

1960
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 K. M. Nanavati
 v.
 The State of
 Bombay
 ———
 Kapur J.

the same subject matter as is contended then art. 161 must prevail over art. 142(1) which is in accord with the constitutional position as above discussed.

In the circumstances of this case I would grant the petitioner exemption prayed for and proceed to hear the special leave petition on merits.

BY COURT: In view of the majority Judgment, the petition is dismissed.

Petition dismissed.

1960
 ———
 September 6.

THE UPPER GANGES SUGAR MILLS LTD.

v.

KHALIL-UL-RAHMAN AND OTHERS.

(B. P. SINHA, C. J., B. P. GAJENDRAGADKAR,
 K. N. WANCHOO, K. C. DAS GUPTA and
 J. C. SHAH, JJ.)

Tenancy—Adhivasi right, acquisition of—Possession continued under stay orders of courts—Whether such possession is on behalf of courts—Person recorded in possession as thekadar—Whether an occupant in his own right—U. P. Zamindari Abolition and Land Reforms Act, 1950, (U. P. I of 1950), s. 20(b).

The landlord granted a theka to the company for 10 years ending with 1350 F which was renewed up to 1355 F (June 1948). On the company's refusal to vacate on the expiry of the theka the landlord filed a suit for ejection under the U. P. Tenancy Act, 1939. The suit was resisted by the company on the ground that it has become a hereditary tenant under s. 29 of that Act. The suit was decreed on November 3, 1948, and an appeal and a second appeal against the decree also failed, but the company remained in possession of the land on account of stay orders granted by the appellate courts. In execution the landlord obtained formal possession on October 13, 1950, but the company resisted actual ejection. On July 1, 1953, the company instituted proceedings to recover actual possession of the land under s. 232 of the U. P. Zamindari Abolition and Land Reforms Act, 1950, claiming to have become an *Adhivasi* under s. 20 thereof. Section 20 provided that every person who was recorded as occupant of any land in the *Khasra* or *Khatauni* of 1356 F shall be called an *adhivasi* of the land and shall be

entitled to take or retain possession thereof. The company was recorded in 1356 F in possession of the land in dispute as *theke-dar*. The landlord contended that the company had not acquired the rights of an *adhivasi*: (i) as it being in possession in 1356 F under the stay orders of the courts it was in occupation not on its own behalf but on behalf of the court, and (ii) as it was recorded as a *theke-dar* in 1356 F its possession was not on its own behalf but on behalf of the landlords, whose *theke-dar* it was.

1960
—
The Upper Ganges
Sugar Mills Ltd.
v.
Khalil-ul-Rahman
& Others

Held, (per Sinha C. J., Gajendragadkar, Wanchoo and Shah, JJ.), that the company had acquired *adhivasi* rights in the land and was entitled to the possession thereof. Simply because there were stay orders which enabled the company to remain in possession, the possession was not on behalf of the court. It remained in possession in the same right in which it was in possession before the decree was passed on November 3, 1948. Though the company was recorded in possession as a *theke-dar* it was an occupant in its own right and not on behalf of the landlord. It was open to the court to look beyond the entry of the company as a *theke-dar* in the *Khasra*.

Swami Prasad v. Board of Revenue, U. P., 1960 A.L.J. 241, *Parshotam Das v. Prem Narain*, A.I.R. 1956 All. 665, *Birjilal v. Murlidhar*, 1954 R. D. 175 and *Lala Nanak Chand v. The Board of Revenue, U. P.*, 1955 A.L.J. 408, referred to.

DAS GUPTA, J.—The company did not acquire the rights of an *adhivasi*. The word “occupant” means a person in possession in his own right and not on behalf of someone else. The benefit under the section is available only to those “recorded” as “occupants”. It is not permissible to look beyond the record to ascertain whether the claimant has been “recorded as occupant”. The record in the *khasra* of the possession “as theke-dar” amounts to record of “possession on behalf of theke-dar’s lessor”.

Swamy Prasad v. Board of Revenue, U. P., 1960 A.L.J. 241, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal
No. 196 of 1952.

Appeal from the judgment and order dated October 3, 1950, of the Court of Board of Revenue, U. P., Allahabad, in Review Application No. 161 of 1949-50.

And

Appeal by special leave from the judgment and order dated January 21, 1956, of the Court of the Board of Revenue, U. P., Allahabad, in Petition No. 22/1954-55.

1960
 The Upper Ganges
 Sugar Mills Ltd.

C. B. Aggarwala and C. P. Lal, for the Appellants
 (In C. A. No. 196 of 1952) and respondent No. 1 (in
 C. A. No. 4 of 1959).

v.
 Khalil-ul-Rahman
 & Others

Achhru Ram and Naunit Lal, for the appellants (in
 C. A. No. 4 of 59) and respondents (in C. A. No. 196
 of 52).

1960. September 6. The Judgment of Sinha C. J.,
 Gajendragadkar, Wanchoo and Shah, JJ. was deli-
 vered by

Wanchoo J.

WANCHOO J.—These two connected appeals will be
 disposed of by one judgment. Appeal No. 196 of
 1952 is by the Upper Ganges Sugar Mills Ltd. (here-
 inafter called the Company) while appeal No. 4 of
 1959 is by Mohd. Khalilul Rehman and others (here-
 inafter called the landlords). The brief facts necessary
 for present purposes are these. Mukhtiar Ahmed,
 father of the landlords, granted a *theka* to the Com-
 pany in August 1933 (corresponding to 1341 F) of the
 lands in dispute for a period of ten years ending with
 1350 F (June 1943). The *theka* contained a clause
 giving option to the Company to get it renewed for
 five years and in consequence the *theka* was renewed
 for five years from 1351 F to 1355 F (that is upto
 June 1948). Thereafter the *theka* provided for option
 to renew the lease with the lessor. In March 1948,
 the landlords gave notice to the Company to the
 effect that the *theka* would not be renewed after 1355
 F. The Company, however, did not agree to hand
 over possession to the landlords and consequently a
 suit was filed by the landlords for ejection of the
 Company under the U. P. Tenancy Act, 1939. It was
 resisted by the Company on the ground that it was
 not a *thekadar* but a tenant and had become heredi-
 tary tenant under s. 29 of the U. P. Tenancy Act.
 This plea failed and the suit was decreed on Novem-
 ber 3, 1948. There was an appeal by the Company
 against the decree. This appeal also failed. Then
 the Company went up in second appeal to the Board
 of Revenue and eventually the second appeal was

dismissed on July 22, 1950. During all this period from November 1948 to July 1950, the Company remained in possession of the land in dispute on account of stay orders obtained from the appellate courts. Execution began in October 1950 and it is said that possession was delivered to the landlords on October 13, 1950 and a *Dakhalnama* was filed on October 15, 1950. It appears, however, that the Company offered resistance to actual ejection and this led to proceedings under s. 145 of the Code of Criminal Procedure and the magistrate ordered the attachment of the land in November 1950 and appointed two *superdars* (caretakers). The Company applied to the Board for a certificate which was granted; and that is how appeal No. 196 has come to this Court.

In the meantime, U. P. Zamindari Abolition and Land Reforms Act, 1950 (U. P. 1 of 1951), (hereinafter called the Act) came into force on July 1, 1953. The Company thereupon instituted proceedings to recover actual possession of the land under s. 232 of the Act read with ss. 12 and 20 thereof. The Sub-Divisional Officer decided in January 1954 in favour of the Company and ordered delivery of possession to it holding that the Company was entitled to possession both under s. 12 as well as under s. 20 of the Act. The landlords went up in appeal, which was dismissed in January, 1955. The appellate court held that the Company was entitled to recover possession under s. 12 but did not decide the case put forward by the Company under s. 20. Thereupon there was a second appeal to the Board of Revenue which was dismissed in January, 1956. The Board also decided the appeal on the basis of s. 12 and did not consider the case as put forward under s. 20. The landlords then came to this Court and were granted special leave to appeal in May 1956; and that is how appeal No. 4 became pending in this Court.

These appeals were heard on November 18, 1959, and this Court remanded the matter and called for a finding from the Board whether the Company had acquired any rights under s. 20 of the Act. The finding has been submitted by the Board and is to the

1960

*The Upper Gan,
Sugar Mills L*
v.
*Khalil-ul-Rahman
- & Others*
Wanchoo J.

1960
 —
 The Upper Ganges
 Sugar Mills Ltd.
 v.
 Khalil-ul-Rahman
 & Others
 —
 Wanchoo J.

effect that the Company is entitled to the benefit of s. 20 of the Act and has acquired Adhivasi rights thereunder.

It is conceded by learned counsel for the landlords that if appeal No. 4 fails and the right of the Company either under s. 12 or under s. 20 is upheld, it would not be necessary to go into appeal No. 196. On this view the Company would have acquired a new right under the Act, which would not be affected by the decision in appeal No. 196, even if it goes against the Company. We shall therefore first deal with appeal No. 4.

Taking the case of the Company under s. 20 first, we have to see whether the Company has acquired Adhivasi rights thereunder. The relevant part of s. 20 for our purposes is as follows :—

“ Every person who—

(a)
 (b) was recorded as occupant,—

(i) of any land (other than grove land or land to which s. 16 applies) in the *Khasra* or *khatauni* of 1356 F, prepared under ss. 28 and 33 respectively of the U. P. Land Revenue Act, 1901, or who was on the date immediately preceding the date of vesting entitled to regain possession thereof under cl. (c) of sub-s. (1) of s. 27 of the United Provinces Tenancy (Amendment) Act, 1947, or

(ii)
 shall unless he has become a *bhumidar* of the land under sub-s. (2) of s. 18 or an *asami* under cl. (h) of s. 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 232 of the Act gives right to an Adhivasi to whom cl. (b) of s. 20 applies to apply within thirty months from the date of vesting to the Assistant Collector in-charge of the Sub-Division for putting him in possession of the land of which he is the Adhivasi.

The question therefore that arises is whether the Company was recorded as occupant of the land in dispute which is undoubtedly not grove land or land

to which s. 16 applies. The word 'occupant' used in this part of the Act is not a term of art and has not been defined anywhere in the Act or in the U. P. Tenancy Act or in the Land Revenue Act. It must therefore be given its ordinary dictionary meaning which is "a person in occupation". In order therefore that the Company can take the benefit of s. 20 it should have been recorded in occupation of the land in dispute in the year 1356 F. The only limitation that has been placed by judicial decisions on this meaning of the word "occupant" is that the person should be in occupation in his own right and not on behalf of someone else. (See *Swami Prasad and another v. Board of Revenue, U. P.* (1)). So long therefore as a person has been in occupation in the relevant year in his own right (and not on behalf of someone else) he will be entitled to the rights conferred under s. 20 of the Act. Learned counsel for the landlords however contends that the Company was not in possession in its own right and his argument in this connection is two-fold. Firstly, it is submitted that the Company was ordered to be ejected on November 3, 1948, which was in 1356 F. Thereafter it remained in possession because of the stay orders passed by the appellate courts to which it went in appeal successively. Therefore even though the Company was in occupation throughout 1356 F its possession after November 3, 1948 was not on its own behalf but on behalf of the Court. Secondly, it is urged that as the Company was recorded as a *thekadar* in 1356 F, its possession was not on its own behalf but on behalf of the landlords, whose *thekadar* it was.

We are of opinion that there is no force in either of these contentions. So far as the first contention is concerned, all that had happened after November 3, 1948, is that the Company got stay orders from the appellate courts and remained in possession as before till July 1950, when its second appeal before the Board of Revenue was finally dismissed. It cannot, however, be said simply because there were stay orders as a result of which the Company continued to

(1) 1960 A.L.J. 241.

1960

*The Upper Ganges
Sugar Mills Ltd.*

v.
*Khalil-ul-Rahman
& Others*

Wanchoo J.

1960

The Upper Ganges
Sugar Mills Ltd.

v.

Khalid-ul-Rahman
& Others

Wanchoo J.

remain in possession that it was in possession on behalf of the court. In such circumstances the possession of the Company, though it continued because of the stay orders, cannot be held to be on behalf of the court; and it must be in occupation in the right asserted by it, even though if it had not obtained the stay orders it would not have remained in possession. Learned counsel for the landlords in this connection relied on *Parshotam Das v. Prem Narain* (1). That case, however, is distinguishable because in that case a receiver had been appointed and the person recorded in occupation of the land was held to be the agent of the receiver. Reliance was also placed on a decision of the Board of Revenue in *Birjlal v. Murli Pd.* (2), where it was held that where a person is recorded as occupant in 1356 F, because of possession acquired on the basis of a stay order issued by a court, his possession will be deemed to be on behalf of the court and will therefore not qualify him for acquisition of the rights of an Adhivasi under s. 20. The facts in that case were somewhat different inasmuch as there was redelivery of possession and that is how the person to whom possession was redelivered was recorded in the revenue records in 1356 F as occupant. But if that case means to lay down that a person who remains in possession because a stay order has been passed by an appellate court must be deemed to be in possession on behalf of the court, it is incorrect. In this case the Company was in possession from before November 3, 1948, and remained in possession thereafter because certain stay orders were passed by the appellate courts. In the circumstances it must be held to have remained in possession in the same right in which it was in possession before November 3, 1948, and its possession thereafter cannot be said to be on behalf of the court.

The next argument on behalf of the landlords is that as the Company was recorded as a *thekadar* in 1356 F in the revenue records it must be held to have remained in possession on behalf of the landlords whose *thekadar* it was. In this connection reliance

(1) A.I.R. 1956 All. 665.

(2) [1954] R.D. 175.

was placed on *Lala Nanak Chand v. The Board of Revenue, U. P.* ⁽¹⁾, where it was held that what s. 20(b) requires is that there should be an entry of a person's name as an occupant in the *khasra* or *khatauni* of 1356 F; but it is not necessary that the person recorded as an occupant should also have been in actual possession. It is not necessary to consider the correctness of that decision in this case for it is not in dispute here that the Company was not only recorded in possession but was in actual possession in 1356 F. What is contended on behalf of the landlords is that as the Company was recorded as a *thekadar* in 1356 F it is not open to the court to go behind that entry and therefore it must be held that the company was in occupation as a *thekadar* in that year and thus was in occupation on behalf of the landlords and not on its own behalf. In this connection we may point out that the Company claimed that it was entitled to possession not only as an Adhivasi under s. 20 but also as a hereditary tenant under s. 12, which provides that a *thekadar* under certain circumstances becomes a hereditary tenant. To meet the Company's case under s. 12 the landlords contended that the Company was not a *thekadar* in 1356 F because the *theka* expired on June 30, 1948. The landlords were thus taking contradictory positions for the purposes of ss. 12 and 20; in opposition to the claim under s. 12 they said that the Company was not their *thekadar* in 1356 F while in opposition to the claim under s. 20, they said that the Company was not in possession on its own behalf but as their *thekadar*. It is argued on their behalf that for the purpose of s. 20 all that has to be looked into is the entry and nothing more and they rely on *Lala Nanak Chand's case* ⁽¹⁾. That case, however, was concerned only with the question whether a person recorded in the revenue records had also to prove actual possession and it was held therein that it was enough that a person should be recorded in the revenue records as an occupant and it was not necessary that he should also be actually in possession in the relevant year. We need say nothing about the

1960

 The Upper Ganges
 Sugar Mills Ltd.

v.

 Khalil-ul-Rahman
 & Others

 Wanchoo J.

(1) 1955 A.L.J. 408.

1960

—
*The Upper Ganges
 Sugar Mills Ltd.*

v.

*Khalil-ul-Rahman
 & Others*

—

Wanchoo J.

correctness of that decision in the present case. But that case was not concerned with the nature of possession, namely, whether it was on a person's own behalf or on behalf of someone else. The words in s. 20(b)(i) only speak of a person being recorded as occupant and there is nothing in that section as to the nature of the occupancy, namely whether it is on behalf of the person recorded or on behalf of somebody else. That is a matter which in our opinion must always be decided on other evidence for the entry does not contemplate recording the nature of the possession in the sense of its being on behalf of the person recorded or on someone-else's behalf. We have already observed that the expression "occupant" is not defined in the Act and it is clear that neither the Act nor the Rules made under it prescribe the form in which the entry specified by s. 20(b) should be made. Besides the reference to the *theka* was bound to be continued even after its termination so long as the Company remained in possession and the *lekhpal* received no order to change it. Therefore the contention on behalf of the landlords that we cannot look beyond the entry of the Company as a *thekadar* and must hold on that basis that it was in possession on behalf of the landlords, is incorrect. On the landlords' own showing in this case, the Company was not in possession as a *thekadar* as the *theka* had expired before 1356 F. Under the circumstances we are of opinion that the company was recorded as an occupant in 1356 F and that the nature of that occupation was on its own behalf and was not either on behalf of the court or on behalf of the landlords. Therefore the Company would be entitled to Adhivasi rights. On this view it is not necessary to decide whether the Company is also entitled to the benefit of s. 12. Appeal No. 4 therefore fails.

As appeal No. 4 fails, it is not necessary to decide appeal No. 196 and that appeal must under the circumstances be dismissed as infructuous.

In the circumstances of these two appeals we are of opinion that parties should bear their own costs of the two appeals in this Court. We therefore dismiss the appeals and pass no order as to costs.

DAS GUPTA J.—I have had the advantage of reading the judgment prepared by my brother Mr. Justice Wanchoo; but I regret my inability to agree that the Upper Ganges Sugar Mills Ltd., the respondent in Civil Appeal No. 4 of 1959 is entitled to the benefit of s. 20(b) of the U. P. Zamindari Abolition Act.

1960
 ———
*The Upper Ganges
 Sugar Mills Ltd.*
 v.
*Khalil-ul-Rahman
 & Others*
 ———
Das Gupta J.

The facts have been fully stated by Mr. Justice Wanchoo and it is unnecessary to repeat them.

It is common ground that if the Company, the Upper Ganges Sugar Mills Ltd., can get the benefit of s. 20(b) or s. 12 of the U. P. Zamindari Abolition Act the Civil Appeal No. 4 of 1959 must be dismissed and consequently Civil Appeal No. 196 of 1952 which is by the Company against the decree of ejection made in favour of the superior landlords must be dismissed as infructuous. The relevant portion of s. 20 is in these words:—

“ Every person who

(a)

(b) was recorded as occupant

(i) of any land (other than grove land or land to which s. 16 applies) in the Khasra or Khatauni of 1356 F, prepared under ss. 28 and 33 respectively of the U. P. Land Revenue Act, 1901.....

(ii)

shall unless he has become *Bhumidhar* of the land under sub-s. (2) of s. 18 or an *asami* under cl. (h) of s. 21 be called *Adhivasi* of the land and shall, subject to the provision of this Act, be entitled to take or retain possession thereof.”

The Khasra and Khatauni have been produced before us and they show that the Upper Ganges Sugar Mills Ltd., has been recorded as in possession of the land in dispute. They also show however that the possession was as a “Thekadar”. What we have to ask ourselves is whether these entries in the Khasra or Khatauni justify the conclusion that the Company has been recorded as an “occupant” within the meaning of s. 20(b).

The word “occupant” has not been defined in the Act and it has to be properly interpreted on a consideration of the entire scheme and the purpose of the

1960
 ———
*The Upper Ganges
 Sugar Mills Ltd.*
 v.
*Khalil-ul-Rahman
 & Others*
 ———
Das Gupta J.

legislation. It was suggested on behalf of the landlords (Appellants in C. A. No. 196 of 1952) that "occupant" connotes a person who is in possession in his own right and not on behalf of someone else. This was the view taken by the Allahabad High Court in *Swami Prasad v. Board of Revenue, U.P.* (1). The correctness of this view has not been challenged before us.

Bearing in mind this connotation of the word "occupant" we have to examine the entries in the Khasra and Khatauni to see whether they amount to the recording of the Company as an "occupant". It has to be noticed that this benefit under s. 20(b) is under the provisions of the section available to those who are "recorded" as "occupants" and not to all those who are "occupants". If the fact of being occupants was what was necessary, and reference to the records was to be made only in supporting or resisting any claim on that basis, we could certainly look beyond the record to decide the question. The Legislature has thought fit to correlate the benefit to the record as an occupant and not merely to the fact of being an occupant. The Khasra or Khatauni as prepared in the Uttar Pradesh does not in any case record any person as an "occupant"; that is why we have to examine the entries in the record to show whether they record the facts which are necessary to satisfy the connotation of the word "occupant". Looking at the entries before us I find that they record the Upper Ganges Sugar Mills' possession as a Thekadar. Chapter XI of the U. P. Tenancy Act (U. P. XVII of 1939) deals with a Thekadar. It seems reasonable to hold that in this Chapter, Thekadar is equated to a farmer of rents, and Thekadar's possession ordinarily is contemplated to be possession on behalf of his lessor. The record in the Khasra of possession "as a Thekadar" appears to me therefore to amount to record of "possession on behalf of the Thekadar's lessor". On the accepted interpretation of the word "occupant" in s. 20 that it means a person in possession in his own right and not on

(1) 1960 A.L.J. 241

behalf of somebody else, these entries in my opinion must be held to record the Upper Ganges Sugar Mills Ltd., as an "occupant". The fact that the Theka had come to an end, and yet, the Khasra continued to record the possession as "Thekadar" is, I apprehend, wholly beside the question.

I cannot see how we can look beyond the actual record to ascertain whether the claimant has been "recorded as occupant"; nor can I find any way of holding that possession as "Thekadar" in the record, may or may not mean "possession on behalf of the lessor". Nor do I think it possible to say that "occupant" should be interpreted to include even one in possession on behalf of another person. I therefore find it difficult to agree that the Upper Ganges Sugar Mills is entitled to the benefit of s. 20(b) of the U. P. Zamindari Abolition Act.

As my learned brethren have taken the view that the Company is so entitled to the benefit, full arguments have not been heard on the question whether the Company is entitled to the benefit of s. 12 and no arguments were heard in the other appeal, viz., Civil Appeal No. 196/52. I am therefore unable to come to any conclusion as to how these appeals should be disposed of.

ORDER OF COURT. In view of the majority Judgment the appeals are dismissed. No order as to costs.

Appeals dismissed.

1960

—
The Upper Ganges
Sugar Mills Ltd.

v.

Khalil-ul-Rahman
& Others

—
Das Gupta J.