the date of vesting, shall be stayed....

21. Section 7 of the Act which deals with saving in respect of certain rights inter alia lays down that nothing contained in Chapter II shall in any way affect the right of any person - (aa) being a bhumidhar, sirdar, adhivasi, or asami of any land, to continue to enjoy any easement or any similar right for the more beneficial enjoyment of the land, as he was enjoying on the date immediately preceding the date of vesting.

22. It would be convenient at this stage to notice Sections 18, 19 and 20 of the Act which are couched in the following terms:

18. Settlement of certain lands with intermediaries or cultivators as bhumidhars.-

(1) Subject to the provisions of Sections 10, 15, 16 and 17, all lands-

(a) in possession of or held or deemed to be held by an intermediary as sir, khudkasht or an intermediary's grove,

(b) held as a grove by, or in the personal cultivation of a permanent lessee in Avadh,

(c) held by a fixed-rate tenant or a rent-free grantee as such, or

(d) held as such by -

(i)

an occupancy tenant.

possessing

(ii)

a hereditary tenant,

the right

(iii)

a tenant on pattadawami or istamrari referred to in Section 17

to transfer the holding by sale.

(e) held by a grove-holder

on the date immediately preceding the date of vesting shall be deemed to be settled by the State Government with such intermediary, lessee, tenant, grantee

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or grove holder, as the case may be, who shall, subject to the provisions of this Act, be entitled to take or retain possession as bhumidhar thereof.

(2) Every person belonging to the class mentioned in Section 3 or Sub-section (2) of Section 3-A of the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949, who has been granted the declaration referred to in Section 6 of the said Act in respect of any holding or share thereof shall, unless the declaration is subsequently set aside, be deemed to be the bhumidhar of the holding or the share in respect of which the declaration has been made and continues in force.

(3) Notwithstanding anything contained in the United Provinces Agricultural Tenants (Acquisition of Privileges) Act, 1949, any declaration granted u/s 6 of the said Act in favour of a tenant to whom Sub-section (2) of Section 10 applies, shall be and is hereby cancelled and the amount deposited by him u/s 3 or 6 of the said Act shall, after deducting the amount which might have been paid or be payable by the State Government to his landholder under Sections 7 and 8 of the said Act, be refunded to the person entitled in such manner as may be prescribed.

19. Land In the holding to be settled with the tenants thereof as sirdar.- All land, held or deemed to have been held on the date immediately preceding the date of vesting by any person as -

(i) a tenant holding on special terms in Avadh,

(ii) an exproprietary tenant

(iii) an occupancy tenant,

(iv) a hereditary tenant

(v) a grantee at favourable rate of rent

(vi) a non-occupancy tenant of tea estates notified as such in a notification issued under Sub-section (5) of Section 30 of the United Provinces Tenancy Act, 1939,

(vii) a sub-tenant referred to in Sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939 and

(viii)....

(ix) all land referred to in Section 17 held on the said date by any person on patta dawami or istamrari,

shall, save in cases provided for in Clause (d) of Sub-section (1) of Section 18, be deemed to be settled by the State Government with such person, who shall, subject to the provisions of this Act, be entitled, except as provided in Sub-section (2) of Section 18, to take or retain possession as a sirdar thereof.

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20. A tenant of sir, sub-tenant or an occupant to be an adhivasi - Every person who -

(a) on the date Immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act -

(i) except as provided in Sub-clause (i) of Clause (b), a tenant of sir other than a tenant referred to in Clause (ix) of Section 19 or in whose favour hereditary rights accrue in accordance with the provisions of Section 10, or

(ii) except as provided In Sub-clause (i) of Clause (b), a sub-tenant other than a sub-tenant referred to in proviso to Sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947, or in Sub-section (4) of Section 47 of the United Provinces Tenancy Act, 1939, of any land other than grove-land,

(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 khatawni of 1356 F, prepared under Sections 28 and 33 respectively of the U.P. Land Reforms 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 United Provinces Tenancy (Amendment) Act, 1947, or

(ii) of any land to which Section 16 applies, in the khasra or khatauni of 1356 Fasli prepared under Sections 28 and 33 respectively of the United Provinces Land Revenue Act, 1901 but who was not in possession in the year 1359 F., 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.

Explanation 1 - Where a person referred to in Clause (b) was evicted from the land after June 30, 1948, he shall notwithstanding anything in any order or decree, be deemed to be a person entitled to regain possession of the land.

Explanation II - Where any entry in the records referred to in Clause (b) has been corrected before the date of vesting under or in accordance with the provisions of the U.P. Land Revenue Act, 1901, the entry so corrected shall, for the purposes of the said clause, prevail,

Explanation III - For the purposes of Explanation II an entry shall be deemed to have been corrected before the date of vesting if an order or decree of a competent court requiring any correction in records had been made before the said date and had become final ever though the correction may not have beer incorporated in the records.

Explanation IV. - For purposes of this section 'occupant' as respects an land does not include a person who was entitled as an intermediary to the land or any

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share therein in the year 1356 Fash,

23. The expression 'Khudkasht' not having been defined in the Act, we shall have, as ordained by Section 3(26) of the Act, to refer to Section 3(9) of the U.P. Tenancy Act, 1939, to find out its meaning:

Section 3(9) of the U.P. Tenancy Act, 1939: "khudkasht" means land other than sir cultivated by a landlord, and under-proprietor or a permanent tenure-holder as such either himself or by servants or by hired labour.

24. We may now advert to Sections 131, 134, 135, 136, 137, 139 and 209 of the Act which are also material for our purpose:

131. Sirdar - Every person belonging to any of the following classes shall be called a sirdar and shall have all rights and be subject to all the liabilities conferred or imposed upon sirdars by or under this Act, namely -

(a) every person who, as a consequence of the acquisition of estates, becomes a sirdar u/s 19,

(b) every person who is admitted as sirdar of vacant land under the provisions of this Act, and

(c) every person who in any other manner acquires the rights of a sirdar under or in accordance with the provisions of this Act or of any other law for the time being in force.

134. Acquisition of bhumidhari rights by a sirdar -

(1) If a sirdar belonging to the class mentioned in Clause (a) of Section 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land of which he is the sirdar, he shall upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in Section 137 in respect of such land:

Provided that the right to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I - In this Sub-section 'land' includes share in land.

Explanation II - For the purpose of this section the land revenue payable shall -

(a) in respect of land referred to in the proviso to Clause (a) of Sub-section (1) of Section 246, be an amount arrived at after all the increases have been given effect to; and

(b) in respect of land to which the proviso to Section 247 applies, be an amount determined at hereditary rates under that section.

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(2) The amount referred to In Sub-section (1) may be paid in cash or, if the State Government so prescribes, in form of bonds or otherwise.

135. Treasury chalan to accompany the application u/s 134. - The application referred to in Section 134 shall be accompanied where the amount is paid in cash, by a treasury chalan and in any other case, by such document or evidence as may be prescribed showing that the amount aforesaid has been deposited and shall briefly describe the right in which the applicant claims the land.

136. Amount to be deposited u/s 134. - Where a sirdar or his predecessor-in-interest was, on the date immediately preceding the date of vesting, a hereditary tenant of the holding, the amount to be deposited u/s 134 shall, notwithstanding anything contained in this Act, be equal to ten times the land revenue payable by him or, if the said land revenue exceeds an amount double that computed at the applicable hereditary rates, ten times such amount.

137. Grant of certificate,- (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in Section 134, he shall grant a certificate to that effect.

(2) Upon the grant of the certificate under Sub-section (1) the sirdar shall, from the date on which the amount referred to in Sub-section (1) of Section 134 has been deposited -

(a) become and be deemed to be a bhumidhari of the holding or the share in respect of which the certificate has been granted, and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, as shall be one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application;

Provided further that in the cases referred to in Explanation II of Section 134 the sirdar shall, during the period a reduced amount is payable in accordance with Section 246 or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation. - For purposes of Clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount.

(2-A) Where the amount referred to in Sub-section (1) of Section 134 is deposited on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under Clause (b) of Sub-section (2) for the remainder of the agricultural year in which the amount is deposited shall be determined in such manner as may be prescribed.

139. Acquisition of bhumidhari rights by a sirdar of the class mentioned in Clause (b) of Section 131. - The provisions of Section 134 and Sections 135 and 137, shall mutatis mutandis apply to a sirdar belonging to the class mentioned in

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Clause (b) or (c) of Section 131.

209. Ejectment of persons occupying land without title-

(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and -

(a) where the land forms part of the holding of a bhumidhar, sirdar or asami without the consent of such bhumidhar, sirdar or asami,

(b) where the land does not form part of the holding of a bhumidhar, sirdar or asami without consent of the Gaon Sabha,

shall be liable to ejectment on the suit, in cases referred to in Clause (a) above, of the bhumidhar, sirdar or asami concerned, and in cases referred to in Clause (b) above, of the Gaon Sabha and shall also be liable to pay damages.

(2) To every suit relating to a land referred to in Clause (a) of Sub-section (1) the State Government shall be impleaded as a necessary party.

25. A close scrutiny of the facts and circumstances of the case in the light of the above quoted provisions of law leaves no room for doubt in our mind that Sher Singh acquired the rights of a Bhumidhar as hereinafter stated. As already indicated, there is nothing on the record before us to establish that the aforesaid lease deed in favour of Sher Singh was fictitious or that the entries made in the revenue record on the basis of that deed were not genuine or did not conform to the true factual position and that Sher Singh was not in actual possession of the fields in question on his own behalf. Consequently as Sher Singh was holding the said fields as a hereditary tenant on the date immediately preceding the date of vesting he became entitled to retain possession thereof as a Sirdar u/s 19 of the Act and on depositing to the credit of the State Government in the manner provided in Section 134 and other allied provisions of the Act an amount equal to ten times the land revenue payable or deemed to be payable, he became entitled to a declaration that he had acquired the rights of a Bhumidhar mentioned in Section 137 of the Act in respect of the said fields and to the grant of a certificate to that effect.

26. In view of our aforesaid findings, it is unnecessary to examine the alternate contention raised on behalf of the Appellants that as Sher Singh was in self-cultivating possession of the land on the date immediately preceding the date of vesting and was recorded as such in the relevant record, he in any case acquired the right of an Adhivasi u/s 20(b) (ii) of the Act or to go into the contention of Mr. Lalnarayan Sinha that the actual physical possession of the land is not necessary to attract the applicability of Section 18 of the Act and the requirement of the section is satisfied even when subsisting right and title to possession over the land on the date of vesting is established.

27. For the foregoing reasons, we allow the appeal, set aside the impugned judgments and orders of the High Court as also the decision of the Joint Director

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of Consolidation and restore that of the Deputy Director of Consolidation, Lucknow. In the facts and circumstances of the case, we leave the parties to bear their own costs.

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