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PATIRAJI

v.

MAMTA & OTHERS

March 15, 1973

[J. M. SHELAT AND Y. V. CHANDRACHUD, JJ.]

B

U.P. Zamindari Abolition and Land Reforms Act, 1950, s. 20(b)(i)—Adivasi rights under—Who is entitled to.

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The appellant filed a suit under s. 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950, on the basis that her name was recorded as an occupant in the Khasra of 1356 Fasli, that she had therefore become an Adivasi, and was consequently entitled to possession of the lands from which she was unlawfully dispossessed by the respondents. The suit was dismissed but was allowed in appeal by the Additional Commissioner. A further appeal by the respondents to the Board of Revenue having been dismissed, they filed a writ petition in the High Court which was allowed on the ground that the entry in favour of the appellant was for a part of the year only and that therefore she was not entitled to the Adivasi rights.

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Dismissing the appeal to this Court,

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HELD : Under the section the Adivasi rights can be claimed by those persons only who are recorded as occupants for the whole of the Fasli year 1356. The rights conferred by the section are available also to trespassers. It could not have been the policy of the Act that everyone of those fleeting trespassers who might be found in occupation at the time of the tri-annual inspections, should be given recognition and be made eligible for the acquisition of Adivasi rights. It is neither logic nor good sense that the last entry-holder should be so recognised, because, such a construction would only encourage greater lawlessness amongst trespassers, every one of whom will make a frantic attempt to be last in the queue. Therefore, there is no justification for construing the provision with greater liberality than the language warrants. Special rights having been conferred by the Act they ought to be subject to the special limitations imposed by the Act. [689C-D, A; 690A-B]

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The Fasli year 1356 commenced on July 1, 1943 and ended on June 30, 1949; and the appellant's name was entered as an occupant only from February 24, 1949. As the entry does not show that the appellant was in occupation of the land throughout the year she was not entitled to the Adivasi rights under the section. [690E]

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Shyam Sunar Lal v. Mangali and Ors., [1963] A.L.J. 286, *Ram Chander and Anr. v. Chootu* 1957 A.L.J. 24 (Revenue) and *Girdhari v. Raghbir Singh etc.* 1958, A.L.J. 183 (Revenue) approved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1324 of 1967.

Appeal by special leave from the judgment and order dated October 31, 1966 of the Allahabad High Court in Special Appeal H No. 344 of 1966.

Jagdish Swarup and *R. K. Bhatt*, for the appellant.

C. B. Agarwala and *C. P. Lal*, for the respondents.

The Judgment of the Court was delivered by

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CHANDRACHUD, J.—The question which arises for consideration in this appeal is whether the appellant Patiraji is entitled to the “Adhivasi” rights under section 20(b)(i) of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (“the Act”).

One Ram Adhar and the respondents were co-tenants of certain lands situated at Bibiganj, District Sultanpur. On the death of Ram Adhar on February 24, 1949 the appellant took proceedings under the U.P. Tenancy Act, 1939 for a declaration that she was the widow of Ram Adhar and as such, had become a co-tenant along with the respondents. The appellant succeeded before the Assistant Collector but in appeal, the Additional Commissioner and then the Board of Revenue took a contrary view, holding that the appellant was not the widow of Ram Adhar. The judgment of the Board of Revenue is dated July 1, 1954.

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In the meanwhile, the Act had come into force on July 1, 1952. The appellant then brought the present suit, treated as one under section 20(b) read with section 232 of the Act. The case of the appellant is that her name was recorded as an occupant in the Khasra of 1356F, that she has therefore become an Adhivasi under section 20(b)(i) and is consequently entitled to possession of the lands from which she was unlawfully dispossessed by the respondents. The trial court dismissed the suit but the Additional Commissioner allowed Patiraji’s appeal and decreed her suit. Respondents carried an appeal against the decision of the Additional Commissioner to the Board of Revenue but that appeal was dismissed. The respondents then filed a writ petition in the High Court of Allahabad, which was allowed by a learned single Judge of that court. He held that the entry in favour of the appellant appeared in the Khasra of 1356F for a part of the year only and therefore she was not entitled to the Adhivasi rights. Special Appeal No. 344 of 1956 against the judgment was dismissed by a Division Bench *in limine* on October 31, 1956. This is an appeal by special leave against that decision.

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The sole foundation of the appellant’s claim is an entry which appears in the Khasra of 1356F, which is to the following effects—

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“Ram Adhar Pandey Bakasht Waris Baqa biz Smt. Patiraji Motwaffi Bewa Ram Adhar Panedy Tarikh 24-2-49 Se”, that is to say “Ram Adhar Pande in cultivation heir in possession Smt. Patiraji widow of deceased Ram Adhar Pandey from 24-2-49”.

The importance of this entry consists in the special benefit which such entries confer under section 20(b)(1) of the Act :

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“20. Every person who

- A (b) was recorded as occupant
 (i) of any land.....in the Khasra or
 Khatauni of 1356F..... shall.....
 be called Adhivasi of the land and shall,
 subject to the provisions of this Act, be
 entitled to take or retain possession thereof.”

B None of the four explanations to section 20 is relevant for the present purpose.

C Looking at the provision contained in section 20(b)(i), it seems to us plain that the Adhivasi rights can be claimed by those persons only who are recorded as occupants for the whole of the Fasli year 1356. It is important to remember that the rights conferred by section 20(b)(i) are available even and mostly to trespassers. Clearly therefore, there is, in the first instance, no justification for construing the provision with greater liberality than the language warrants. Special rights conferred by the Act ought to be subject to the special limitations imposed by the Act.

D Apart from this aspect, any other view of section 20(b)(i) would make it unworkable in practice and would set the pace for lawlessness amongst trespassers. If different persons are in occupation of a land during different parts of the year, whom shall the court recognise as an Adhivasi and by what test shall the court pick and choose? Under the Uttar Pradesh Land Records Manual, the Lekhpal, has to make three field-to-field inspections of every village in his *halka*, beginning respectively on August 15th, January 15th and April 15th of every year. (Rule A-55). On the basis of these inspections, the Lekhpal has to make entries in the 'Khasra', that is to say in the field-book, in form No. P-A-3 (Rule A-60). If a person other than a tenure-holder as classified in Part I or Part II of the Khatauni, is found to be in actual occupation, his name is to be recorded in the 'Remarks' column (column No. 21) as "baqabza so and so" (Rule A-71, para 3). It may so happen, and decided cases show that it does so happen, that different persons are found to be in possession of a land at the time of the tri-annual inspections. The Lekhpal has to enter their names as occupants, may be in the remarks column, but the picture emerging at the close of the year will reveal that different persons were in occupation of the land—some one during the Kharif season, some one during the Rabi season and some one probably taking charge, on the sly, of a *bona vacantia*. When the true owner is away, the trespassers will play and the law which governs them is might is right. It cannot be the policy of the Act that everyone of these fleeting trespassers must find recognition and be made eligible for the acquisition of Adhivasi rights. None of them, in our opinion, can qualify for these valuable rights. It was urged

that the last entry-holder should be recognised as an occupant to the exclusion of others but there is neither logic nor good sense in such a course. The last holder may have been in possession for a fractional part of the year and such possession may adventitiously coincide with the April visit of the Lekhpal. Besides, such a construction, as said already, will only encourage greater lawlessness amongst trespassers. Every one of them will make a frantic attempt to be last in the queue.

Rightly therefore, the High Court of Allahabad and the Board of Revenue, U.P. have been uniformly taking the view that the right conferred by section 20(b)(i) can be availed of by those persons only who are recorded as occupants for the entire Fasli year 1356 and not by those who are recorded as occupants for a part of the year. (See *Shyam Sunar Lal v. Mangali and Ors.*⁽¹⁾ *Ram Chander and Anr. v. Chhotu;*⁽²⁾ *Girdhari v. Raghubir Singh etc.*⁽³⁾) It would seem that the Board of Revenue struck a discordant note in the instant case only, but it is necessary to point out that the Board rested its decision on the circumstance that the appellant was the "sole heir" of Ram Adhar. In making that assumption the Board was in error, because in the earlier proceedings it was held that the appellant was not the widow of Ram Adhar and she traced on other line of heirship.

It is clear from the entry on which the appellant relies that her name was entered as an occupant as from February 24, 1949. The Fasli year 1356 concerned on July 1, 1948 and ended on June 30, 1949. As the entry does not show that the appellant was in occupation of the land throughout the year, she is not entitled to the Adhivasi rights under section 20(b)(i) of the Act.

Some attempt was made to contend that the appellant was shown as a joint occupant along with the Adhar during the life time of the latter and therefore she must be held to have been in possession for the whole year. An uncertified copy of the entry to which counsel drew our attention does not bear out this submission and in fact such a contention was never raised at any earlier stage.

In the result we confirm the judgment of the High Court and dismiss the appeal with costs.

V.P.S.

Appeal dismissed.

(1) 1963 A.L.J. 286.

(2) 1957 A.L.J. 24 (Revenue).

(3) 1958 A.L.J. 183 (Revenue).