MEHARBANSINGH AND OTHERS

v.

NARESHSINGH AND OTHERS

October 27, 1969

[V. RAMASWAMI AND I. D. DUA, JJ.]

Madhya Bharat Zamindari Abolition Act XIII of 1951—*S.* 4(1)(*f*)—*Proprietary rights vesting in State—Khud-kasht land allowed to be retained in possession—Land whether khud-kasht have to be first gone into—Notice to the State, necessity of.*

The appellant filed a suit for redemption of a mortgage. The lower courts decreed the suit. The High Court held that in view of the provisions of the Madhya Bharat Zamindari Abolition Act XIII of 1951 the appellants were entitled to redeem the mortgage but disentitled to get possession of the mortgaged land since under the Act the proprietary rights including the right to possession vested in the State. In appeal to this Court it was urged that High Court did not afford the appellants an opportunity to show that the land in question was *Khud-kasht* and, therefore in according with section 4 they were entitled to remain in possession thereof.

HELD : The precise question requiring decision by the High Court in the present case was lost sight of and not properly adverted to. Under the Act the proprietor, notwithstanding any other consequences of the vesting in the State, is entitled to continue to retain possession of his *Khud-kasht* land which is so recorded in the annual village papers before the date of vesting. In the present case both the contesting parties claim for themselves actual possession of the land in dispute as *Khud-kasht* and also assert that the relevant entries in the annual village papers before the date of vesting showed them in such possession. On this basis they both claim right to retain possession even against the State. These rival controversial claims pressed by both the parties was the central question involving proper appraisal of the material on the record and this basic dispute had to be first adverted to and judicially determined and thereafter the Court had to consider the applicability of the relevant provisions of Act XIII of 1951 to the facts found. As the question of vesting of title in the State was also of vital importance it was fit and proper for the Courts below to have issued notice to the State as well thereby enabling it to be impleaded as a party, if it so desired. [25D-26B]

Haji Sk. Subban v. *Madho Rao,* [1962] Supp. 1 S.C.R. 123, distinguished.

[The case was remitted to the High Court for a fresh decision].

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1438 of 1967.

Appeal by special leave from the judgment and decree dated September 27, 1962 of the Madhya Pradesh High Court, Gwalior Bench in Civil Appeal No. 310 of 1960.

S. T. Desai and *P. C. Bhartari,* for the appellants.

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B. C. Misra, Bhajan Ramrakhyani and *Urmila Kapoor,* for respondents Nos. 1 to 4, 8 and 10 to 12.

The Judgment of the Court was delivered by

Dua, J. This is the plaintiffs' appeal by special leave from a B common judgment and decree of a learned Single Judge of the Madhya Pradesh High Court at Gwalior dated September 27, 1962 partially allowing the defendants' second appeal and dismissing that of the plaintiffs.

It is not necessary to state the detailed facts of the case. Facts C necessary for the purpose of this appeal alone may briefly be stated. In May, 1939 Ramle Singh and Jomdar Singh created a mortgage of the suit land in favour of Munshi Singh for a sum of Rs. 2,242 14/-. It is said that in May, 1943 notice given by the mortgagors for redemption of the mortgage was refused by the mortgagee. In June, 1943 the suit giving rise to the present appeal was instituted for redemption of the mortgage. Some D other persons who were found to be in possession of the land, claiming to be tenants, were also impleaded as defendants. On May 25, 1951 Madhya Bharat Zamindari Abolition Act XIII of 1951 was enforced. It appears that an application to amend the plaint as a result of the new enactment was disallowed by the trial Court, but on revision the Madhya Pradesh High Court by E its order dated October 10, 1955 reversed the order of the trial Court and permitted the plaintiffs to amend the plaint. The pleadings after the amendment gave rise to nearly 17 issues on the merits. On October 10, 1958 the suit was decreed in respect of the relief for redemption but claim in regard to mesne profits was disallowed. Preliminary decree for redemption was F accordingly granted. In the course of its judgment the trial Court observed under issue No. 10 as follows :

> "I have in preceding paras shown that as per allegations in the written statements and the patwari papers, it appears that the suit lands have been in possession of Hanumantsingh, Shambhoosingh, Khemsingh, Mansingh and G Namdassingh. It will be discussed later whether they and descendants of Munshisingh are joint owners or not. Before abolition of *zamindari,* the records show half of the suit lands as the Khundkasht of the above defendants and half as the tenancy holding of Namdas (Kastkari). These entries however do not confer any title on the parties. Their H right to remain in possession is limited *i.e.* till such time as the property is redeemed by the mortgagers *i.e.* the plaintiffs. These entries or the rights shown therein cannot prejudice the right of the plaintiffs."

The Court while deciding issues Nos. 16 and 17 observed thus : A

> "I have discussed these issues earlier in a different context. I may briefly add that Abolition of Zamindari Act does not affect the right of the plaintiffs to recover possession of lands which were placed in possession of the mortgagees (1956 M.B.L.J. *Rameshwar* vs *Bhogiram*). Defendants Hanumantsingh and others did not acquire possession of the suit lands by virtue of the sale in favour of their father Daulat Singh because they had purchased only an equity of redemption as will appear from the judgment in Civil Suit No. 21/2001 filed on record. Entries as *Pacca Krishak* cannot affect the rights under the mortgage bond. I find accordingly." B C

Three appeals were presented in the District Court against the decree founded on this judgment, one of them being by the plaintiffs challenging refusal by the trial Court to grant mesne profits. In October, 1960 the plaintiffs' appeal was partly allowed and mesne profits decreed from the date of deposit of the mortgage amount in Court. The other two appeals were dismissed. That Court disposed of all D appeals by a common judgment and came to the conclusion that the lands had been mortgaged with possession by Samle Singh and Jomdar Singh with Munshi Singh and that they were under self-cultivation of the plaintiffs before the mortgage, the mortgagees having come into possession by reason of the mortgage. The matter was taken by the defendants to the High Court on second appeal, the E plaintiffs having also preferred an appeal in that Court against the decree of the first appellate Court declining to give full relief claimed in regard to mesne profits. In the High Court also three appeals were presented. The High Court partially allowed the defendants' appeal in view of the provisions of the Madhya Bharat Zamindari Abolition Act XIII of 1951. The plaintiffs were held entitled to redeem the mortgage by paying the mortgage money but disentitled to F get possession of the mortgaged land. The proprietary rights including the right to get possession having vested in the State under the aforesaid Act, the plaintiffs, according to the High Court, could only claim compensation from the Government on the basis of their proprietary rights after redeeming the mortgage by making payment of the mortgage money. In support of this view the High Court relied G on this Court's decision in *Haji Sk. Subhan* v. *Madho Rao*[1], considering that decision to be decisive of the point in issue. That decision, however, appears to us to be directly concerned with the Madhya Pradesh Abolition of Proprietary Rights (Estates, Muhals, alienated land) Act, 1950 (Madhya Pradesh Act I of 1951).

Before us the short question raised on behalf of the appellants is H that reliance on the Madhya Bharat Zamindari Abolition Act XIII of

(1) [1962] Supp. 1 S.C.R. 123.

A 1951 for the first time in the High Court was improper and that in any event without affording an opportunity to the appellants to show that the said Act did not apply to the case in hand, their suit could not have been dismissed. The submission is not wholly correct. There was in fact an amendment of the plaint pursuant to the enactment of the Madhya Bharat Abolition of Zamindari Act and additional issues were framed on the amended pleadings. The parties and the courts were thus not ignorant of the existence of the said Act on the statute book.

Turning to the Act in question, it was brought on the statute book in 1951, as the preamble shows, in order "to provide for the public purposes of the improvement of agriculture and financial condition of agriculturists by abolition and acquisition of the rights of proprietors in villages, *muhala, chaks* or blocks settled on zamindari system which is only a system of keeping an intermediary between the State and the tenants injurious to the betterment of agriculture as well as the agriculturists in Madhya Bharat and for other matters connected therewith."

"Proprietor" as defined in s. 2(a) means, "as respects a village, *muhal* or land settled on zamindari system, a person owning whether in trust or for his own benefit such village, *muhal* or land and includes :

(1) a Malguzar as defined in sub-clause (12) of section 2 of Qanoon Mal, Gwalior State, Samvat 1983; and

(2) as respects a *chak* or block a *chakdar* or blockdar whose lease granted to him by the Government under any Act, Rule or Circular relating to *chaks* and blocks, includes also, amongst its other conditions, a condition that he shall acquire the proprietary rights in respect of that *chak* or block when the conditions of the lease are fulfilled;

(3) the heir and successors in interest of a proprietor;"

Section 2(c) defines "Khud-kasht" to mean "land cultivated by the Zamindar himself or through employees or hired labourers and includes *sir* land." Sections 3 and 4 which occur in Chapter II dealing "vesting of proprietary rights in the State" provides as under :

"3. Vesting of proprietary rights in the State.

(1) Save as otherwise provided in this Act and subject to the provisions of section 8, on and from a date to be specified by a notification by the Government in this behalf (hereinafter referred

to as the date of vesting all proprietary rights in a village, *muhal* land, *chak* or block in Madhya Bharat vesting in a proprietor of such village, Muhal, land, *chak* or block as the case may be, or in a person having interest in such proprietary right through the proprietor shall pass from such proprietor or such other person, to and vest in the State free of all encumbrances.

(2) After issue of a notification under sub-section (1) no right shall be acquired in or over the land to which the said notification relates except by succession or under a decree or order of a Court or under a grant or contract in writing made or entered into by or on behalf of the Government; and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the Government in this behalf.

(3) The Government may by notification published in the Gazette vary the date specified under sub-section (1) at any time before such date.

4. Consequences of the vesting of an estate in the State.

(1) Save as otherwise provided in this Act when the notification under section 3 in respect of any area has been published in the gazette, then, notwithstanding anything contained in any contract, grant or document or in any other law for the time being in force, the consequences as hereinafter set forth shall from the beginning of the date specified in such notification (hereinafter referred to as the date of vesting) ensue, namely :—

(a) all rights, title and interest of the proprietor in such area, including land (cultivable, barren or Bir), forest, trees, fisheries, wells (other than private wells) tanks, ponds, water channels ferries, path ways, village-sites, hats and bazars and melagrounds and in all sub-soil including rights, if any, in mines and minerals, whether being worked or not shall cease and be vested in the State free from all encumbrances;

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(b) all grants and confirmation of title of or to land in the property so vesting or of or to any right or privilege in respect of such property or land revenue in respect thereof shall, whether liable to resumption or not, determine;

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(c) all rents and cesses in respect of any holding in the property so vesting for any period after the date of vesting which, but for such vesting would have been payable to the proprietor, shall vest in the State and be payable to the Government and any payment made in contravention of this clause shall not be a valid discharge of the person liable to pay the same;

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Explanation—The word "Holding" shall for the purpose of this clause be deemed to include also land given, on behalf of the proprietor, to any person on rent for any purpose other than cultivation;

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(d) all arrears of revenue, cesses or other dues in respect of any property so vesting and due by the proprietor for any period prior to the date of vesting shall continue to be recoverable from such proprietor and may, without prejudice to any other mode of recovery, be realised by deducting the amount from the compensation money payable to such proprietor under Chapter V;

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(e) The interest of the proprietor so acquired shall not be liable to attachment or sale in execution of any decree or other process of any court, civil or revenue, and any attachment existing at the date of vesting or any order for attachment passed before such date shall, subject to the provisions of section 73 of the Transfer of Property Act, 1882, cease to be in force.

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(f) every mortgage with possession existing on the property so vesting or part thereof on the date immediately preceding the date of vesting shall, to the extent of the amount secured on such property or part thereof be deemed without prejudice to the rights of the State under section 3, to have been substituted by a simple mortgage.

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(2) Notwithstanding anything contained in sub-section (1) the proprietor shall continue to remain in possession of his khud-kasht land, so recorded in the annual village papers before the date of vesting.

(3) Nothing contained in sub-section (1) shall operate as bar to the recovery by the outgoing proprietor of any sum which becomes due to him before the date of vesting in virtue of his proprietary rights."

A plain reading of these sections would show that all rights, title and interests of the proprietors in the area notified were to cease and were instead to vest in the State free from all encumbrances with effect from the date of notification and after such vesting in the State every mortgage with possession existing on the property so vested or part thereof on the date immediately preceding the date of vesting, to the extent of the amount secured on such property or part thereof, is to be deemed, without prejudice to the right of the State under section 3 to have been substituted by a simple mortgage. The proprietor, however, notwithstanding other consequences of the vesting in a State, is entitled to continue to remain in possession of his khud-kasht land which is so recorded in the annual village papers before the date of vesting. Now it was clearly open to the plaintiffs to show that the land in question was *khud-kasht* and, therefore, in accordance with s. 4 they were entitled to remain in possession thereof.

On behalf of the appellants' also our attention was invited to the decision of this Court in the case of *Haji Sk. Subhan*(1) and specific reliance was placed on observations at page 139 of the report which suggests that a person continuing in possession on the basis of entries in the village papers, which had to be presumed to be correct, was not affected by the Act. Reference was also made to the observation at page 142 of the report where right to possess was upheld in favour of the party who had obtained a declaration of being an owner in possession.

On behalf of the respondents reliance was placed on *Rana Sheo Ambar Singh* v. *Allahabad Bank Ltd., Allahabad*(2), but that decision does not deal with the Madhya Bharat Act which concerns us. That decision is concerned with the U.P. Zamindari Abolition and Land Reforms Act I of 1951, the scheme of which is not shown to be similar to that of the Madhya Bharat Act so far as it concerns us in the present case. That decision is, therefore, of little assistance in construing the Madhya Bharat Act. Another decision on which the respondents' learned Advocate has placed reliance is *Raja Sailendra Narayan Bhaj Deo* v. *Kumar Jagat Kishore Prasad Narayan Singh*(3) which again

(1) [1962] Supp. 1 S.C.R. 123.
(2) [1962] 2 S.C.R. 441.
(3) [1962] Supp. 2 S.C.R. 119.

A deals with the Bihar Lands Reforms Act and not with the Madhya Bharat Act. The scheme of the Bihar Act being also dissimilar from that of the Madhya Bharat Act, this decision too cannot be of much help.

The last decision relied on by Shri Mishra is *Suraj Ahir* v. *Prithinath Singh and others*(1) which is concerned with the Bihar B Lands Reforms Act XXX of 1950 as amended by Act XVI of 1959. This decision is equally unhelpful.

In our opinion the High Court was in error in allowing the appeal before it and in dismissing the plaintiff-appellants' suit for possession on the authority of this Court's decision in the case of C *Haji Sk. Subhan*(2). In the reported case the word "document" as occurring in s. 4(1) of the M.P. Abolition of Proprietary Rights (M.P. Act 1 of 1951) was construed to include a decree of the Court and it was held that the principle that the executing Court cannot question the decree and has to execute it, had no operation on the facts of that case, because the objection was not based on the invalidity of the decree but on the effect of the afore- D said Act on the rights of the decree holder proprietor to retain possession. The facts of that case were, therefore, different and so was the problem requiring solution. The precise question requiring decision by the Court in the present case was lost sight of and not properly adverted to. We are required in the present case to consider the effect of s. 4(1)(f) of the M.P. Act XIII of E 1951 on the rights of the plaintiff-appellants to redeem the mortgage and secure possession of the mortgaged land.

It may be pointed out that both the contesting parties—the appellants and the respondents—before us claim for themselves actual possession of the land in dispute as *Khud-kasht* and also assert that the relevant entries in the annual village papers before F the date of vesting showed them in such possession. On this basis they both claim right to retain possession even against the State. These rival controversial claims pressed by both the parties was the central question involving proper appraisal of material on the record and this basic dispute had to be first adverted to and judicially determined and thereafter the Court had G to consider the applicability of the relevant provisions of the M.P. Act XIII of 1951 to the facts found. As the question of vesting of title in the State was also of vital importance it was, in our opinion, fit and proper for the Courts below to have issued notice to the State as well, thereby enabling it to be impleaded as a party if it so desired. The approach of the High Court is erroneous and its decision highly unsatisfactory. The controlling question H seems to have been missed. We, therefore, allow the appeal and remit the case back to the High Court for a fresh decision of the

(1) A.I.R. 1963 S. C. 454. (2) [1962] Supp. 1 S.C.R. 122.

appeal after notice to the State and after hearing it, in case it desires to be heard. It would also be open to the High Court, if it considers just and proper, to implead the State and if necessary to permit it to adduce evidence before the High Court or to remit the case to the trial Court for that purpose. In the circumstances of the case, parties would bear their own costs in this Court. A B

Y.P. *Appeal allowed.*