Budhan Singh & Anr vs Nabi Bux & Anr on 20 August, 1969

Equivalent citations: 1970 AIR 1880, 1970 SCR (2) 10

Author: K.S. Hegde

Bench: K.S. Hegde, A.N. Ray

PETITIONER:
BUDHAN SINGH & ANR.

Vs.

RESPONDENT:
NABI BUX & ANR.

DATE OF JUDGMENT:
20/08/1969

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
RAY, A.N.

CITATION:
1970 AIR 1880 1970 SCR (2) 10
1969 SCC (2) 481
CITATOR INFO :
RF 1973 SC 893 (10)
RF 1973 SC1461 (328)
R 1977 SC2196 (10)

ACT:
U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act 1 1951), s. 9-'Held', meaning of-Whether means 'lawfully held'-Construction of statutes-General legislative intent is to advance justice and reason-Interpretation which will have harsh or ridiculous effect must be avoided-Ryot leaving residential building during communal riots-In his absence landlord entering on land and constructing new building in place of tenants' building-Tenant returning-Tenant whether entitled to new building under s. 9.

HEADNOTE:
The respondents being Ryots of the appellants were granted over sixty years ago a village site by the ancestors of the appellants on which they built their residential houses.

During the 1947 riots the respondents in order to seek safety fled from the village temporarily and came back in 1949. They found that their residential buildings on the aforesaid site had been demolished and that in their place the appellants had raised a cow-shed. The appellants refused to give back possession of the site and building to the respondents whereupon on January 9, 1951 the respondents filed a suit for possession. The appellants based their defence on the provisions of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (Act 1 of 1951) which came into force on January 26, 1951. According to s. 4 of the Act, with effect from the notified date i.e. July 1, 1952, all Estates became vested in the State of Uttar Pradesh. The lands and buildings enumerated' in ss. 6 and 9 were however settled on the persons who 'held' them. The contention of the appellants was that they 'held' the buildings on the relevant date and therefore the buildings were deemed to be settled on them by the State Government. In the Allahabad High Court there was conflict of opinion as to the meaning of the word 'held' in s. 9. In Pheku Chamar's case a Division Bench of the Court held that the word 'held' in s. 9 connotes the existence of a right or title in the holder. However in Bharat's case another Division Bench of the Court declined to follow Phekhu Chamar's case and came to the conclusion that the legislature used wide language in s. 9 and it covers the case of buildings belonging to persons who constructed them whether lawfully or unlawfully. When the present case came up in second appeal before the High Court it was referred to a Full Bench. The majority of judges adopted the view taken in Phekhu Chamar's case and decided against the appellants; the dissenting judge took the view that since the buildings constructed by the respondents did not exist on the date of vesting they were not entitled to the benefit of s. 9. In appeal to this Court by certificate,

HELD: (1) Though in fact the vesting of the Estate and the deemed settlement of some rights in respect of certain classes of lands or buildings included in the Estate took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the Estates in the State absolutely and free of all encumbrances. Then followed the deemed settlement by the State of some rights with the persons mentioned in ss. 6 and 9. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within ss. 6 or 9. [13 B---C]

Rana Sheo Ambar Singh v. Allahabad Bank Ltd. Allahabad, [1962] 2 S.C.R. 441 and Shivashankar Prasad Shah & Ors. v. Vaikunth Nath Singh & Ors., C.A. No. 368/66 decided on 3-7-1969, referred to.

(ii) It was unfortunate that the Division Bench in Bharat's case should have thought it proper to sit in judgment over the correctness of a decision rendered by a

Bench of co-ordinate jurisdiction. Judicial propriety requires that if a bench of a High Court is unable to agree with the decision already rendered by another co-ordinate bench of the same High Court the question should be referred to a larger bench. Otherwise the decisions of High Courts will not only lose respect in the eyes of the public, it will also make the task of the subordinate courts difficult. [15 E]

(iii) Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly, ridiculously or in any other manner contrary to prevailing conception of justice and reason in most instances it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law-makers. [16 B]

In the present case it was hard to believe that the legislature in enacting s. 9 intended to ignore the rights of persons having legal title to possession and wanted to make a Rift of any building to a trespasser howsoever recent the trespass might have been if only he happened to be in physical possession of the buildings on the date of vesting. It is difficult to discern any legislative policy in support of that construction. [16 D]

According to Webster's New Twentieth Century Dictionary the word 'held' is technically understood to mean to possess by legal title. Therefore by interpreting the word 'held' as 'lawfully held' there was no addition of any word to the section. According to the words of s. 9 and in the context of the scheme of the Act it is proper to construe the word 'held' in the section as 'lawfully held'. The appellants contention in this regard must be rejected. [17 B--D]

Pheku Chamar & Ors. v. Harish Chandra &, Ors. A.I.R. 1953 All. 406, approved.

Bharat and Anr. v. Ch. Khazan Singh & Anr. A.I.R. 1958 All. 332, disapproved.

K.K. Handique v. The Member, Board of Agricultural Income-tax Assam, A.I.R. 1966 S.C. 1191 and Eramma v. V, Verrupanna & Ors. [1966] 2 S.C.R. 626, applied.

(iv) When the respondents left the village owing to communal disturbances they could not be said to have abandoned their residential buildings. The appellants unlawfully demolished them and entered the land as trespassers. The cow-shed they erected on the land was not greater in value than the respondents residential buildings. On equitable considerations it must be held that when the respondents came back to their village in 1949, they were entitled to recover not only the site but also the building constructed on it by the appellants. Hence it should be held that on the date of vesting, the respondents were the owners of the building in question for in law they were holding the same. [14 A--E]

[Question whether if a stranger constructs a building on

the land of another, the true owner of the land is entitled to recover the land with the building on it, left open.] [14 D]
12

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1789 of 1966. Appeal from the judgment and decree dated May 24, 1961 of the Allahabad High Court in Second Appeal No.. 1302 of 1952.

B.C. Misra, G.S. Chatterjee and M.M. Kshatriya, for the appellants.

J.P. Goyal and G.N. Wantoo, for the respondents. The Judgment of the Court was delivered by Hegde, J. The scope of s. 9 of the U.P. Zamindari Abolition and and Reforms. Act, 1950 (U.P. Act 1 of 1951) (to be hereinafter referred to as the Act) comes up for decision in this appeal by certificate.

The facts relevant for deciding this appeal are no more in dispute. The respondents were Ryots under the appellants in village Nagli Abdulla, a hemlet of village Machhra. The site of the building in dispute in this appeal had been taken by the father of the respondents from the appellant's ancestors over 60 years ago and thereafter the respondents put up some buildings on that site for their residential purposes. During the communal disturbances in 1947 they left the village temporarily as a measure of safety and took shelter with some of their relations in some other village at a distant place. They came back to their village in the year 1949 when the conditions improved. At that time they found the appellants occupying that site after putting up a cow-shed on the site in which their residential buildings stood. Those residential buildings had been demolished and the site in question included as a part of the house of the appellants. As the appellants refused to deliver possession of the suit property, the respondents instituted a suit for possession of the same on January 9, 1951.

On January 26, 1951, the Act came into force. Section 4 of the Act provided for the vesting of the Estates in the State. It prescribes that as soon as may be after the commencement of the Act, the State Government may, by notification, declare that as from a date to be specified, all Estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified, all such Estates shall stand transferred to and vest, except as otherwise provided in the Act, in the State free from all encumbrances. Section 6 of the Act enumerates the consequences of the vesting of an Estate in the State. Section 9 deals with the buildings in the abadi. Reading ss. 4, 6 and 9 together, it follows that all Estates notified under s.4 vest in the State free from all encumbrances. The quondam proprietors or tenure-holders of those Estates lose all interests in those Estates. As proprietors' or tenure holders they retain no interest in respect of them whatsoever. But 'in respect of the land or buildings enumerated in s. 6 and s. 9, the State settled on the person who held them certain rights. Though in fact the vesting of the Estates and the deemed settlement of some rights in respect of certain classes of land or buildings included in the Estate took place simultaneously, in law the two must be treated as different transactions; first there was a vesting of the Estates in the State absolutely and free of all encumbrances. Then followed the deemed settlement by the State of some

rights with the persons mentioned in ss. 6 and

9. Therefore in law it would not be correct to say that what vested in the State are only those interests not coming within ss. 6 or 9; see--Rana Sheo Ambar Singh v. Allahabad Bank Ltd., Allahabad(1). In this connection reference may also usefully be made to the decision of this Court in Shivashankar Prasad Shah and Ors. v. Vaikunth Nath Singh and Ors.(2), a decision rendered under the Bihar Land Reforms Act, 1950, the relevant provisions of which are similar to the provisions of the Act. In this case notification under s.4 of the Act was issued on July 1, 1952. Hence the vesting contemplated under s. 4 took place on that date.

Section 9 of the Act, the section with which we are concerned in this case, reads thus:

> "All wells, trees in abadi, and all buildings situated within the limits of an estate, belonging to or held by an intermediary or tenant or other persons, whether residing in the village or not, shall continue to belong to or be held by such intermediary or tenant or person as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

In view of that provision all buildings situate within the limits of an Estate held by an intermediary or tenant or other person, whether residing in the village or not continues to be held by him and the site: of the buildings within the area appurtenant thereto should be deemed to have been settled with him by the State Government on such terms and conditions as may be prescribed.

As seen earlier till about 1947, the respondents were lawfully holding the buildings and the site with which we are concerned in this case as Ryots. They never gave up their possession of (1) [1962] 2, S.C.R. 441.

(2) Civil Appeal No. 368/66 decided on 3-7-1969.

the buildings voluntarily. The fact that they vacated those buildings and took shelter with their relations during the time of the communal disturbances cannot be considered as abandonment of the buildings. In law they continued to be in possession of the buildings. Hence the appellant's entry into the suit site was an unlawful act. In the eye of law they were trespassers. In demolishing the buildings put up by the respondents, they, committed the offence of mischief. The fact they had put up new structures cannot under the Transfer of Property Act, enhance their rights to the property. We have no material before us from which we can find out the value of the buildings. demolished by them and the value of the buildings put up by them unlawfully. From the description of the buildings given in evidence, it appears that the newly put up building is only cattle-shed. We are not satisfied that the newly put up building is worth more than the buildings that had been demolished by the appellants. In the the circumstances of the case all that can be said is that the old buildings have been substituted by the new building. Therefore the owners of the old buildings continue to be the owners of the new building. In that view of the matter it is not necessary to consider whether if a stranger builds a building on the land of another, the true owner of the land is entitled to recover the

land with the building on it. Equitable considerations persuade us to hold that when the respondents came back to their village in 1949, they were entitled to recover not only the site but also the building constructed on it by the appellants. Hence it should be held that on the date of vesting, the respondents were the owners the building in question. In law they were holding the same. The controversy between the parties in this appeal is as to the meaning to be attached to the word "held" in s.9 of the Act. Is the holding contemplated therein 'lawful holding" or a mere holding lawful or otherwise. It is contended on behalf of the appellants that the dictionary meaning of the word "held" merely means 'to have a possession of s 9 merely contemplates Physical possession and nothing more; on the date of the vesting they were in physical possession of the site as well as the building; therefore the building must be deemed to have been settled with them. On the other hand it is contended on behalf of the respondent that the word "held" in s. 9 of the Act means "lawfully held" and that section does not confer any benefit on a trespasser. The meaning of the word "held" in s.9 came up for consideration before a Division Bench of the Allahabad High Court consisting of Agarwala and Chaturvedi, JJ. in Pheku Chamar and Ors. v. Harish Chandra and Ors.(1). In that case the learned

1) A.I.R. 1953 All.. 406.

judges held that the legislature has deliberately used the word "held" and that word connotes the existence of a right or title in the holder. They further opined that s. 9 does not confer a right on the persons having no title to the land. The settlement contemplated by the section is confined in its application to the case where the building is lawfully held by the person in possession. The learned judges also observed that in enacting s.9, the legislature never meant to deprive the citizens of their lawful rights over the lands merely because a trespasser has succeeded in making some construction on it. Section 9 does not mean that if a person has made some construction whatsoever over any land lying within the limits of an estate, however wrongful or recent the possession might be, that construction must be deemed to have been settled with him by the State Government. The meaning of the word "held" in s.9 again came up before another Division Bench of the Allahabad High Court consisting of Desai and Takru, JJ. in Bharat and anr. v. Ch. Khazan Singh & ant.(1) The learned judges declined to follow the decision in Pheku Chamar's case(2). They came to the conclusion that the legislature used a wide language in s.9 and it covers the case of buildings belonging to persons who constructed them lawfully or unlawfully. It is unfortunate that the latter. Division Bench should have thought it proper to sit in judgment over the correctness of a decision rendered by a Bench of co-ordinate jurisdiction. Judicial propriety requires that if a bench of High Court is unable to agree with the decision already rendered by an other coordinate bench of the same High Court, the question should be referred to a larger bench. Otherwise the decisions of High Courts will not only lose respect in the eyes of the public, it will also make the task of the sub-ordinate courts difficult.

The question of law referred to hereinbefore again arose for decision in this case. When this case came up in the second appeal before Sahai, J. he referred it to a Full Bench in view of the conflict of opinion noticed earlier. The Full Bench was presided over by Dasai, C.J. who was a party to the decision in Bharat's case(1). The other members of the bench were Mukerji and Dwivedi, JJ. Mukerji and Dwivedi, JJ. agreed with the view taken in Pheku Chamar's case(2). Desai, C.J. in his dissenting judgment did not deal with the meaning of the word "held" in s. 9 but on the other hand opined that

the suit should have been dismissed because of the fact that the buildings put up by the respondents were not there on the date of vesting and hence the respondents were not entitled to the benefit of s.9.

Before considering the meaning of the word "held" in s. 9, it is necessary to mention that it is proper to assume that the lawmakers who are the representatives of the people enact laws (1) A.I.R. 1958 All. 332. (2) A.I.R.1953 All.

which the society considers as honest, fair and equitable. The object of every legislation is to advance public welfare. In other words as observed by Crawford in his book on Statutory Constructions the entire legislative process is influenced by considerations of justice and reason. Justice and reason constitute the great general legislative intent in every piece of legislation. Consequently where the suggested construction operates harshly,. ridiculously or in any other manner contrary to prevailing conceptions of justice and reason, in most instances, it would seem that the apparent or suggested meaning of the statute, was not the one intended by the law-makers. In the absence of some other indication that the harsh or ridiculous effect was actually intended by the legislature,, there is little reason to believe that it represents the legislative intent. We are unable to persuade ourselves to believe that the legislature intended to ignore the rights of persons having legal title to possession and wanted to make a gift of any building to a trespasser howsoever recent the trespass might have been if only he happened to be in physical possession of the building on the date of vesting. We are also unable to discern any legislative policy in support of that construction. It was urged before us by the learned Counsel for the appellants that the legislature with a view to put a stop, to any controversy as to any rights in or over any building directed that whoever was in physical possession of a building on the date of vesting shall be deemed to be the settle of that building. He further urged that it would have been a hard and laborious. task for the State to investigate into disputed questions relating to title or possession before making the settlement contemplated by s. 9 and therefore the legislature cut the Gordian Knot by conferring title on the person who was in possession of the building. We see no merit in this argument. The settlement contemplated by s. 9 is a deemed settlement. That settlement took place immediately the vesting took place No inquiry was contemplated before that settlement. If there is any dispute as to who is the settle, the same has to be decided by the civil courts. The State is not concerned with the same. Section 9 merely settles the building on the person who was holding it on the date of vesting.

It is true that according to the dictionary meaning the word "held" can mean either a lawful holding or even a holding without any semblance of a right such as holding by a trespasser. But the real question is as to what is the legislative intent? Did the legislature intend to settle the concerned building with a person who was lawfully holding or with any person holding lawfully or otherwise? Mr. Misra contended that there is no justification for us to read into the section the word "lawfully" before the word "held". According to him, if the legislature intended that the holding should be a lawful one, it would have said"lawfully held". He wanted us to interpret the section as it stands.

It is true that the legislature could have used the word "lawfully held" in place of the word "held" in s. 9 but as mentioned earlier one of the dictionary meanings given to the word "held" is, "lawfully held". In Webster's New Twentieth Century Dictionary (Second Edition), it is stated that in legal

parlance the word "held" means to possess by "legal title". In other words the word "held" is technically understood to mean to possess by legal title. Therefore by interpreting the word "held" as "lawfully held", we are not adding any word to the section. We are merely spelling out the meaning of that word. It may further be seen that the section speaks of all buildings .... within the limits of an Estate, belonging to or held by an intermediary or tenant or other person" .... The word "belonging" undoubtedly refers to legal title. The words "held by an intermediary" also refer to a possession by legal title. The words "held by tenant"

also refer to holding by legal title. In the sequence mentioned above it is proper to construe the word "held" in s. 9 when used in relation to the words "other person" as meaning "lawfully held" by that person. That interpretation flows from the context in which the word "held" has been used. We have earlier mentioned that the said interpretation accords with justice.

The expression "held" has been used in the Act in various other sections--see ss. 2(1)(c), 13, 17, 18, 21, 144, 204, 240A, 298, 304, and 314 to connote possession by legal title. Mr. Misra, learned Counsel for the appellants does not deny that the expression "held" in those sections means held lawfully. But according to him that is because of the context in which the word is used. Mr. Misra is right in saying so but he overlooks the context in which that expression is used in s. 9. We have already made reference to that context. He failed to point out to us any section in the Act, leaving aside s. 9 for the time being where the word "held" has been used as meaning mere holding, lawful or otherwise. In K.K. Handique v. The Member, Board of Agricultural Income Tax, Assam(1) this Court was called upon to consider the meaning of the word "holds" in ss. 12 and 13 of' the Assam Agricultural Income Tax Act. Subba Rao, J. (as he then was) speaking for the Court observed that the expression "holds" includes a two-fold idea of the actual possession of a thing and also of being invested with a legal title though some times it is used only to mean actual possession. After reading ss. 12 and 13 together he observed that the word "holds" in those sections means holding by legal title. In Eramma v. Verrupanna & Ors.(2), this Court considered the meaning of the word (1) A.I.R. 1966 S.C. 1191. (2) [1966] 2, S.C.R.

626.

"possessed" in s. 14 (1) of the Hindu Succession Act which laid down that "any property possessed by a female Hindu whether acquired before or after the commencement of this Act shall be held by her as full owner thereof and not as a limited owner". It held that the property possessed by a female widow, as contemplated in the section, is clearly a property to which she has acquired some kind of title whether before or after the commencement of the Act. It is true that in arriving at that conclusion the Court took into consideration the language of the provision as a whole and also the explanation to the section. The scheme of the Act is to abolish all Estates and vest the concerned property in the State but at the same

time certain rights were conferred on persons in possession of lands or buildings. It is reasonable to think that the persons who were within the contemplation of the Act are those who were in possession of lands or buildings on the basis of some legal title. Bearing in mind the purpose with which the legislation was enacted, the scheme of the Act and the language used in s. 9, we are of opinion that the word "held" in s. 9 means "lawfully held". In other words we accept the correctness of the view taken by Mukerji and Dwivedi, JJ. For the reasons already mentioned we are unable to agree with Desai, C.J. that the fact that the appellants had demolished the buildings put up by the respondents and put up some other building in their place had conferred any rights on them under s. 9.

In the result the appeal is dismissed with costs.

G.C. Appeal dismissed.