

BRIGHU NATH SAHAY SINGH AND ORS.

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v.

MD. KHALILUR RAHMAN AND ORS.

SEPTEMBER 4, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ]

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Bihar Land Reforms Act, 1950:

Ss.2(k), 3, 4, and 6—Agricultural lands—Khas Possession—Suit by intermediaries for—Held, defendants being in self-cultivation, intermediaries, cannot claim any right as they were not in khas possession of lands which vested in State under s.4.

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The appellants, the erstwhile intermediaries, filed a suit for possession over the land in dispute claiming themselves to be the proprietors thereof. The trial court decreed the suit. The first appellate court affirmed the decree, but the High Court, in the second appeal, dismissed the claim of the plaintiffs holding that the Bihar Land Reforms Act, 1950 having come into force on 25.9.1950, the plaintiffs had no title to the property and consequently they could not recover possession from the defendants. Aggrieved, the plaintiffs filed the appeal by special leave.

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Dismissing the appeal, this Court

HELD : 1.1. Sections 2(k), 4 and 6 of the Bihar Land Reforms Act, 1950 clearly envisage that the intermediary must, as on the date of vesting, be in possession of the land used for agricultural purpose or horticulture purpose as a tenure holder by cultivating such land or carrying on horticulture operations thereon by himself with his own stock or by his own servants or by hired labour or with hired stock. [318-B]

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1.2. In view of the findings recorded by the courts below that the respondents have been in self-cultivation of the land, the appellants cannot claim any rights as they were not in *khas* possession of the lands vested in the State under s.4 of the Act. Therefore, the appellants cannot claim to be in *khas* possession of the lands. [318-C]

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1.3. In view of the notification issued by the State Government acquiring the lands in question by publication of the notification under s.4

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- A in the Gazette, the said lands have been vested in the State free from all encumbrances but subject to the provision of the Act from the date of the notification viz. January 26, 1995. The rights of the appellants, if any, on the date of the vesting, i.e. January 26, 1995, shall cease in them and shall stand vested in the State free from all encumbrances subject to the rights, if any, held by the contesting respondents that would be decided by the Government in an appropriate form. [317-B; 318-D]
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Labanya Bala v. State of Bihar, Patna Secretariat, Patna & Anr., [1994] Supp. 3 SCC 725, relied on.

- C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3689 of 1984.

From the Judgment and Order dated 7.11.83 of the Patna High Court in Appeal from Appellate Decree No. 132 of 1973.

- D Tapas Ray and D.P. Mukherjee for the Appellants.

M. Quamaruddin, Feroze Ahmed, Ms. M. Quamaruddin and Ms. R. Begum for the Respondent Nos. 1-6, 9 & 11.

- E B.B. Singh for State.

The following Order of the Court was delivered :

- F This appeal by special leave arise from the judgment and decree dated November 7, 1983 of the Patna High Court made in A.A.D. No.132 of 1973. The appellants claimed themselves to be the proprietors of the land of 4 Bighas, 15 Kathas 10 Dhurs of an old Tauzi No. 1298 (New Tauzi No. 8655) situate in Saraunja village in District Begusarai in Bihar. Their plea was that they had title to and were in possession of the said land and that the respondents have no right to the possession of the said land. The Trial Court decreed the suit for possession holding that they had the title.
- G On appeal, it was confirmed but in the second appeal, the High Court reversed the same holding that after the Bihar Land Reforms Act, 1950 (for short, 'the Act') had come into force on September 25, 1950, the appellants had no title to the property and, consequently, they cannot recover possession from the respondents. Thus, this appeal by special
- H leave.

Pursuant to the notice issued by this Court on December 8, 1994, Shri B.B. Singh, learned counsel for the State, has placed before us the notification issued by the State Government acquiring the lands in question by publications of the notification under Section 4 of the Act in the Gazette. Consequently, it is clear that the lands in question have been vested in the state free from all encumbrances but subject to the provision of the Act from the date of the notification, viz., January 26, 1955.

The question thus arises whether the appellants can claim title to the property and recover possession thereof from the contesting respondents. The effect of the vesting under the Act was considered by this Court in *Labanya Bala (Smt.) v. State of Bihar Patna Secretariat, Patna and Anr.*, [1994] Supp. 3 SCC 725. It was held that by operation of Section 4 such estates or tenures including the interests of the proprietor in such an estate or tenure and his interests in trees forests, fisheries etc. and all other sairati interests as also his interest in all sub-soil, rights including any rights in mines and minerals etc. other than the interests of the raiyats or under-raiyats shall with effect from the date of vesting, vest absolutely in the state free from all encumbrances and such proprietor or tenure-holder shall cease to have any interest in such estate or tenure other than the interests expressly saved by or under the provisions of Section 6 of the Act which provides that "on and from the date of vesting, all lands used for agriculture or horticulture purposes which were in khas possession of an intermediary on the date of such vesting, including land used for agriculture and held in direct possession of a temporary lessee of an estate or tenure and cultivated by himself with his own stock or by his own servants or by hired labour or with hired stock.... shall, subject to the provisions of Sections 7-A and 7-B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession thereof and hold them a raiyat under the State having occupancy rights in respect of such lands subject to the payment of such fair and equitable rent as may be determined by the Collector in the prescribed manner."

Khas possession has been defined under Section 2(k) of the Act which reads as under :

"Khas possession" with reference to the possession of a proprietor of any land used for agricultural or horticultural purposes means the possession of such proprietor or tenure holder by cultivating

- A such lands or carrying on horticultural operations thereon himself with his own stock or by his own servants by hired labour or with hired stock."

- B A reading of Section 2(k) with Sections 4 and 6 of the Act, clearly envisages that the intermediary must, as on the date of vesting, be in possession of the land used for agricultural purpose or horticulture purpose as a tenure holder by cultivating such land or carrying on horticulture operations thereon by himself with his own stock or by his own servants or by hired labour or with hired stock.

- C In view of the findings recorded by the court below that the respondents have been in self cultivation of the land, the appellants cannot claim any rights as they were not in khas possession of the lands vested in the State under s.4 of the Act. Therefore, the appellants cannot claim to be in Khas possession of the lands in question. As a consequence, they cannot claim any rights in the land. The rights of the appellants, if any, on the date of the vesting, i.e., January 26, 1955, shall cease in them and shall stand vested in the State free from all encumbrances subject to the rights, if any, held by the contesting respondents that would be decided by the Government in an appropriate form.
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The appeal is accordingly dismissed but without costs.

R.P.

Appeal dismissed.