

BABU NOORUL HASAN KHAN

v.

RAM PRASAD SINGH & ORS.

October 18, 1979

[N. L. UNTWALIA AND A. D. KOSHAL, JJ.]

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 Secs. 11, 12, 13(1) & 13(2)—Scope of.

The appellants and others were the Zamindars of a village in which certain lands were given on Theka to the Respondent and others on 6th March, 1948, the Zamindari having vested on 30th June, 1952. Disputes arose between the appellants and the respondents during the pendency of proceedings under the U.P. Consolidation of Holdings Act. The appellants and others claimed the plots in dispute being in their exclusive *Sir* and *Khudkast* would be deemed to have been settled with them by the State on the Abolition of Zamindari and their name should be recorded as *Bhoomidars* thereof. Respondent and others on the other hand claimed they had become the *Sirdars* of the plots in dispute and resisted the claims of the Zamindars. The dispute gave rise to the question of title. The Civil Judge sent the matter for decision to an Arbitrator appointed under the Act. The Arbitrator held the respondents to be the *Sirdars* of the plots in question. The appellants filed objections against the award before the Civil Judge who allowed the objections, set aside the award and remitted back the award for reconsideration. Appeals were taken to the Additional District Judge who disagreed with the Civil Judge but affirmed the order of remand. Both sides filed separate revisions before the High Court, the revision of Respondents was allowed and dismissed those of the appellants. The only point argued was whether Respondent and others have been rightly held to be the *Sirdars* of the plots in question or whether the ex-landlords had become the *Bhoomidars*.

Dismissing the appeal.

HELD : That a *Thekedar* of an Estate ceases to have any right to hold or possess any land in such Estate with effect from the date of its vesting. This is what has been provided in sub-section (1) of section 13. But it is subject to the exceptions—viz., one, the provisions contained in section 12 and the other engrafted in sub-section (2) of section 13. There is no dispute between the parties that the land in possession of the *Thekedars* on the date of vesting was either covered by section 12(1) or section 13(2)(a). The land admittedly was the *Sir* or *Khudkasht* of the lessor namely the *Zamindars*. If such a land was in the personal cultivation of a person on the 1st May, 1950 as a *Thekedar* thereof and if the *Theka* was made with a view to the cultivation of the land by such *Thekedars* personally then because of the *non-obstante* clause occurring in sub-section (1) of section 12 of the Act the *Thekedar* would be deemed to be a hereditary tenant of the land entitled to hold as such and liable to pay rent at hereditary rates. If, however, the land was in personal cultivation of the *Thekedar* merely as a *Thekedar* appointed to collect rent from other tenants and incidentally allowed to cultivate the *Sir* or *Khudkasht* land of the lessor then he will be a mere *asami* in accordance with section 13(2)(a) of the Act. The Arbitrator on a consideration of the *theka* document found that the *theka*

A was made with a view to cultivation of the land by the Thekedar personally. The interpretation of the Arbitrator was not such that it could enable the Civil Judge to take the view that there was an error of law apparent on the face of the record. On the other hand it appears to us that the interpretation put by the Arbitrator was correct. There is a subtle but clear dividing line between the two types of cases one falling under section 12(1) of the Act and the other coming within the ambit of section 13(2)(a). The High Court was right in its view that the Award of the Arbitrator was not fit to be interfered with. 1980 G-H. 981 A-D)

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1951 of 1969.

C Appeal by Special Leave from the Judgment and Order dated 7-1-69 of the Allahabad High Court in Civil Revision No. 506-510 and 548-552/65.

J. P. Goyal and *S. K. Jain* for the Appellant.

R. K. Garg, *V. J. Francis* and *D. K. Garg* for Respondent No. 1.

The Judgment of the Court was delivered by

D UNTWALIA, J.—This is an appeal by special leave from the judgment of the Allahabad High Court disposing of ten connected civil revisions. Noorul Hasan Khan and others were the Zamindars of the village in which certain lands were given in Theka to Bhagwati Singh, Ram Prasad Singh and others on the 6th of March, 1948.

E The Zamindari vested under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, hereinafter called the Act, on the 30th of June, 1952. Disputes arose between the ex-Zamindars and the ex-Thekadars during the pendency of the proceedings under the U.P. Consolidation of Holdings Act. When entries in the list of tenancy holders were published under section 11 of the Consolidation of the

F Holdings Act relating to the lands in dispute consisting of several plots, objections were filed by both the parties. Noorul Hasan Khan and others claimed that the plots in dispute being their exclusive *Sir* and *Khudkasht* would be deemed to have been settled with them by the State on the abolition of the Zamindari and their names should be recorded as *bhumidars* thereof. On the other hand Bhagwati Singh

G and others claimed that they had become the *Sirdars* of the plots in dispute and they resisted the claim of the ex-Zamindars. The Consolidation Officer referred the matter to the Civil Judge of Azamgarh in accordance with section 12 of the Consolidation of Holdings Act. The Civil Judge sent the matter for decision to an Arbitrator

H appointed under the Act as the dispute gave rise to the question of title. Shri Kailash Chandra, an Assistant Collector, was appointed as an Arbitrator. On consideration of the oral and documentary

evidence adduced before him he rejected the claim of ex-Zamindars and decided the matter in favour of the ex-Thekedars. Bhagwati Singh and others were held to be the Sirdars of the plots in question. Noorul Hasan and others filed objections to the Award before the Civil Judge. He allowed the objections on the ground that the illegality of the Award was apparent on the face of it in as much as the Arbitrator did not apply the correct law in determining the rights of the parties. He set aside the Award and remitted it back to the arbitrator for reconsideration in the light of his judgment.

Appeals were taken to the learned Additional District Judge who by order dated 8-12-1962 disagreed with the learned Civil Judge on the main question but affirmed his order of remand on the ground that in the Award many questions were left undetermined. Both sides filed separate revisions before the High Court. The High Court has allowed the revisions of the ex-Thekedars and dismissed those of the ex-Zamindars. Hence this appeal.

The only point which was argued and agitated before us is whether Bhagwati Singh and others have been rightly held to be the Sirdars of the plots in question or whether the ex-landlords had become the bhumidars. The determination of this question depends upon a correct appreciation of the provisions of law contained in sections 12 and 13 of the Act. We shall read the relevant portions of the two sections. They are as follows :—

“12. Thekedars to be hereditary tenants in certain circumstances.—(1) Where any land was in the personal cultivation of a person on the 1st day of May, 1950, as a thekedar thereof and the theka was made with a view to the cultivation of the land by such thekedar personally, then notwithstanding anything in any law, document or order of court, he shall be deemed to be a hereditary tenant thereof entitled to hold, and when he has been ejected from the land after the said date, to regain possession as a hereditary tenant thereof liable to pay rent at hereditary rates.

13. Estate in possession of a thekedar.—(1) Subject to the provisions of Section 12 and sub-section (2) of this section a thekedar of an estate or share therein shall, with effect from the date of vesting, cease to have any right to or possess as such any land in such estate.

A (2) Where any such land was in the personal cultivation of the thekedar on the date immediately preceding the date of vesting, the same shall—

B (a) if it was *sir* or khudkasht of the lessor on the date of the grant of the theka, be deemed for purposes of Section 18, to be the *sir* or khudkasht of the lessor on the date immediately preceding the date of vesting and the thekedar shall, with effect from the date of vesting, become the asami thereof liable to pay rent at hereditary rates applicable on the date immediately preceding the date of vesting and entitled to hold the land as such for the unexpired period of the theka or for a period of five years from the date of vesting whichever is less;

C (b) if it was not *sir* or khudkasht of the lessor on the date of the grant of the theka and—

D (i) its area does not exceed thirty acres, be deemed for purposes of Section 19 to have been held by the thekedar as a hereditary tenant liable to pay rent which shall be equal to the rent calculated at hereditary rates applicable on the date immediately preceding the date of vesting,

E (ii) its area exceeds thirty acres, be deemed to the extent of thirty acres for purposes of Section 19 to have been held as a hereditary tenant as aforesaid and the remainder shall be deemed to be vacant land and the thekedar shall be liable to ejection therefrom in accordance with the provisions of Section 209.”

F It would be noticed from the provisions aforesaid that a Thekedar of an Estate ceases to have any right to hold or possess as such any land in such Estate with effect from the date of its vesting. This is what has been provided in sub-section (1) of section 13. But it is subject to two exceptions—viz., one the provision contained in section 12 and the other engrafted in sub-section (2) of section 13. There is no dispute between the parties that the land in possession of the Thekedars on the date of vesting was either covered by section 12(1) or section 13(2)(a). We are not concerned in this case with section 13(2)(b) as the land admittedly was the *Sir* or *Khudkasht* of the lessor namely the Zamindars. If such a land was in the personal

cultivation of a person on the 1st day of May, 1950 as a Thekedar thereof and if the *Theka* was made with a view to the cultivation of the land by such *Thekedar* personally then, because of the *non-obstante* clause occurring in sub-section (1) of section 12 of the Act the *Thekedar* would be deemed to be a hereditary tenant of the land entitled to hold as such and liable to pay rent at hereditary rates. If, however, the land was in personal cultivation of the *Thekedar* merely as a *Thekedar* appointed to collect rent from other tenants and incidentally allowed to cultivate the *Sir* or *Khudkasht* land of the lessor then he will be a mere *asami* in accordance with section 13(2)(a) of the Act. The Arbitrator on a consideration of the *Theka* document found that the *theka* was made with a view to cultivation of the land by the *Thekedar* personally. The interpretation of the Arbitrator was not such that it could enable the Civil Judge to take the view that there was an error of law apparent on the face of the record. On the other hand it appears to us what the interpretation put by the Arbitrator was correct. There is a subtle but clear dividing line between the two types of cases one falling under section 12(1) of the Act and the other coming within the ambit of section 13(2)(a). In our opinion the High Court was right in its view that the Award of the Arbitrator was not fit to be interfered with.

For the reasons stated above, we dismiss this appeal but in the circumstances make no order as to costs.

N.K.A.

Appeal dismissed.