Basdeo and ors. Vs. Board of Revenue and ors.

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Court : Allahabad

Decided On : May-23-1974

Reported in : AIR1974All337

Judge : Satish Chandra, ;Hari Swarup, ;H.N. Seth, ;K.N. Seth and ;P.N. Bakshi, JJ.

Acts : Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 11, 12, 13, 18, 19, 20 and 21; Constitution of India - Article 141

Appeal No. : Special Appeal Nos. 212, 215, 216, 217 and 218 of 1971

Appellant : Basdeo and ors.

Respondent : Board of Revenue and ors.

Advocate for Def. : R.M. Sahai, Standing Counsel

Advocate for Pet/Ap. : Sanbatha Rai, ;K.P. Singh and ;K.L. Misra, Advs.

Judgement :

Satish Chandra, J.

1. Gajadhar Khatik was the occupancy tenant of the plots in dispute. In or about the year 1923 he mortgaged them in favour of the respondents second set. Gajadhar died, and the tenancy was inherited by his son Moti. In 1944 a tripartite agreement was entered info among Moti, the Maharaja of Banaras, who was the zamindar, and the appellants. As a result, two documents were executed. One was dated 4th September, 1944, whereunder Moti surrendered his occupancy tenancy holdings in favour of the Maharaja of Banaras, the zamindar, on payment of Rs. 6,000 as consideration. This amount was paid by the appellants as consideration for being granted a lease of the plots by the zamindar. On 20th February, 1945, the Maharaja of Banaras executed a registered deed of lease letting out the plots to the appellants on a premium of Rs. 6,000, Out of the sum of Rs. 6,000, a sum of Rs. 3,300 was retained by the appellants for payment to the mortgagees, namely, respondents second set, and the balance of Rs. 2,700 was paid in cash to Moti Khatik,

2. On 10th April, 1945, the appellants, namely, the new lessees, filed a suit for declaration and possession under Section 59/180 of the U. P. Tenancy Act against the mortgagees, respondents second set.

3. The mortgagees contested the suit, inter alia, on the ground that the plaintiffs had retained a sum of Rs. 3,300 with them for payment to the mortgagees with the consent of the zamindar, but they had not paid the money to the mortgagees. The

mortgagees having been recognised by the zamindar, were in authorised possession. It appears that the mortgagees had sublet some of the plots. The sub-tenants from the mortgagees were also impleaded as defendants to the suit, These sub-tenants also contested the suit. They claimed that they were in authorised possession on behalf of the mortgagees.

4. The trial court decreed the suit on 6th September, 1948. On appeal the decree was set aside and the suit was dismissed. On 18th August, 1951, the Board of Revenue, however, allowed the second appeal filed by the plaintiffs and restored the decree of the trial court. The Board of Revenue observed that the appellants before it did not deny the liability to pay the mortgage money, and in fact, they offered to pay it. Therefore, they could not be estopped from ejecting the mortgagees whose interest had been extinguished under Section 47 of the U. P. Tenancy Act. In execution of this decree for possession, the appellants obtained possession on 5th October, 1951. The names of the mortgagees were expunged from the records and those of the appellants were mutated.

5. On 10th December, 1953, the erstwhile mortgagees and their sub-tenants made five applications for restitution of possession under Section 232 of the U. P. Zamindari Abolition and Land Reforms Act. They claimed that they had become adhivasis because they were recorded as occupants within the meaning of Sub-clause (b) of Section 20 of the Act, The trial court allowed these applications, which orders were, however, set aside on appeal. On 23rd March, 1965, the Board of Revenue allowed the second appeal and restored the decree of the trial court, with the result that the applications for restitution stood allowed. Aggrieved, the lessees instituted five writ petitions in this Court.

6. The learned single Judge found that in 1356 Fasli the erstwhile mortgagees were recorded in the remarks column as mortgagees, that on some of the plots one Raj Narain was entered as sub-tenant in column No. 6, that on these plots the mortgagees were also entered in the remarks column as mortgagees, that in case of some other plots column No. 6 was blank, while the mortgagees were entered as such in the remarks column in respect of certain plots, and that Amaldhari Pandey and Mahadeo Ahir were entered as sajhis in the remarks column along with the mortgagees over two plots, whereas these very persons were recorded over two other plots as 'bilewaz halwahi Somaru Bhar' along with the mortgagees' entry of the appellants. He found that the mortgage created by Gajadhar Khatik was extinguished on surrender of the holding, and consequently the respondents ceased to hold the status of mortgagees in the land from 1944 onwards. Relying upon the Supreme Court decision in Upper Ganges Sugar Mills Ltd. v. Khalil-ul-Rahman (AIR 1961 SC 143) it was observed that the Khasra entries showing them as mortgagees in 1356 Fasli had clearly to be interpreted in the same manner as entries showing a company as Thekedar after the expiry of the Theka were interpreted by the Supreme Court in that case. It was held that the Khasra entries of 1356 Fasli recording the respondents as mortgagees must be deemed in law to have recorded the mortgagees as occupants and so they became adhivasis under Section 20 (b). It was also held that the entry of sub-tenant also amounted to recording the person as occupant, but the learned single Judge held that the Board of Revenue could not be said to have committed any manifest error of law in treating the entry of 'halwaha' as that of a mere licencees so as to be outside the purview of Section 20. With these findings the writ petition was dismissed.

7. At the hearing of the appeals it was urged on behalf of the erstwhile mortgagees that they were not, in fact, mortgagees in 1356 Fasli, but since they were recorded in the revenue papers for that year, their record will be a record as occupants within the meaning of Clause (b) of Section 20. In support reliance was placed upon the Upper Ganges case, AIR 1961 SC 143 which was followed in Jhamman Lal v. Deputy Custodian General, 1964 All LJ 273 = (AIR 1965 All 253); Pir Khan v. Deputy Director of Consolidation. 1965 All LJ 591; Narain v. Smt. Anti, 1966 All LJ 442 and also on a Full Bench decision in Chobey Sunder Lal v. Sonu, 1967 All LJ 960 = (AIR 1969 All 304) (FB). Another Division Bench reported in Mustafa Khan v. Deputy Director of Consolidation, 1972 All LJ 854 = (AIR 1973 All 372) had doubted the correctness of these decisions. In view of this conflict of opinion the Division Bench referred the following questions of law to a larger Bench:--

(1) Whether an entry in 1356 Fasli has to be taken as it is or can the Court construe it in the light of findings given by it on other evidence?

(2) Whether an entry in 1356 Fasli recording a person as mortgagee in the remarks column is in law an entry of recorded occupant if it is found that the person was in possession in 1356 Fasli as a trespasser?

(3) Can an entry not made in accordance with the prescribed rules be still deemed to be an entry of recorded occupant?

(4) If a person is recorded in subtenants' column and another person is recorded as mortgagee in the remarks column, will any of them be deemed to be recorded occupant, and if so, who?

(5) Whether a halwaha can be held to be a sub-tenant?

8. Questions (1), (2) and (3) and (4) are inter-related. They may be considered together.

9. These questions proceed on the factual position that the title of a mortgagee of occupancy tenancy had extinguished prior to 1356 Fasli. He was in possession in 1356 Fasli as a trespasser. But he was recorded in the revenue papers as a mortgagee in the remarks column. The question is whether such an entry is an entry recording him as occupant within meaning of Section 20 (b) (i) of the U. P. Zamindari Abolition and Land Reforms Act.

10. The appellants submit that the respondents are recorded as mortgagees and the entry should be taken as it is. The respondents, on the other hand, contend that since the mortgage extinguished prior to 1356 Fasli, their possession in 1356 Fasli was in their own right and not as a trespasser. The record in their favour will be as an occupant.

11. Section 20 of the Act, in so far as it is material, provides-

'20. A tenant of sir, sub-tenant or an occupant to be adhivasi. Every person who-

(a) .....

(b) was recorded as occupant--(i) of any land (other than grove land or land to which

Section 16 applies) or land referred to in the proviso to Subsection (3) of Section 27 of the U. P. Tenancy (Amendment) Act, 1947, in the Khasra or Khatauni of 1356 Fasli, prepared under Sections 28 and 33 respectively of the U. P. Land Revenue Act, 1901..... shall unless he has become a bhumidhar of the land under Sub-section (2) of Section 18 or an asami under Clause (h) of Section 21, be called adhivasi of the land and shall subject to the provisions of this Act, be entitled to take or retain possession thereof.'

This provision requires the Khasra and Khatauni of 1356 Fasli to be prepared under Sections 28 and 33 respectively of the Land Revenue Act, 1901. The second noticeable condition is that the section operates 'subject to the provisions of this Act.' Section 21 on the other hand operates 'notwithstanding anything contained in this Act'. Evidently Section 20 does not override the other provisions of the Act, but is subservient to them.

12. Section 28 of the Land Revenue Act provides that the Collector shall maintain the khasra in accordance with rules made under Section 234 of the Act. Section 33 requires the Collector to maintain the record of rights, and for that purpose to prepare annually an amended set of registers enumerated in Section 32. Clause (e) of Section 32 refers to 'a register of all persons cultivating or otherwise occupying land specifying the particulars required by Section 55'. This register is called the Khatauni, Section 55 provides:--

'55. The register of persons cultivating or otherwise occupying land prescribed by Clause (e) of Section 32 shall specify as to each tenant the following particulars-

(a) the nature and class of his tenures as determined by the United Provinces Tenancy Act, 1939;

(b) the rent payable;

(c) omitted;

(d) any other condition of the tenure which the Provincial Government may, by rules made under Section 234, require to be recorded.'

13. It will thus be seen that both the khasra and khatauni have to be prepared in accordance with the rules framed under Section 234. Khatauni has to specify the nature and class of tenure of the person cultivating or otherwise occupying land.

14. Section 234 of the Land Revenue Act conferred rule making power upon the Local Government. Its Clause (d), inter alia, provided for prescribing the form, contents, method of preparation etc. and maintenance of the record of rights and other records, maps, field books, register and lists made or kept under the Act. The Land Records Manual is a collection of rules framed under Section 234 of the Land Revenue Act, as well as instructions issued by the State Government in relation to various matters. Chapter V of Part I of the Manual relates to the map and Khasra. Chapter VIII deals with the Khatauni. The preface to the Manual shows that Chapters III to XI of Part I of the Manual have been framed under Clause (d) of Section 234 of the Land Revenue Act. So the rules contained in Chapters V and VIII of the Manual are statutory rules made under Section 234. Chapter V dealing, inter alia, with Khasra consists of paragraphs 55 to 102. Chapter VIII relates to Khatauni and

consists of paragraphs 121 to 160. Paragraph 60 provides that Khasra shall be prepared in Form No. P-3, Form No. P-3 consists of 21 columns. Column No. 5 is meant for the name of the cultivator. In column No. 6 are to be entered the names of sub-tenants or tenants of sir, or tenants of permanent tenure-holders, or rent free grantee, or grantees at a favourable rate of rent or occupiers of land without the consent of the persons entitled to admit such sub-tenants. Column No. 21 is the remarks column. Paragraph 71 provides for the entry in column No. 5. In it not only the name of the cultivator but also the 'nature of his rights' i.e., the class of his tenure and, where necessary, the term of cultivation, have to be entered. These entries are to be made in accordance with paragraphs 72 to 86, 124 and 124-A and 126 to 129, as the case may be. Paragraphs 124 to 129 are in Chapter VIII dealing with Khatauni. Paragraphs 78 and 79 deal with cultivation of thekedars and mortgagees. Paragraph 79 provides-

'When a permanent tenure-holder or a fixed-rate tenant has mortgaged his holding with possession, or a grove-holder, the interest in his grove-land, the word 'mortgagor' shall be entered in column 5 after the class of tenant, or the grove-holder, as the case may be. The name and description of the mortgagee shall then be entered in the same column followed by the word 'mortgagee'. If any other tenant has mortgaged his holding the name and description of the mortgagee will not be entered in column 5 but in the column of remarks followed by the word 'mortgagee'. If the mortgagee has let out the field to a cultivator, the name of the actual cultivator should be shown in column 6. Mortgagees without possession shall not be shown anywhere in the khasra.

Note:-- The record of mortgage in the remarks column of Khasra is intended to show the fact of possession. It is no recognition of an illegal transaction.'

15. Paragraph 124 provides for the arrangement of holdings in the Khatauni in Agra, while paragraph 124-A deals with arrangement of land in the Khatauni in Avadh. A perusal of paragraph 124 shows that it divides land into 20 classes, depending on the nature of the rights possessed by the cultivator. Class (1) is of Sir of landlords. Class (2) deals with Khudkasht. Class (2A) relates to thekedars or mortgagees' cultivation. Classes (3) to (9) refer to different kinds of tenants. Class (10) relates to land held by non-occupancy tenants. Class (10A) provides-

'(10A) Occupiers of land without title when there is no one already recorded in column 5 of the Khasra.

Note:-- When no rent has been fixed and any person has been admitted to the occupation of land or permitted to retain possession of land by any one having a right to admit or permit him, with the intention that a contract of tenancy should thereby be effected, he is a hereditary tenant and his proper place is under class (8). But before any person who claims to be a tenant of this description is entered as hereditary tenant, the Pat-wari shall record the statement of the Zamindar and such person in his diary and obtain their signatures and make the entry under class (8) only if the case is undisputed. If the Zamindar denies admission to tenancy or recognition of such person as tenant, such person shall be entered under class (IDA).'

Class (11) consists of rent free grantees, while class (12) deals with grove holders. Class (16) is of tenants under permanent tenure-holders. Class (17) is of tenants of sir and tenants of Khudkasht. Class (18) deals with tenants under rent free grantees.

Class (18A) is of lessees under Section 252, U. P. Tenancy Act

16. Class (19) is of sub-tenants while class (20) is-

'(20) Occupiers of land without the consent of the person if any entered in column 5 of the Khasra.

Notes-- (1) When no rent has been fixed and any person has been admitted to the occupation of land or permitted to retain possession of land by a tenant, with the intention that a contract of subtenancy should thereby be effected, he is a sub-tenant and his proper place is under class (19). But before any person, who claims to be a sub-tenant by virtue of such admission without rent or recognition as sub-tenant is entered as subtenant, the Patwari shall record the statements of the tenant and such person in his diary and obtain their signatures and make the entry in class (19) only if the case is undisputed. If the tenant denies admission to tenancy or recognition of such person as sub-tenant, such person shall be entered under class (20).

(2) The above classification applies to the whole of the Agra province except the areas specified in the First Schedule of the Land Revenue Act, 1901.'

17. The arrangement of land in Avadh is similar except that class (5A) is equivalent to class (10A) in Agra and class (12) is equivalent to class (20) mentioned above.

18. Paragraph 121 provides that the Khatauni shall be prepared in Form P-11. This form consists of 9 columns, of which column 2 deals with the name of the cultivator.

19. It will be seen that there is detailed provision for specifying the nature of the tenure under which a person is cultivating. The classification includes 'occupiers of land'. Classes (10A) and (20) deal with them. In the context of this classification it is apparent that the occupiers of land mentioned in classes (10A) and (20) are those who are not the holders of any recognised tenure. Such occupiers of land without title are recorded in the khasra in column 6.

20. Under Paragraph 84 of the Manual if the lekhpal finds that a person whose name has not been previously recorded is in cultivatory possession and someone else is recorded in column No. 5 he shall enquire how such person has obtained possession. If he finds that such person is a usufructuary mortgagee of the holding or sajhidar of the person recorded in column 5, he will follow the procedure laid down in paragraphs 79 and 83. If he finds that the person recorded in column 5 has died and such person is his heir, he will take steps to enter the heir's name in column 5, according to the procedure laid down in Paragraph 82. If the lekhpal finds that such person holds a sub-lease from the person recorded in column 5, he will follow the procedure laid down in paragraph 87 (3). If the Lekhpal finds that such person does not fall in any of the classes mentioned above and the person recorded in column 5 belongs to class (10) or (10A) in Agra, and in Avadh to class (5) or (5A) of the Khatauni, the Lekhpal shall substitute for the recorded person the name of the actual occupier in column 5 in red ink. If the person recorded in column 5 is a tenant of any class other than these or is a grove-holder or a grantee under class (11) in Agra or class (6) in Avadh, the Lekhpal shall follow the procedure laid down in paragraphs (b) to (d) given below that Paragraph.

21. Paragraphs (b) to (d) give detailed procedure for enquiring and making of an

entry. The entries are made in red ink with 'Dawedar Qabiz' added. The entry is made in the remarks column only provisionally and pending the completion of the enquiry.

22. Paragraph 85 deals with holdings abandoned by tenants. In such cases if a stranger is in occupation, the actual cultivator is entered in the remarks column, preceded by the word 'Qabiz'. In such a situation the tenant's name is mentioned in column 5, with the addition of the word 'Farar' in red ink.

23. Paragraph 87 deals with entries of sub-tenants and others (column (6)). Sub-paragraph (1) provides that in column 6 of the Khasra will be entered persons of the following descriptions :

(a) Tenants under permanent tenure-holders in Agra (Class 16 of the Khatauni).

(b) Tenants of Sir, Tenants of Khudkasht (in Agra class 17 and in Avadh class 10 of the Khatauni).

(c) Tenants under rent-free grantees and grantees at a favourable rate of rent (in Agra class 18 and in Avadh class 10A of the Khatauni).

(d) Sub-tenants (in Agra class 19 and in Avadh class 11 of the Khatauni).

(e) Occupiers of land without the consent of the person whose name is entered in column 5 of the Khasra (in Agra class 20 and in Avadh class 12 of the Khatauni).

Sub-paragraph (iii) provides that-

'If there was no entry in column 6 of the Khasra in the preceding year and the lekhpal finds at the tune of partal some person belonging to one of the classes mentioned in sub-paragraph (i) in cultivatory occupation of the land, he will enter in column 6 in red ink the name, parentage and rent, if any, of such person together with his status:

Provided that he shall not record any such person as belonging to class (a), (b), (c) or (d) of sub-paragraph (i) unless he is satisfied by an enquiry from the parties concerned that a contractual relation of landholder and tenant exists between them. If he is not so satisfied, he shall re-card the person as belonging to class (e). Pending such enquiry the Lekhpal shall note the name and parentage of such person in the remarks column of the Khasra.'

24. It will thus be seen that where no one is entered in column 6, a person claiming to be in cultivatory occupation without the consent of the person whose name is entered in column 5 has to be entered in column 6 in red ink and his status has also to be entered in that column. If such person claims to be a tenant of the kind mentioned in classes (a) to (d) of sub-paragraph (i) and if the Lekhpal is not satisfied that he belongs to one of those classes, he will be recorded as an occupier belonging to class (e), and pending such inquiry his name is to be noted in the remarks column of the Khasra. Obviously if after the enquiry the lekhpal is satisfied that he is a tenant mentioned in class (a), (b), (c) or (d) he will be mentioned as such in column 6, otherwise his name shall be entered in column 6 in red ink together with his, status, that is, as 'Occupier of the land.'

25. Sub-paragraph (iv) of Paragraph 87 provides for a case where an entry already

exists in column 6 of the Khasra and the Lekhpal finds at his partal that some person other than the recorded person is in cultivatory occupation of the land. Clauses (a) to (d) of sub-paragraph (iv) give detailed instructions with regard to various contingencies which may arise. Clause (d) deals with the situation where the occupier claims to be recorded in column 6 to the exclusion of the recorded person. In that case the Lekhpal has to proceed as follows :--

(i) If the recorded person belongs to class (b), (d) or (e) of sub-paragraph (i), the lekhpal will substitute the name of the actual occupier in place of the name of the recorded person but he shall not enter the new name in class (fa) or class (d) unless the conditions laid down in the proviso to sub-paragraph (iii) are fulfilled. If he finds that a contractual relationship has not arisen between the occupier and the person entitled to sublet he will treat the occupier as belonging to class (e).

(ii) If the recorded person belongs to class (a) or (c) of sub-paragraph (i), the lekhpal shall provisionally enter in red ink the name of the actual occupier in the remarks column of the khasra and shall proceed, as far as possible, as laid down in sub-paragraphs (b) to (d) of paragraph 84, provided that in a case falling under class (d) the name and other particulars of the actual occupier with the words 'Qabiz Dawedar' shall be entered below the name and other particulars of the person already recorded in column 6.'

26. Thus the Lekhpal has to make an enquiry whether a contractual relationship of landholder and tenant arises between the person in cultivatory occupation and the person entered in column 5. If he is not so satisfied, then the person in cultivatory occupation is to be entered in column 6 in red ink, and in cases covered by Clause (ii) of sub-paragraph (iv) (d), with the words 'Kabiz Dawedar' added.

27. It is evident that the Land Records Manual gives detailed instructions to the Lekhpal as to how and when is he to record the person as occupier of land. Reading paragraphs 79, 84 and 87 together it is evident that the Lekhpal is to enter the usufructuary mortgagee of an occupancy tenant in the remarks column with the word 'mortgagee' added. If he finds that a person is an occupier of land without consent, he is to be entered in column 6 in red ink and in some cases with the words 'Kabiz Dawedar' added. The Lekhpal is not authorised to record the name of an 'occupier' in the remarks column as a mortgagee,

28. If a person has been recorded as mortgagee in the remarks column, it is an entry which, consistently with the rules contained in the Land Records Manual, cannot be treated as an entry recording him as an occupier or occupant. Since the rules require the Lekhpal to make an inquiry into the status as well as nature of the rights possessed by a person in cultivatory occupation of land before recording an entry, it is evident that Sections 28 and 33 of the Land Revenue Act read in the light of the rules framed thereunder do not contemplate that an entry made by the lekhpal is to be read or construed in the light of the findings that may be given by the Courts subsequently. Since the entries are to be made after the requisite enquiry contemplated by the rules, the entries must be read and construed as required by those rules.

29. In the present case the entry is in the remarks column and with the word 'mortgagee' added against the name. The entry can be read only as indicating that the person was recorded, in accordance with the provisions, as a mortgagee. Such an

entry is not an entry recording him as occupant. Record as an occupant is authorised to be made in special circumstances and after proper enquiry and in accordance with the provisions of paragraphs 84 and 87. An entry made in accordance with those provisions alone can be read as recording a person as an occupant. Similarly any entry recording a person as a sub-tenant in column 6 while entering another as mortgagee in the remarks column is an entry in accordance with the last clause of paragraph 79 of the Land Records Manual. It is an entry recording him as a sub-tenant from the mortgagee. It is not an entry recording him as an occupant.

30. The legislative history of Section 20 (b) (i) is interesting and instructive.

31. The U. P. Agricultural Tenants (Acquisition of Privileges) Act No. 10 of 1949, conferred certain privileges on specified categories of tenure-holders provided they deposited ten times the rent. The privileges were that the tenure-holder was not liable to ejectment for non-payment of rent and that he was henceforward to pay half the rent. Under Section 3, those entitled to acquire these privileges were-

(a) a tenant holding on special terms in Avadh,

(b) an exproprietary tenant,

(c) an occupany tenant, and

(d) a hereditary tenant.

The U. P. Agricultural Tenants (Acquisition of Privileges) (Amendment and Miscellaneous Provisions) Act, No. 7 of 1950, made certain changes in the principal Act. In Section 3 a new Clause (e) was added, which provided for 'an occupier'. This amendment was made with retrospective effect. Explanation 2, which was also added to Section 3 stated-

Explanation 2.-- For the purposes of this section the expression-

(i) 'occupier' means an occupier of any land which on the date immediately preceding the date of declaration under Section 6 is not included in the holding of a permanent tenure-holder, permanent lessee in Avadh, tenant, grove-holder, rent-free grantee, grantee at a favourable rate of rent or which is not sir or khudkasht or which is not in, the personal cultivation of a Thekedar or a mortgagee.' Thus an occupier of land which was included in the holding of inter alia any kind of tenant was not entitled to acquire the privileges conferred by that Act. Schedule IV to U. P. Zamindari Abolition and Land Reforms Act amended the U. P. Agricultural Tenants (Acquisition of Privileges) Act, 1949. Section 340 made the amendments retrospective with effect from the commencement of the 1949 Act. The IV Schedule repealed and re-enacted Section 3 (1) of the Principal Act. Under the re-enacted section, Clause (e) referred to an occupier. Explanation 2, which denned the word 'occupier' was also amended. Between the words 'occupier' and 'of' the words 'recorded in the record of rights of 1356 Fasli' were inserted. After the amendment the Second Explanation read as follows:--

'Explanation 2-- For the purposes of this section the expression-

(1) 'occupier' means an occupier recorded in the record of rights of 1356 Fasli of any

land which on the date immediately preceding the date of declaration under Section 6 is not included in the holding of a permanent tenure-holder, permanent lessee in Avadh, tenant, grove-holder, rent-free grantee, grantee at a favourable rate of rent or which is not in the personal cultivation of a thekedar or a mortgagee or which is not sir or khudkasht of a landlord, who on the said date is assessed in Uttar Pradesh to a land revenue of Rs. 250 or less annually or where no land revenue is assessed to a lesser amount of local rate than would be payable on a land revenue of Rs. 250 annually.'

32. It will be seen that even after the amendment an occupier recorded in the record of rights of 1356 Fasli in respect of any land which is included in the holding of inter alia, any class of tenant, was not entitled to acquire the privileges under the Act of 1949.

33. It is difficult to imagine that the legislature while denying persons recorded in 1356 Fasli over holdings of tenants, the right even to acquire the privileges on payment of ten times rent, would by the same Act confer on them adhivasi and then sirdari rights. The tenants who acquired the privileges and were conferred bhumidhari rights by Section 18 (2) would lose them if someone else happened to be recorded in 1356 Fasli over their holding.

34. If it is held that 'recorded asoccupant' within meaning of Section 20 (b) (i) includes all and sundry who happened to be recorded somehow in 1356 Fasli, then all those tenants and other tenure holders on whom the U. P. Zamindari Abolition and Land Reforms Act confers bhumidhari, sirdari and asami rights by Sections 18, 19 and 21 would lose their rights from the very moment they were deemed to have acquired those rights, namely, the date of vesting, in case someone else is found recorded in 1356 Fasli in manner showing that he was in immediate occupation.

35. It is settled that when the legislature unfolds a scheme of land reform in several inter-related and connected provisions, they should be so read that each has its proper operation. One provision should not be so construed that allothers are nullified. The operative efficacy of the various provisions like Sections 11, 18, 19 and 21 was maintained by the Legislature by, firstly, restricting the operation of Section 20 (b) (i) to recorded occupants in accordance with the Land Revenue Act; and, secondly, by expressly making the provisions of Section 20 operative subject to the other provisions of the Act, viz., Sections 11, 12, 13, 18, 19 and 21 etc. In other words, the title of Bhumidhar, Sirdar or asami conferred by these provisions on tenure holders will prevail and will not be defeated by someone else being recorded as sub-tenant or mortgagee or thekedar etc. of the tenure-holder, even though such person is proved not to be the sub-tenant, mortgagee or thekedar in 1356 Fasli.

36. For the respondents it was submitted that the Supreme Court in AIR 1961 SC 143 (supra) has held that if a person was not a thekedar in 1356 Fasli, but was recorded as such, the entry will be deemed to be recording him as an occupant. Learned counsel urged that the principle laid down in this case has been extended by several Division Benches of this Court: in 1964 All LJ 273 = (AIR 1965 All 253) (supra); 1965 All LJ 591 (supra); and 1966 All LJ 442 (supra) and also by a Full Bench in 1967 All LJ 960 = (AIR 1969 All 304) (FB) (supra) to the case of record as sub-tenant. In these cases it has been held that if a person is recorded as a sub-tenant but it is found that he was not really a sub-tenant in 1356 Fasli, the entry will be deemed recording him as an occupant. On the strength of these authorities learned counsel contended that

the same principle should be applied to the case of mortgagees. In the present case the respondents were not mortgagees in 1356 Fasli but they were recorded as such in that year, and so the entry in their favour, it is submitted, should be regarded as an entry recording them as occupants.

37. The sheet-anchor of this submission is the decision of the Supreme Court in Upper Ganges Sugar Mills' case, AIR 1961 SC 143. That case, therefore,requires close study.

38. In that case the Sugar Millswas the thekedar of the land. The theka came to an end in 1355 Fasli, that is, June, 1948. In the revenue papers for 1356 Fasli the Sugar Mills was recorded as thekedar. In a suit for ejectment filed by the landlord the Company pleaded that it was not a thekedar but a hereditary tenant. This plea failed and the suit was decreed. The decree was maintained in appeal as well as in second appeal. The Company appealed to the Supreme Court under a certificate granted by the Board of Revenue. During the pendency of theappeal, the U. P. Zamindari Abolition and Land Reforms Act came into force.

39. After the coming into force of the U. P. Zamindari Abolition and Land Reforms Act the Sugar Mills applied for recovery of possession under Section 232 of the Act on the ground that it was in 1356 Fasli recorded as 'occupant' within meaning of Clause (b) of Section 20 (1) and so it became an adhivasi, entitled to retain possession. This suit was decreed, and the decree was upheld in appeal as well as in second appeal. The landlords went up in appeal to the Supreme Court.

40. On behalf of Khalil-ur-Rehman, the landlord, it was argued before the Supreme Court that the term 'occupant' as occurring in Clause (b) of Section 20 connotes a person who is in possession in his own right and not on behalf of someone else. In support reliance was placed upon a Full Bench decision of this Court in Swami Prasad v. Board of Revenue, 1960 All LJ 241 (FB). It was urged that the Sugar Mills was entered as thekedar. A thekedar holds possession on behalf of the landlord. The Sugar Mills being recorded as thekedar could not, in law, be deemed to be recorded as occupant. Wanchoo, J., speaking for the majority, proceeded on the basis that the first part of the argument was acceptable. He observed that in order that the Company can take the benefit of Section 20 it should have been recorded in occupation of the land in dispute in the year 1356 Fasli. The only limitation that has been placed by judicial decisions on the meaning of the word 'occupant' is that the person should be in occupation in his own right and not on behalf of someone else-- see 1960 All LJ 241 (FB) (supra). Wanchoo, J. then observed:--

'Learned counsel for the landlords however contends that the company was not in possession in its own right, and his argument in this connection is two-fold. Firstly, it is submitted that the company was ordered to be ejected on November 3, 1948, which was in 1356 Fasli. Thereafter it remained in possession because of the stay orders passed by the appellate courts to which he went up in appeal successively. Therefore, even though the company was in occupation throughout 1356 Fasli, its possession after November 3, 1948, was not on its own behalf but on behalf of the Court. Secondly, it is urged that as the company was recorded as a thekedar in 1356 Fasli, its possession was not on its own behalf but on behalf of the landlords, whose thekedar it was.'

Wanchoo, J. rejected both the submissions. With regard to the second submission it

was observed that what was contended on behalf of the landlords was that as the company was recorded as thekedarin 1356 Fasli, it was not open to the Court to go behind that entry, and, therefore, it must be held that the company was in occupation as thekedar in that year and thus was in occupation on behalf of the landlords and not on its own behalf. This plea was answered by saying-

'In this connection we may point out that the company claimed that it was entitled to possession not only as an adhivasi under Section 20 but also as a hereditary tenant under Section 12, which provides that a thekedar under certain circumstances becomes a hereditary tenant To meet the company's case under Section 12 the landlords contended that the company was not a thekedar in 1356 Fasli because the theka expired on June 30, 1948. The landlords were thus taking contradictory positions for the purposes of Sections 12 and 20; in opposition to the claim under Section 12 they said that the company was not their thekedar in 1356 Fasli while in opposition to the claim under Section 20, they said that the company was not in possession on its own behalf but as their thekedar.'

41. It is thus evident that the argument that the company was not in possession on its own behalf was repelled on this peculiar factual position that the landlords were taking up contradictory stands.

42. On behalf of the landlords reliance was placed upon Lala Nanak Chand v. Board of Revenue, 1955 All LJ 408, Wanchoo, J, held that that case was concerned only with the question whether a person who is recorded in the revenue records had also to prove actual possession, and it was held that it was enough that a person should be recorded in the revenue records and it was not necessary that he should also be in possession in the relevant year. This decision was distinguished on the ground that that case was not concerned with the nature of possession, namely, whether it was on a person's own behalf or on behalf of someone else. Wanchoo, J. then observed:--

'The words in Section 20 (b) (i) only speak of a person being recorded aa occupant and there is nothing in that section as to the nature of the occupancy, namely, whether it is on behalf of the person recorded or on behalf of somebody else. That is a matter which in our opinion must always be decided on other evidence for the entry does not contemplate recording the nature of the possession in the sense of its being on behalf of the person recorded or on someone else's behalf. We have already observed that the expression 'occupant' is not defined in the Act and it is clear that neither the Act nor the rules made under it prescribe the form in which the entry specified by Section 20 (b) should be made.'

43. Coming to the facts of that case, his Lordship held-

'Besides the reference to the theka was bound to be continued even after its termination so long as the company remained in possession and the Lekhpal received no order to change it. Therefore the contention on behalf of the landlords that we cannot look beyond the entry of the company as a thekedar and must hold on that basis that it was in possession on behalf of the landlords, is incorrect. On the landlords' own showing in this case, the company was not in possession as a thekedar as the theka had expired before 1356 Fasli. Under the circumstances we are of opinion that the company was recorded as an occupant in 1356 Fasli and that the nature of that occupation was on its own behalf and was not either on behalf of the Court or on behalf of the landlords.'

44. It is well settled that a judicial pronouncement has to be read and understood in the light of the arguments raised and considered. In this case the landlords' submission was that the word 'occupant' has not been defined, that there were no rules prescribing the form in which an entry of aa occupant is to be made, and that, therefore, the entry should be taken on its face value. If the entry records a person as thekedar, he should be deemed to be recorded as such and not as 'occupant' in the sense that he was recorded as a person who was in possession on his own behalf and not on behalf of somebody else. The entire argument of the landlords before the Supreme Court continued to hammer that the Sugar Mill was not recorded as in possession on its own behalf but that it was recorded as in possession on behalf of somebody else. The Supreme Court repelled this submission on the view that when there is no definition of the word 'occupant' and there are no rules prescribing the form in which the entry is to be made and further when Section 20 (b) (i) does not indicate about the recording of the nature of the occupancy, then per force the court must decide the question whether the person was in possession on his own behalf or on behalf of someone else, on other evidence. The Court went into the facts of the case and held that it was the landlords' own case that the company was not a thekedar. Therefore, the landlords were precluded from saying that it was in possession on behalf of the landlords. The argument that the company was in possession on behalf of the Court was equally untenable. The fact that the company continued to be recorded as a thekedar in 1356 Fasli though the theka had terminated earlier was explained by saying that the reference to the theka was bound to be continued even after its termination so long as the company remained in possession and the lekhpal received no order to change it.

45. For reasons best known to the learned counsel appearing for the landlords in that case the attention of the Supreme Court was not invited to the detailed statutory rules contained in the Land Records Manual prescribing the enquiry that has to be made by the Lekhpal prior to making an entry of a person as occupant, including an enquiry into the nature of his right or occupancy. The Supreme Court's attention was also not drawn to the fact that there is a form prescribed for making the entries in the khasra as well as khatauni, and also that the rules prescribe the manner and method of making the entries, including the column in which alone a person can be recorded as occupant. In this factual background the decision in this case has to be confined to these special facts, namely, that the Court was kept unaware of the detailed rules on the subiect and that the only argument raised before it was that decided cases have placed only one limitation on the meaning of the word 'occupant' and that is, that a person should be in occupation in his own right and not on behalf of someone else. Proceeding upon this basis, the case of the landlords was only this that the sugar mill was in possession not on its own behalf but on behalf of either the court or the landlords. This contention was repelled on the peculiar facts of the case including the fact that the landlords' own ease was that the company was not its thekedar in that year and so the landlords were precluded from saying that its possession was on behalf of the landlords.

46. This decision does not contain any declaration of law that there are no rules to determine the nature of the right of an occupant, or prescribing the form in which the entry is to be made, or the manner and method of making the entry. This decision cannot be taken as declaring the law that the only limitation placed by judicial decisions on the word 'occupant' is that the person should be in occupation in his own right and not on behalf of someone else, because this was only an argument raised on behalf of the landlords and the Court proceeded to decide whether the facts of the

case satisfied this test. The Court held that it was not satisfied.

47. This decision would be of assistance if it was settled that there is noother limitation, upon the significance of the word 'occupant' occurring in Section 20 (b) (i) and it is further assumed that there are no rules with regard to the several matters mentioned above.

48. In subsequent decisions the Supreme Court has noticed the relevant rules and placed other limitations on the term 'recorded as an occupant'. In Bachan v. Kanker, AIR 1972 SC 2157 the Supreme Court held-

'Section 29 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 speaks of a person recorded as occupant to become adhivasi of the land and to be entitled to take or retain possession as mentioned in the section. One of the principal matters mentioned in the section is that the Khasra or Khatauni of 1356 Fasli is to be prepared under Sections 28 and 33 of the U. P. Land Revenue Act, 1901. The U. P. Land Records Manual in Chapter A-V in paragraphs A-55 to A-67 lays down the manner in which the khasra or the field book showing possession is to be prepared by the Patwari in the areas to which Zamindari Abolition and Land Reforms Act, 1959 applies. There are detailed instructions about the manner in which the enquiry should be carried out about actual possession, and change in possession and corrections in the map and field book, and the form in which the Khasra is to be prepared. The form of Khasra is given in paragraph A-89. The form shows that the Lekhpal has to prepare a consolidated list of entries after partal or proper investigation. Again, paragraphs A-70 to A-73 of the U. P. Land Records Manual show how entries have to be made in Khataunis every year showing the nature of tenure of each holder. The Khatauni is meant to be a record of tenure-holders. The manner of changes to be made there is laid down in paragraphs A-82 to A-83. Entries are to be checked. Extract has to be sent to the Chairman, Land Management Committee, as contemplated in paragraph A-82 (iii). In this context Section 20 (b) (i) of the U. P. Zamindari Abolition and Land Reforms Act which speaks of the record 'as occupant' in the Khasra or Khatauni of 1356 Fasli refers to the Khasra or Khatauni being prepared in accordance with the provisions of the Land Revenue Act, 1901. Khasra is the field book provided for by Section 28 of the Land Revenue Act. Khatauni is an annual register prepared under Section 33 of the Land Revenue Act, 1901. It has to be emphasised that the entry under Section 29 (b) (i) of the U. P. Zamindari Abolition and Land Reforms Act, 1959, in order to enable a person to obtain adhivasi rights must be an entry under the provisions of law.'

The Court went on to hold-

'This Court has held that entries which are not genuine cannot confer adhivasi rights. The High Court wrongly held that though the entry was incorrect it could not be said to be fictitious,'

49. This decision of the Supreme Court contains a declaration of law that the entry recording a person as occupant within meaning of Section 20 (b) (i) must be prepared in accordance with the provisions of the Land Revenue Act and the relevant rules contained in the Land Records Manual. It also declares the law that if an entry is incorrect or not genuine it will not confer adhivasi rights. In other words, if an entry is proved to have been made in accordance with the relevant rules for recording a person as an occupier, then alone it will be a valid entry recording a person as an

occupant so as to confer adhivasi rights under Section 20 (b) (i). These are the limitations placed by judicial decisions upon the significance of the term 'recorded as occupant' occurring in Section 20 (b) (i).

50. In Ram Das v. Deputy Director, AIR 1971 SC 673 the Supreme Court, relying upon its earlier decision in Smt, Sonawati v. Sri Ram, AIR 1968 SC 466 held that when there was evidence to show that an entry was fictitious, the person whose name was so entered in the record on the material date could not claim the rights of an adhivasi. This was another limitation.

51. In Smt. Sonawati's case, AIR 1968 SC 466 one Pritam Singh claimed that he was recorded as 'occupant' in the Khasra for 1356 Fasli. The Supreme Court held that the entries on which reliance was placed did not support his case. Shah, J., speaking for the Court, observed-

'In the certified extract of the Khasra for 1356 Fasli (Ex. A/1) tendered in evidence by Pritam Singh in the column. 'Name and caste of cultivator' the entry is 'Tota Ram and others' and in the column for 'remarks' the entry is 'Pritam Singh s/o Pyare Lal Sankuri'.'

The learned Judge then held-

'Our attention has not been invited to any provision of the U. P. Tenancy Act or instructions issued by the Revenue authorities which tend to establish that the name of an occupant of land is liable to be entered in the column reserved for 'Remarks.....'. The Assistant Collectorhas pointed out that according to paragraph 87 of the Land Records Manual it is necessary for a Patwari to make an enquiry about the status of the occupant, and if he thinks that a claimant is an occupant, he should enter the name in red ink in Khasra as 'Kabiz' sajhi etc.' Admittedly Pritam Singh was not shownas Kabiz or sajhi nor was the entry posted in red ink.'

52. This decision shows that before a record of the name of any person in the Khasra or Khatauni can be treated as a record of an occupant, the entry must be established to be in accordance with the rules governing the making of entries of occupants. If it is not made accordingly, it will not be recognised as an entry recording a person as occupant. A black ink entry in the remarks column is not an entry of an occupant.

53. In Amba Prasad v. Mahboob Ali, AIR 1965 SC 54 the entry was as Kabiz in the remarks column. The Supreme Court held that the entry was made in accordance with paragraph 85 of the Land Records Manual and so it was one of an occupant. The Court further observed that as between a proprietor and a tenant the tenant, between a tenant and a sub-tenant the sub-tenant, and between a sub-tenant and a person recorded in the remarks column as Dawedar Kabiz the latter, are the occupants. It will be noticed that these observations emphasised that the person recorded in the remarks column as Dawedar Kabiz would be an occupant in preference to the sub-tenant, tenant or the proprietor. These observations cannot possibly be regarded as laying down the law that if a person is recorded in the remarks column as mortgagee, he was recorded as an occupant, obviously, because the rules in the Land Records Manual do not authorise the making of an entry of an occupant in the remarks column as mortgagee; it has to be made in red ink and as Dawedar Kabiz etc.

54. In the next place, these observations were made while considering the

significance of the word 'occupant'. The Court was not considering the question nor did it hold that the entry as tenant or sub-tenant would by itself be a record of an occupant. The Court was emphasising the meaning and significance of the word 'occupant' and not of the phrase 'recorded as occupant'. A person in cultivatory possession may in ordinary parlance be the occupant of the land, but in the context of the Land Records Manual that is a far different thing from being 'recorded as occupant'. As already seen, the phrase 'recorded as occupant' has a technical significance under the Land Revenue Act read with the Land Records Manual. In Amba Prasad's case, AIR 1965 SC 54 the Supreme Court did not anywhere observe that an entry which is not in accordance with the rules would nonetheless be an entry recording a person as occupant merely because the person was recorded in a manner as to show that he was in immediate possession of the land.

55. The decision of the Supreme Court in Sri Nath Singh v. Board of Revenue, AIR 1968 SC 1351 may now be considered. In this case the thekedar of proprietary rights sued for the ejectment of the appellants and respondents before the Supreme Court under Section 171 of the U. P. Tenancy Act on the ground of illegal sub-letting. The suit was dismissed on 3rd March, 1946, that is, towards the end of 1353 Fasli on the ground that there had been no sub-letting and that the entries in the records were not correct. The entry in 1356 Fasli showed the respondents as sub-tenants. Before the Supreme Court the following points were urged for the appellants:--

(1) The correctness of the entry in the record of rights of 1356 Fasli can be gone into and is capable of challenge in a court of law exercising jurisdictionunder Article 226.

(2) In the present case there was an adjudication in March 1946 and the respondents were not sub-tenants; consequently unless they showed that they had hereafter become sub-tenants the benefit of the entry in their favour in 1356 Fasli could not be availed of by them.

(3) Under Rule 183 of the rules framed under the Act it was incumbent on the respondents to state in their application the dates of their dispossession and the failure to do so rendered their petition defective.

(4) In the Khasra of 1356 Fasli the respondents were only recorded as subtenants but not as occupants and hence they cannot get the benefit of Section 20(b) (i).

56. The Court (Shah and Mitter, JJ.) speaking through Mitter, J. referred to its decisions in AIR 1961 SC 143 and AIR 1965 SC 54 (supra) and held-

'These decisions negative the first, second and the fourth points sought to be raised on behalf of the appellants.'

57. With regard to the third point the Court observed that it was enough to say that the point was not canvassed before the Board of Revenue and as such they need not look into it. This decision shows that the specific points raised on behalf of the appellants were repelled. Points 1, 2 and 3 are immaterial for our purposes. The fourth point was that in the Khasra of 1356 Fasli the respondents were only recorded as sub-tenants but not as occupants. At the most it can be said that the repelling of this point meant that the Supreme Court held that the respondents were recorded as occupants. The Court was impressed by the position that in 1356 Fasli a decree had declared that there was no sub-letting and the entries in the village records regarding

sub-letting showing the respondents to be sub-tenants were erroneous, but in spite of this the entry of 1356 Fasli was not corrected. The Court held-

'We have to go by the entry in the record of rights and no enquiry need be made as to when the respondents became sub-tenants after the decision in favour of the landlords.'

58. It will be seen that though this decision was rendered on 21st March, 1968, the Court's attention was not invited to its decision in Sm. Sonawati's case, AIR 1968 SC 466 which was rendered six months earlier on 21st September, 1967. The decision in Sm. Sonawati's case was given by a Bench of three Judges, while in Sri Nath Singh's case AIR 1968 SC 1351 the decision was by a two-Judge Bench. Firstly, because Sonawati's case was not considered, and, secondly, because Sonawati's case was decided by a larger Bench, the decision in Sri Nath Singh's case cannot be deemed to have overruled the decision in Sonawati's case. If there is any conflict between the two, the decision in Sonawati's case will- prevail. As already seen, Sonawati's case emphasised that the entry of occupant must be made in accordance with the rules given in the Land Revenue Act and the Land Records Manual, otherwise it will not enable a person to claim adhivasi rights under Section 20 (b) (i). This declaration of law which was confirmed by the Supreme Court in its latter decisions in Ram Das's case, AIR 1971 SC 673 (supra) and Bachan's case, AIR 1972 SC 2157 (supra) continues to hold the field. The observations in Sri Nath Singh's case (supra) to a different effect are hence not operative.

59. The position is that the true and the prevailing declaration of law made by the Supreme Court is that the record as an occupant is that which is made in accordance with the provisions of the Land Revenue Act and the Land Records Manual governing the making of an entry of an occupier. The entry must be genuine and not fictitious; otherwise it will not be an entry recording a person as occupant within meaning of Section 20 (b) (i) so as to confer adhivasi rights.

60. My answer to question No. 1 is that an entry in the Khasra or Khatauni of 1356 Fasli has to be taken as it is and has to be read in the light of the relevant rules. It cannot be construed in the light of findings given by the court on other evidence.

61. I would answer questions Nos. 2, 3 and 4 in the negative.

62. The fifth question is whether a halwaha can be held to be a sub-tenant.

63. It has to be remembered that the special appeal in which this questionarises arose out of proceedings for recovery of possession under Section 232 of the U. P. Zamindari Abolition and Land Reforms Act. That provision is confined to an Adhivasi to whom Clause (b) of Section 20 applies. Clause (b) aforesaid relates to a recorded occupant So the question whether a halwaha becomes & sub-tenant really does not arise in the special appeal. In view of the discussion of the other questions it is evident that an entry of a person as halwaha in the remarks column or any other column is not an entry of recorded occupant.

64. Question No. 5 is, therefore, reframed as follows:--

'Whether an entry of halwaha can be deemed to be an entry of recorded occupant?'

and this question is answered in the negative.

65. In the result I would answer all the five questions in the negative.

Hari Swarup, J.

66. I agree

H.N. Seth, J.

67. I agree.

K.N. Seth, J.

68. I agree.

P.N. Bakshi, J.

69. I agree.