

SHEO NAND AND ORS.

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v.

THE DEPUTY DIRECTOR OF CONSOLIDATION
ALLAHABAD AND ORS.

FEBRUARY 3, 2000

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[S. SAGHIR AHMAD AND Y.K. SABHARWAL, JJ.]

U.P. Consolidation of Holdings Act, 1953: Sections 9, 11-C (As introduced by Act XXXV of 1974).

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U.P. Land Records Manual.

Escheat—Land—Recorded tenure-holder—Civil death of—No heirs of recorded tenure—Holder—Claim by certain persons on the basis of Sirdari rights by adverse possession—Rejection by Deputy Director of Consolidation—Order by Deputy Director that in the absence of lawful claimant property would vest in the Gaon Sabha by escheat—Order of Deputy Director challenged before High Court—During pendency of proceedings before High Court Section 11-C introduced in the 1953 Act—New section provided for escheat even when no objection was filed by Government or gaon Sabha—Held, it is statutory duty of all authorities to give effect to the provisions of Section 11-C even if no claim was laid by Gaon Sabha—Even though the provisions of Section 11-C were not available to the Deputy Director at the time of the decision of the revision filed before him, his order that the property should be recorded in the name of the Gaon Sabha could be sustained on the basis of the provisions of Section 11-C at the time of hearing of the writ petition and the High Court was, therefore, justified in upholding his order.

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Section 48—Revision—Power of—Scope and extent—Powers conferred on Deputy Director to consider legality and correctness of proceedings—Held, powers have been considered in widest terms—Power should not be exercised to disturb the findings of fact unless they are perverse—Revenue records—Fictitious and forged entries—Deputy Director in such a case has full power to re-appraise and re-evaluate the evidence on record—In such a situation he can re-open the entire case and would be justified in looking into the legality of entire proceedings.

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A *Constitution of India, 1950 : Article 296 Seventh Schedule—Union List—Entry 32—State List—Entries 35 and 44.*

Escheat of lapse—Bona Vacantia—Real and personal estate—Want of heir or successor or rightful owner—Vesting of such a property in State Legislative History of Principle of Escheat discussed.

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A.G. of Ontario v. Mercer 8 Appeal Cases 767; St. Catherine's Co. v. The Queen 14 Appeal Cases 46; A.G. for Quebec v. A.G. for Canada, (1921) 1 A.C. 401; Rex v. Attorney-General of British Columbia, (1924) Appeal Cases 213 (PC), referred to.

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Bombay Dyeing & Manufacturing Co. Ltd. v. State of Bombay, [1958] SCR 1122 = AIR (1958) SC 328; Superintendent & Legal Remembrancer State of West Bengal v. Corporation of Calcutta, [1967] 2 SCR 170 = AIR (1967) SC 997, relied on.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1268 of 1992.

From the Judgment and Order dated 21.5.91 of the Allahabad High Court in C.M.W.P. No. 641 of 1972.

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T.N. Singh, B.M. Sharma, (C.L. Sahu) (NP), S.N. Singh, B.S. Jain, R.D. Rathore and Goodwill Indeever for the appearing parties.

The following Order of the Court was delivered by

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S. SAGHIR AHMAD, J. The appellants, who had claimed Sirdari rights by adverse possession over different plots in three different villages, were allowed that right only in respect of one plot situated in village Jethupur and their claim in respect of other plots was dismissed by the Deputy Director of Consolidation at the revisional stage under Section 48 of the U.P. Consolidation of Holdings act, 1953 (for short, 'the Act') on a

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consideration of oral & documentary evidence. The Deputy Director, who carefully scrutinised the Revenue Records, filed by the parties, found many of the entries forged and fictitious; may other entries were found to have been made in the Revenue Records without complying with the mandatory requirements set out in the U.P. Land Records Manual. He ultimately

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came to the conclusion that since the recorded tenure-holder, namely,

Jethu @ Madhoo (respondent No. 12) was not available, having died a civil death, his property would vest in the Gram Sabha. The Deputy Director had also negated the claim of Smt. Ganeshia, alleged sister of Jethu who had also laid claim over the plots belonging to Jethu on the ground that Jethu who was unmarried and consequently had no issue, was not heard of for more than 10 years and had died a civil death and, therefore, the plots which belonged to him would come down to her by inheritance and she was entitled to be recorded as Sirdar of all those plots. Her claim has been negated on account of the finding that she was not real sister of Jethu.

Learned counsel for the appellants has raised two contentions. The first contention is that the Gaon Sabha had not filed any objections under Section 9 of the Act and, therefore, it could not be given the plots which belonged to Jethu and the appellants having been in possession over the plots since long had acquired Sirdari rights by adverse possession and were, therefore, entitled to be recorded as such during consolidation proceedings. This claim was negated by the High Court on the basis of the provisions contained in Section 11-C which were introduced in the Act by U.P. Act No. XXXV of 1974. This Section provides as under :

"11-C. In the course of hearing of an objection under Section 9-A or an appeal under Section 11, or in proceedings under Section 48, the (Consolidation Officer, the Settlement Officer) (Consolidation) or the Director of Consolidation, as the case may be, may direct that any land which vests in the State Government of the Gaon Sabha or any other local body or authority may be recorded in its name, even though no objection, appeal or revision has been filed by such Government, Gaon Sabha, body or authority."

This Section casts a duty on the Consolidation Officer, the Settlement Officer (Consolidation) and the Deputy Director to record the property in the name of the Gaon Sabha or the State Government or any other local body or authority if, during the course of the consolidation proceedings, they notice that the property really belonged to any of them notwithstanding that they had not filed any objection, appeal or revision under the Act. This is the statutory duty of the authorities functioning under the Act and they cannot act otherwise. If, therefore, the Deputy Director of Consolidation, during the course of the hearing of revision, came to the conclusion

A that the claim of the appellants was not correct or that the property which originally belonged to Jethu could not be given to his sister, Smt. Ganeshia, who, as a matter of fact, was found to be not his sister, the property had to be recorded in the name of the Gaon Sabha in whom it would vest in the absence of any lawful claimant.

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It was next contended by the leaned counsel for the appellants that the Deputy Director had disposed of the revision prior to the introduction of Section 11-C in the principal Act and, therefore, the plots in question could not be recorded in the name of Gaon Sabha unless those plots were claimed by the Gaon Sabha to have vested in them and objections to that effect were filed under Section 9 of the Act. It is contended that the Deputy Director, in the absence of any statutory provision, was not justified in recording a finding that the property belonging to Jethu would vest in the Gaon Sabha. This contention is also without any substance.

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The Deputy Director of Consolidation on a consideration of the oral and documentary evidence on record had come to the conclusion that Jethu who was not heard of for more than 7 years and had consequently died a civil death, had not left any heir who could be record as tenureholders of those plots in his place. The property would, therefore, vest in the Gaon Sabha by *Escheat*. The decision of the Deputy Director was challenged before the High Court and during the pendency of the writ petition, the provisions of Section 11-C were introduced in the principal Act. Consequently, it was the duty of the High Court to give effect to those provisions given at the time of the final decision of the writ petition. As pointed out above, it is the statutory duty of all the authorities functioning under the Act to give effect to the provisions of Section 11-C of the Act and to record the property as having vested in the Gaon sabha even if no claim was laid by the Gaon Sabha nor was any petition filed by the Gaon Sabha under the Act. Even though the provisions of Section 11-C were not available to the Deputy Director at the time of the decision of the revision filed by the appellants before him, his order that the property should be recorded in the name of the Gaon Sabha could be sustained on the basis of the provisions of Section 11-C at the time of hearing of the writ petition and the High Court was, therefore, justified in upholding his order. There

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H is, thus, no error in the judgment of the High Court.

It was next contended that Section 11-C would apply to properties which were the properties of the Gaon Sabha from the very inception and over which the name of somebody else was recorded. It is contended that if during the course of the consolidation proceedings, it is noticed by the Consolidation Authorities that the property in question, which was recorded in the name of a tenure-holder, did, in fact, belong to the Gaon Sabha, the entry would be deleted and the property recorded in the name of the Gaon Sabha, notwithstanding that Gaon Sabha may not have filed any claim or objection in respect of that property. But where the property belongs to a tenure-holder and is sought to be given to the Gaon Sabha on the principle of *Escheat*, namely, where it is found by the Consolidation Authorities that the tenure-holder, who was dead, had not left any heir who could be recorded as tenure-holder in place of that person, the provisions of Section 11-C would not be applicable and in that situation the Gaon Sabha, who had not laid any claim over that property, would not be given the benefit of Section 11-C. The contention is not correct. Where on a determination of the rights of the claimants before the Consolidation Authorities it is found that none of the claimants could be held to be the tenure-holder of the property in question which, admittedly, belonged to a third person who was not heard of for more than 7 years and was, therefore, treated as having died a civil death or who, in fact, was dead without leaving any heir, the property would vest in the Gaon Sabha. This is the principle of *Escheat*.

"*Escheat*" literally means "to revert to the State". This event takes place in default of heirs or devisees. Under the old feudal system, if the person to whom the property was let out or who was in possession of that property, had died intestate or without leaving any heir, the property would revert to the landlord or Zamindar, but if there was no landlord or intermediary, the property would vest in the State or, during the British days, in the Crown (King). This principle was also judicially laid down in *A.G. of Ontario v. Mercer*, 8 Appeal Cases 767 as also in *St. Chatherine's Co. v. The Queen*, 14 Appeal Cases 45. This was followed and applied in *A.G. for Quebec v. A.G. for Canada*, (1921) 1 A.C. 401.

In *Rex v. Attorney-General of British Columbia*, (1924) Appeal Cases 213 (PC), it was observed as under :

"Except for the difference between a right to lands, the title to

A which is ultimately in the Crown, and a right to personality, which is complete in a private person if there be a private person entitled, the principle on which *bona vacantia* and escheat fall to Crown is the same, that is, that there being no private persons entitled, the Crown takes."

B We may point out that property vesting in the State by the principle of *Escheat* is not new and should not surprise the counsel for the appellants. Under the Act of 1853, made by the British Parliament (An Act to provide for the Government of India (1853), Statute 16 and 17 Victoria, C. 95, S. 27), it was specifically provided as under :

C "All real and personal estate within the said territories escheating or lapsing for want of an heir or successor and all property within the said territories devolving, as *bona vacantia* for want of a rightful owner, shall (as part of the revenues of India) belong to the East India Company in trust for Her Majesty for the service of the Government of India."

E The above provision thus dealt with two situations, namely, (i) where there was no heir or successor; and (ii) where there was even no owner of the property. The first of the two situations was described in terms of "*Escheat or lapse*" and the second in terms of "*bona vacantia*". This provision was retained in Section 54 of the Government of India Act, 1858. The successor Act, namely, the Government of India Act, 1915, provided in Section 20(3)(iii) that the revenues of India received for His Majesty would include all movable or immovable property in British India escheating or lapsing for want of an heir or successor, and all property in British India Devolving as *bona vacantia* for want of a rightful owner. Thus, the dichotomy between *Escheat* or lapse and *bona vacantia* was retained in this Act.

G A similar provision was contained in Section 174 of the Government of India Act, 1935, which provided *inter alia*, as under :

H "Subject as hereinafter provided any property in India accruing to His Majesty by escheat or lapse or as *bona vacantia* for want of a rightful owner shall, if it is property situate in a Province, vest in His Majesty."

Thus, in this Act also, it was provided that the property would vest by escheat or lapse or as *bona vacantia*. A

Coming now to the Constitution of India, we find a similar provision contained in Article 296 which provides as under :

"296. Subject as hereinafter provided, any property in the territory of India which, if this Constitution had not come into operation would have accrued to his Majesty or, as the case may be, to the Ruler of an Indian State by escheat or lapse, or as *bona vacantia* for want of a rightful owner, shall, if it is property situate in a State, vest in such State, and shall, in any other case, vest in the Union." B C

Legislative competence to enact legislation as to *Escheat* is relatable to the Entries 35 & 44 in the State List and Entry 32 in the Union List set out in the Seventh Schedule to the Constitution.

This Court in *Bombay Dyeing & Manufacturing Co. Ltd. v. State of Bombay*, [1958] SCR 1122 = AIR (1958) SC 328, as also in *Superintendent & Legal Remembrancer State of West Bengal v. Corporation of Calcutta*, [1967] 2 SCR 170 = AIR (1967) SC 997, has already upheld the property coming to State by escheat. D

Surprisingly, Jethu, who was claimed by the appellants to be dead as he was not heard of for more than seven years, and his so-called sister, Smt. Ganeshia also contended that on account of his absence for more than seven years, Jethu should be treated to be dead, put in an appearance before the High Court and filed an application upon which the High Court observed in its judgment that since the claim put forward by Jethu depended upon questions of fact, he may approach the Consolidation Authorities. In the present appeal also, a counter affidavit has been filed on behalf of Jethu who has denied the case set up by the appellants and Smt. Ganeshia, who is said, in the counter affidavit, to be the real sister of Jethu's father and not of Jethu himself. E F G

If Jethu approaches the Consolidation Authorities, his claim would be investigated and appropriate orders would be passed. In case it is found that the claims set up by the appellants and Smt. Ganeshia were false and Jethu was alive whose property could not be recorded in the name of Gaon Sabha, appropriate action would be taken against the appellants and Smt. H

- A Ganeshia for having set up the claim that Jethu, on account of his absence for more than seven years, had died a civil death.

- B It was next contended by the learned counsel for the appellants that the appellants had filed a revision only in respect of one village before the Deputy Director under Section 48 of the Act and, therefore, the Deputy Director ought to have confined himself only to the question raised in that revision relating to that specific village. It is contended that the Deputy Director reopened the entire case in respect of all the three villages and adjudicated upon the rights of the appellants in respect of land situate in all the three villages. This, it is contended, was beyond the scope of Section 48 of the Act and consequently the judgment passed by the Deputy Director should be remanded for fresh hearing. We are not prepared to accept this contention.

Section 48 of the Act provides as under :

- D "48. Revision and reference - (1) The Director of Consolidation may call for and examine the record of any case decided or proceedings taken by any subordinate authority for the purpose of satisfying himself as to the regularity of the proceedings; or as to the correctness, legality or propriety of any order other than interlocutory order passed by such authority in the case of proceedings and may, after allowing the parties concerned an opportunity of being heard, make such order in the case of proceedings as he thinks fit.

- E (2) Powers under sub-section (1) may be exercised by the Director of Consolidation also on a reference under sub-section (3).

- F (3). Any authority subordinate to the Director of Consolidation may, after, allowing the parties concerned an opportunity of being heard, refer the record of any case or proceedings to the Director of Consolidation for action under sub-section (1).

- G Explanation. - (1) For the purposes of this section, Settlement Officers, (Consolidation), Consolidation Officers, Assistant Consolidation Officers, Consolidator and Consolidation Lekhpals shall be subordinate to the Director of Consolidation.

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Explanation. - (2) For the purposes of this section the expression 'interlocutory order' in relation to a case or proceedings, means such order deciding any matter arising in such case or proceeding or collateral thereto as does not have the effect of finally disposing of such case or proceeding."

The Section gives very wide powers to the Deputy Director. It enables him either *suo motu* on his own motion or on the application of any person to consider the propriety, legality, regularity and correctness of all the proceedings held under the Act and to pass appropriate orders. These powers have been conferred on the Deputy Director in the widest terms so that the claims of the parties under the Act may be effectively adjudicated upon and determined so as to confer finality to the rights of the parties and the Revenue Records may be prepared accordingly.

Normally, the Deputy Director, in exercise of his powers, is not expected to disturb the findings of fact recorded concurrently by the Consolidation Officer and the Settlement Officer (Consolidation), but where the findings are perverse, in the sense that they are not supported by the evidence brought on record by the parties or that they are against the weight of evidence, it would be the duty of the Deputy Director to scrutinise the whole case again so as to determine the correctness, legality or propriety of the orders passed by the authorities subordinate to him. In a case, like the present, where the entries in the Revenue record are fictitious or forged or they were recorded in contravention of the statutory provisions contained in the U.P. Land Records Manual or other allied statutory provisions, the Deputy Director would have full power under Section 48 to re-appraise or re-evaluate the evidence on record so as to finally determine the rights of the parties by excluding forged and fictitious revenue entries or entries not made in accordance with law.

If, therefore, during the course of the hearing of the revision filed by the appellant under Section 48 of the Act, the Deputy Director reopened the whole case and scrutinised the claim of the appellants in respect of two other villages, it could not be said that the Deputy Director exceeded his jurisdiction in any manner. It will be noticed that while scrutinising the evidence on record, the Deputy Director had noticed that the entries were fictitious and in recording some of the entries in the revenue record in favour of the appellants, statutory provisions including those contained in

A U.P. Land Records Manual were not followed. In that situation, the Deputy Director was wholly justified in looking into the legality of the entire proceedings and disposing of the revision in the manner in which he has done.

B For the reason stated above, we find no merit in this appeal which is dismissed but without any order as to costs.

T.N.A.

Appeal dismissed.