

Supreme Court of India

Harnam Singh vs Khema Kunwar on 2 May, 1994

Equivalent citations: 1994 AIR 2755, 1994 SCC (4) 589

Author: V N.

Bench: Venkatachala N. (J)

PETITIONER:

HARNAM SINGH

Vs.

RESPONDENT:

KHEMA KUNWAR

DATE OF JUDGMENT 02/05/1994

BENCH:

VENKATACHALA N. (J)

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VENKATACHALA N. (J)

RAMASWAMY, K.

CITATION:

1994 AIR 2755

1994 SCC (4) 589

JT 1994 (3) 486

1994 SCALE (2) 766

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by VENKATACHALA, J.- In these appeals by special leave directed against the common judgment and order dated 8-12-1972 of a Division Bench of the High Court of Allahabad, rendered in Special Appeal Nos. 948-949 of the a question of somewhat importance, which arises for our decision, is as to whether a widow belonging to a class of disabled persons under Section 157 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 'the UPZA & LR Act' could be regarded as a landholder envisaged under Section 21(1)(h) respecting her Sir lands, which a 'thekedar' under a 'thekinama' executed by her had let out for occupation and cultivation by tenants prior to 9-4-1947 and which were allowed by the 'thekedar' to continue in such occupation and cultivation on 9-8-1947, by receiving yearly rents from the tenants.

2. Material facts which have led to the need to decide the said question in the present appeals, could be stated thus. That on 18-11-1933, Smt Khema Kunwar, Respondent 1 in these appeals, as the widow of Nathu Singh succeeded to his Sir lands - Plot Nos. 1, 6 and 1063 among others, of Village

Barai M. Khara, Pargana Ujhani, District Budaun. That on 12-12-1939, she executed a 'thekaname' in favour of one Ganga Singh, by which he was put in physical possession of the said Sir lands, enabling him as a 'thekedar' not only to cultivate those lands personally for over a period of twenty years subject to payment to her theka money of Rs 355 per annum, but also to lease them for cultivation to tenants and receive annual rents from them during that period. No sooner Ganga Singh got possession of the said Sir lands under the 'thekaname' from Smt Khema Kunwar, he as 'thekedar', leased Plot Nos. 1 and 6 to Harnam Singh, the appellant in CA No. 142 of 1976 and Plot No. 1063 to Mohar Singh, the appellant in CA No. 143 of 1976, on yearly rents and put them in possession of those plots in the year 1940 for their cultivation. Ever since the 'thekedar' received yearly rents from Harnam Singh and Mohar Singh, as they were his tenants or lessees. In the year 1960, when Harnam Singh, who was in occupation of Plot Nos. 1 and 6 and Mohar Singh, who was in occupation of Plot No. 1063, from the year 1940 paying annual rents as tenants to 'thekedar', Ganga Singh, found that they were shown as 'Asamis' in respect of the said plots in the Basic Years Records, they filed objections under Section 9 of the Uttar Pradesh Consolidation of Holdings Act, 1953 - 'the UPCH Act' before the jurisdictional Consolidation Officer, claiming that they should be shown in Basic Years Records as 'Adhivasis' respecting plots in their occupation. Smt Khema Kunwar, who did not dispute the fact that Harnam Singh and Mohar Singh were occupants of the Plot Nos. 1, 6 and 1063 contested their claim for recording them as 'Adhivasis' of those lands in Basic Years Records. The Consolidation Officer by his judgment and order dated 26-9-1961 dismissed the objection raised by Harnam Singh and Mohar Singh. That order, when was carried in appeals by Harnam Singh and Mohar Singh before the Assistant Settlement Officer, their claim for recording their names in the Basic Years Records as 'Adhivasis' was upheld by his Judgment and order dated 13-6-1963. Smt Khema Kunwar, although impugned the order of the Assistant Settlement Officer in her appeal filed before the Deputy Director of Consolidation, and in her revision filed before the Joint Director of Consolidation, she did not succeed. So also she did not succeed in her writ petitions filed in the matter before the High Court of Allahabad, in that a learned Single Judge of that Court dismissed those writ petitions by his common judgment and orders dated 4-9-1967. But her special appeals filed against the said common judgment and orders of the learned Single Judge before the same High Court were allowed by a common judgment and order dated 8-12-1972 of a Division Bench of that Court, upholding her contention that the appellants herein were 'Asamis' under Section 2 1(1)(h) of the UPZA & LR Act and not 'Adhivasis' under Section 20(1)(b) thereof. It is that common judgment and order of the Division Bench of the High Court which has been impugned by Harnam Singh and Mohar Singh by filing the present appeals by special leave.

3. The contention raised before us by Mrs Rachna Gupta, the learned counsel appearing for the appellants was that even if Smt Khema Kunwar widow of Nathu Singh belonged to a class of disabled persons under Section 157 of the UPZA & LR Act, the judgment and order of the Division Bench of the High Court cannot be sustained since it was based on its wrong view that Smt Khema Kunwar was landholder envisaged under Section 2 1 (1)(h) of that Act. Her contention, in other words, was that Smt Khema Kunwar, when had under a 'thekaname' executed by her in the year 1933 in favour of Ganga Singh had granted to him as her 'thekedar' the right to lease out her Sir lands in favour of the tenants and receive rents from them and when accordingly her Sir lands, the said plots had been leased out by that 'thekedar' in favour of the appellants and given for their

occupation and cultivation long prior to 9-4-1947 and the appellants were allowed to continue in occupation of such lands by the 'thekedar' on receiving rents from them even on 9-4-1947, she (Smt Khema Kunwar) could not have been the landholder of such lands, envisaged under Section 21 (1)(h) of the UPZa & LR Act as has been held by the Division Bench. Whether the said contention of the learned counsel for the appellants in the present appeals calls to be upheld, is indeed the question which now needs our consideration and decision.

4. On 12-12-1939 Smt Khema Kunwar, who was the Sirdar of the aforesaid Sir lands (plots), it is not disputed, executed a 'thekinama' of even date in favour of Ganga Singh, making him 'thekedar' in respect of them Under that 'thekinama', it is also not disputed, the 'thekedar' was given the right to cultivate the said plots for a period of 20 years, on payment of 'theka' money of Rs 355 per annum. Under that very 'thekinama' it is again not disputed, that the 'thekedar' was given the further right to lease the said plots for cultivation to tenants of his choice and to receive rents from such tenants. It transpires that on the execution of that 'thekinama' the 'thekedar' who got possession of the said plots from Smt Khema Kunwar, leased them to the appellants herein for cultivation as his tenants and received annual rents from them ever since. The right of leasing the said plots in favour of tenants and the right of receiving rents from them were the rights conferred by Smt Khema Kunwar in favour of the 'thekedar' Ganga Singh under 'thekinama' executed and registered by her, stood unrebuted before the consolidation authorities who have concluded accordingly, The English officially translated copy of 'thekinama' produced for our perusal fully supports such conclusion.

5. The United Provinces Tenancy Act, 1939 - 'the UPT Act' when came into force on 19-1-1940 the appellants were in occupation of those plots of lands as tenants and cultivating them by paying rents to the 'thekedar'. The said tenancies created by 'thekedar' in favour of the appellants being agricultural tenancies, came to be regulated by the UPT Act. While under clause (7) of Section 3 of the UPT Act 'holding' is defined to include the 'theka area' held by a 'thekedar', under clause (24) thereof the 'thekedar' is defined to mean a farmer or other lessee of the rights in land of a proprietor, who has also, in particular the right to receive rents or profits. Section 209 of the UPT Act declares that the farm or lease of a thekedar is a 'theka', the person who grants it is the 'lessor', and the area to which it relates is the 'theka area'. Section 211 of that Act declares that the thekedar may exercise, during the period of his 'theka' all rights of the lessor under the Act even if such rights were not conferred upon him under the terms of the 'thekinama'. So also Sections 212 to 222 thereof refer to regulation of the relationship of 'thekedar' with his lessor and his lessee. Further, under clause (11) thereof a 'landholder' is defined to mean a person to whom rent is payable while under clause (23) thereof 'tenant' is defined to mean a person by whom rent is payable. Furthermore, under clause (18) thereof, 'rent' is defined to mean whatever is, in cash or kind, payable on account of the use or occupation of land.

6. From the said definition clauses and provisions of the UPT Act, it becomes clear that Ganga Singh, in whose favour the aforesaid 'thekinama' was executed by Smt Khema Kunwar, respecting the aforesaid plots, was not only the 'thekedar' under that Act but also a 'landholder' in respect of those plots in that he was receiving rents from the tenants who were occupying those plots and cultivating them.

7. But, after the coming into force of the UPZA & LR Act when a notification referred to in Section 4 thereof was published in the Gazette all rights, titles and interest of all intermediaries in every estate including the aforesaid plots of lands ceased and vested in the State of U.P. free from encumbrances. 'Intermediary' is defined under clause (12) of Section 3 thereof to mean with reference to any estate, a proprietor, as well as, a 'thekedar'. Section 12 thereof declares that 'thekedars' would become hereditary tenants where the lands were in their personal cultivation on 1-5-1950. Under sub-section (2) of Section 13 thereof, it entitles such 'thekedar' to become 'Asami' to the Sir lands or khudkasht of the lessor on the date of the grant of the 'theka'. However, Section 20(b) thereof says that every person who was recorded as a tenant of any land, shall, unless he has become an 'Asami' under clause (h) of Section 21(1), be called an 'Adhivasi' of the land. In *Udai Ram Lakhan v. Dy. Director of Consolidation*, this Court has held that a person shown in actual possession 1 1989 Supp (2) SCC 722 (2): 1990 RD 9 in Khasra also shall be regarded as tenant. From this it follows that a tenant shown to be in occupation of a plot of land under Record of Rights has to be regarded as a recorded occupant of such land.

8. Sub-section (1) of Section 21 of the UPZA & LR Act, which insofar as is material for deciding the question under consideration may be excerpted. It reads :

"21(1). Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting occupied or held land as

(a)...

* * *

(h)... 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 landholders, all of them were person or persons belonging-

(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(10 of Section 157; ... shall be deemed to be an asami thereof."

9. The Division Bench of the High Court in its judgment under appeal has taken the view that the respondent herein Smt Khema Kunwar is the landholder referred to in clause (h) of sub-section (1) of Section 21, facing within one of the classes of disabled persons mentioned in Section 157(1) of the Act and hence the appellants herein, who are in occupation of her aforesaid plots, are to be regarded as 'Asamis' envisaged under the clause although they have become tenants under the thekedar Ganga Singh, who was receiving rents from them.

10. We find it difficult to agree with the said view taken by the Division Bench of the High Court, which has led to the rendering of its judgment under appeals. Section 3 of the UPZA & LR Act which contains definition clauses, in its clause (26) states that the words and expressions 'landholder' 'thekedar' ... 'rent' ... 'tenant' ... 'holding' ... not defined in the Act and used in the United Provinces Tenancy Act, 1939 shall have the meaning assigned to them in the UPT Act. From what is contained in the said clause (26), it becomes obvious that the word 'landholder' used in any of the provisions of the UPZA & LR Act including the provisions in sub-section (1) of Section 21 shall carry the meaning given to it under the UPT Act. When we have referred earlier to the definition clauses and the provisions of the UPT Act we have clearly found that 'thekedar' under that Act would be a 'landholder' in respect of Sir lands (plots) of a proprietor if he has leased them to tenants on the basis of 'thekinama' executed by the proprietor or Sirdar in his favour, for he receives rents from such tenants. Therefore, the landholder referred to in clause (h) of Section 21(1) of the UPZA & LR Act can only be 'thekedar' even where he had leased Sir lands of his proprietor, because of his entitlement to receive rents from the tenants of such lands. Such being the legal position of a 'thekedar', question of regarding a widow who had given away her Sir lands to a 'thekedar' under 'thekinama' executed by her conferring full authority on the 'thekedar' to lease to tenants such lands and to receive rents payable for them from the tenants, as a landholder of such lands can never arise. Moreover, when 'thekedar' becomes a landholder in respect of such Sir lands leased out to tenants as 'thekedar', question of a proprietor continuing as their landholder also cannot arise. Therefore, in the present case, when in respect of the aforesaid agricultural lands (plots) 'thekedar' Ganga Singh was the landholder who had leased out those lands to the appellants herein and was receiving rents from them treating them as tenants, it ought not to have been held that Smt Khema Kunwar, a person belonging to a class of disabled persons under section 157(1) of the Act, was the 'landholder' in respect of those plots as would make the appellants herein the 'Asamis' under Section 21(1)(h) of the UPZA & LR Act. On the other hand, the appellants herein, who were the tenants of those plots (lands), being occupants of them, before, after and at the time of their vesting in the State under the Act, are regarded very rightly by the consolidation authorities and by the learned Single Judge of the High Court as persons recorded in the Records of Rights, as occupants of those plots (1, 6 and 1063) and have been rightly held to be 'Adhivasis' of those lands under Section 20(b) of the UPZA & LR Act.

11. In the result, we allow these appeals, set aside the judgment and order of the Division Bench of the High Court under appeals and restore the orders of the consolidation authorities and the learned Single Judge of the High Court which were set aside by the judgment and order under appeal.

12. However, in the facts and circumstances of the case, we make no order as to costs.