WALI MOHAMMAD (DECEASED) BY L.RS. A

v.

RAM SURAT & ORS.

SEPTEMBER 21, 1989

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[M.H. KANIA AND S. RANGANATHAN, JJ.]

U.P. Zamindari Abolition and Land Reforms Act 1950—Section 232 and Section 20 (b)(i)—Interpretation of—Who can be declared as Adhivasi thereunder.

One Wali Mohammad (since deceased) executed on May 22, 1928 an usufructuary mortgage in favour of Ram Kumar and Shiv Kumar in respect of two plots. According to Wali Mohammad he redeemed the said mortgage and took possession of the plots in the beginning of Fasli year 1354 (period from 1.7.1946 to 30.6.1947) and continued in possession thereof. C

D

On 28th December 1953, Ram Kumar moved an application under Section 232 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 for obtaining possession of the two plots in question from Wali Mohammad on the ground that his name was recorded in the Khasra and Khatauni of 1356 Fasli and therefore he was the Adhivasi of the said plots. Wali Mohammad contested the application before the Sub-Divisional Officer. The Sub Divisional Officer dismissed the suit finding that Wali Mohammad was in possession of the plots. This decision was affirmed by the Addl. Commissioner, who held that the entry in the Khasra relied on by Ram Kumar was a fictitious one. On second appeal the Board of Revenue set aside the orders of the Sub-Divisional Officer as also of the Addl. Commissioner. The Board held that the entry in the Khasra to the effect that Ram Kumar was the occupant of the two plots in Fasli year 1356 was sufficient to confer Adhivasi rights. Thereupon Wali Mohammad filed a Writ Petition in the High Court challenging the decision of the Board of Revenue. The Single Judge who heard the Writ Petition allowed the Writ Petition holding that the Board had committed an error of jurisdiction and consequently quashed the orders of the Board. Ram Kumar preferred a Letter Patent appeal against the order of the Single Judge. The Division Bench allowed the appeal and set aside the order passed by the Single Judge. The Division Bench took the view that the entry in the revenue records was enough to confer rights of Adhivasi under Section 20(b) of the Act. E F G H

A **Being aggrieved by the said decision of the High Court the legal representatives of Wali Mohammad who has since died has filed this appeal, after obtaining Special Leave.**

Dismissing the appeal, this Court,

B **HELD: Section 20(b) of the Act deals with the question as to who is entitled to take or retain possession of the land in question. The plain language of cluase (1) of Sub-Section (b) of Section 20 of the Act, suggests that this question has to be determined on the basis of the entry in the Khasra or Khatauni of the Fasli year 1356. An analysis of the said section shows that Under sub-section (b) of section 20, the entry in the Khasra of Khatauni of the Fasli year 1356 shall determine the question** C **as to the person who is entitled to take or retain possession of the land. If the entry is fictitious or is found to have been made surreptitiously then it can have no legal effect as it can be regarded as no entry in law, but merely because the entry is made incorrectly that would not lead to the conclusion that it ceases to be an entry. It is possible that the said** D **entry may be set aside in appropriate proceedings. [214G-H; 215A]**

In the present case, although the Addl. Commissioner has held that the entry was fictitious, the conclusion seems to have been arrived at merely on the basis that Wali Mohammad was in possession in Fasli year 1356, with the result that the entry in the Khasra or Khatauni E **showing Ram Kumar as the occupant could not be correct. There is nothing to show that the said entry was fictitious or was made fraudulently or was in-correctly introduced by reason of ill-will or hostility towards Wali Mohammad. In these circumstances, the entry may not be correct but it could not be said to be fictitious or regarded as *non est*. Merely because the entry might be incorrect, that would not make any** F **difference to the determination of the question as to who is entitled to be declared to be the Adhivasi of the land under the provisions of Section 20(b) of the said Act. [216B-D]**

Bachan & Anr. **v.** *Kankar & Ors.,* **[1973] 1 SCR 727 and** *Vishwa Vijai Bharti* **v.** *Fakhrul Hasan & Ors.,* **[1976] Suppl. SCR 519, referred** G **to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1443 of 1972.

From the Judgment and Order dated 30.11.1971 of the Allaha- H bad High Court in Special Appeal No. 491 of 1963.

Uma Dutt for the Appellants. A

Ms. Rachna Gupta for Bagga for the Respondents.

The Judgment of the Court was delivered by

KANIA, J. The appellants before us are the heirs and legal representatives of one Wali Mohammad. Respondents Nos. 1 and 2 are the sons of one Ram Kumar. Respondent No. 3 is the Board of Revenue, Allahabad. B

On May 22, 1928 Wali Mohammad executed a usufructuary mortgage in favour of Ram Kumar and Shiv Kumar in respect of two plots. According to Wali Mohammad, he redeemed the said mortgage and took possession of the said plots in the beginning of Fasli Year 1354 (period from 1.7.1946 to 30.6.1947) and continued to be in possession thereof. On December 28, 1953 Ram Kumar moved an application under section 232 of the U.P., Zamindari Abolition and Land Reforms Act, 1950 (heeinafter referred to as "the said Act"), for getting possession of the said two plots from Wali Mohammad on the ground that his name was recorded in the Khasra and Khatauni of 1356 Fasli and, therefore, he was the Adhivasi of the said plots. This was contested by Wali Mohammad. The Sub-Divisional Officer found that Wali Mohammad was in possession of the said plots since the redemption of the said mortgage and dismissed the suit of Ram Kumar. That decision was confirmed by the Additional Commissioner on appeal holding that the entry in the Khasra relied on by Ram Kumar was fictitious. On second appeal, the Board of Revenue set aside the decision of the Sub-Divisional Officer and the Additional Commissioner and held that the entry in the Khasra to the effect that Ram Kumar was the occupant of the said plots in Khasra of Fasli Year 1356 was sufficient to confer Adhivasi rights on him and no further inquiry was called for to ascertain whether the said entry was correct or wrong. Wali Mohammad filed a writ petition in the Allahabad High Court, challenging the aforesaid decision of the Board of Revenue. The learned Single Judge of the High Court, after hearing the arguments in the said writ petition, allowed the same and quashed the order of the Board of Revenue on the ground that the Board of Revenue had committed an error of jurisdiction. Ram Kumar preferred a Letters Patent Appeal against the said decision of the learned Single Judge. The said appeal was allowed by a Division Bench of the said High Court. The Division Bench set aside the order of the learned Single Judge, holding that the entry in the revenue records was enough to C D E F G H

A confer rights of Adhivasi under section 20(b) of the said Act. That decision is challenged before us in this appeal by Special Leave granted on the application of Wali Mohammad. Wali Mohammad died during the pendency of the present appeal and his heirs and legal representatives have been brought on record in his place.

B The relevant provision which falls for consideration is clause (i) of sub-section (b) of section 20 of the said Act. The relevant part of section 20 runs as follows:

> "20. Every person who—
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> C (a) x x x x x
> (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 (Amend-
> D ment) Act, 1947 in the Khasra or Khatauni of 1356 F. prepared under sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901 (U.P. Act III of 1901), or who was on the date immediately preceding the date of vesting entitled to retain possession thereof under clause (c) of sub-section (1) of section 27 of the United Provinces
> E Tenancy (Amendment) Act, 1947 (U.P. Act X of 1947), or
>
> (ii) x x x x x
>
> shall, unless he has become a bhumidhar of the land under sub-section (2) of section 18 or an assami under clause (h)
> F 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."

The said section deals with the question as to who is entitled to take or retain possession of the land in question. The plain language of
G the aforesaid clause (i) of sub-section (b) of section 20 of the said Act suggests that this question has to be determined on the basis of the entry in the Khasra or Khatauni of 1356 Fasli Year prepared under sections 28 and 33 respectively of the U.P. Land Revenue Act, 1901. An analysis of the said section shows that under sub-section (b) of section 20 the entry in the Khasra or Khatauni of the Fasli Year 1356
H shall determine the question as to the person who is entitled to take or

retain possession of the land. It is, of course, true that if the entry is fictitious or is found to have been made surreptitiously then it can have no legal effect as it can be regarded as no entry in law but merely because an entry is made incorrectly that would not lead to the conclusion that it ceases to be an entry. It is possible that the said entry may be set aside in appropriate proceedings but once the entry is in existence in the Khasra or Khatauni of Fasli Year 1356, that would govern the question as to who is entitled to take or retain possession of the land to which the entry relates.

It was submitted by learned counsel for the appellants that if the entry was not correct, it could not be regarded as an entry made according to law at all and the right to take or retain possession of the land could not be determined on the basis of an incorrect entry. He placed reliance on the decision of this Court in *Bachan and another* v. *Kankar and others,* [1973] 1 SCR 727. In that judgment the nature of the entries in Khasra or Khatauni is discussed and it is also discussed as to how this entry should be made. This Court held that entries which are not genuine cannot confer Adhivasi rights. It has been observed that an entry under section 20(b) of the said Act, in order to enable a person to obtain Adhivasi rights, must be an entry under the provisions of law and entries which are not genuine cannot confer Adhivasi rights. In that judgment it has been stated that the High Court was wrong when it held that though the entry was incorrect, it could not be said to be fictitious. That observation, however, has to be understood in the context of what follows, namely, that an entry which is incorrectly introduced into the records by reason of ill-will or hostility is not only shorn of authenticity but also becomes utterly useless without any lawful basis. This judgment, in our view, does not lay down that all incorrect entries are fictitious but only lays down that a wrong entry or incorrect entry which has been made by reason of ill-will or hostility cannot confer any right under section 20(b) of the said Act. This decision is clarified by a subsequent judgment of this Court in *Vishwa Vijai Bharti* v. *Fakhrul Hasan and others,* [1976] Suppl. SCR 519, where it has been held as follows:

> "It is true that the entries in the revenue record ought, generally, to be accrpted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the

A revenue record states but the entry is open to the attack that it was made fradulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."

B Coming to the present case, although the Additional Commissioner has held that the entry was fictitious, that conclusion seems to have arrived at merely on the basis that Wali Mohammad was in possession in Fasli Year in question, with the result that the entry in the Khasra or Khatauni showing Ram Kumar as the occupant could not be correct. There is nothing to show that the said entry was fictitious or was made fradulently or was incorrectly introduced by reason of ill-will C or hostility towards Wali Mohammad. In these circumstances, the entry may not be correct but it could not be said to be fictitious or regarded as *non est*. Merely because the entry might be incorrect, that would not make any difference to the determination of the question as to who is entitled to be declared to be the Adhivasi of the land under D the provisions of section 20(b) of the said Act. We agree with the conclusion and reasoning of the High Court.

In the result, the appeal fails and is dismissed with costs.

Y. Lal Appeal dismissed.