Supreme Court of India
Richpal Singh & Anr vs Desh Raj Singh & Ors on 25 August, 1981
Equivalent citations: 1981 AIR 1960, 1982 SCR (1) 368
Author: V Tulzapurkar
Bench: Tulzapurkar, V.D.

PETITIONER:
RICHPAL SINGH & ANR.

Vs.

RESPONDENT:
DESH RAJ SINGH & ORS.

DATE OF JUDGMENT25/08/1981

BENCH:
TULZAPURKAR, V.D.
BENCH:
TULZAPURKAR, V.D.
VARADARAJAN, A. (J)

CITATION:
1981 AIR 1960 1982 SCR (1) 368
1981 SCC (4) 194 1981 SCALE (3)1269

ACT:
Uttar Pradesh Zamindari Abolition and Land Reforms Act section 21(1)(h) construction of-Whether the lessor/landlord should not only be "disabled person" on the relevant dates but that he should continue to live on the date immediately preceding the date of vesting-Section 21(1)(h) section 157(1) and 240B, scope of.

HEADNOTE:
One Smt. Ram Kali, widow of Tikam Singh, was the land-holder of the agricultural lands in dispute situated in villages Agaota and Khaiya Khera in District Bulandshahr (U.P.). On June 14, 1915 Smt. Ram Kali, who was a Sirdar and a "disabled person" falling within section 157(1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, executed a registered deed of lease fora period of five years in favour of Uttam Singh and Murli Singh (the predecessors-in-title of the respondents) but before the expiry of the period of five years she died in August, 1945 and Dan Sahai, who was also "disabled person" - within the meaning of section 157(1) of the Act, (her husband's real brother and predecessors-in-title of the appellants) inherited her interest. After the expiry of the period of registered lease Uttam Singh and Murli Singh continued to

hold the lands as tenants from year to year under Dan Sahai.

In consolidation proceedings a question arose, whether Uttam Singh and Murli Singh, who were lessees (adhivasis) under Smt. Ram Kali and Dan Sahai acquired the status of Sirdars, being entitled to be treated so under section 240B of the Act or they remained Asamis of the plots in dispute. The Division Bench of the Allahabad High Court, relying on the earlier view taken by its Full Bench in Smt. Maya v. Raja Dulaji and others (1970) A.L.J. 476, decided the appeals in favour of the respondents by holding that they were not Asamis but had become Sirdars. Hence the appeals by certificate by successors-in-title of Ram Kali and Dan Sahai.

Allowing the appeals, the Court

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HELD: 1. On true construction of section 21(1)(h) of the U.P. Zamindari Abolition and Land Reforms Act the benefit thereof would be available to the land-holder on the date of vesting, if the same land-holder or his predecessor existing on the material dates was a person or persons belonging to one or more clauses mentioned in section 157(1) of the Act. [378 C-D]

Since, in the instant case, which falls under sub-clause (a) of clause (h) on the date of actual letting Smt. Ram Kali was a "disabled person" and since on the next material date, namely, April 9,1946 Dan Sahai (successor-in-interest of Smt. Ram Kali) was also a disabled person, the land-holder on the date of vesting who incidentally happened to be Dan Sahai would be entitled to the benefit of section 21(1)(h) and the respondents (successors of Uttam Singh and
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Murli Singh) would remain Asamis and cannot be said to have become Sirdars within the meaning of section 240B of the U.P. Zamindari Abolition and Land Reforms Act, 1950. [378 E-F]

2. Section 21(1)(h) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 provides that every person occupying or holding land in any one of the capacities mentioned in clause (h) on the date immediately preceding 1-7-1952 shall be deemed to be an Asami thereof notwithstanding anything contained in the Act, if the land-holder or if there are more than one all of them were "disabled persons" within the meaning of section 157(1) both on the date of letting as well as on April 9, 1946 where the letting has taken place prior to April 9, 1946 or were disabled persons on the date of letting if the letting has occurred after April 9, 1946. [373 A-B]

3:1. It is true that clause (h) contains the phrase "where the land-holder or if there are more than one land-holder all of them were person or persons belonging" to any one or more than one of the clauses mentioned in section 157(1) of the Act. Under section 3(26) of the Act, the definition of "landholder" as given in the U.P. Tenancy Act,

1939 has been adopted since the expression is not defined in the Act. The expression "land-holder" who obviously is a possessor of interest in land under section 3(11) of the U.P. Tenancy Act, 1939 means a person to whom rent is payable, and under section 3(1), ibid. by legal fiction it shall include his predecessor-in-interest as also successor-in-interest to whom the rent was or is payable. It is such definition that will have to be read in the U.P. Zamindari Abolition and Land Reforms Act wherever that expression occurs. Therefore the expression "land-holder" occurring in section 21(1)(h) of the Act must mean a person to whom rent is payable and by fiction would include his predecessor-in-interest. Read in this light there would be no question of adding the words predecessor-in-interest of the land-holder in section 21(1)(h) as that would be implicit in the term "land-holder" on account of deeming provision of section 3(1) read with section 3(11) of the U.P. Tenancy Act, 1939. [375 G-H, 376 A, D-F]

3:2. Section 157(1) of the U P. Zamindari Abolition and Land Reforms Act permits leases by disabled persons and provides that a Bhumidar or on an Asami holding land in lieu of maintenance allowance under section 11, who is a disabled person falling under any of the clauses (a) to (g), may let the whole or any part of his holding, "provided that in the case of a holding held jointly by more persons than one, but one or more of them but not all are subject to the disabilities mentioned in clauses (a) to (g), the person or persons may let out his or their share in the holding". Having regard to the proviso under which even in the case of a joint holding a lease of his share by a disabled land-holder is permissible and the same is liable to be separated by a partition, the expression "all of them" must refer to all such land holders who were disabled land-holders on the material dates. When under the proviso to section 157(1) a lease of his share by a disabled land-holder in joint holding (held along with a non-disabled person) is expressly permitted and under section 157(2) the Court has to determine such share of the disabled lessor and partition the same on an application being made in that behalf, it cannot be said that the Legislature intended to deprive the protection of section 21(1)(h) to such disabled land-holder simply because on the date immediately preceding the date of vesting such land-holder comes to hold the
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land jointly with some other non-disabled land-holder. On true construction of the crucial phrase occurring in clause (h) it is not possible to read into the provision the additional requirement, namely, that the identity of the land-holder or land-holders must remain unchanged up to the date of vesting. [376 G-H, 377 A, B-D, G-H]

Further the scheme of the U.P. Zamindari Abolition and Land Reforms Act is different from the Agra Tenancy Act, 1926 and U.P. Tenancy Act, 1939. In each of the two

provisions of these two Acts express words have been used conferring personal rights on the individuals concerned which is not the case with section 21(1)(h) of the Zamindari Abolition and Land Reforms Act. [378 B-C]

Smt. Maya v. Raja Dulaji and Ors. [1 970] A.L.J. 476 over ruled.

Dwarika Singh v. Dy. Director of Consolidation All W.C. 213-1981 All. L.J. 484 approved.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1725-26 of 1973.

From the judgment and order dated 27th October, 1972 of the Allahabad High Court in Special Appeals Nos. 424 and 425 of 1971.

P. N. Lekhi, M.K. Garg and V. K. Jain for the Appellants.

A. P. S. Chauhan and C.K. Ratnaparkhi for the Respondents.

The Judgment of the Court was delivered by TULZAPURKAR, J. These appeals by certificate granted by the Allahabad High Court raise the following substantial question of law of general importance which needs to be decided by this Court:

"Whether the view taken by the Full Bench in Smt. Maya v. Raja Dulaji and others (1) that the lessor/landlord should not only be disabled person on the relevant dates, but that he should continue to live on the date immediately preceding the date of vesting, within the meaning of clauses

(h) of section 21 (1) of the U.P. Zamindari Abolition and Land Reforms Act, represents a correct construction of clause (h) of section 21(1) of the Act ?"

The facts giving rise to the aforesaid question may be stated. One Smt Ram Kali, widow of Tikam Singh, was the land-holder of the plots (agricultural land) in dispute situated in villages Agaota and Khaiya Khera in District Bulandshahr (U.P.). On June 14, 1945 Smt. Ram Kali who was a Sirdar and a 'disabled person' falling within s. 157 (1) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter called "the Act") executed a registered deed of lease for a period of S years in favour of Uttam Singh (the predecessors-in-title of the respondents) but before the expiry of the period of S years she died in August, 1945 and Dan Sahai (her husband's real brother and predecessors-in-title of the appellants) inherited her interest. Dan Sahai was also a 'disabled person' within the meaning of s. 157(1) of the Act. It seems that after the expiry of the period of the registered lease Uttam Singh and Murli Singh continued to hold the land as tenants from year to year under Dan Sahai. In consolidation proceedings a question arose whether Uttam Singh and Murli Singh, who were lessees under Smt. Ram Kali and Dan Sahai acquired the status of Sirdars or they remained Asamis of the plots in dispute. The case of Dan Sahai was that they were Asamis and

not adhivasis entitled to be treated as Sirdars under s. 240 of the Act and that depended upon whether as tenants or occupants of the plots in dispute their case fell within the provisions of s. 21(1) (h) of the Act. The contention of Dan Sahai was that since Smt. Ram Kali was a disabled person on the date of letting and since he who succeeded her was also a disabled person on April 2, 1946, the lease in favour of Uttam Singh and Murli Singh would fall within section 21(1) (h) and as such Uttam Singh and Murli Singh shall be deemed to be Asamis. On the other hand the contention on behalf of Uttam Singh and Murli Singh was that the land-holder should not only be a disabled person on both the dates mentioned in sub-cl. (a) of cl. (h) of s. 21(1? (being the date of letting as also April 9, 1946) but the same landlord should continue to live on the date immediately preceding the date of vesting (which is 1- 7-1952 under the Act) and since in the instant case the same landlord who had let out the plots and who was disabled person on the date of letting had not continued to live on the date immediately preceding the date of vesting s. 21(1)

(b) was totally inapplicable and, therefore, they were entitled to be treated as Sirdars. The Division Bench of the Allahabad High Court in Special Appeals Nos. 424-425 of 1971 accepted the contention raised by counsel on behalf of Uttam Singh and Murli Singh (the respondents' predecessors) relying on the view taken by the Full Bench in Smt. Maya v. Raja Dulaji and others (1) and decided the appeals in their favour by holding that they were not Asamis but had become Sirdars.

At the outset it may be stated that it was not disputed either in the lower courts or before us that both Smt. Ram Kali as well as Shri Dan Sahai who succeeded to her interest in the plots after her death were disabled persons under s. 157((1) of the Act. In fact it was accepted by both the sides that on the date of letting (being 14th June, 1945) Smt. Ram Kali, the then land holder was a disabled person and on 9th April, 1946 (being the other relevant date under sub-clause (a) of clause (h) of section 21(1) Dan Sahai, the then land-holder, was a disabled person who continued to be the land holder upto the date of vesting, and the question is whether in such 8 case the occupation of the plots by Uttam Singh and Murli Singh under the lease from both of them would fall within the provisions of s. 21(1) (h) of the Act.

The relevant provision runs thus:

"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-

... ...

(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 the said section where the land holder or if there are more than one land-holders, 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 (I) of Section 157.

shall be deemed to be an asami thereof "

In other words, s. 21 (1) (h) provides that every person occupying or A holding land in any one of the capacities mentioned in cl. (h) on the date immediately preceding 1-7- 1952 shall be deemed to be an Asami thereof notwithstanding anything contained in the Act, if the landholder or if there are more than one all of them were disabled persons within the meaning of s. 157(1), both on the date of letting as well as on April 9, 1946 where the letting has taken place prior to April, 9, 1946, or were disabled persons on the date of letting if the letting has occurred after April 9, 1946. In the instant case it is not disputed that Uttam Singh and Murli Singh were on the date immediately preceding the date of vesting holding or occupying the plots in question in one or the other capacity mentioned in cl. (h); secondly, since the letting was prior to April 9, 1946 sub- cl. (a) of cl. (h) is attracted and it is also not disputed that on the date of letting the then land-holder (Smt. Ram Kali) was a disabled person and on April 9, 1946 the then land-holder Dan Sahai, who succeeded her, was also a disabled person under s. 157(1) of the Act. Incidentally Dan Sahai continued to be the land-holder on the date immediately preceding 1.7 1952. On these facts it seems to us clear that all the requirements of s. 21(1) (h) could be said to have been satisfied but the Division Bench relying upon the Full Bench decision in Smt. Maya v. Raja Dulaji and others (supra) held that Uttam Singh and Murli Singh were not Asamis and had become Sirdars because s. 21(1) (h) was not attracted inasmuch as in their view it was a requirement of that provision that not merely should the land- holder be a disabled person on both the dates mentioned in sub-cl. (a) of cl. (h) but the same land-holder should continue to be landholder on the date immediately preceding the date of vesting (i.e. the identity of the disabled land-holder or landholders on both the dates and the land-holder or land- holders seeking the benefit or protection of the provision on the date immediately preceding 1.7.1952 must, remain unchanged) and this requirement was not satisfied in this case. The question is whether on true construction of the provision such a requirement can be read into the said provision ?

In Smt. Maya v. Raja Dulaji and others (supra) the facts were that the disputed plots belonged to one Bijain and were inherited on his death by his widow Smt. Lakshmi and when Smt. Lakshmi died her minor unmarried daughter Kumari Maya became the land-holder. Her elder sister Saheb Kunwar acting as her guardian executed a registered lease of the plots in favour of the plaintiffs (Ram Charan and others) on 15.10.1947 for a period of five years (a case falling under sub-cl. (b) of cl. (h)). Later on Maya was also married to her sister's husband Thakurdas who was admitted to the holding as co-tenant with Maya, with the consent of the Zamindar in the year 1948. Thus on the date of vesting (1.7.1952) both Maya (who was still minor and disabled person) as well as her husband Thakurdas were the land-holders of the plots in question. The lessee plaintiffs filed a suit in the year 1954 for a declaration that they had become Adhivasis of the land on the coming into force of the

U.P.Z.A. and L.R. Act and had subsequently acquired Sirdari rights on the passing of the U.P. Act XX of 1954 The suit was decreed by both the Courts below and hence Maya defendant preferred a second appeal to the High Court. The question raised for determination was whether for the purposes of s. 21 (1) (h) the disability of the landholders who were in existence on the date of vesting was material or the disability of the land-holders who let out the land was a deciding factor? The Court noticed that s. 21(1) (h) had been introduced in the Act for the first time by U.P. Act XVI of 1953 with retrospective effect from July 1, 1952 and was later on amended by U.P. Act XX of 1954 and has thereafter continued in its present form. Section 21(1) (h), as originally enacted, in express terms required that "the land-holder or if there are more than one landholder all of them were person or persons belonging, both on the date of letting and on the date immediately preceding the date of vesting, to any one or more of the classes mentioned in sub-s. (2) of s. 10 or cl. (viii) of sub-s. (I) of s. 157". As a result of the amendment made by Act XX of 1954 the words "both on the date of letting and on the date immediately preceding the date of vesting" were omitted. In other words, by the amendment the requirement that disability of the land-holder should subsist on the date immediately preceding the date of vesting was deleted. The Full Bench accepted the position that for purposes of s. 21(1) (h), in its present form, the disability of the land-holder need not continue or subsist on the date immediately preceding the date of vesting and might cease on or before the date of vesting but took the view that in the case before it there were two land-holders on the date immediately preceding the date of vesting, namely, Smt. Maya and her husband Thakurdas, that a new body of 'land-holders' had come into existence subsequent to the date of letting and that all of them were not land-holders who had let out the land as disabled person and, therefore, the plaintiffs became Adhivasis and the defendants were not entitled to the benefit of s. 21(1) (h) of the Act. In other words, the Full Bench has been of the view that for purposes of s. 21(1) (h) it is necessary that the land-holders on the date immediately preceding the date of vesting must be the same persons as those who let out the land and suffered from disability on the date of letting, and also on A April 9, 1946 in case the letting was before that date. In other words, the identity of the land-holder or land-holders must remain unchanged up to the date of vesting.

For reading such a requirement into the provision the Full Bench has given two reasons: (a) that such a requirement arises on construction of certain words used in cl. (h) (vide: para 17 of the Judgment) and (b) that the protection given to a disabled landholder was intended to be a personal protection granted to the very individual who let out the land as a disabled person and this was warranted by a historical survey of parallel provisions contained in the preceding Tenancy Laws in U.P. (vide: Para 19). According to the Full Bench the crucial words used in cl. (h) are "where the landholder or if there are more than one land-holder all of them were person or persons belonging" to any one or more of the classes of disabled persons under s. 157(1) and the Full Bench has reasoned "the word 'are' and the word 'them' together with the word 'were' in the aforementioned phrase clearly show that the intention of the Legislature was that on the date of vesting the 'land-holder' should be the very person who was the land-holder on the relevant dates, to earn the benefit of cl. (h) of s. 21(1)". The Court observed that s. 21(1) (b) could bear the interpretation suggested by counsel for Smt. Maya only if the words 'or their predecessor-in-interest' were added before the words "all of them". The Court has further stated that historical survey of the parallel provisions contained in the preceding Tenancy Laws showed that the protection given to a disabled person had always been in the nature of a personal protection granted to the very individual who let

out the land as a disabled land-holder and the protection ceased to be available when the identity or personality of that land- holder is changed and in that behalf reliance was placed on certain provisions of the Agra Tenancy Act, 1926 and U.P. Tenancy Act, 1939. In our view neither reason holds good for sustaining the literal construction placed upon the provision by the Full Bench.

It is true that cl. (h) contains the phrase "where the land- holder or if there are more than one landholder, all of them were persons belonging" to any one or more of the classes mentioned in s. 157(1), but for arriving at the correct interpretation of this crucial phrase it is necessary to have regard to the definition of 'landholder' and the provisions of s. 157 of the Act with which s. 21(1)

(h) is inter-connected.

Under s. 3(26) of the Act, the definition of 'landholder' as given in the U.P. Tenancy Act 1939 has been adopted since the expression is not defined in the Act. That expression has been defined in s. 3(11) of the U.P. Tenancy Act 1939 thus:

> "Landholder" means the person to whom rent is or, but for a contract express or implied would be, payable."

This definition must be read in light of s. 3(1) of that Act which runs thus:

> "All words and expressions used to denote the possessor of any right, title or interest in land, whether the same be proprietary or otherwise, shall be deemed to include the predecessors and successors in right, title or interest of such Person."

In other words, the expression 'landholder' who obviously is a possessor of interest in land under s. 3(11) means a person to whom rent is payable, and under s. 3(1) by legal fiction it shall include his predecessor-in-interest as also successor-in-interest to whom the rent was or is payable. It is such definition that will have to be read in the U.P.Z.A. and L.R. Act wherever that expression occurs. It is thus obvious that the expression 'landholder' occurring in s. 21(1) (h) must mean a person to whom rent is payable and by fiction would include his predecessor-in-interest. Read in this light there would be no question of adding the word predecessor-in-interest of the land-holder in s. 21(1) (h) as that would be implicit in the term 'landholder' on account of the deeming provision of s. 3(1) read with s. 3(11) of the Tenancy Act, 1939. It does appear that this aspect of the matter was not brought to the notice of the Full Bench when it construed the concerned crucial phrase. Moreover after the amendment effected by Act XX of 1954 the thrust of cl. (h) is on the landholder or landholders being disabled persons on the material dates only.

Further s. 157(1) permits leases by disabled persons and says that a Bhumidhar or an Asami holding land in lieu of maintenance allowance under s. 11, who is a disabled person falling under any of the clauses (a) to (g), may let the whole or any part of his holding; and the proviso thereto is very important which runs thus:

"Provided that in the case of a holding held jointly by more persons than one, but one or more of them but not all are subject to the disabilities mentioned in clause

(a) to (g), the person or persons may let out his or their share in the holding."

And sub-s. (2) provides that where any share of a holding has been let out under the aforesaid proviso the Court may on an application of the Asami or the tenure-holder determine the share of the lessor in the holding and partition the same. Having regard to the aforesaid proviso under which even in the case of a joint holding a lease of his share by a disabled land-holder is permissible and the same is liable to be separated by a partition it is obvious that the expression "all of them" must refer to all such land-holders who were disabled land-holders on the material dates. When under the proviso to s 157(1) a lease of his share by a disabled land-holder in joint holding (held alongwith a non-disabled person) is expressly permitted and under s. 157(2) the Court has to determine such share of the disabled lessor and partition the same on an application being made in that behalf, it is difficult to accept that the Legislature intended to deprive the protection of s. 21(1) (h) to such disabled land-holder simply because on the date immediately preceding the date of vesting such land- holder comes to hold the land jointly with some other non- disabled land-holder. In other words on the facts found in the Full Bench case when on the date of letting the entire holding belonged to Smt. Maya who was a disabled person and on the date of vesting she alongwith her husband Thakurdas (a non-disabled person) became joint holder, could Smt. Maya at any rate to the extent of her share in the joint holding be denied the benefit of s. 21(1) (h) notwithstanding the proviso to s. 157(1) and s. 157(2) being in the Statute ? The answer is obviously in the negative. In fact in view of the fact that on the material date (being the date of letting) the entire holding belonged to Smt Maya the disabled person, and having regard to the deeming provision which has to be read in the definition of 'landholder' and having regard to the thrust of amended cl. (h) which does not require that the successor-in-interest be a disabled person on the date of vesting, the benefit of s. 21 (1) (h) should have been extended or made available in respect of the entire holding. In other words, on true construction of the crucial phrase occurring in cl. (h) it is not possible to read into the provision the additional requirement, namely, that the identity of the land-holder or land-holders must remain unchanged up to the date of vesting.

Coming to the second reason the Full Bench has observed that a historical survey of parallel provisions of the Agra Tenancy Act 1926 and U.P. Tenancy Act, 1939 supported the conclusion that protection was granted only to the very individual who let out the land as a disabled land-holder and the protection ceased when the identity of the personality of that land-holder changed and in that behalf reference was made to s. 29(6) and (7) of the former Act and s. 41 (2) of the latter Act. Now apart from the fact that the scheme of the U.P.Z.A. and L.R. Act is different from these two earlier enactments, a careful analysis of the two provisions in the earlier enactments will clearly show that in each of the provisions express words had been used conferring personal rights on the individuals concerned which is not the case with s. 21(1) (h) of the Act.

Having regard to the above discussion we are of the opinion that the view taken by the Full Bench of Allahabad High Court in Smt. Maya v. Raja Dulaji and others (supra) does not represent the correct construction of s. 21(1) (h) of the Act. On true construction of the said provision in our view, the

benefit thereof would be available to the land-holder on the date of vesting, if the same landholder or his predecessor existing on the material dates was a person or persons belonging to one or more of the classes mentioned in s. 157(1) of the Act.

Since in the instant case, which falls under sub-cl.

(a) of cl. (h), on the date of actual letting Smt. Ram Kali was disabled person and since on the next material date, namely, April, 9 1946 Dan Sahai (successor-in-interest of Smt. Ram Kali) was also a disabled person, the land-holder on the date of vesting, who incidentally happened to be Dan Sahai, would be entitled to the benefit of s. 21(1) (h) and the respondents (successors of Uttam Singh and Murli Singh) would remain Asamis and cannot be said to have become Sirdars.

We might mention that after the arguments in these appeals were concluded and our Judgment was ready for pronouncement we were informed that in a later case Dwarika Singh v. Dy. Director of Consolidation (l) a larger Bench of S-Judges of the Allahabad High Court has, by majority, overruled the view taken in Smt. Maya's case.

In the result the appeals are allowed, the orders of the Division Bench in Special Appeals Nos. 424-425 of 1971 are set aside and for reasons given by us above, the decision of the learned Single Judge dated May 10, 1971 is restored.

We direct that each party will bear its own costs.

S. R. Appeals allowed.