

Shiveshwar Prasad Narain Singh & Anr vs Gharahu & Anr. Etc on 15 November, 1978

Equivalent citations: 1979 AIR 413, 1979 SCR (2) 296

Author: D.A. Desai

Bench: D.A. Desai, P.S. Kailasam

PETITIONER:

SHIVESHWAR PRASAD NARAIN SINGH & ANR.

Vs.

RESPONDENT:

GHARAHU & ANR. ETC.

DATE OF JUDGMENT 15/11/1978

BENCH:

DESAI, D.A.

BENCH:

DESAI, D.A.

KAILASAM, P.S.

CITATION:

1979 AIR 413

1979 SCR (2) 296

1979 SCC (3) 23

ACT:

U.P. Zamindari Abolition & Land Reforms Act, 1950 -
Section 20-Scope of.

HEADNOTE:

The U.P. Zamindari Abolition and Land Reforms Act, 1950 was enacted for the abolition of zamindari system which involved intermediaries between the tiller or the soil and the State. The Act provides for the acquisition of the rights, title and interest of intermediaries and to reform the law relating to land tenure consequent upon such abolition. Chapter II makes provision for acquisition of the interest of intermediaries and the consequences flowing therefrom. As from the date to be specified in a notification to be issued by the State Government all estates situate in the State shall vest in the State and all such estates shall stand transferred and vest, with certain exceptions, in the State free from all encumbrances.

Section 20 confers the status of adhivasi on certain classes of tenants, sub tenants and occupants. Section 20(a)(i) which seeks to confer on a tenant of sir the status of adhivasi provides that every person who is a tenant of sir would become an adhivasi of the land, unless he has become a bhumidar of the land under s. 18(2) or asami under s. 21 (h) and shall be entitled to take or retain possession thereof. Section 20(b) (i) provides that every person who was recorded as occupant of any land in the khasra or Khatauni of 1356F shall become adhivasi except in certain cases. Section 21(h) provides that every person who, on the date preceding the date of vesting occupied or held land as a tenant of sir a sub-tenant or occupant, shall be deemed to be an asami thereof.

The plaintiff was an intermediary who held the land in dispute as sir under s. 18 of the Abolition Act and became a bhumidar of the land.

In three different suits filed against the defendants the plaintiff claimed that she was entitled to recover possession from the defendants, who were tenants of sir on the ground that she was holding the suit lands as an intermediary and held the land as sir. She claimed that (i) she had become a bhumidar under s. 18 of the Act and (ii) she being a disabled person within the meaning of s. 157 of the Act and the defendant in each case being an occupant had become an asami by the combined operation of s. 20(b)(i) and s. 21(h) and, therefore, she was entitled to recover possession from the defendant in each suit. The defendants, in each suit on the other hand, claimed that he had become an adhivasi and therefore, the plaintiff was not entitled to recover possession.

The plaintiff's suits were dismissed by the lower court. Appeals to the District Judge and the High Court were also dismissed.

297

In appeal to this Court it was contended on behalf of the plaintiffs that A if the tenant of sir who falls under s. 20(a)(i) is also recorded as occupant under s. 20(b)(i) in the khasra of 1356F he would become an occupant and would acquire the status of adhivasi under s. 20(b)(i) and in that event if the landholder of such occupant is a disabled person within the meaning of s. 157, such occupant would not be an adhivasi but shall be deemed to be an asami thereof in view of the provisions contained in s. 21(h).

Dismissing the appeal,

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HELD: (1) If the defendant in each case was a tenant of sir in respect of land of which possession is sought by the plaintiff and no one else was shown as the occupant of such land in 1356F obviously the defendant in each case would become adhivasi under s. 20(a) (i). Therefore, s. 21 (h) would not be attracted because the third clause of s. 21(h) refers to an occupant as envisaged in s. 20(b)(i) and

therefore the defendant would not become an asami as therein contemplated. [305D-E]

(2) Although the expression "occupant" is not defined in the Abolition Act it has been interpreted to mean a person holding the land in possession or actual enjoyment. If a person was a tenant of sir on the date immediately preceding the date of vesting but was not recorded as an occupant in Khasra or Khatauni of 1356F he became an adhivasi and not an asami under s. 20(a)(i). If on the other hand he is not only a tenant of sir and is also recorded as an occupant in the khasra or khatauni of 1356F meaning thereby that if on the relevant date he was in possession and actual enjoyment of the land, he would become adhivasi under s. 20(b)(i) and would be exposed to the further exception enacted in 8. 21(h) which, if attracted, would make him asami. Therefore, a tenant of sir not being in possession on the relevant date would be in a more favorable position than one who would be in continuous undisturbed possession being recorded as occupant in khasra or Khatauni of 1356F. Such could not be the intention of the legislature. [302H; 303A-B]

Amba Prasad v. Abdul Noor Khan & Ors., [1964] 7 SCR 800; referred to.

Kumari Radha Kishori v. Joint Director of Consolidation, U.P., 1972 All. L.J. 738; approved.

(3) Section 20(a)(i) and (ii) provide for conferring the status of adhivasi on a tenant of sir or sub-tenant as the case may be, but it also comprehends the situation that such a tenant of sir or a sub-tenant may not be in possession and there may be someone else recorded as occupant in khasra or khatauni of 1356 which would mean that someone other than the tenant of sir, or a sub-tenant was in possession or actual enjoyment of the land. It is such an occupant who is in actual possession and enjoyment of land being the tiller of soil, was to be adhivasi in preference to tenant of Sir or sub-tenant of such land. Such class of occupant envisaged in s. 20(b)(i) is taken out of the operation of 9. 20(a)(i) or (ii) by engrafting an exception except as provided in s. 20(b) (i). That is why s. 20(a) (i) and (ii) open with an exception, namely, except as provided in sub-clause (i) of clause (b) which would mean that except where there is an occupant recorded in 1356 F on the land of which there is tenant of sir or sub-tenant the latter would become adhivasi, but where there is an occupant on land recorded in 1356 F such occupant would be adhivasi. [303F-H] 298

With a view to extinguishing feudal overlordship and removing all intermediaries so as to establish direct relationship between the State and the tiller of the soil, a bold attempt was made by the Act to remove all intermediaries. This laudable object in enacting the statute must inform interpretative process and where the language is ambiguous or capable of two interpretations, the court

should so interpret the provision as to advance the legislative intendment. [301A-B]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1198- 1200 of 1969 (Appeals by special leave from the Judgment and Order dt. 29.10.68 of the Allahabad High Court in S. A. Nos. 3949- 3950 and 4000 of 1959) J. P. Goyal, S. M. Jain and S. K. Jain for the appellant.

Yogeshwar Prasad, S. Baggai and Meera Bali for the respondents.

The Judgment of the Court was delivered by DESAI, J.-These three appeals by special leave arise from three different suits filed by plaintiff Smt. Raj Rup Kunwar for possession of certain plots of land from the defendants in each suit under section 202 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (Abolition Act', for short), alleging that on the relevant date she was holding the land involved in the suit as an intermediary as sir and has according by become bhumidhar under section 18 of the Abolition Act and she being a disabled person within the meaning of Section 157, the defendant in each case being an occupant, has become an asami by the combined operation of section 20(b) (i) and section 21 (h) of the Abolition Act and, therefore, she is entitled to recover possession from the defendant in each suit. The defendant in each suit contested the claim of the plaintiff contending that the defendant in each case has become an adhivasi and, therefore, the plaintiff is not entitled to recover possession. The Sub-Divisional officer in whose court the suit was instituted agreed with the defendants and dismissed the suits and the first appeal in each suit to the District Judge, Varanasi and the Second Appeal to the High Court at Allahabad did not meet with success. Hence, the present appeals by the legal representatives of the original plaintiff who died in the course of litigation. The appeals were consolidated by the High Court and were disposed of by a common judgment.

The facts concurrently found and not in dispute are that the deceased plaintiff was an intermediary who held the land involved in the dispute as sir and under section 18 of the Abolition Act became a bhumidhar of the land. Defendant in each case was the tenant of sir. Deceased plaintiff was paying more than Rs. 250/- per annum and, therefore, section 16 would not be attracted. Plaintiff was a disabled person A within the meaning of section 10 and section 157. All the Courts are agreed that the defendant in each suit was recorded as tenant of sir in the khasra of 1356 Fasli.

On these undisputed facts a narrow but interesting question raised in these appeals is whether the defendant in each case would become an adhivasi under section 20(a) (i) or an asami by the combined operation of section 20(b)(i) and section 21(1)(h) of the Abolition Act Section 20 reads as under:-

"20. Every. person who-

(a) on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of this Act-

(i) except as provided in sub-clause (i) of clause (b), a tenant of sir (other than a tenant referred to in clause (ix) of section 19 or in whose favour hereditary rights accrue in accordance with the provisions of Section 10) or

(ii) except as provided in [sub-clause (i) of clause (b), a sub-tenant other than a sub-tenant referred to in proviso to sub-section (3) of section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act XVII of 1939), of any land other than grove land,

(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 (Amendment) Act, 1947] in the khasra or khatauni or 1356 F. prepared under section 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 regain possession thereof under clause (c) of sub-section (1) of section 27 of the United Provinces Tenancy (Amendment) Act, 1947 (U.P. Act X of 1947), or

(ii) of any land to which section 36 applies, in the khasra or khatauni of 1956 Fasli prepared under sections 28 and 33 respectively of the United Provinces Land Revenue Act, 1901 (U.P. Act III of 1901), but who was not in possession in the year 1356 F. shall, unless he has become a bhumidhar of the land under sub-section (2) of section 18 or an asami under clause (h) 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".

Section 21 (1) (h) reads as under :-

"21. Non-occupancy tenants, sub-tenants of grove- lands and tenant's mortgagees to be asamis-(1) Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as-

(h) a tenant of sir of land referred to in sub-

clause (a) of clause (i) of the explanation under section 16, a sub-tenant referred to in sub-clause (ii) of clause (a) of section 20 or an occupant referred to in sub-clause (i) of clause (b) of the said section where the landholder or if there are more than one land-holders, all of them were person or persons be longing-

(a) if the land was let out or occupied prior to the ninth day of April, 1946, both on the date of letting or occupation, as the case may be, and on the ninth day of April, 1946"

and

(b) if the land was let out or occupied (on or) after the ninth day of April, 1946, on the date of letting or occupation.

to any one or more of the classes mentioned in sub- section (1) of section 157.

shall be deemed to be an asami thereof".

The Abolition Act as its Preamble shows, was enacted to provide for the abolition of the Zamindari system which involved intermediaries between the tiller of the soil and the State in Uttar Pradesh and for the acquisition of their rights. title and interest and to reform the law relating to land tenure consequent upon such abolition and acquisition and to make provisions for other matters connected therewith. Chapter II makes provision for acquisition of the interest of intermediaries and the consequences flowing therefrom. On a notification to be issued by the State Government after the commencement of the Act as from the date to be specified in notification all estates situated in Uttar Pradesh shall vest in the State and all such estates shall stand transferred and vest, except otherwise provided, in the State, free from all encumbrances. With a view to extinguishing feudal overlordship and removing all intermediaries so as to establish direct relationship between the State and the tiller of the soil, a bold attempt was made by the Abolition Act to remove all intermediaries. This laudable object in enacting the statute must inform interpretations process and where the language is ambiguous, or capable of two interpretations, the Court should so interpret the provisions as to advance the legislative intent. Bearing in mind this well-known canon of construction of such welfare legislation, we may now approach the specific contentions raised in this appeal.

Section 20 which we have extracted above provides for conferring Adhivasi status on certain classes of tenants, sub-tenants and occupants. Section 20(a) (i) seeks to confer on a tenant of sir the status of adhivasi, subject to certain exceptions enacted in the section. Indisputably, defendant in each case was a tenant of sir. Sub-section (a)

(i) of s. 20, omitting inapplicable portion, provides that every person who, on the date immediately preceding the date of vesting was or has been deemed to be in accordance with the provisions of the Act, a tenant of sir, shall, unless he has become a bhumidhar of the land under subsection (2) of s. 18 or an asami under clause (h) of s. 21, would become adhivasi of the land. Sub-clause (i) of s. 20(a) starts with an exception as set out in sub-clause (i) of clause (b) of s. 20. Analysing section 20 (a) (i) it would appear that every person who is a tenant of sir on the date immediately preceding the date of vesting shall, Unless he has become a bhumidhar under s. 18(2) or asami under s. 21 (h) would become an adhivasi. Sub-clause (i) of clause (b) provides that every person who was recorded as occupant of any land in the khasra or khatauni of 1356 Falsi prepared under relevant statute, shall, except in cases therein mentioned, become adivasi Section 20 confers status of adhivasi on certain classes of tenants of sir as provided in s. 20(a)

(i) and on certain sub-tenants provided in section 20(a)

(ii) and on occupants of land envisaged in s. 20(b)(i) and

(ii). The expression except as provided in sub-clause (i) of clause (b)" both in section 20(a) (i) and 20(a) (ii) would only mean that except those persons who would fall in sub-clause (i) of clause (b), all other tenants of sir falling under sub-clause (i) of s. 20 (a) or all sub-tenants falling under clause (ii) of s. 20(a) would become adhivasi unless otherwise provided in (2) or s. 21 (h) . On a pure grammatical construction it would appear that every tenant of sir or a sub-tenant covered by clause (i) or clause (ii) of s. 20(a), would become adhivasi unless there is some one who is covered by clause (b) (i) of s. 20 recorded as occupant of the land of which there was a tenant of sir as envisaged by s. 20(3) (i) or a sub-tenant as envisaged by s. 20(a) (ii). Once in respect of a land there is not shown to be any person as envisaged by s. 20(b) (i) on the land of which there is a tenant of sir or a sub-tenant as envisaged by s. 20(a)(i) and (ii) respectively, the latter would become adhivasi but if there is some one in respect of such land who is recorded as occupant and qualifies for being regarded adhivasi under s. 20(b) (u) he would become adhivasi in preference to or over-riding the claim of a tenant of sir or sub-tenant described in s. 20(a) (i) or 20(a) (ii) respectively.

It was, however, contended that the occupant is not defined in the Act and that the occupant can only mean a person holding the land in possession or actual enjoyment. Proceeding further it was said that if a tenant of sir who falls under s. 20(a) (i) is also recorded as occupant under s. 20(b) (i) in the khasra of 1356 Fasli, he would become an occupant and would acquire the status of adhivasi under s. 20(b) (i) and in that event if the land holder of such occupant is a disabled person within the meaning of s. 157, such occupant would not be an Adhivasi but shall be deemed to be an asami thereof in view of the provision contained in s. 21(h). Legal consequence of acquiring a status of adhivasi or asami is that in the former case the disabled person where occupant such person was cannot evict him from land for personal cultivation, which bar does not exist in the case of asami.

It was contended that a tenant of sir who, if he is also an occupant of the land within the meaning of s. 20(b)

(i), would become adhivasi under s. 20(b) (i) whereupon s. 21 (h) would be attracted and such a tenant of sir would become an asami and not adhivasi. This construction is sought to be spelt out by reference to the exception engrafted in s. 20(a) (i) by submitting that a tenant of sir can become adhivasi under s. 20(a) (i), if on the date immediately preceding the date of vesting he is a tenant of sir but is not recorded as occupant in the khasra or khatauni of 1356 F. This approach apart from being contrary to the grammatical construction of the section, also runs counter to the very object or the scheme of the legislation. A tenant of sir was more favourably placed than a mere occupant whose possession may not be referable to a valid title before the enactment of Abolition Act. The expression 'occupant' in Abolition Act is not defined but it has been interpreted to mean a person holding the land in possession or actual enjoyment (see *Amba Prasad v. Abdul Noor Khan & ors.*). If a person is a tenant of sir on the date immediately preceding the date of vesting but is not recorded as an occupant in khasra or khatauni of 1356 F., he becomes adhivasi and not an asami under s. 20(a)(i). If on the other (1) [1964] 7 S.C.R. 800.

hand he is not only a tenant of sir and is also recorded as an occupant A in the khasra or Khatauni of 1356 F. meaning thereby that if on the relevant date he was in possession and actual enjoyment of the land he would become adhivasi under s. 20(b) (i) and would be exposed to the further exception enacted in s. 21 (h) which if attracted, would make him asami. Therefore, a tenant of sir not being in possession on the relevant date would be in a more favourable position than one who would be in continuous undisturbed possession being recorded as occupant in khasra or khatauni of 1356 F. Such could not be the intention of the legislature. Therefore, the construction suggested by Mr. Goyal cannot be accepted.

A tenant of sir or a sub-tenant would become under s. 20(a) (i) or (ii), as the case may be, an adhivasi. Now let us recall the object in enacting the legislation which was to confer certain rights on person who were in actual possession of land. Legislature must have in view the eventuality where a tenant of sir or sub-tenant as contemplated by s. 20(a) (i) or (ii), as the case may be, would not be in possession but some one else is in possession and enjoyment and, therefore, may have been recorded as an occupant in the khasra or khatauni of 1356F. The statute in such a situation intended to confer the status of adhivasi on such occupant in preference to a tenant of sir or sub-tenant who is not in possession. This construction advances the object to be achieved by the legislation, namely to remove intermediaries and to bring the tiller of the soil in direct relation to the State. Section 20(b) (i) contemplates an occupant who is recorded in respect of land therein mentioned as being in actual possession because khasra records possession and enjoyment of the land and therefore the expression occupant was interpreted to mean a person holding a land in possession or actual enjoyment. If this meaning of the expression 'occupant' is kept in view, s. 20(a) & (b) present no difficulty for construction. Section 20(a)(i) and (ii) provide for conferring the status of adhivasi on a tenant of sir or subtenant, as the case may be, but it also comprehends the situation that such a tenant of sir or a sub-tenant may not be in possession and there may be some one else recorded as occupant in khasra or khatauni of 1356 F. which would mean that some one other than the tenant of sir, or a sub-tenant was in possession or actual enjoyment of the land. It is such an occupant who is in actual possession and enjoyment of land being the tiller of soil, was to be adhivasi in preference to tenant of sir or sub-tenant of such land. Such class of occupant envisaged in s. 20(b) (i) is taken out of the operation of s. 20(a) (i) or

(ii) by engrafting an exception; except as provided in s. 20(b) (i) . That is why s. 20(a) (i) and (a) (ii) open with an exception, namely, except as provided in sub-clause (i) of clause (b) which would mean that except where there is an occupant recorded in 1356 F. On the land of which there is a tenant of sir or sub-tenant, the latter would become adhivasi, but where there is an occupant on land recorded in 1356 F. such occupant would be adhivasi. Allahabad High Court in Kumari Radha Kishori v. Joint Director of Consolidation, U.P.(I) interpreted s. 20(a) (i) and (ii) to mean what we have indicated above when it observed that except as provided in sub-clause (i) of clause

(b) occurring in s. 20(a) (i) indicates that if 'a' is a tenant of sir on the date immediately preceding the date of vesting and 'b' is recorded as occupant of sir in 1356 F., then 'b' will acquire adhivasi rights in preference to 'a'. It was further held CC that a person who is in fact a tenant of sir and who is so recorded in the records of 1356 F., will acquire adhivasi rights under s. 20(a) (i) and not under s. 20(b) (i).

Mr. Goyal, however, contended that this Court in Amba Prasad's (supra) case has in terms held that a person in possession alone can be recorded as an occupant and that if a tenant of sir was in possession and actual enjoyment and was, therefore, recorded as occupant in 1356 F. he is an occupant and the case would fall under s. 20(b) (i). In a slightly different context this Court observed as under:

"The word 'occupant' is not defined in the Act. Since khasra records possession and enjoyment the word 'occupant' must mean a person holding the land in possession or actual enjoyment. The khasra, however, may mention the proprietor, the tenant, the sub-tenant and other person in actual possession, as the case may be. If by occupant is meant the person in actual possession it is clear that between a proprietor and a tenant the tenant, and between a tenant and the sub-tenant the latter and between him and a person recorded in the remarks column as "Dawedar Qabiz" the dawedar qabiz are the occupants. This is the only logical way to interpret the section which does away with all intermediaries".

Instead of supporting the construction as canvassed for by Mr. Goyal, this observation accords with the construction as put by us. The whole gamut of law under discussion proceeds in the direction of removal of intermediaries of all sorts and kinds so as to bring the tiller in direct relation to the State. Now, if there is a tenant of sir or a sub-tenant of 11 a land who held the status or character on the day just preceding the (1) 1972 Allahabad Law Journal 738.

date of vesting but some one other than the tenant or sir or sub-tenant is recorded as occupant in khasra or khatauni of 1356 F. Obviously the tenant of sir or sub-tenant is intermediary and by conferring adhivasi status on the occupant in such circumstances the intermediaries are being done away with. The hierarchy set out in Amba Prasad's (supra) case would show that Dawedar Qabiz means person in actual possession but whose possession is not referable to a valid title would become an occupant. This would indicate that in considering relative rights s. 20(b) accords preference to one in actual possession against one who holds some right in the land. The construction, therefore., as put by us accords with the object and purpose of the legislation and it is a wellsettled rule of construction that where two constructions are possible, one which advances the object of the, legislation must be preferred to one which may retard or frustrate the object of the legislation.

The view in Amba Prasad's (supra) case was affirmed by this Court in Nath Singh & ors. v. The Board of Revenue & ors.(1) If dependant in each case was a tenant of sir in respect of land of which the possession is sought by the plaintiff and no one else was shown as the occupant of such land in 1356 F., obviously the defendant in each case would become adhivasi under s. 20(a) (i). Therefore, s. 21 (h) would not be attracted as contended for by Mr. Goyal in this case because the third clause of s. 21 (h) refers to an occupant as envisaged in sub-clause (i) of clause (b) of s. 20 and, therefore, the defendant would not become an asami as therein contemplated. In this view of the matter the plaintiff's suit has been rightly dismissed. Accordingly these appeals fail and are dismissed with no order as to costs.

P.B.R.

Appeals dismissed.

Shiveshwar Prasad Narain Singh & Anr vs Gharahu & Anr. Etc on 15 November, 1978

(1) [1968] 3 S.C.R. 498.