STATE OF U.P.

v.

SMT. SARJOO DEVI & ORS.

July 27, 1977

[P. K. GOSWAMI AND JASWANT SINGH, JJ]

U.P. Zamindari Abolition & Land Reforms Act, 1950—*ss.* 3(14), 212 *and* 212*A—Scope of—Land settled on the respondent with hereditary tenancy rights —Sabhapati of Gaon claimed the land to be common pasture land—No evidence to show the land to be pasture land—Sub Divisional Officer ordered ejectment of the tenant—Legality of the order.*

Words and phrases—"Held" meaning of.

Under section 3 of the U.P. Land Utilisation Act, the Collector served a notice on two intermediaries under the U.P. Zamindari Abolition and Land Reforms Act, 1950, calling upon them either to cultivate the land belonging to them or to let it out to other persons for cultivation. Thereupon in 1950 the land was settled on respondent No. 1 with hereditary tenancy rights. In 1954, a notification was issued under the Indian Forest Act, 1927 declaring that certain lands, including the land in dispute, would be constituted as reserve forest. Respondent No. 1 preferred her claim before the Forest Settlement Officer. In the meantime respondent No. 5, Sabhapati of the Gaon Samaj, filed an application before the Sub-Divisional Officer claiming that the land was customary pasture land and that respondent No. 1, who had encroached upon the land, should be ejected. That application having been granted, respondent No. 1 filed a suit against the appellant and others for a declaration that the Sub-Divisional Officer's order was null and void and was not binding on her because she was the Sirdar in possession of the land.

The trial Court held that the suit land was never recorded in the revenue papers as customary pasture land but as 'Parti' land fit for cultivation and declared the order of the Sub-Divisional Officer to be null and void. The District Court and the High Court upheld the order of the trial Court.

In appeal before this Court, it was contended that (i) the trial court was wrong in holding that the Sub-Divisional Officer's order was null and void; (ii) the impugned order was final and (iii) the land not having been ever occupied for the purpose connected with agriculture respondent No. 1 could not be said to be a hereditary tenant.

Dismissing the appeal,

HELD : (1)(a) The Courts below were right in holding that the land in question was not customary common pasture land nor it ever been used as customary pasture land or pasture land in any year. The Sub-Divisional Officer acted without jurisdiction and the impugned order was wholly illegal, ineffective, null and void and not binding on respondent No. 1. [186 B]

(b) A conjoint reading of the provisions of ss. 212-A and 212 of the 1950 Act would show that the Chairman, member or society of a committee referred to in s. 121 can make an application to the Collector for ejectment of a person only if the land of which he is in possession is of the description specified in s. 212, that is, (i) if it was *recorded* as customary pasture land or (ii) if it *was* a customary common pasture land. The evidence adduced in the case does not at all show that the suit land was recorded as customary pasture land nor does it show that it was in fact customary common pasture land. On the contrary the relevant revenue records showed that the land in question was "Parti fit for cultivation." [185 H]

(2) The Sub-Divisional Officer's order cannot be held to be final and the suit of respondent No. 1 to establish her right was clearly maintainable. The impugned order passed under s. 212-A is not final and it is open to the party

against whom the order of ejectment was passed to institute a suit to establish the right claimed by it. It is only when the suit instituted by the person sought to be ejected fails that the order of the ejectment becomes conclusive. [186 G]

(3) (a) This Court in *Budhan Singh & Anr.* v. *Nabi Bux & Anr.* [1970] 2 S.C.R. 10, interpreted the word "held" in s. 9 of the 1950 Act as meaning possession by "legal title". [187 E]

(b) A perusal of the definition of the word 'land' in the Act would show that it is not necessary for the land to fall within the purview of this definition, that it must be actually under cultivation or be occupied for purposes connected with agriculture. The requirement of the definition is amply satisfied if the land is either held or occupied for purposes connected with agriculture. The word "held" in the definition is of wide import. [187 A]

In the instant case, it has been concurrently found by the Courts below on the basis of evidence adduced in the case that the land in question was let out to respondent No. 1 by the intermediaries in May 1950 for growing crops; that she brought a substantial portion thereof under cultivation, paid rent to the intermediaries, had been regularly paying revenue to the State and that she had all along lawfully continued to hold the land for purposes connected with agriculture. From the appellant's own revenue record it is clear that respondent No. 1 was holding the land as a hereditary tenant on the date immediately preceding the date of vesting. She has, therefore, fulfilled all the requisite conditions and become a sirdar of the land on the date of vesting under s. 19 of the Act. [187 E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2334 of 1968.

Appeal by Special Leave from the Judgment and Order dated 5-2-1968 of the Allahabad High Court in Second Appeal No. 3257 of 1960.

G. N. Dikshit, and *O. P. Rana* for the Appellant.

Faujdar Rao, Jagdish Misra and *U. B. Prasad* for Respondent No. 1.

The Judgment of the Court was delivered by

JASWANT SINGH, J. This appeal by special leave which is directed against the judgment and decree dated February 5, 1968 of the High Court of Judicature at Allahabad affirming the decisions of the District Judge and the Civil Judge, Basti, dated May 20, 1960 and July 27, 1959 respectively decreeing the suit instituted by respondent No. 1 herein under sub-section (7) of section 212A of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No. 1 of 1951) (hereinafter referred to as 'the U.P. Z.A. and L.R. Act'), which came into force on January 26, 1951, arises in the following circumstances:—

The land in dispute measuring 142 bighas, 1 biswa and 18 dhurs situate in village Baudhara, Tappa Menhdawal, Pargana Maghar East, Tehsil Khalilabad, District Basti, belonged in 1950 A.D. to Girdhar Das and Purshottam Das, Zamindars of Gorakhpur City, who became intermediaries under the U.P. Z.A. and L.R. Act. Finding that the said land was lying uncultivated, the Collector, Gorakhpur, served the aforesaid Zamindars with a notice under section 3 of the U.P. Land Utilisation Act calling upon them either to cultivate the land themselves or to let out the same to other persons for cultivation. The said Zamindars thereupon settled the land in May 1950 (1357 Fasli) with respondent No. 1 by executing 'pattas' in her favour for growing crops i.e. for cultivation and conferred hereditary tenancy rights on her. On May 1, 1954, a notification under section 4 of the Indian

Forest Act, 1927 was published in the U.P. Gazette in respect of 342 acres of land of village Baudhara including the land in question declaring that it had been decided to constitute the said land as a reserved forest. This was followed in June, 1954 by a proclamation as required by section 6 of the Forest Act. Respondent No. 1 thereupon preferred her claim in respect of her rights to the land in question before the Forest Settlement Officer. On January 22, 1955, when the said claim preferred by respondent No. 1 was still pending, Ram Naresh Tewari, father of respendent No. 5, describing himself as Sabhapati of Gaon Samaj, Baraipur, filed an application purporting to be under section 212A, (1) of the U.P. Z.A. and L.R. Act before the Sub Divisional Officer, Khalilabad (who was empowered by the State Government to discharge the functions of a Collector) for ejectment from the land in question of respondent No. 1 on the ground that it was a customary common pasture land and as such had vested in the Gaon Samaj and that the said respondent had encroached upon the same. By his order dated August 16, 1955, the Sub Divisional Officer, Khalilabad, allowed the aforesaid application of Ram Naresh Tewari and ordered the ejectment of respondent No. 1. After unsuccessfully trying by means of a review petition to have the aforesaid order of her ejectment quashed, respondent No. 1 filed the aforesaid suit, being suit No. 7 of 1956, on February 15, 1960 under sub-section (7) of section 212-A of the U.P. Z.A. and L.R. Act against the State of U.P., the appellant herein, and four others including Ram Naresh Tewari, the father of respondent No. 5, for declaration that the aforesaid order passed by the Sub Divisional Officer, Khalilabad, was illegal, ineffective, null and void and was not binding on her and that she was a sirdar in possession of the land in question. She also prayed for a perpetual injunction restraining the defendants from interfering with her possession and enjoyment of the land. The case as set up by respondent No. 1 was that in 1357 Fasli (1950 A.D.), the zamindars *viz.* Girdhar Das and Purshottam Das who were in possession of the land in question duly executed pattas conferring hereditary tenancy rights in the land in her favour; that the said tenancy rights were confirmed by virtue of the decrees passed by the competent revenue courts in suits brought by her under sections 59 and 61 of the U.P. Tenancy Act, 1939 (U.P. Act No. XVII of 1939) (hereinafter referred to as 'the U.P. T. Act); that on the notified date *viz.* July 1, 1952, she became a sirdar of the land in question under section 19 of the U.P. Z.A. and L.R. Act; that since 1357 Fasli (1950 A.D.) she had been in actual possession of the land and using it for agricultural purposes or for purposes connected with agriculture and had been appropriating its produce and regularly paying rent to the aforesaid zamindars and since July 1, 1952, she had been continuously paying revenue to the State Government; that as the land in question could not and did not vest in the Gaon Samaj, neither the Gaon Samaj nor Ram Naresh Tewari had any right to make an application under section 212-A (1) of the U.P. Z.A. and L.R. Act and that the land not having been a common pasture land or a customary common pasture land before or after August 8, 1946, but having been in exclusive possession and ownership of the aforesaid zamindars till the execution by them of the aforesaid pattas and after their execution in her exclusive possession, it was not land of the nature which could legitimately be said to fall within the purview of section 212 of the

A U.P. Z.A. and L.R. Act and that the proceedings taken by the Sub Divisional Officer, Khalilabad, under section 212-A of the U.P. Z.A. and L.R. Act were illegal, null and void. The appellant herein alone contested the suit. The rest of the defendants having chosen to remain absent despite service of summons, the case proceeded *ex-parte* against them. The appellant pleaded *inter alia* that as the land had never been in the actual possession of the aforesaid zamindars before or after B the enforcement of the U.P. Z.A. and L.R. Act, it vested in the State Government; that the land had always remained a customary pasture land of public utility in which no tenancy or other right could be conferred by the zamindars in favour of respondent No. 1; that the transaction of lease relied upon by respondent No. 1 was invalid and unenforceable; that the suit land legally vested in the Gaon Samaj and C that the impugned ejectment order dated August 16, 1955 passed by the Sub Divisional Officer, Khalilabad was binding on respondent No. 1 and the suit brought by her was not maintainable.

On a consideration of the oral and documentary evidence, the trial court came to the conclusion that the suit land was never recorded in the revenue papers as customary pasture land but was recorded in the D Khatoni relating to 1357 Fasli (1950 A.D.) as "Parti land fit for cultivation"; that there was also no evidence to support the contention of the appellant that the suit land was used in any year as common pastures land or as pasture land; that even the appellant had to concede that some 10 or 12 bigha of the suit land had been brought under cultivation by respondent No. 1; that the suit land had been let out to E respondent No. 1 in May 1950 when she became a hereditary tenant of the same; that the suit land not being a customary pasture land, the order dated August 16, 1955 passed by the Sub-Divisional Officer, Khalilabad was illegal, null and void and was not binding on the plaintiff. The trial court further held that the oral and documentary evidence adduced by respondent No. 1 established that she had been recorded in the revenue papers as hereditary tenant of the land; that F respondent No. 1 had also been held by the competent revenue courts in suits Nos. 1178 of 1950, 780 of 1950 and 285 of 1952 filed by her under sections 59 and 61 of the U.P. T. Act as hereditary tenant and that she had become sirdar of the suit land on the date of vesting. With these findings, the Civil Judge, Basti decreed the suit with costs in favour of respondent No. 1 by his judgment and decree dated July 27, 1959. Aggrieved by this Judgment and decree, the State of U.P. went G up in appeal to the District Judge, Basti, who by his judgment and decree dated May 20, 1960 affirmed the aforesaid judgment and decree of the trial court holding *inter alia* that the suit land had been let out to respondent No. 1 for the purpose of growing crops; that in revenue papers (Exhibits 1, 7 and 8) which relate to the years 1358, 1359 and 1362 Faslis, she had been recorded as hereditary tenant of the suit land and she became sirdar thereof on the date of vesting viz. July 1, H 1952. On further appeal, the High Court by its judgment dated February 5, 1968, upheld the aforesaid judgments and decrees of the trial court and the District Judge, Basti. It is against this judgment and decree that the State of U.P. had come up in appeal to this Court.

Appearing on behalf of the appellant, Mr. Dixit has urged that the material on the record did not warrant the findings of the courts below that the suit land not being of the nature contemplated by section 212 of the U.P. Z.A. and L.R. Act, the aforesaid order passed by the Sub Divisional Officer, Khalilabad, was null and void. He has further contended that the impugned order was final and conclusive and the suit out of which the present appeal has arisen was not maintainable. He has lastly submitted that it is the definition of "land" as contained in section 3(14) of the U.P. Z.A. and L.R. Act and not the one contained in section 3(1) of the U.P. T. Act which is relevant for the purpose of the instant case and that the land not having been ever occupied for the purpose connected with agriculture, respondent No. 1 could not be said to be a hereditary tenant thereof and the courts below have erred in declaring her as sirdar thereof. We shall consider these points seriatim.

Point No. 1 :—For a proper determination of this point, it is necessary to refer to section 212-A(1) of the U.P. Z.A. and L.R. Act under which the aforesaid application by Ram Naresh Tewari, father of Sheo Ram Tewari, respondent No. 5 herein purported to be made as also to section 212 of the same Act which is alluded to in section 212-A(1) :

> "212-A(1). Without prejudice to the provisions of section 212, the Chairman, member or society of a committee referred to in section 121, may, make an application to the Collector for ejectment from the land of a person in possession of a land referred to in section 212.
>
> (7) Where an order for ejectment has been passed under this section, the party against whom the order has been passed, may institute a suit to establish the right claimed by it, but subject to the results of such suit the order passed under sub-section (4) or (6) shall be conclusive."
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> "212. Ejectment of persons from land of public utility. Any person who, on or after the eighth day of August 1946 has been admitted as a tenure or grove holder of, or being an intermediary has brought under his own cultivation or has planted a grove upon, land which was recorded as or was customary common pasture land, cremation or burial ground, tank pond path way or Khalian, shall be liable notwithstanding anything contained in section 199, on the suit of the Gaon Sabha to ejectment from the land, on payment of such compensation as may be prescribed."

A conjoint reading of the provisions of these two sections would show that the Chairman, member or society of a committee referred to in section 121 can make an application to the Collector for ejectment of a person only if the land of which he is in possession is of the description specified in section 212 *i.e.* (1) if it was *recorded* as customary pasture land or (2) if it *was* a customary common pasture land. The evidence adduced in the case does not at all show that the suit land was recorded as customary pasture land nor does it show that it was in fact

customary common pasture land. On the contrary, the appellant's own record clearly negatives its case. In Exhibits 2 and 45 which are copies of settlement Khatoni of 1323 Fasli, the land in question is clearly recorded as 'Parti' with long thatching grass. Again in Khatoni of 1357 Fasli (1950 A.D.), the land is recorded as "Parti fit for cultivation". The courts below were, therefore, perfectly right in holding that there is no evidence to support the appellant's contention that the land in question was either recorded as customary common pasture land or had ever been used as customary pasture land or pasture land in any year. Manifestly therefore, the Sub Divisional Officer, Khalilabad acted without jurisdiction and the impugned order passed by him directing the ejectment of the respondent No. 1 was wholly illegal, ineffective, null and void and not at all binding on respondent No. 1.

Point No. 2 :—The second point urged by Mr. Dixit is also devoid of substance. Even a cursory glance at sub-section (7) of section 212-A of the U.P. Z.A. and L.R. Act reproduced above is enough to show that the order passed by the Sub Divisional Officer, Khalilabad, under section 212-A is not final and it is open to the party against whom the order of ejectment is passed to institute a suit to establish the right claimed by it. It is only when the suit instituted by the person sought to be ejected fails that the order of ejectment becomes conclusive. The aforesaid order passed by the Sub Divisional Officer, Khalilabad cannot, therefore, be held to be final and the suit brought by respondent No. 1 to establish her right was clearly maintainable.

Point No. 3 :—For a decision of this point, it is essential to refer to sections 3(14) and 19 of the U.P. Z.A. and L.R. Act, which read as follows :—

> "3(14). Land (except in sections 109, 143 and 144 and Chapter VII means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming."

> "19. All land held or deemed to have been held on the data immediately preceding the date of vesting by any person as :
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> (i) .. ..
> (ii) .. ..
> (iii) .. ..
> (iv) A hereditary tenant
> (v) .. ..
> (vi) .. ..
> (vii) .. ..
> (viii) .. ..
> (ix) .. ..
>
> shall, have 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."

A bare perusal of the definition of the word "land as contained in section 3(14) of the U.P. Z.A. and L.R. Act which is reproduced above would show that it is not necessary for the land to fall within the purview of this definition that it must be actually under cultivation or occupied for purposes connected with agriculture. The requirement of the definition is, in our opinion, amply satisfied if the land is either held or occupied for purposes connected with agriculture. The world "held" occurring in the above definition, which is a pa. pple. of the word "hold" is of wide import. In the Unabridged Edition of "The Random House Dictionary of the English Language", the word "hold" has been inter alia stated to mean "to have the ownership or use of; keep as one's own." In 'The Dictionary of English Law' by Earl Jowitt (1959 Edition), the word "hold" has been interpreted as meaning "to have as tenant".

In Stroud's Judicial Dictionary (Fourth Edition), the distinction between holding and occupation is sought to be brought out by quoting the following observations by Littledale, J. in *R.* v. *Ditcheat*(1).

> "There is a material difference between a holding and an occupation. A person may hold, though he does not occupy. A tenant is a person who holds of another; he does not necessarily occupy.

In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal parlance, the word "held" means to possess by 'legal titled'. Relying upon this connotation, this Court in *Budhan Singh & Anr.* v. *Nabi Bux & Anr.*(2), interpreted the word "held" in section 9 of the U.P. Z.A. and L.R. Act as meaning possession by legal title.

In the instant case, it has been concurrently found by the courts below on the basis of evidence adduced in the case that the land in question was let out to respondent No. 1 by the aforesaid intermediaries in May, 1950 (1357 Fasli) for growing crops; that she brought a substantial portion thereof under cultivation, paid rent to Girdhar Das and Purshottam Das in 1951 and 1952 against proper receipts; that she has been regularly paying revenue to the appellant and that she has all along lawfully continued to hold the land for purposes connected with agriculture. It is also established from the appellant's own revenue record that respondent No. 1 was holding the land as a hereditary tenant on the date immediately preceding the date of vesting. There is, therefore, no manner of doubt that she fulfilled all the requisite conditions and became a sirdar of the land on the date of vesting under section 19 of the U.P. Z.A. and L.R. Act.

All the contentions raised by counsel for the appellant, therefore, fail.

For the foregoing reasons, we find no force in this appeal which is dismissed. The appellant shall pay costs of respondent No. 1 as directed in court's order dated November 12, 1968.

P.B.R. *Appeal dismissed.*

(1) 9 B & C 108.
(2) [1970] 2 S.C.R. 10.