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Court : Uttaranchal

Decided On : May-15-2007

Reported in : AIR2007Utr87

Judge : P.C. Verma and; B.C. Kandpal, JJ.

Appellant : State of U.P. and anr.

Respondent : R.B. NaraIn Singh Sugar Mills Ltd. and anr.

Disposition : Petition dismissed

Judgement :

1. The disputed property involved in both the above appeals belongs to the same and the one Sugar Factory at one site and similar controversies are involved in these cases, hence both the appeals have been heard together and are being decided by this common judgment.

2. F.A. No. 15/2002, arise out of the judgment and decree dated 13-12-2001, passed by Civil Judge (Senior Division), Haridwar in O.S. No. 4 of 1992, R.B. Narain Singh v. State of U.P. and Ors. whereby the suit of the plaintiff/respondent was decreed for permanent injunction prohibiting the defendants/appellants not to interfere and evict the plaintiff from the peaceful possession of the suit property.

3. F.A. No. 9/2003 has been preferred against the judgment and decree dated 4-1-2003, passed by District Judge, Haridwar, in O.S. No. 03/1992, whereby the suit

of the plaintiff/respondents for permanent prohibitory injunction was decreed against the defendant/appellants.

4. The relevant facts, in brief, are that the plaintiff/respondent R.B. Narain Singh Sugar Mills Ltd. is a Company incorporated under the Indian Companies Act, 1913 now 1956, which was established in the year 1932-33 at Baraut, District Meerut (hereinafter referred as 'the Mill'). The Mill worked there till 1938-39 and it was shifted to and established at its present site at Laksar, District Haridwar in 1939. The Mill purchased land at the site and is in exclusive possession over there. In the year 1989 Laksar was notified a Town Area and the limits of Town Area were expanded covering the area of some adjoining villages including Simli and Khera. It was also alleged that Lord Krishna Sugar Mill also sold properties to the plaintiffs. Before the declaration of Town Area the disputed land had already vested in plaintiffs on the date of vesting by virtue of provisions of Section 9 of U.P.Z.A. & L.R. Act. Due to the ignorance of plaintiffs the Courts could not be moved for mutation in the year 1939.

5. Thereafter, there' were certain disputes with some persons about the properties and survey and inspections were made and it was detected that the name of plaintiff was not in the revenue records properly therefore in 1958 application for correction of records was moved. The application was allowed and the name of the plaintiff was entered in the register Malikan and Khasra Khautanis. In 1987 the Town Area filed Suit No. 50 of 1987 in the Court of Assistant Collector, 1st Class, Haridwar on wrong allegations with regard to the disputed property. The said suit is still pending in revision No. 5 of 1988-89 before the Board of Revenue and the proceedings of Court below are stayed. Thereafter Haridwar was declared as District and Laksar was declared as one of the Tehsils. S.D.O. Laksar passed order dated 21-8-90 expunging the name of the plaintiff from the revenue record about the disputed property without issuing any notice to the plaintiffs and the said order was mutated in the name of Gram Sabha Simli. Against this order revision was preferred before the Additional Commissioner, Meerut who stayed the operation of the order dated 21-8-90 and the knowledge of the same was to the defendants.

6. The plaintiff-Mill preferred suit Nos. 3 of 1992 and 4 of 1992 before Civil Judge, Haridwar for the decree of permanent injunction against the defendants directing the defendants not to make any type of interference in the possession of the properties belonging to the plaintiffs given at the foot of the plaints either by dispossessing the plaintiffs or by making any construction oven the properties or by acquiring or getting the property acquired or by claiming possessory title or otherwise title in any way directly or indirectly whatsoever.

7. The defendants State of U.P. and the Town Area filed joint written statement in both the suits and mainly pleaded that the disputed land comes within the definition of agricultural land and the suits are barred by the provisions of Section 331 of Act No. 51 and Sections 34, 38 and 41 of Specific Relief Act; that the suits have not been valued properly; that the plaintiff was not in possession of the disputed land; that the property has vested in State Government under the provisions of Sections 4 and 6 of the U.P.Z.A. & L.R. Act and the management of which has been given to the related Gram Sabha, that the disputed land is a 'Banjar' land and in the revenue records in 1359 Fasli to 1366 Fasli it remained a 'Banjar' land in the revenue records; that where the disputed land fall, in that village notice Under Section 4(2) of the Consolidation Act has been published on 22-4-1959 and thereafter revenue Court had no jurisdiction to correct 1 the records, hence the order dated 10-8-1959 is void and ineffective and due to this reason the S.D.O. Laksar rejected that order vide his order dated 21-9-90; that it is wrong to say that the provisions of Sections. 229-B and 209 of U.P.Z.A. & L.R. Act do not apply in the matter and that notice Under Section 80, C.P.C. and Section 106, Panchayat Raj Act was not served.

8. The defendant Gram Sabha Simli did not file W.S. and the suits were heard ex parte against it.

9. In O.S. No. 3/1992, on the pleadings of parties, following issues were framed:

1. Whether the plaintiff is the owner in possession of the land in question?

2. Whether the suit is not maintainable for not serving the notice Under Section 80, C.P.C. and Section 106, Panchayat Raj Act?

3. Whether the suit is barred by Section 331 (1) of U.P.Z.A. & L.R. Act?

4. Whether the suit is liable to be stayed Under Section 10, C.P.C. as per the, para 49 of the plaint ?

5. Whether the suit is barred by the provisions of Sections 34, 38 and 41 Specific Relief Act?

6. Whether the plaintiff is entitled to get any relief?

7. Whether the suit is not maintainable for devaluation and insufficient Court fee ?

10. On the pleadings of parties, in O.S. No. 4/1992, the following issues were framed:

1. Whether the plaintiff is the owner in possession of the disputed land ?

2. Whether the suit is barred by the provisions of Section 331 of U.P.Z.A. & L.R. Act and the Civil Court has no jurisdiction to hear the case ?

3. Whether the suit has not been valued properly ?

4. Whether the Suit is barred by the provisions of Sections 34, 38 and 41 of Specific Relief Act?

5. Whether the suit is barred by the provisions of Section 80, C.P.C. and Section 106, Panchayat Raj Act ?

6. Whether the disputed land has vested in the U.P. Government and Gram Sabha in accordance with the provisions of Section 117, U.P.Z.A. & L.R. Act?

7. Whether the disputed land has vested in defendant No. 1 State as per the provision of Section 4(2) of U.P.Z.A. & L.R. Act and the rights of the plaintiffs have abolished ?

8. Whether the correction proceedings initiated by the plaintiff were illegal and void If so, its effect ?

9. Whether the disputed land is a Banjar land If so, the same has vested with the plaintiff as per the provisions of U.P.Z.A. & L.R, Act?

10. Whether the plaintiff is entitled to get any relief?

11A. Whether the relief sought is the consequental relief as per the pleadings of the plaint ?

11B. Whether insufficient Court fee has been paid-?

11. Parties filed documentary as well as oral evidence in support of their cases. Suit No. 3 of 1992 came for hearing before the District Judge, Haridwar whereas suit. No. 4/1992 was heard and decided by Civil Judge (S.D.) Haridwar. Both the Courts decreed the suits of the plaintiff for permanent injunction.

12. Feeling aggrieved by the impugned judgments and decrees the State and the 'Town Area Committee have preferred these appeals'

13. We have heard the learned Counsel for the parties and perused the record.

14. Before coming to the points involved in the present appeals, it would be relevant do quote certain paragraphs of the Apex Court's judgment rendered in U.P. State Sugar Corporation Ltd. v. Dy. Director of Consolidation and Ors. reported in MANU/SC/0069/2000 : [2000]1SCR673 , which read as below:

21. Before coming to that question, it would be better to consider the background in which the U.P. Zamindari Abolition and Land Reforms Act was enacted which will also reveal the purpose for which it was made and the significance of 'Gaon Sabha' as a governing unit in the rural areas of the State of Uttar Pradesh. The history is given in the Eastern Book Company publication of Mr. S.M. Husain's Commentary on the U.P. Zamindari Abolition and Land Reforms Act, a part of which is reproduced below:

The State of Uttar Pradesh was previously known as the United Provinces of Agra and Oudh i.e. a composite province consisting of the province of Agra and the province of Oudh. Although since the introduction of the U.P. Land Revenue Act they had a uniform system of revenue law, but the law of tenancy till the

introduction of the U.P. Tenancy Act 17 of 1939 was absolutely different.

The province of Agra was previously known as the North-Western Province, being a part of the Presidency of Fort William, and was governed by the Bengal Regulations. The Regulations specially applicable to North-Western Province were subsequently published under the authority of the Government of India in the form of North-Western Province Code. These Regulations were primarily meant for the collection of revenue and had nothing for the benefit of the tenants. It was in the year 1859 that the Rent Recovery Act 10 of 1859 was introduced, which, in a way, recognised the rights of subordinate tenure-holders. Thereafter the Agra Tenancy Act of 1901, to a certain extent, defined the rights of the tenants; but it still left the door open to arbitrary ejectment and afforded no adequate protection to the tenants from enhancement of rent and wasteful litigation by unscrupulous landlords. It was generally felt that the law required drastic changes, but due to the intervention of the war nothing could be done till the year 1926.

The Province of Oudh, previous to its annexation by the East India Company, was governed by the Kings of Oudh. They had different systems of collecting revenue, and collected it through mustajiri, or by appointment of Nazims, Chakladars or other collecting officials. The immediate holders of the soil had no substantive rights, and were at the mercy of these rent collectors. In anticipation of the annexation of the province Lord Dalhousie, the Governor General of India wrote to General Outram, the resident of Oudh, to do away with the landholder or Taluqdars as a class and make a summary settlement direct with the persons i possession of the soil. Oudh was annexed on 13-2-1856 and before the summary settlement could be completed mutiny broke out in Lucknow on 30-5-1857, and the authority of the British Government having come to a standstill, the entire records so far prepared were destroyed. After the furies of the mutiny were over and the British Government was able to recontrol the province, Lord Canning issued a proclamation on 15-3-1859, confiscating all proprietary rights in the soil of the province. The Second Summary Settlement was thereafter made on the principle of the restoration of the status quo at the time of the annexation. This secured the position of Taluqdars and landlords, but gave no relief to the under-proprietors or to other subordinate tenure-holders.

In the year 1864 Sir John Lawrence became the Viceroy of India. With his intimate knowledge of the working of rent law in the Punjab and the North-Western Province, he was keen to recognise the rights of under-proprietors and hereditary tenants in Oudh. He succeeded in protecting the rights of the under-proprietors by the Oudh Sub-Settlement Act, 1886, which paved a way for further recognition of the rights of subordinate tenure-holders and tenants, and culminated in the passing of the first Rent Act for Oudh in 1868 (Act 19 of 1868). This Act was soon after repealed in part by Act 7 of 1870, and on minor points was amended by Acts 32 of 1871, 18 of 1876, 14 of 1878 and 14 of 1882. It was in the year 1886, that Act 22 of 1886 was passed, which brought some substantial relief to tenants. The changes brought about by this Act were: (1) statutory rights | of tenants, (2) limit of enhancement of rent (3) restrictions on ejectment and (4) the tenant's right of improvement. There were minor amendments by Acts 20 of 1890 and 12 of 1891 but they did not change the principle on which the original Act was framed. The amending Act 4 of 1901 opened two new chapters in the rent law, viz. (1) ex-proprietary tenancy, and (2) resumption of rent-free grants. This ex-proprietary right was apart from ex-proprietor's right of occupancy recognised by Section 5 of the Oudh Rent Act, 1886 and Section 25 of the Oudh Laws

These Acts and amendments, though beneficial in their effect, failed to meet the changed economic conditions that grew up with the increase in population, the development of agriculture, and the rise in value of the agricultural produce. There was growing distress and discontent all round and the pent-up feelings ultimately found expression in the shape of Kisan Sabha movement. There were serious riots in the whole of the province, made more ugly by the retaliatory measures adopted by the landlords. The rioters' slogan was: 'no nazrana, no ejectment', while the landlords in turn adopted every means to turn out the tenants from their holdings, and extend their sir and khudkasht as much as possible. These riots though put down with a heavy hand, in any case, brought home to the Government, the necessity of sympathetic amendments in the rent law. It was, therefore, 'to improve relations between landlords and tenants in Oudh and specially to give the latter greater security of tenure at a fair rental that the Oudh Rent (Amendment) Act 4 of 1921 was enacted.

This Act had repercussions in the province of Agra. There the Kisan movement gained momentum in the shape of eka, and in the words of Sir William Marris, drove the Government to two conclusions: '(1) that it was inequitable, and in the long run impossible to leave the unprotected tenants of the Agra province in a less secure position than the new statutory tenants in Oudh, and (2) that it was our duty to take the matter up and deal with it at a time, when the province was happily at peace, so as to remove in good time such grounds of agrarian discontent as might afford fuel for grave mischief, if such another wave of ferment and excitement as occurred in 1922 were to impinge again on the province.' This consciousness of the Government resulted in the enactment of the Agra Tenancy Act 3 of 1926.

It should not be lost sight of, that the time that these two Acts, viz. the Oudh Rent (Amendment) Act and the Agra Tenancy Act, were enacted, the Provincial Legislature was dominated by landed interest, and these Acts were the result of a compromise between the landlords and the Government, as representing the interests of the tenants and other subordinate tenure-holders. While securing protection for the tenants, the Government had to yield certain concessions to the landlords. These were abused, and resulted in-the 'no rent' and 'no revenue' campaign of 1930-31, which had its genesis in the high rents, which had become oppressive due to the sudden fall in the prices of agricultural produce. To meet the situation the Government enacted the U.P. Emergency Powers Ordinance 12 of 1930 and the U.P. Special Powers Act 14 of 1932. The tenants were protected from ejectment on account of arrears of rent by U.P. Arrears of Rent Act 1 of 1932, and were given relief by U.P. Assistance of Tenants Act 8 of 1932 providing remissions in arrears for 1337 and 1338 Faslis up to 25 p.c, and allowing payment of decreed amount by installments: by the amending Act 9 of 1934 in addition to several executive measures, such as, Flat Rate Remission Scheme etc.

In September 1939, the Great War began. It was a fight for democracy and ended in its complete victory. Its effects could not but be felt throughout the world. A feeling had grown and developed by the year 1946, when the Congress returned to power, that the feudal order or the existing landlord-tenant system was inconsistent with the democratic set-up of India, and the tillers of soil should be allowed to reap the full fruits of their labour. On 8-8-1946, the following resolution

was, therefore, passed by the Legislative Assembly:

This Assembly accepts the principle of the abolition of the zamindari system in this province which involves intermediaries between the cultivator and the State and resolves that the rights of such intermediaries should be acquired on payment of equitable compensation and that Government should appoint a Committee to prepare a scheme for this purpose.A Committee known as the Zamindari Abolitibn Committee was appointed to report and make recommendations on the following matters:

1.Accepting the principle of the abolition of] the zamindari system-

(a) What rights should be acquired?

(b) What would be the principle for the determination of equitable compensation for the acquisition of such rights?

(c) What administrative and financial arrangements would be required to give effect to the; proposals formulated under (a) and (b)?:

(2) What would be the basic principles and precise scheme of land tenure which will replace the existing system of zamindari in the Province?

(3) What would be the administrative organization required to give effect to new scheme of land tenure and, in particular, what would be the machinery for collecting government dues?

The Committee submitted its report in August 1948, which after careful consider action was crystallised into the U.P. Zamindari Abolition and Land Reforms Bill, 1949. The Hon'ble Chief Minister while releasing the Bill for publication made the following observation:

We have given many long hours to the consideration of the intricate and complex problems which form the subject-matter of this Bill. It is the result of close study, dispassionate consideration and sober discussion and I hope it will be examined in the same spirit. We have not in any way been influenced by any extraneous consideration. In fact, we have never been hostile to Zamindars or for the matter of

that to any other section of the community. We wish to do all that we can for the welfare of even' one but all of us have to realise that the good of each individual lies in the good of all and in this new order it is necessary that even for the preservation of individual interest those of the larger whole should not be neglected or underrated.

With the implementation of this measure we hope, many of our dreams would be realised. Next to the achievement of independence for our country, I think, the implementation of this comprehensive measure, which will bring real Swaraj to about 50 million people in this Province, will always be regarded as an outstanding step towards the achievement of the destiny of our people.

The Bill was introduced in the Assembly on 7-7-1949, and after a discussion lasting for several days it was referred to a Joint Select Committee. This Committee was able to make important changes in the Bill, and submitted its report, which was published in the U.P. Gazette dated 29-12-1949, and presented to the Assembly on 9-1-1950.

The Assembly took up the consideration of the Bill on 16-1 -1950, when its first reading took place, and was ultimately passed on 4-3-1950. It was presented to the Legislative Council on 6-9-1950, which passed it on 30-11-1950, with certain amendments. The Bill as passed by the Council was returned to the Assembly, which accepted the amendments on 26-12-1950. It was again returned to the Legislative Council, which accepted it on 16-1 -1951. His Excellency the Governor reserved it for the assent of the President, who gave his assent on 24-1-1951, and the U.P. Zamindari Abolition and Land Reforms Act, became the law of the land from 26-1-1951.

22. The Act was enforced with effect from 1 -7-1952 when a notification under Section 4 of the Act was published in the U.P. Gazette (Extraordinary) of the even date. It has also been stated in the introductory part of the above commentary as under:

The Act has really created a peasant proprietorship, and by the creation of Gaon Samaj and Gaon Sabha, to whom all common lands, forests, trees, public wells,

fisheries, hats, bazars, melas, tanks, ponds, private ferries, pathways and abadi sites would vest, an attempt has been made to develop self-governing village communities. The establishment of co-operative farming is also with the same object, as also for creating a sense of community of interest.23 At another place, it is stated as under

The Act has, in effect, abolished the feudal order and landlord-tenant system and has replaced it by a system pregnant for the development of a sense of democracy and a community of interest. It has recognised the truth that those who till the soil, must reap the fruits of their labour.24. Section 4 which provides for the vesting of estates in the State provides as under:

4. Vesting of estates in the State.- (1) As soon as may be after the commencement of this Act, the State Government may, by notification, declare that, as from a date to be specified, all estates situate in Uttar Pradesh shall vest in the State and as from the beginning of the date so specified (hereinafter called the date of vesting), all such estates shall stand transferred to and vest, except as hereinafter provided, in the State free from all encumbrances.

(2) It shall be lawful for the State Government, if it so considers necessary, to issue, from time to time, the notification referred to in Sub-section (1) in respect only of such area or areas as may be specified and all the provisions of Sub-section (1) shall be applicable to and in the case of every such notification.

25. Section 6 provides for the consequences of such vesting. It is provided that all rights, title and interest of all the intermediaries shall cease and be vested in the State of Uttar Pradesh free from all encumbrances.

26. Section 7 which is relevant for the purpose of this case and which saves certain rights provides, inter alia, as under:

7. Saving in respect of certain rights.- Nothing contained in this chapter shall in any way affect the right of any person-

(a)***

(aa) being a bhumidhar, sirdar, adhivasi or asami of any land, to continue to enjoy any easement or any similar right for the more beneficial enjoyment of the land, as he was enjoying on the date immediately preceding the date of vesting;

(b)***'

27. Section 9 provides as under:

9. Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers there of.- All wells, trees in abadi and all buildings situate within the limits of an estate belonging to or held by an intermediary or tenant or other person whether residing in the village or not, shall continue to belong to or be held by such intermediary, tenant or person, as the case may be, and the site of the wells or the buildings within the area appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed.28. Sections 7 and 9 thus save certain rights. While Section 7, inter alia, saves the right of easement for better and for more beneficial enjoyment of the land in the possession of the tenure-holder, Section 9 provides that the wells, trees in abadi and buildings belonging to or held by an intermediary or tenant or other person, shall continue to belong to that person and the site thereof including the area appurtenant thereto would be deemed to have been settled with him by the State Government. It is thus obvious that wells, trees in abadi and buildings or the site of the building which are fictionally settled with the owner thereof including the land appurtenant thereto would not vest in the State as a consequence of the notification issued under Section 4 of the U.P. Zamindari Abolition and Land Reforms Act. The right of easement available under Section 7 would also continue to be available to the person who had been enjoying that right on the appurtenant land for the better enjoyment of the land in his possession and such right would not be destroyed on account of vesting of all right, title and interest in the State.

29. Chapter VII of the Act deals with the Gaon Samaj and the Gaon Sabha. Originally, Section 113 provided that a Gaon Samaj would be established for each village. Section 114 provided that a Gaon Samaj would include all adults ordinarily residing in the circle for which it is established. Under Section 115, the Government could alter the limits of the Gaon Samaj. Section 116 provided for the

incidental orders on account of changes in the jurisdiction of a Gaon Samaj. Section 117 dealt with the vesting of certain land etc. in the Gaon Samaj. Sections 113 to 116 have since been deleted by U.P. Act 33 of 1961 and Chapter VII has been headed as 'Gaon Sabha'. Section 117 which provides for the vesting of certain land etc. in the Gaon Sabha has been retained. The relevant portion of this section, as it stood at the relevant time, is quoted below:

117. Vesting of certain lands, etc. in Gaon Sabha.- (1) At any time after the publication of the notification mentioned in Section 4, the State Government may by notification in the Gazette declare that as from the date to be specified (hereinafter in this chapter called the specified date) -

(i) all land whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

(ii) all forests within the village boundaries,

(iii) all trees (other than trees in a holding or on the boundary thereof or in a grove or abadi),

(iv) fisheries,

(v) hats, bazars and melas, except hats, bazars and melas held on land to which provisions of Clauses (a) to (c) of Sub-section (1) of Section 18 apply or on land referred to in Section 9, and

(vi) tanks, ponds, private ferries, water channels, pathways and abadi sites, situate in a Circle, which had vested in the State under this Act, shall vest in the Gaon Sabha established for the Circle:

Provided that, it shall be lawful for the State Government to make the declaration aforesaid either in respect of all or any of the things mentioned in Clauses (i) to (vi) and in so doing, make such exceptions or impose such conditions as it may specify in the notification.(2) ***

(3) Where anything of the nature specified in Clauses (i) to (vi) of Sub-section (1) has been vested in any Gaon Sabha under Sub-section (2), such Gaon Sabha or

its Land Management Committee shall in respect of the part of the village perform, discharge, or exercise functions, duties and powers assigned, imposed or conferred by or under this Act on a Gaon Sabha, or a Land Management Committee, as the case may be, in, relation to such thing and the holding area within the part of the village,

(4)***

30. Section 126 provides that the State Government may issue such orders and directions to the Land Management Committee as may appear to be necessary for purposes of this Act and it shall be the duty of the Land Management Committee to forthwith carry out such orders and comply with such directions. Comprehensive provisions have also been made in respect of the Gaon Sabha under the Uttar Pradesh Panchayat Raj Act, 1947 of which only a few provisions are referred to as they alone are relevant for the purpose of the present case.

31. Section 3 of the U.P. Panchayat Raj Act provides that the State Government shall, by notification in the Official Gazette, establish a Gram Sabha for a village or group of villages. ;

32. A Gram Panchayat is constituted under Section 12 of the Act for every Ranchayat area.

33. Bhumi Prabandhak Samiti or the Land Management Committee is provided for by Section 28-A of the Uttar Pradesh Panchayat Raj Act, 1947 which is quoted below:

28-A. Bhumi Prabandhak Samiti.- (1) The Gram Panchayat shall also be the Bhumi Prabandhak Samiti and as such discharge the duties of upkeep, protection and supervision of all property belonging to or vested in or held by the Gram Panchayat under Section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, or under any other provision of that Act.

(2) The Pradhan and Up-Pradhan shall respectively be the Chairman and the Vice-Chairman of the Bhumi Prabandhak Samiti, and the Lekhpal of the area comprised in the jurisdiction of the Gram Panchayat shall be its Secretary.

34. The duty to upkeep, protect and supervise all properties belonging to or vested in or held by the Gram Panchayat under Section 117 of the U.P. Zamindari Abolition and Land Reforms Act or under any other provision of that Act is that of the Land Management Committee or Bhumi Prabandhak Samiti.

35. Under Section 28-B, the functions, of the Land Management Committee have been indicated. The relevant functions for the purpose of this case are contained in Clause (a) of Section 28-B which provides that the Land Management Committee shall for and on behalf of the Gram Panchayat be charged with the general management, preservation and control of all properties referred to in Section 28-A including the settling and management of the land but not including the transfer of any property for the time be-irig vested in the Gram Panchayat under Section 117 of the U.P. Zamindari Abolition arid Land Reforms Act, 1950 or under any other provision of that Act.

36. A perusal of the relevant portion of Section 117 of the U.P. Zamindari Abolition and Land Reforms Act (quoted above) would indicate that only such land etc. would vest in the Gaon Sabha as is mentioned in the Gazette notification issued under Section 117 of the Act. The words 'which had vested in the State', used in this section, indicate that the property which had originally vested in the State on account of the notification issued under Section 4 could be vested in the Gaon Sabha by a notification issued under Section 117. The analysis, thus, clearly indicates that before a property is vested in the Gaon Sabha, it should have first vested in the State Government under Section 6 of the U.P. Zamindari Abolition and Land Reforms Act.

37. Power to admit any person as bhumidhar by the Land Management Committee is contained in Section 195 of the U.P. Zamindari Abolition and Land Reforms Act which, as it stood at the relevant time, provides as under:

195. Admission to land.- The Land Management Committee shall have the right to admit any person as sirdar to any land (other than land falling in any of the classes mentioned in Section 132) where-

(a) the land is vacant land,

(b) the land is vested in the Gaon Sabha under Section 117, or

(c) the land has come into the possession of Land Management Committee under Section 194 or under any other provision of this Act.

Admittedly Clause (c), indicated above, is not applicable to the facts of this case.

38. Now, Section 197 enables a Land Management Committee to admit any person as asami of any land falling in any of the classes mentioned in Section 132. This section is also not applicable to the facts of this case as the land of which a lease was executed by the Land Management Committee in favour of the respondent, was not the land falling in any of the classes mentioned in Section 132.

39 Section 198 sets out the order of profane in admitting persons to the land as bhumidhar under Section 195 and as asami under Section 197. The order of preference set out in Section 198 has to be followed by the Land Management Committee in makany aliotments of the land.

40. The procedure which has to be followed by the Land Management Committee in admitting any person to land under Sections 195. and 197 is set out in the Rules made under the Act. The relevant Rules are Rules 173 to 178-A. Sub-section (4) of Section 198 authorises the Collector to cancel the allotment of lease of any land made by the Land Management Committee suo motu on his own motion or on the application of any person aggrieved by that allotment or

41. In the instant case, it was found as a fact by the Consolidation Officer as also by the Settlement Officer (Consolidation) that part of the land in question was the land appurtenant to the staff quarters of the Sugar Mill while the other part was utilised for storage tanks for molasses and for sullage water and other purposes connected, with the functioning of the Mill. Since the land in question was being utilised as land appurtenant to the staff quarters of the Mill from before the date of vesting, that would not vest in the State on account of notification issued under Section 4 of the Act. The easement right available to the Sugar Mill in respect of the plots in question would also not stand destroyed and would continue to be

enjoyed by the Mill.

42. The findings recorded concurrently by the Consolidation Officer as also the Settlement Officer (Consolidation) regarding the land in question being the land appurtenant to the staff quarters of the Mill or the land being utilised for storage of molasses and sullage water etc. have not been set aside by the Deputy Director of Consolidation nor has the High Court held that the findings were erroneous. That being so, the property, at no stage, vested in the State and, therefore, it could not, at any subsequent stage, vest in the Gaon Sabha. The Gaon Sabha, therefore, could not legally execute any lease in respect of these plots in favour of the respondent.

15. The main question in the present matter is as to whether the disputed land by operation of U.P.Z.A. & L.R. Act, 1951, has vested in Government and the Government has handed over the same to the Gaon Sabha Simli or the land had already vested In the Sugar Mill on the date of vesting.

16. Learned Standing Counsel appearing on behalf of the appellants first of all argued that the land in dispute was recorded as 'Banjar' in 1324 and 1352 Fasli, in the revenue records on the date of vesting and as such, by virtue of Sections 4 and 6 of the U.P.Z.A. & L.R. Act, it has vested in the State Government free from all encumbrances and the same came under the control of Gram Sabha for the purpose of its management as has been provided under Section 117 of the U.P.Z.A. & L.R. Act and the Courts below committed manifest error of law in totally ignoring and disregarding the aforesaid crucial evidence and holding that the land has not vested in State Government.

17. Against the above submission, Learned Counsel for the respondent/Mill has argued that some land was purchased by the Mill in the year 1937-38 and established factory on it and the land appurtenant to the land owned by the Mill is land of public utility and the whole land had already vested in the Mill on the date of vesting, hence the same cannot vest in Gaon Sabha and the plaintiff would continue to be its owner even after abolition of zamindari.

18. In order to appreciate the submissions of the learned Counsel, it will be practicable to determine the ownership and possession over the disputed land. It has come on record that whole of the disputed land is not Banjar land, some Khasra Nos. viz. 86, 219,206, 209, 210, 211, 213,214, 216, 217 were purchased by the Mill in the year 1937-38 and the Factory was established on the aforesaid land. Further the factory is in possession of Khasra numbers 78, 80, 82, 83, 85, 86, 87, 88, 90, 91, 92, 218, 219, 220, 221;, 222 shown in the foot of plaint of O.S. No. 3/1992 and on the Khasra numbers mentioned in the foot of plaint of O.S. No. 4/1992. Khasra Nos. 164, 165, 173 and 169 were also purchased by the Mill from various land owners and the said land was transferred to the Mill. To prove its case plaintiff examined P.W. 1, Prakat Singh and P.W.2, Jorden Brave in O.S. No. 3/1992. These witnesses have deposed that the Sugar Factory is running continuously since 1938-39 at Laksar and the disputed land is in continuous possession and use of the Factory. On behalf of the Mill various documents, such as Pattas, sale deeds, resolution etc. with regard to transfer of land to the Mill have been brought on record. The witness of the defendant/appellant D.W. 1, Shravan Kumar Lekhpal has deposed that he has no knowledge about the location of the disputed land. This witness has not been able to state that on how much area the mill is established. He has admitted that in Khasra No. 168 Church Building is constructed whereas in the revenue records this khasra land has been shown as 'Banjar'. In O.S. No. 4/1992, D.W. 1, Mangu Singh has admitted that the entries of the revenue records are wrong and against the location at the site. It may also be mentioned here that the revenue entries on which the defendants are relying, the same were got done by the revenue itself. The State has not been able to establish that the revenue entries are in accordance with the exact location at the site and have been made strictly adopting the procedure provided in this regard. It is also important to mention here that the Mill is in possession of the disputed land and that was the reason that relief for permanent injunction not to interfere with the peaceful possession of the plaintiff/Mill was sought. It has also come on record that the disputed land was recorded in the name of the Mill but after creation of Tehsil at Laksar the S.D.O. without issuing notice to the Mill deleted the entries of the Mill in the revenue records and recorded the land in the name of the State Government. The claim of the plaintiff/Mill is that in the Fasli

year 1326 most of the Khasra numbers mentioned at the foot of the plaint were recorded as 'Mazrua' and some as 'Qadeem'. None of these plots have been recorded as 'Banajar'. In 1359 Fasly most of these Khasra numbers are recorded as 'Abadi', 'Hauz Mill', 'Abadi Mill, 'sarak', 'Bhatta and only a few Khasra numbers have been recorded as 'Banjar'. The S.D.O. Laksar passed an illegal and void order on 21-8-1990 expunging the name of plaintiffs from the revenue records about the disputed property. According to G.O. No. 4093/1-A-450/1951 dated 1-7-1952 the lands held by a limited Company under the Indian Companies Act are to be treated as areas held and occupied for a public purpose and work of public utility. The plaintiffs case is that the Sugar Factory is a public limited company and is producing sugar by crushing sugarcane of the cane growers of the area and there is no other sugar factory in whole of Tehsil Laksar except that of plaintiffs. It is serving public purposes and its work is of public utility. More than 1200 persons are employed in the sugar factory and the factory is helping persons and downtrodden in various ways. It has also come on record that in 1960 the properties mentioned at the foot of the plaints came under consolidation of the area. During consolidation 'partal' on all these plots, there being Abadi or Abadi sites, these plots were found unsuitable for consolidation and were out of consolidation. The above facts have not been rebutted by the defendants by adducing cogent and reliable evidence. Therefore, the defendants/ appellants have not been able to establish that the disputed land has vested with the State Government on account of notification issued Under Section 4 of the U.P.Z.A. & L.R. Act and thereafter the same vested in the Gaon Sabha by a notification issued Under Section 117 of the Act. It will not be out of place to mention here that the Gaon Sabha, although was impleaded, as defendant No. 3 in the suits, but it has not contested the suits.

19. we have also gone through the judgment of the Hon'ble Apex Court in the case of U.P. State Sugar Corporation Ltd. (supra) and find that the facts of that case are squarely covered with the facts of the case in hand. Therefore, in view of the law laid down by the Hon'ble Supreme Court in the above cited case, and for the reasons recorded above, we hold that the land of the Mill and its appurtenant land utilized for Mill buildings, Gurdwara, quarters, play grounds, dumping yards, double storeyed buildings called 'Pilli Kothi', residential quarters, hospital, bank

buildings, cane trollies parking and cane trucks parking yards, latrines, private roads, buggies, parking yard, water drains for drainage of the dirty water of the Mill, Molasses storage tanks, spray pond, clarification house of the factory, lime and godowns and canteen, workers club, sugar godowns, general offices, stores, guest houses, cane office, Chairman's and Resident Director's residences etc., cannot vest in the State Government and the State Government cannot hand over the said land to the Gaon Sabha for its management under the provision of Section 117 of the U.P.Z.A. & L.R. Act. Sinde the land in question was being utilized as land appurtenant to the land of the Mill from before the date of vesting that land would not vest in the State. The easement right available to the Sugar Mill in respect of the plots in question would also not stand de stroyed and would continue to be enjoyed, by the Mill. That being so, the property at no stage, vested in the State and, therefore, it could not, at any subsequent stage vest in the Gaon Sabha. The Courts below have rightly decided the point in favour of the Mill. We do not find any illegality and impropriety in the finding recorded by the Courts below and the same do not required interference of this Court.

20. From the above discussion we come to the conclusion that the disputed land is in the exclusive possession of the Sugar Factory, some of the land has been purchased/transferred/handed over to the Mill and the land appurtenant to the Factory land has already vested in the mill on the date of vesting.

21. The next argument of the learned Standing Counsel is that the suits were barred by the provisions of Section 331 of the U.P.Z.A. & L.R. Act and Sections 34, 38 and 41 of Specific Relief Act and the finding of the Courts below on the point is erroneous. Learned Standing Counsel has submitted that some part of the disputed land is used for agricultural purpose, therefore, the best way for the plaintiff was to file suit be-fore Revenue Court under the provision of Section 229-B of U.P.Z.A. & L.R. Act. He further argued that the plaintiff was not in possession of the disputed land and wanted to declare its possession over the land in sul therefore the suits were barred by the pro- visions of Specific Relief Act.

22. We find no substance in the argument advanced by the learned Counsel for the appellant, firstly on the ground that the disputed land is an Abadi land and it is

not being used as the agricultural land and secondly the plaintiff has not sought relief of declaration, rather it has sought the relief of permanent injunction not to interfere in its peaceful possession over the, disputed land. We find that the trial Courts were well within their jurisdiction to decide the above issues in favour of the plaintiff/Mill.

23. The learned Standing Counsel lastly 'Submitted that the suits instituted before the Courts below were not maintainable as Notice 80 C.P.C. and 106 Panchayat Raj Act were not served on the defendants and the trial Courts have committed error of law in deciding the points in favour of the plaintiff/Mill.

24. Perusal of the record reveal that the above pleas were taken by the defendant/State and the burden to prove the same was on the defendant/State. The defendant/ State did not adduce any evidence about the above allegation. The defence witness Shravan Kumar has not deposed even a single word about the factum of non-receipt of notice. On the other hand the plaintiff has asserted the notice was sent to the defendant/State. In support it filed postal receipts paper Nos. 10-C, 11-C and 12-C showing therein that notices were sent to Gram Pradhan, Officer I/C Town Area and Collector, Haridwar respectively. The receipts show that the envelopes were got served on 10-8-1991. The notices were proved by P.W. 1, Prakat Singh in O.S. No. 3/1992 and in O.S. No. 4/1992 the receipts paper Nos. 167-C/l to 167-C/3 and 168-C have been proved by the same witness Prakat Singh produced in this case also. In the aforesaid circumstances, it cannot be said that no notice Under Section 80 C.P.C. and Section 106 Panchayat Raj Act was served upon the defendants/appellants before filing the

25. No other point has been raised before us by either party.

In view of foregoing discussion, we hold that both the appeals have no merit and the same are liable to be dismissed.

26. Both the appeals are dismissed. The impugned Judgments and decrees passed by the Courts below are upheld. No order as to costs.

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