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**(1973) 01 AHC CK 0022**  
**In the Allahabad High Court**  
**Case No : Writ Petition No. 1216 of 1969**

Tribhuwan Dutt Misra

APPELLANT

Vs

District Deputy Director Consolidation and Others

RESPONDENT

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**Date of Decision :** 03-01-1973

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 202, 204

**Citation :** AIR 1973 All 279 : (1975) RD 103

**Hon'ble Judges :** O.P. Trivedi, J

**Bench :** Single Bench

**Advocate :** S.C. Das, H.N. Tilhari and J.C. Srivastava, for the Appellant; Cf. Standing Counsel (for Nos. 1 and 2) and B.K. Srivastava, (for Nos 3 to 5), for the Respondent

**Final Decision :** Allowed

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## Judgement

O.P. Trivedi, J.—This petition under Article 226 of the Constitution of India has been filed by Tribhuwan Dutt Misra and arises from consolidation matter.

2. In the basic year records Smt. Rai Pali, widow of Sheo Shanker, was recorded as Bhumidiar of disputed plot Nos. 151, 152, 154 and 155 in village Kakrahia, Pargana Mijhaura, Tahsil Akbarpur, district Fazibad. She sold her Bhumidhari rights in plot Nos. 151, 152 and 154 to the petitioner by a sale deed executed on 14-8-1961 and made an oral transfer in respect of plot No. 155 in favour of the same person. At the very outset, it may be stated here that these transfers of the disputed plots by Smt. Raj Pali in favour of the petitioner were at no stage challenged before the consolidation authorities. Patiraj, opposite party No. 3, filed an objection u/s 9 of the U. P. Consolidation of Holdings Act claiming rights in Plot Nos. 151, 152 and 154 and another objection was filed u/s 9 of the said Act by Udai Raj and Abhai Raj, sons of Ram Asrey, opposite parties Nos. 4 and 5 claiming rights in Plot No. 155 with the allegation that they were Asamis of Smt. Raj Pali who was a widow and her disability having come to an end on 14-8-1961 and no suit for ejectment having been filed by her or by the petitioner

subsequently u/s 202 of the Zamindari Abolition and Land Reforms Act during the prescribed period of three years, they had acquired Sirdari rights in the said plots. This averment contained in para 4 of the petition was admitted in para 5 of the counter-affidavit with this additional assertion that the opposite parties had been in continuous possession over the disputed plots since the lifetime of the husband of Smt. Raj Pali. The consolidation officer rejected the objections of opposite parties Nos. 3 to 5 holding that they were never in possession over the disputed plots and did not possess any rights. The opposite parties appealed before the Settlement Officer Consolidation who upset the findings of consolidation officer holding that the opposite parties were in possession over the disputed plots and held them to be Asamis of Smt. Raj Pali. The Settlement Officer Consolidation directed expunction of the name of the petitioner from the record and entry of opposite parties' name in his place.

3. The petitioner filed a revision before the Deputy Director of Consolidation which was rejected. The Deputy Director of Consolidation also held that the opposite parties were in possession of the disputed plots at the time when Smt. Raj Pali executed the sale deed in petitioner's favour on 14-3-1961 and that they had never been dispossessed by Smt. Raj Pali or the petitioner and had continued to be in possession throughout. He also took the view agreeing with the Settlement Officer Consolidation that the petitioner not having filed the suit for ejectment against the opposite parties u/s 202 of the U. P. Zamindari Abolition and Land Reforms Act, they had acquired Sirdari rights u/s 204 of the said Act.

4. It may be stated here that in their counter-affidavit the opposite parties denied that the petitioner was ever in possession over the disputed plots and asserted their own continuous possession. In para 4 of the rejoinder affidavit the petitioner admitted that opposite parties Nos. 3 to 5 were Asamis of Smt. Raj Pali, who was a disabled person within the meaning of Section 10 (2) of the U. P. Zamindari Abolition and Land Reforms Act, and reaffirmed that Smt. Raj Pali had dispossessed the opposite parties from the disputed plots before execution of the side deed in petitioner's favour and delivered possession of the disputed plots to the petitioner.

5. I have heard arguments of the learned counsel for the petitioner Sri S.C. Das and Sri G.G. Srivastava and also the arguments of Sri B.K. Srivastava appearing for opposite parties Nos. 3 to 5.

6. The first submission on behalf of the petitioner is that the Settlement Officer Consolidation and the Deputy Director of Consolidation appear to have held the opposite parties Nos. 3 to 5 Asamis of the disputed plots on the basis of Section 3 of the U. P. Land Reforms (Supplementary) Act, 1952, on the basis of their possession in the year 1369 F. It may be mentioned here that the parties had filed Khatauni of 1359 F, in which Smt. Raj Pali was recorded as Chief tenant of the disputed plots; Patiraj, opposite party No. 3, was recorded as Asami against plot Nos. 151, 152 and 154; and Ram Asray, father of opposite parties Nos. 4

and 5, was recorded as Asami of plot No. 155. The submission is that u/s 3 (1) (a) of the U. P. Reforms (Supplementary) Act, 1952, the opposite parties became Asamis of the disputed plots from year to year and there was no limitation provided for filing a suit for ejectment against such an Asami u/s 202 (b) of the U. P. Zamindari Abolition and Land Reforms Act (hereinafter called the Act). Therefore, it is submitted that the opposite parties could not acquire Sirdari rights u/s 204 of the Act. This submission appears to be well-founded.

7. Section 202 of the Act reads as follows:--

"Without prejudice to the provisions of Section 338, an Asami shall be liable to ejectment from his holding on the suit of the Gaon Sabha or the land-holder, as the case may be, on the ground or grounds:--

(b) that he-

(ii) has acquired the rights of an Asami under the Uttar Pradesh Land Reforms (Supplementary) Act, 1952, and that he holds the land from year to year or for a period which has expired or will expire before the end of the current agricultural year."

8. Serial No. 26 of Appendix III of the U. P. Zamindari Abolition and Land Reforms Rules, 1952, shows that no period of limitation is provided for a suit for ejectment of an Asami u/s 202 (h) of the Act. That being so, there was an apparent error in the judgments of the Deputy Director of Consolidation and the Settlement Officer Consolidation when they proceeded on the basis that there was a limitation of three years for filing a suit for ejectment against an Asami who had acquired rights of an Asami u/s 3 of the U. P. Land Reforms (Supplementary) Act, 1952. As no limitation is provided for filing a suit for ejectment against such an Asami, he being on the express words of Section 202 (b) of the Act a person holding land from year to year, the provisions of Section 204 of the Act will not apply to such a person. There is a accruing right in favour of the petitioner to file a suit for ejectment against such an Asami at any time and it is clear, therefore, that the opposite parties could not have acquired Sirdari rights on the basis of Section 204 of the Act.

9. The argument of the learned counsel for the opposite parties that the opposite parties have acquired Sirdari rights u/s 210 of the Act, because no suit for their ejectment was filed by Smt. Raj Pali, also appears to be devoid of substance because the argument appears to proceed on the basis of the contention that the predecessors of the opposite parties were in possession over the disputed plots since the time of Sheo Shanker, husband of Smt. Raj Pali. No such case appears to have been pressed before the consolidation authorities and none of them were able to trace opposite parties possession to the time of Sheo Shaker. There is no document on record which may support the inference that the predecessors of the opposite parties were in possession over the disputed plots in the time of Sheo Shanker. The names of the opposite parties were recorded against the disputed plots for the first time in the year 1359 F. (vide the khetauni entry). In

the Khetauni of 1344 F. the name of Smt. Raj Pali, widow of Sheo Shanker, was recorded as Sirdar against the disputed plots. In the Khetauni of 1314 F. Sheo Shanker was recorded as sirdar of the disputed plots and Ram Nath and Ram Adhar as Shikmi. In the Khetauni of 1327 F. the name of Ram Nath was recorded as Asami. The opposite parties were unable to establish any connection between themselves and Ram Nath or Ram Adhar. There appears, therefore, to be no basis for the contention made in the counter-affidavit that the opposite parties or their predecessors were in possession over the disputed, plots since the time of Sheo Shankar. There is no suggestion that the opposite parties or their predecessors had taken a lease of the disputed land from Sheo Shanker. Smt. Raj Pali could not bring a suit for ejectment against the opposite parties, u/s 209 of the Act, as according to the opposite parties" case they were her Asamis. Consequently, no Sirdari rights could be acquired by the opposite parties on the basis of Section 210 of the Act also.

10. There is also an error apparent on the face of the judgment of the Deputy Director of Consolidation in relation to the finding of possession over the disputed plots in favour of the opposite parties. The main basis for that finding was that the opposite parties" possession was recorded against the disputed plots in the khasra of 1365 F. and because during the consolidation Partial they were found to be in possession. It is an admitted fact that no copy of khasra of 1365 F. was produced before the consolidation authorities by the parties. Therefore observation of the Deputy Director of Consolidation that opposite parties" possession was recorded in 1365 F. is against the record and so far as the remarks that during the consolidation Partial the opposite parties were found to be in possession over the disputed plots, Annexure 6 shows that the possession of opposite parties Nos. 3 to 5 was reported in possession in the capacity of the mortgagee in respect of plot No. 155 only possession of the opposite parties was not noted in the Partial in respect of plot Nos. 151, 152 and 154. The opposite parties did not file copy of a single Khasra, relating to the disputed plots, to establish their possession over the land. The only khasras which were produced related to the years 1366 F. to 1368 F. and in these possession of the petitioner was found recorded and not of the opposite parties. Even the khasra of 1359 F. was not produced. On the other hand, khetauni of 1363 F. in which the opposite parties were recorded as Sirdars, an entry of patently dubious character, and the khetaunis of 1365 F. to 1371 F. were produced in which the opposite parties were recorded as Asamis, but khetauni entries had no relevance for the question of possession. In this state of documentary evidence and the error in the judgment of the Deputy Director of Consolidation with regard" to the Khasra of 1365 F. and the reported possession of the opposite parties in the consolidation partial, I am of the opinion that the findings of fact on the question of possession recorded in favour of the opposite parties also appears to suffer from an error of law and for that reason having regard to the totality of the evidence appears to be erroneous.

11. The contention of the petitioner that he is in possession appears to be supported by evidence, particularly documentary evidence on record.

12. Having found that the finding of the Deputy Director of Consolidation that the opposite parties have acquired Sirdari rights is erroneous, the petition is entitled to succeed and the order of the Deputy Director of Consolidation dated 22-10-1969 and of the Settlement Officer Consolidation dated 24-7-1969 are liable to be quashed.

13. The petition is allowed with costs against opposite parties Nos. 3 to 5 and the order of the Deputy Director of Consolidation dated 22-10-1969 (copy of Which is Annexure-5 to the writ petition) and the order of the Settlement Officer Consolidation dated 24-7-1969 (copy of which is Annexure-4 to the writ petition) are hereby quashed. Let certiorari issue accordingly.

14. As the petition succeeds the amount deposited by the petitioner in this Court under this Court's order dated 23-12-1970, shall be paid to the petitioner on a proper application.