

Lalai And Ors. vs The State Of Uttar Pradesh And Ors. on 29 August, 1969

Equivalent citations: 1969(2)UJ601(SC)

JUDGMENT

Grover, J.

1. This is an appeal by special leave from a judgment of the Allahabad High Court dismissing a writ petition which had been filed by the appellants.

2. The appellants were the Zamindars of certain plots in three villages in district Basti in the State of Uttar Pradesh. One Tameshar was an occupancy tenant in these plots. He died in August 1945. On his death Lalai, respondent No. 4, entered into possession of the said plots asserting that he was Tameshar's daughter's son. One of the appellants filed a suit under Section 180 of the U. P. Tenancy Act 1939 for his ejectment on the ground that he was a trespasser. That suit was ultimately dismissed by the appellate court on the ground that the plaintiff did not have the right to institute the suit alone without impleading the other co-sharers. Thereafter the appellants and others who constituted the entire body of the co-sharers instituted a fresh suit for ejectment of Lalai. The trial court decreed the suit holding that Lalai was not the daughter's son of Tameshar but was a mere trespasser. Lalai preferred an appeal to the Additional Commissioner which was dismissed in July 1951. He preferred a second appeal before the Board of Revenue which was admitted and the execution of the decree was stayed. On July 1, 1952 the , hereinafter called the Act, came into force. The hearing of the appeal was stayed under Rule 4 of the Zamindari Abolition and Land Reforms Rules. During the pendency of the appeal Ishwar Din who was one of the respondents died on August 9, 1954. The respondents contended that the entire appeal had abated for want of substitution of the heirs of the deceased respondent. The appellants, however, maintained that the suit itself had abated under Rule 5 of the aforesaid Rules. The two members of the Revenue Board expressed separate opinions. Shri S.N. Mitra was of the view that the appeal along with the suit had abated, whereas Shri R.N. Singh, the Judicial Member, held that the appeal had abated under Order 22, Rule 4 of the CPC. On September 20, 1956 an order was made dismissing the appeal. Lalai continued to remain in possession. He challenged the order of the Board of Revenue by means of a petition under Article 26 of the Constitution and obtained an interim order staying execution of the decree for ejectment which had been obtained by the appellants under Section 180 of the Tenancy Act. The writ petitions were dismissed by Broome J. on February 7, 1962.

3. Meanwhile a notification was issued in January 1960 under the U P. Consolidation of Holdings Act 1953. This related to 194 villages in the district of Basti including the villages in which the land

in dispute was situate. Thereupon the proceedings under the aforesaid Act commenced. Appellants Nos. 2 and 4 and the predecessors in-interest of appellants Nos. 1 and 3 moved the Consolidation Officer for their names being recorded against the plots in dispute as Bhoomidars and for the deletion of the name of respondent No. 4 Lalai therefrom. The Consolidation Officer disposed of the matter on April 29, 1961. He held that Lalai was only a trespasser and he could not acquire any Sirdari rights on the basis of possession. His name was ordered to be deleted. Lalai went up in appeal to the Additional Settlement Officer (Consolidation) The appeal was dismissed. Lalai preferred a second appeal before the Deputy Director of Consolidation. On August 17, 1961 that appeal was allowed as he was in possession of the suit land in 1356 F. The appellants filed an application for revision in the court of Commissioner who was acting as Director of Consolidation. On April 28, 1962 the Commissioner dismissed that appeal. The appellants then moved the High Court under Article 26 of the Constitution The learned Single Judge who heard the petition was of the view that on the date of the vesting with reference to the provisions of the Act, namely, July 1, 1952 the appellants were only intermediaries and since the land had vested in the State and the appellants had no subsisting rights their petition was not maintainable. This order was affirmed by the Division Bench in appeal which was dismissed summarily.

4. It appears that on the question locus standi the Division Bench was in error in dismissing the special appeal against the judgment of the learned Single Judge in limine. There were a number of questions involved which required determination. The first question was the effect of the decree which had been granted in favour of the appellant in proceedings under Section 180 of the Tenancy Act. That decree had become final and was binding on Lalai. Broome J., in the writ petition filed by Lalai agreed with the view of Shri R.N. Singh Judicial Member of the Board that the suit and the appeal could not be ordered as having abated, under Rule 5 of the U.P. Zamindari Abolition and land Reforms Rules. In the proceedings before the Consolidation authorities the question arose whether Lalai had been recorded as an occupant of the suit land so as to get the benefit of Section 20(b) of the Act. The Consolidation Officer held that in 1356 F Lalai was not recorded as an occupant. The additional Settlement Officer (Consolidation) stated in his order dated July 27, 1962 that Lalai had claimed that he was the occupant in the year 1356 F and, therefore, he became Adivasi of the plots in suit. But no copy of the khasra or khatauni entries had been filed to show that he had ever been recorded as an occupant of the said plots. The Consolidation Officer and the Additional Settlement Officer (Consolidation) held that the appellant had become Bhoomidars under Section 18 of the Act as they should be deemed to be holding the landsras khudkast. The Deputy Director of Consolidation in his order dated August 17, 1961, was of the view that since Lalai had been in possession all along and was in possession on the critical date in 1356 F he had acquired Sirdari rights on the basis of his occupation of the- land in suit. The Com-missioner in his order dated July 27, 1962 referred to a decision of this court in *The Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman & Ors.* (1). In that case a limited company whose possession of the land in dispute had been recorded in 1356 F as Thekedar had continued to remain in possession owing to certain stay orders of the court and it was held that it remained in possession in the same rights which the company enjoyed in 1356 F and it thus acquired Adivasi in the land. This case could be of no avail to Lalai if he was not recorded as an occupant in 1356 F.

5. In the High Court the learned Single Judge did advert to the words "deemed to be held by an intermediary as Sir, khudkast" in Clause (a) of Sub-section (1) of Section of the Act and said that they referred to the provisions of sees. 10 to 17 of the Act. But the Division Bench did not go into the matter fully and consider the true legal position when a trespasser is in occupation of certain lands. Can it not be said in such a situation that the owner holds the land as khudkast constructively ? It may lead to an anomalous situation if it is held that khudkast of the owner or Zamindar can only mean that he should, at a particular point of time, be cultivating himself. For instance, if a few days before July, 1952, which was the critical date for the purpose of the Act, a trespasser ousts a zamindar from the possession of his khudkast land will it mean that the latter would be deprived of taking advantage of the provision of Section 18 (1) (a) of the Act ? The meaning of the expression "deemed to be held" has to be investigated in the light of the legislation relating to abolition of intermediates and land reforms together with the tenancy laws. In the absence of a fuller discussion by the High Court and its considered opinion on the point we do not propose to pronounce any final judgment in the matter.

We would, in the circumstances, remit the matter to the High Court with the direction that the special appeal be admitted to a hearing and all the necessary points which require consideration be disposed of in accordance with law. Costs to abide the event.