

DEO NANDAN AND ANR.

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v.

RAM SARAN AND ORS.

MARCH 9, 2000

[B.N. KIRPAL AND N. SANTOSH HEGDE, JJ.]

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Land Laws :

U.P. Zamindari Abolition and Land Reforms Act, 1950—Sections 134 and 137—Sirdar of Land applied for bhumidari certificate and executed sale deed on same day—Bhumidari certificate granted after death of applicant—Widow re-sold the land—Trial Court held first sale deed invalid—Lower Appellate Court allowed the appeal holding that certificate would relate back to date of application—High Court reversed the order and held first sale deed invalid—On appeal, Held, rights stand acquired when revenue contemplated under the Section is deposited—Issue of certificate immaterial as declaration takes effect from date of deposit of revenue since doctrine of relation back incorporated in Amendment Act 21 of 1962.

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The sirdar of the land in question applied to be declared a bhumidar under Section 134 of the U.P. Zamindari Abolition and Land Reforms Act 1950. A sale deed was executed on the same day after making the application. He died before the grant of bhumidari certificate under Section 137 of the Act. His widow sold the land to the respondent before the bhumidari certificate was issued with effect from the date of application.

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Trial court declared the first sale deed invalid as the seller had not been declared bhumidar at that time. The lower appellate court held the first sale deed valid as the certificate granted would relate back to the date of application. High Court in second appeal held the first sale deed to be invalid as no right had been acquired by the seller on the date of application. Hence this appeal.

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Allowing the appeal, this Court

HELD : 1. Section 134 of the U.P. Zamindari Abolition and Land Reforms Act clearly specifies the date with effect from which the rights would stand acquired, which is when the amount contemplated by it is deposited. This clearly obviates the uncertainty of the point of time when

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A the title is transferred by fixing the date as being the one when the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited. [213-F-H]

B 2. Before amendment in 1962, Section 137(2) of the Act provided that it is only upon the grant of certificate under Section 137(1) that the sirdar shall from the date thereof become or be deemed to be a bhūmidar of the holding or the share in respect of which the certificate has been granted. The amendment of Section 137(2) by the Amendment Act 21 of 1962 brought it in line with Section 134. The two provisions read together clearly provide that as and when the certificate under Section 137 is granted, it must relate back and be effective from the date on which the amount referred to in Section 134(1) has been deposited. [214-A-C]

C *Banshidhar v. Smt. Dhirajadhari and Ors.*, (1971) All. L.J. 937; *Mobin Khan v. Chunnu Khan and Ors.*, (1981) All. L.J. 402 and *Raghunandan Singh and Another v. Vashwant Singh*, (1978) Revenue Decisions 183, overruled.

D 3. When a certificate is issued under Section 137 of the Act, it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature is that as and when the said application is accepted and order is passed under Section 137, it must relate back to the date when the application was filed. The doctrine of relation back has been incorporated in Sections 134 and 137 of the Act. [214-E-H]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4966 of 1984.

G From the Judgment and Order dated 7.1.82 of the Allahabad High Court S.A. No. 2473 of 1970.

Prem Prasad Juneja, S.P. Juneja and P.S. Jha for the Appellants.

T.N. Singh and B.M. Sharma for the Respondents.

H The Judgment of the Court was delivered by

KIRPAL J. The question involved in this case pertains to the interpretation of Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act as the said provisions existed in 1964-1965.

Briefly stated the facts are that one Bechan was a sirdar of agricultural land which consisted of six plots. On 25th August, 1964, he filed an application under Section 134 of the said Act before the revenue authorities and paid an amount equal to 10 times the land revenue and prayed that he should be declared a bhumidar. It is an admitted case of the parties that it is only on such declaration taking effect that he could sell the said land.

After the said application had been filed and the land revenue deposited, Bechan executed a sale deed on 25th August, 1964 selling the said land to the plaintiffs, who are the appellants herein. Before any order could be passed granting the bhumidari certificate, Bechan died on 15th September, 1964. The problem for the plaintiffs arose when on 5th January, 1965 the widow of Bechan sold that very land to the defendants, who are the respondents in this appeal. On 9th February, 1965, the sanad was issued under section 137 in the name of Bechan with effect from 25th August, 1964, the date when the said land revenue had been paid along with the application for grant of bhumidari certificate.

The appellants/plaintiffs then filed a suit in the trial court challenging the validity of the sale deed dated 5th January, 1965 in favour of the respondents/defendants. The trial court dismissed the suit having come to the conclusion that the appellants herein had not derived any valid title to the property in question because on the date when the sale deed was executed on 25th August, 1964 Bechan had not been declared as a bhumidar under Section 137. In appeal, the lower appellate court reversed the decision of the trial court and decreed the suit. In arriving at this conclusion, the lower appellate court was of the opinion that the certificate which was granted under Section 137 would relate back to the date of the application and, therefore, the appellants herein had acquired the title on 25th August, 1964 and, consequently, the sale deed of that very land on 5th January, 1965 executed by the widow of Bechan was not valid.

The High Court, in a second appeal being filed, reversed the decision of the lower appellate court and held that on 25th August, 1964 Bechan had not acquired any right, title or interest which he could transfer because the order on his application for grant of the bhumidari certificate had been passed only on 9th February, 1965. In coming to this conclusion, the High Court relied upon a Full Bench decision of the Allahabad High Court reported as *Banshidhar v. Smt. Dhirajadhari and Others*, (1971) All.L.J. 937 and also

A a Single Judge decision reported as *Mobin Khan v. Chunnu Khan and Others*, (1981) All.L.J. 402. Hence, this appeal by special leave.

As we have already indicated, the decision in this appeal depends upon the interpretation of Sections 134 and 137 of the U.P. Zamindari Abolition and Land Reforms Act. These Sections read as follows :

B "S. 134. Acquisition of bhumidhari rights by a sirdar. (1) If a sirdar belonging to the class mentioned in clause (a) of Sec. 131 pays or offers to pay to the credit of the State Government an amount equal to ten times the land revenue payable or deemed to be payable on the date of application for the land for which he is the sirdar, he shall, upon an application duly made in that behalf to an Assistant Collector, be entitled, with effect from the date on which the amount has been deposited, to a declaration that he has acquired the rights mentioned in Sec. 137 in respect of such land.

D Provided that the rights to pay or offer to pay the amount aforementioned shall cease on the expiry of three months from the date to be notified by the State Government.

Explanation I - In this sub-section 'land' includes shares in land.

Explanation II - For the purpose of this section the land revenue payable shall -

E (a) in respect of land referred to in the proviso to clause (a) of sub-section (1) of Sec. 246 be an amount arrived at after all the increases have been given effect to; and

F (b) in respect of land to which the proviso to Sec. 247 applies, be an amount determined at hereditary rates under that section.

(1) The amount referred to in sub-section (1) may be paid in cash or, if the State Government so prescribes, in form of bonds or otherwise."

G S. 137. Grant of certificate. - (1) If the application has been duly made and the Assistant Collector is satisfied that the applicant is entitled to the declaration mentioned in section 134, he shall grant a certificate to that effect.

H (2) Upon the grant of the certificate, under sub-section (1), the sirdar shall, from the date on which the amount referred to in sub-

section (1) of Section 134 has been deposited

(a) become and be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted; and

(b) be liable for payment of such reduced amount on account of land revenue for the holding or his share therein, as the case may be, one-half of the amount of land revenue payable or deemed to be payable by him therefor on the date of application.

Provided further that in the cases referred to in Explanation II of section 134 the sirdar shall, during the period a reduced amount is payable in accordance with section 246 or 247, be liable for payment of one-half of the amount payable from time to time.

Explanation. — For the purposes of clause (b) the land revenue payable by a sirdar on the date aforesaid shall, where it exceeds an amount double that computed at the hereditary rates applicable, be deemed to be equal to such amount.

(2A) Where the amount referred to in sub-section (1) of section 134 is deposited on a date other than the first day of the agricultural year, the land revenue payable by the bhumidhar under clause (b) of sub-section (2) for the remainder of the agricultural year in which the amount is deposited shall be determined in such manner as may be prescribed."

Section 134, from its plain language, indicates and shows that on the application being made and 10 times the land revenue being paid, the sirdar becomes entitled 'with effect from the date on which the amount had been deposited' to a declaration that he has acquired the rights mentioned in Section 137 of the Act. The Section clearly specifies the date with effect from which the rights would stand acquired. The date is the one on which the amount contemplated by Section 134 is deposited. This clearly obviates the uncertainty of the point of time when the title is transferred by fixing the date as being the one when the amount is deposited. It would be immaterial as to when the declaration under Section 137 is made because that declaration must necessarily take effect from the date when the amount is deposited.

Whatever little doubt there may be in this construction of section 134

A is eliminated by the perusal of sub-section (2) of Section 137. It is to be noticed that, as observed by the lower appellate court, that before amendment in 1962, sub-section (2) of Section 137 of the Act provided that it is only upon the grant of certificate under sub-section (1) of Section 137 that the sirdar shall from the date thereof become or be deemed to be a bhumidhar of the holding or the share in respect of which the certificate has been granted. The amendment of sub-section (2) of section 137 by the Amendment Act 21 of 1962 with effect from 13th December, 1962 brought Section 137(2) in line with Section 134. The two provisions read together clearly provide that as and when the certificate under Section 137 is granted, it must relate back and be effective from the date on which the amount referred to in sub-section (1) of Section 134 has been deposited.

It is no doubt true that in the Full Bench decision in *Banshidhar v. Smt. Dhirajadhari and Others* (supra), in the Single Judge decision in *Mobin Khan v. Chunnu Khan and Others* (supra) and in the decision in *Raghunandan Singh and Another v. Vashwant Singh*, (1978) Revenue Decisions 183, a different view has been expressed by the Allahabad High Court. In the Full Bench decision, the view taken is that it is from the date when the order is passed under Section 137 that the sirdar becomes a bhumidhar. In the latter two cases, it has been held that if after filing of the application and making payment of the land revenue the applicant dies, then certificate in his name cannot be granted. In our opinion, the said decisions run counter to the plain language and meaning of Sections 134 and 137 as they stood at the relevant point of time. When a certificate is issued under Section 137, it in fact recognises the position as on the date when the application was made and the payment contemplated under Section 134(1) was deposited. The certificate, in other words, will have a retrospective effect and would relate back to the date of the application. There was nothing to prevent the revenue authorities from allowing the application filed under Section 134(1) on the day when it was presented. The underlying intention of the legislature, therefore, clearly is that as and when the said application is accepted and order is passed under Section 137, it must relate back to the date when the application was filed. Such a situation is not unknown to law. Mr. Prem Prasad Juneja, Learned counsel for the appellants, as an analogy, has drawn our attention to Order 22 Rule 6, C.P.C. which provides that if any of the parties to a suit dies after the hearing has been completed and before the judgment is pronounced, the suit would not abate. The doctrine of relation back has been incorporated in Sections 134 and 137 of the U.P. Zamindari

Abolition and Land Reforms Act.

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We are, therefore, of the opinion that the lower appellate court had rightly interpreted Sections 134 and 137 and the High Court was in error in overruling the said decision.

For the aforesaid reasons, the appeal is allowed, the judgment of the High Court is set aside and the decision of the lower appellate court is restored, the effect of which would be that the suit filed by the appellants would stand decreed.

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Appeal allowed.