
(1982) 02 AHC CK 0075
In the Allahabad High Court
Case No : Writ Petition No. 4135 of 1971

Shyam Singh

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 12-02-1982

Acts Referred:

Uttar Pradesh Tenancy Act, 1939 — Section 180(2)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 19, 20,
20(2), 21, 210

Citation : (1982) AWC 365 : (1982) RD 197

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K.M. Sahai, J.—Uncertainly and change in the meaning of expression "recorded occupant" in Section 20 (b) of UP ZA Act I of 1951 by Judicial interpretation has made Petitioner rush to this Court twice but with no result. When Petitioner came earlier by way of Civil Misc. Writ Petition No. 1187 of 1962 decided on 10th October 1966 against the order of the Consolidation Authorities the law which held the field was Upper Ganges Sugar Mills v. Khalil Rahman 1961 AWR 78 SC. It was more or less settled that a person who was in possession in his own right and not on behalf of any one else in 1356 fasli was entitled to adhivasi rights even if the entry was as proprietor. The court therefore quashed the order and directed Deputy Director of Consolidation to decide whether Petitioner donee of proprietary and Sir land from limited owners could be deemed to be recorded occupant of 1356 fasli although the entry was in column 5 as Sir holder and the limited owner died in 1355 fasli therefore the Petitioner could not be deemed to be intermediary thereafter. In pursuance of this direction the Deputy Director decided this controversy afresh on 12-5-71 but unfortunately for the Petitioner against him. It was held that for determining recorded occupant there should be two persons one in main column and other in possession. And as Petitioner was entered as Sir holder in column 5 it could utmost be considered as an entry

descriptive of his title but not of possession. Consequently the Petitioner, according to Deputy Director of Consolidation, could not be held to be recorded occupant. So the Petitioner approached this Court again.

2. By the time the petition matured for hearing this Court in *Basdeo v. Deputy Director of Consolidation* 1974 ALJ 766 : 1974 RD 188 a five Judges Full Bench went back to the theory of benefitting a person who was in possession in his own right and confined it to cases of persons who were in possession without any right or title. It was held, "Record as an occupant is authorised to be made in special circumstances and after proper inquiry and in accordance with the provisions of paragraph 84. An entry made in accordance with those provisions alone can be read as recording a person as an occupant." Reason for this limited interpretation was, that, "all those tenants and other tenure holders on whom the UP ZA Act I of 1951 confers Bhumidhari, Sirdari and Asami rights by Sections 19, 20 and 21 would lose their rights from the very moment they were deemed to have acquired their rights, namely the date of vesting, in case some one else is found recorded in 1356 fasli in a manner showing that he was in immediate occupation." Thus "legislative scheme unforded of land reform" was saved by reading provisions in a manner that ignored the entire objective of confirming adhivasi rights u/s 20 on tiller of soil and compensating the chief tenant. The decision in *Upper Ganges Sugar Mills*, a landmark in interpretation of Section 20 was distinguished as being peculiar to its own facts and not containing a declaration of law as "for reasons best known to the learned Counsel appearing for the landlord in that case, the attention of the Supreme Court was not invited to the detailed statutory rules contained in the Land Records Manual."

3. In *B.M. Lakhani v. Malkapur Municipality* AIR 1970 SC it has been ruled that a decision given by Supreme Court is binding on the High Court and the High Court cannot ignore it because they thought that "relevant provisions were not brought to the notice of the court." But the decision given by the Full Bench is binding on a single Judge. It is not open to him to rely on Supreme Court decision instead of Full Bench or Division Bench of his court. In *Sri Bhagwan v. Ram Chand* 1965 AWR 304 it was observed:

It is hardly necessary to emphasise that consideration of judicial propriety and decorum required that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger bench to examine the question.

4. It is urged that the order of Deputy Director is manifestly erroneous as for being recorded occupant there was no requirement of two persons being entered in revenue record. Undoubtedly the finding of Deputy Director is contrary to law but no writ can be issued as the ultimate order that Petitioner did not acquire adhivasi rights u/s 20 (2) of ZA Act appears to be well founded on the principle

laid down by this Court in Basudeo's case.

5. Factually also the decision in the Upper Ganges Sugar Mills is not very helpful. Admittedly one Jagoo Singh was the proprietor. After his death his interest devolved on his widow who executed a gift deed of proprietary share and Sir in village in dispute in favour of Petitioner. She died in 1947 i. e. 1355 fasli. For three years opposite parties who are reversioners did not move at all. In 1951 they filed the suit for possession which abated due to enforcement of consolidation when the matter was pending in second appeal. It was held by this Court earlier that after death of a limited owner in 1947 the Petitioner could not be deemed to have continued as intermediary. Even assuming it to be so it was open to reversioners to abide by the transaction that is ratify it (See AIR 1972 SC 2669). What was the effect of non-filing the suit by opposite parties or not exercising the option for four years and whether the rule of estoppel applied against them is not up for consideration in this case but he could not certainly be treated as trespasser as in case of Upper Ganges Sugar Mills. There the term of theka had come to an end in 1355 fasli and it was not renewed therefore possession of thekadar was of trespasser and not as thekadar. In the case of an alienee from a limited owner title vests in him during her life time. After her death the alienee does not become trespasser. His rights are subject to challenge by reversioners. As the suit was filed in 1951 the opposite parties shall be deemed to have exercised their option only on that date. It could not reflect to earlier period and Petitioner could not be deemed to be trespasser in 1948-49, i. e. 1355 fasli.

6. Reliance is placed on Shiveshwar Prasad Narain Singh and Another Vs. Ghurahu and Another, and it is argued that a person in possession in 1356 fasli is recorded occupant. This decision has absolutely no reliance. Here the controversy was competing claim of a tenant of Sir u/s 20 (a)(i) and recorded occupant u/s 20 (b).

7. Learned Counsel then argued that he being a trespasser acquired rights of hereditary tenant u/s 180(2) of U.P. Tenancy Act and Sirdar u/s 210 of ZA Act. No such plea was raised therefore Petitioner cannot be permitted to raise it. His argument that in claim of sirdari plea of Sirdar u/s 210 is involved is misconceived, because rights of sirdar were claimed in consequence of becoming adhivasi. Moreover the lady died in 1947 and the option to challenge the alienation was exercised in 1951 only when suit for possession was filed which also abated due to enforcement of consolidation. From the date of exercise of option the limitation to file the suit either under Tenancy Act or ZA Act did not expire.

8. In the end the learned Counsel raised an argument of despair that on the date when Deputy Director decided the second appeal he had no jurisdiction to do so as provision for second appeal had been deleted by amended Act of 1963 and what was maintainable was revision. Reliance is placed on Gauri Shanker v. S.N. Tiwari 1968 AWR 770 (FB). In this decision it was held if no second appeal had

been filed prior to 1963 then irrespective of date of decision of Settlement Officer Consolidation no second appeal could be filed after this date. But if appeal had been filed and was pending then it was to be heard and decided as second appeal. From the order of the Settlement Officer Consolidation it is clear that appeal was decided on 10-12-60. And the second appeal was decided on 2-12-61 which was quashed by the court. Therefore Second Appeal in this case had been instituted prior to 1963. Even otherwise the submission is without merit. Assuming that no second appeal lay and the Director of Consolidation should have decided as revision the Petitioner cannot be said to have been prejudicial. Scope of Section 48 is now much wider. The Deputy Director is empowered to interfere both on facts and law.

9. In the result this petition fails and is dismissed but there shall be no order as to costs.