

**AlauddIn Vs. Hamid Khan**

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**Court :** Allahabad

**Decided On :** Jan-13-1971

**Reported in :** AIR1971All348

**Judge :** C.S.P. Singh, J.

**Acts :** Tenancy Laws; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 3(14), 143(2) and 331A

**Appeal No. :** Second Appeal No. 2471 of 1967

**Appellant :** Alauddin

**Respondent :** Hamid Khan

**Advocate for Def. :** Girish Narain Singh, Adv.

**Advocate for Pet/Ap. :** S.S. Verma, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**C.S.P. Singh, J.**

1. This is an appeal by the defendant arising out of a suit for recovery of rent and ejection.

2. It was alleged by the plaintiff that he was the Bhumidhar of plot No. 211 and that a portion of it was under his cultivation and in the other portion he had certain thatched constructions which had been let out to the defendant on a payment of Rs. 126/- per annum with the further stipulation that in case the defendant committed default in the payment of rent for a period of three years he will be liable to ejectment. The defendant failed to pay the stipulated rent on demand and hence the suit.

3. The defendant asserted that the rent had been paid but that the plaintiff did not issue a receipt for the same. The jurisdiction of the Court was also challenged and it was alleged that the rights of the plaintiff in the suit had been extinguished.

4. One of the issues that arose in the suit was as to whether the land was used for a purpose connected with agriculture, horticulture, animal husbandry, pisciculture and poultry farming. This issue was referred to the Assistant Collector, Incharge of the sub-division, under Section 331-A of the U. P. Z. A. & L. R. Act (hereinafter referred to as the Act) and he recorded a finding that the land was not used for purposes connected with agriculture, horticulture etc.

5. As regards the question of jurisdiction, the trial Court held that the jurisdiction lay in the Civil Court inasmuch as on account of the provisions of Section 143 of that Act, no suit for ejectment or arrears of rent could be filed in the revenue Court. The trial Court treated the finding given by the Assistant Collector on issue No. 7 as a declaration under Section 143 of the Act and it was on this account that he held that the suit could be tried by him.

6. Both the Courts below have decreed the plaintiff's suit and the defendant has now come up in appeal.

7. It has been contended before me that inasmuch as there was no declaration under Section 143 (2) of the Act. the provisions of Chapter VIII of that Act were applicable and inasmuch as letting out had been admitted by the plaintiff, the appellant became the sirdar of the land. It was further contended that the trial Court fell into an error in treating the finding given by the Assistant Collector on issue No. 7 as a declaration under Section, 143 of the Act. Counsel for the

respondent has, however, urged that inasmuch as the land was not being used for purposes connected with agriculture, horticulture etc., the land had ceased to be land as defined in Section 3 Sub-clause (14) of that Act and the embargo imposed against letting out of land did not apply to land which did not answer the description of land as contained in Section 3 (14) of that Act. He has further contended that the order passed on a reference under Section 331-A Sub-section (2) of the Act has the effect of a declaration under Section 143 (2) of that Act and as such the rights of the plaintiff as Bhumidhar continued even in spite of the letting inasmuch as the provisions of Chapter VIII were not applicable to the disputed land.

In order to decide the controversy between the parties it will be useful to set out the provisions of Section 143 of the Act:--

'Section 143. -- Use of holding for industrial or residential purposes -- (1) Where a bhumidhar uses his holding or part thereof for a purpose not connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming, the Assistant Collector in-charge of the sub-division may, suo motu or on an application, after making such enquiry as may be prescribed, make a declaration to that effect.

(1-A) Where a declaration under subsection (1) has to be made in respect of a part of the holding, the Assistant Collector in-charge of the sub-division may, in the manner prescribed, demarcate such part for the purpose of such declaration.

(2) Upon the grant of the declaration mentioned in Sub-section (1) the provisions of this chapter (other than this section) shall cease to apply to the bhumidhar with respect to such land and he shall thereupon be 'governed in the matter of devolution of the land by personal law to which he is subject.'

8. It would appear that till such time that a declaration is not granted under Sub-clause (2) of the above section the results set out in this sub-section do not follow. The use of the words 'upon the grant of the declaration' are significant and no other construction is possible. The contention of counsel for the respondent that even though no declaration has been granted under Section 143 Sub-clause (2)

inasmuch as the land in dispute was not being used for a purpose connected with agriculture, horticulture etc. does not appear to be sound. In case the intention of the legislature was that as soon as land which had been previously held for purposes connected with agriculture etc., ceased to be used for that purpose, the provisions of the U. P. Z. A. & L. R. Act or Chapter VIII would not apply, it would not have been necessary for it to enact Section 143. In fact in case such an interpretation is put, the provisions of Section 143 of the Act become redundant.

It is plain that till such time that a Bhumidhar does not get the requisite declaration he continues to be governed by the provisions of the U. P. Z. A. & L. R. Act irrespective of the fact as to whether he uses his land for purposes connected with agriculture, horticulture etc., or not. It, however, remains to consider the contention that the order, passed by the Assistant Collector on a reference under Section 331-A (2) is in effect a declaration granted under Section 143 Sub-section (2) of the Act. Section 331-A Sub-clause (2) only lays down that in deciding the issue referred to him the Assistant Collector shall decide the same in the manner laid down for making of a declaration under Section 143 or 144 of the Act. It does not say in so many words that the finding recorded by the Assistant Collector on such a reference shall have the effect of an order or a declaration under Section 143 (2) of the Act.

It appears that Section 331-A (2) of the Act as framed is only a procedural section governing the manner in which the Assistant Collector will dispose of the reference. This finding, in view of Section 331-A Sub-clause (4), which the Assistant Collector records, becomes a part of the finding of the parent Court which referred the issue. This consideration weakens the argument that the finding recorded by the Assistant Collector has the effect of a declaration under Section 143, Sub-clause (2) of the Act. Moreover, the respondent does not stand to gain even in case his argument about the effect of the finding under Section 331-A (2) of the Act is accepted, inasmuch as the findings on the issue was recorded after the institution of the suit, while the letting had taken place much earlier. It is clear that the defendant had become a Sirdar of the disputed property on account of the provisions of Section 165 of the U. P. Z. A. & L. R. Act. The view taken by the Courts below appears to be incorrect.

9. The appeal is accordingly allowed. The suit of the plaintiff is dismissed. Parties shall bear their own costs.

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