

PETITIONER:
U.P. STATE SUGAR CORPORATION LTD.

Vs.

RESPONDENT:
DY. DIRECTOR OF CONSOLIDATION & ORS. .

DATE OF JUDGMENT: 07/02/2000

BENCH:
D.P.Wadhwa, S.S.Ahamad

JUDGMENT:

S. SAGHIR AHMAD, J.

The dispute, which pertained to Plot Nos. 1366, 1367 and 1368 (old) situate in Village Maliyana, District Meerut, was decided by the Consolidation Officer, Meerut, in favour of the appellant by his judgment and order dated 19.4.1969. An appeal filed against that decision was dismissed by the Settlement Officer (Consolidation), Meerut, by judgment dated 25.11.1969 and the Revision filed under Section 48 of the U.P. Consolidation of Holdings Act against the above judgment by respondent Dewa Ram, who is now represented by respondents 2 to 5, was dismissed on the ground that the certified copy of the judgment passed by the Settlement Officer (Consolidation), as required by Rule 111(1) of the Rules made under the Act, had not been filed with the memo of revision. But the High Court, in a writ petition which was thereafter filed by Dewa Ram, set aside the judgment passed by the Deputy Director (Consolidation), on 1.11.1973 and remanded the case to the Deputy Director (Consolidation) for a fresh decision on merits. After remand, the Deputy Director (Consolidation), by judgment dated 31.3.1975, reversed the earlier judgments passed by the Consolidation Officer and the Settlement Officer (Consolidation), and held that Dewa Ram, in whose favour a lease of the above plots was executed by the Land Management Committee, had become "Sirdar" of those plots and his name may be recorded as such in the Revenue records. A writ petition filed thereafter by the appellant in the Allahabad High Court was dismissed by the impugned judgment dated 28.7.1989.

On the commencement of the proceedings under the U.P. Consolidation of Holdings Act, Dewa Ram, predecessor-in-interest of respondents 2 to 5, who shall hereinafter be referred to as respondent, filed objections claiming "Sirdari" rights over the plots referred to above on the basis of a lease executed in his favour on 18.4.1966 by the Chairman, Land Management Committee, who was also the Pradhan of the village. Messrs Jaswant Sugar Mills, which has since been taken over by the appellant, also filed objections claiming Sirdari rights over those plots over

which there existed their storage tank for molasses and a tank for sullage water. These structures, namely, the storage tank for molasses and the tank for sullage water were said to exist since the time of Messrs Indira Sugar Works which was established in the year 1932-33 by one Seth Inder Sain who, after taking permission of the then Zamindars, had constructed molasses tank and also a tank for storage of sullage water and dumping of waste material, while a portion of the aforesaid plots was used as land appurtenant to staff quarters of the Sugar Mill. The plots were surrounded on all sides by the other land of the Sugar Mill. Seth Inder Sain transferred the Mill to Messrs Jaswant Sugar Mill and thereafter, as pointed out above, it was taken over by the appellant which is a Govt. owned Corporation and the plots in question are in their possession since then. On the basis of these facts, it was pleaded before the Consolidation Officer that since the plots were being used for storage of molasses and sullage water and also as appurtenant land for better enjoyment of the other property of the Mill, they never vested in the State on the abolition of "Zamindari" by the U.P. Zamindari Abolition and Land Reforms Act, 1950.

The objections of the Mill were allowed by the Consolidation Officer as also by the Settlement Officer (Consolidation), but were rejected by the Deputy Director (Consolidation) and the High Court.

Mrs. Shobha Dikshit, learned Senior Counsel, appearing on behalf of the appellant, has contended that the lease executed in favour of respondent by the Chairman, Land Management Committee, on the basis of which "Sirdari" rights were claimed by him, was wholly fictitious as it was found as a fact by the Consolidation Officer and Settlement Officer (Consolidation) that the Chairman of the Land Management Committee was a close relation of the respondent who was also not an agricultural labourer nor had he any source of cultivation. It was also found that respondent was not in possession over any portion of the land in dispute. These plots were found by the Consolidation Officer, on a local inspection, to contain the storage tank for molasses. It was also found that the plots were appurtenant to the building of Messrs Jaswant Sugar Mill and its residential colony (staff colony) and that the Mill was in possession throughout. Consequently, the Mill was held entitled to the benefit of Section 7 of the U.P. Zamindari Abolition & Land Reforms Act. These findings, it is contended, which remained undisturbed, were sufficient for the claim of the respondent being rejected by the Consolidation Officer and the Settlement Officer (Consolidation) and the Deputy Director (Consolidation) and the High Court were wholly in error in interfering with those decisions. It is also contended that the decision of the High Court that the validity of the lease-deed could not be legally examined by the Consolidation Authorities, was wholly erroneous.

Learned counsel for the respondent has, on the contrary, contended that it having been found as a fact that the Chairman, Land Management Committee, had executed a lease of the plots in question in favour of the respondent under Section 198 of the U.P. Zamindari Abolition & Land Reforms Act, it was not within the competence of the Consolidation Authorities to have looked into the validity of that lease and they ought to have proceeded to record the

name of the respondent in the Revenue records as "Sirdar" on the basis of that lease-deed.

The Consolidation Officer had disposed of the objections filed by the respondent as also by the appellant with the following findings :

"The lease deed in question in favour of plaintiff Dewa Ram is proved by collusive and illegal on more than one ground first the allegation of the other party that said leases Dewa Ram is close relation of Pradhan Het Ram stands proved by the Statement of Dewa Ram and Pradhan Het Ram themselves as both have given evasive answers on the facts of their relationship such as Dewa Ram even could not tell the name of his grand father and brother of his father. Similarly Pradhan has even tried to conceal the name of father of Dewa Ram. Further the interest shown by the Pradhan Shri Het Ram in support of the claim of Dewa Ram itself raises strong presumption in favour of this allegation of alleged close relationship. Further Dewa Ram admittedly has got as source of cultivation. Not only this he is not even agricultural labourer. Further the Patta is dated 16.4.1966 and the receipt of deposit of ten times is dated 2.7.67. This is also strong proof of the fact that the transaction has been done afterwards simply to legalise the patta. This also shows clear collusion of the Pradhan with said Dewa Ram. Thirdly the original Gram Samaj agenda book summoned in the court shows that name of the plots in dispute are in different ink. Lastly, the lessee Dewa Ram is not at all prove to be in possession over the land in dispute. What is very important in this case is that as revealed by my spot inspection also plot No. 1366, 1367 and 1368 were found to be in was partly for storing Sheera by Jaswant Sugar Mills and partly for throwing sullage water and spent wash of the adjacent factory for which several drains exists on spot as shown in the spot memo also. Not only this in plot No. 1366 a pucca well built tank for storing sheera exist which seems to be quite old. The plots thus can hardly be said to be vacant land and cannot be utilised for agricultural purpose and lessee Dewa Ram can hardly be expected to carry on cultivation over this land. In fact the land has got special commercial value and the Pradhan in collusion with Dewa Ram has executed this leasedeed simply to gain this property. This as discussed above the lease deed in favour of Dewa Ram is not entitled to get his name mutated on the basis of lease deed in question."

Further findings recorded by the Consolidation Officer are as follows :

"But Jaswant Sugar Mills was entered to be in possession since before Zamindari abolition. Thus no doubt the land of disputed plot Nos. 1366, 1367, 1368 are proved to be area appurtenant to the building of Jaswasnt Sugar Mills and its residential colony and is in possession and was of the Mill for the purposes of storing of sheera, sullage water, refuse etc. as mentioned above. But since not cultivatory possession of the Mill is proved over land in dispute no sirdari rights accrues to the Mill over the land in dispute. The objectors Jaswant Sugar Mills thus can

at best claim rights u/s 9 of the U.P.Z.A. and Protection of Sec. 7(1) of the said Act which protects the rights of Bhumidharis and Sirdaris is continue to enjoy the easement or any similar rights for the more beneficial enjoyment of the land as he was enjoying on the dates immediately preceding the date of vesting."

These findings were affirmed by the Settlement Officer (Consolidation) by his judgment dated 25.11.1969. The Settlement Officer (Consolidation) recorded the following findings:

"I find that the lease executed in his favour was not legal and according to rules. As is clear from the evidence on record and as has also been held by the learned C.O. the

Chairman of the L.M.C. was his relation and the lease executed in his favour was collusive one, there is no evidence on record to establish that the appellant is a landless person and the claim of other landless persons of the village were considered by the village Pradhan and L.M.C. Besides the alleged lease deed is dated 16.4.1966 while the receipt for payment of ten times rent produced by the appellant is dated 2.7.67. This appears to be a manipulation and also collusion with the village Pradhan. The appellant has also not been able to establish his possession over these plots and there is no satisfactory evidence to prove the same. The learned C.O. has made a spot inspection and his inspection memo dated 8.12.1968 is on file. He too had not found the appellant to be in cultivatory possession of these plots which were in was by others for other than agricultural purposes. Thus the appellant Deva Ram could not be mutated as Sirdar of the disputed land on the basis of illegal, and collusive lease executed in his favour and his claim has been rightly rejected by the C.O. his appeal has no force and is liable to be dismissed."

These findings have not been disturbed by the Deputy Director (Consolidation) who decided the Revision on 31.3.1975 with the finding that the lease executed in favour of the respondent under Section 198 of the U.P. Zamindari Abolition & Land Reforms Act was valid, inasmuch as a notice issued under Section 198(2) of that Act by the Sub-Divisional Officer was subsequently withdrawn and the proceedings for cancellation of lease initiated on the basis of that notice were also withdrawn. He also recorded a finding that the possession over the land in dispute was all along with the respondent. For this purpose, he relied upon an interim order passed by the High Court in the earlier writ petition to the effect that the possession of the respondent would not be disturbed.

The reasoning of the Deputy Director (Consolidation) on both the questions is, to say the least, ridiculous. The mere fact that a notice under Section 198(2) of the U.P. Zamindari Abolition & Land Reforms Act was issued for cancellation of the lease-deed executed in favour of respondent and the proceedings initiated on the basis of that notice were subsequently withdrawn, would not mean that the lease was valid specially when the Consolidation Officer and the Settlement Officer (Consolidation) both had held that the land which contained a storage tank for molasses and another for sullage water and other purposes, was in the possession of the Sugar Mill. Proceedings initiated under

Section 198(2) of the U.P. Zamindari Abolition & Land Reforms Act for cancellation of the lease in favour of the respondent were initiated and withdrawn without there being any notice ever issued to the Sugar Mill. The Deputy Director (Consolidation) did not advert himself to the vital facts that the land contained the storage tanks for molasses and sullage water and other purposes connected with the sugar industry nor did he consider that the plots were the land appurtenant to the staff quarters of the Mill. The benefit of Section 7 of the U.P. Zamindari Abolition & Land Reforms Act, which was extended by the Consolidation Officer was also not adverted to by the Deputy Director (Consolidation). The finding on the question of possession was recorded by the Deputy Director in favour of the respondent because of the interim order passed by the High Court in the first writ petition in which the only question raised by the respondent was that his Revision filed before the Deputy Director (Consolidation) could not have been dismissed merely on the ground that the certified copy of the judgment passed by the Settlement Officer (Consolidation) was not annexed with the memo of Revision. It was on this question that the High Court had remanded the matter to the Deputy Director (Consolidation) for consideration of the Revision on merits. Thus, the question of possession was not in issue before the High Court and the High Court was not required to record a finding whether respondent or the appellant was in possession over the plots in question. In the circumstances, the reliance placed by the Deputy Director on the interim order passed by the High Court in that petition for recording a finding that respondent was in possession over those plots, was wholly out of place.

The High Court before which the judgment of the Deputy Director was assailed, went a step further and on an incorrect interpretation of Section 209 and 210 of the U.P. Zamindari Abolition & Land Reforms Act held that the Sugar Mill would not get "Sirdari" rights over the Gaon Sabha property. Now, in the particular circumstances of the case, neither Section 209 nor did Section 210 apply.

Section 209, as it stood at the relevant time, is reproduced below.

"S.209- Ejectment of persons occupying land without title-

(1) A person taking or retaining possession of land otherwise than in accordance with the provisions of the law for the time being in force, and-

(a) Where the land forms part of the holding of a bhumidhar, sirdar or asami without the consent of such bhumidhar, sirdar or asami,

(b) where the land does not form part of the holding of a bhumidhar, sirdar or asami without the consent of the Gaon Sabha

shall be liable to ejectment on the suit, in cases referred to in clause (a) above, of the bhumidhar, sirdar or asami concerned; and in cases referred to in clause (b) above of the Gaon Samaj and shall also be liable to pay damages.

(2) To every suit relating to a land referred to in clause (a) of subsection (1) the State Government shall be impleaded as a necessary party."

Section 210 as amended by the U.P. Civil Laws Reforms and Amendment Act, 1976 (Act No. LVII of 1976), is quoted below:

"210. Consequences of failure to file suit under Section 209.- If a suit for eviction from any land under section 209 is not instituted by a bhumidhar or asami, or a decree for eviction obtained in any such suit is not executed within the period of limitation provided for institution of such suit or the execution of such decree, as the case may be, the person taking or retaining possession shall -

(a) where the land forms part of the holding of a bhumidhar with transferable rights, become a bhumidhar with transferable rights of such land and the right, title and interest of an asami, if any, in such land shall be extinguished; (b) where the land forms part of the holding of a bhumidhar with non-transferable rights, become a bhumidhar with non-transferable rights and the right, title and interest of an asami, if any, in such land shall be extinguished;

(c) where the land forms part of the holding of an asami on behalf of the Gaon Sabha, become an asami of the holding from year to year.

Provided that the consequences mentioned in clauses (a) to (c) shall not ensue in respect of any land held by a bhumidhar or asami belonging to a Scheduled Tribe." .lm10

The reasoning of the High Court appears to be that the land, on the commencement of the consolidation operations, was recorded in the name of the Gaon Sabha and therefore, it was the property of the Gaon Sabha. Even if the Mill was in possession over the land of the Gaon Sabha for more than twelve years, it would not get "Sirdari" rights. Section 209, which has been extracted above, provides that a person taking or retaining possession over any land in accordance with the provisions of the law for the time being in force shall be liable to be evicted from that land on the suit of a bhumidhar, sirdar or asami, as the case may be, if the land pertains to such bhumidhar, sirdar or asami and the possession was taken or retained without the consent of such bhumidhar, sirdar or asami. If the land pertained to Gaon Sabha, then the person taking or retaining possession over the land would be liable to be evicted therefrom on the suit of the Gaon Sabha.

Consequences of not filing a suit under Section 209 have been indicated in Section 210. Clause (iii) of Section 210 as it originally stood (prior to amendment in 1976) provided that if the suit was not filed within the period of limitation, then such person would become Sirdar of the land in question as if he had been admitted to the possession of that land by the Gaon Sabha. Since this clause does not form part of Section 210 as introduced by Amendment in 1976, the High Court was of the opinion that the Mill, as a

consequence of the Gaon Sabha not filing a suit for the eviction of the Mill within the period of limitation, would not become Sirdar of the land in question and, therefore, its objections filed before the Consolidation Officer for Sirdari rights were liable to be rejected.

Section 209 and 210 both pre-suppose that the land over which possession was taken or retained by a third person belonged to a bhumidhar, sirdar or asami or, for that matter, to the Gaon Sabha and it is at the instance of such bhumidhar, sirdar or asami or the Gaon Sabha that such person who has taken or retained possession belonging to them would be evicted therefrom.

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 XVII 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 the 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 X 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 ejection 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 Avadh, previous to its annexation by the East India Company, was governed by the Kings of Avadh. 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 Avadh, to do away with the landholders or Taluqdars as a class and make a summary settlement direct with the persons in possession of the soil. Avadh was annexed on 13th February 1856 and before the summary settlement could be

completed mutiny broke out in Lucknow on 30th May, 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 re-control the province, Lord Canning, issued a proclamation on 15th march, 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 Avadh. 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 Avadh in 1868 (Act XIX of 1868). This Act was soon after repealed in part by Act VII of 1870, and on minor points was amended by Acts XXXII of 1871, XVIII of 1876, XIV of 1878 and XIV of 1882. It was in the year 1886, that Act XXII 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 XX of 1890 and XII of 1891 but they did not change the principle on which the original Act was framed. The Amending Act IV 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 Act.

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 ejctment," 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 IV 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 III of 1926.

It should not be lost sight of, that at 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 XII of 1930 and the U.P. Special Powers Act XIV of 1932. The tenants were protected from ejectment on account of arrears of rent by U.P. Arrears of Rent Act I of 1932, and were given relief by U.P. Assistance of Tenants Act VIII of 1932 providing remissions in arrears for 1337 and 1338 Faslis up to 25 P.C., and allowing payment of decreed amount by instalments; by the Amending Act IX 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 8th of August, 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 Abolition 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 organisation 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 consideration 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 every 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 under-rated.

"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 millions of 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 7th July, 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 29th December, 1949, and presented to the Assembly on 9th January, 1950.

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

The Act was enforced with effect from July 1, 1952 when a Notification under Section 4 of the Act was published in the U.P. Gazette (Extra-Ordinary) 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."

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." 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."

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.

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)

....."

Section 9 provides as under:-

"9. Private wells, trees in abadi and buildings to be settled with the existing owners or occupiers thereof.- 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."

Section 7 and 9 thus save certain rights. While Section 7, inter alia, saves 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.

Chapter VII of the Act deals with Gaon Samaj and 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 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. Section 113 to 116 have since been deleted by U.P. Act No. XXXIII 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 Clause (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, path-ways 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)"

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 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.

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.

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

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."

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.

Under Section 28-B, the functions of the Land Management Committee have been indicated. The relevant functions for purpose of this case is contained in Clause (a) of Section 28-B which provides that the Land Management Committee shall for and on behalf of 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 being vested in the Gram Panchayat under Section 117 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 or under any other provision of that Act.

A perusal of 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 are 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.

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.

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.

Section 198 sets out the order of preference in admitting persons to 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 making allotments of the land.

The procedure which has to be followed by the Land Management Committee in admitting any person to land under Section 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 lease.

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 quarter 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 Quarter of the Mill from before the date of vesting, that land 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.

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 Quarter 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.

The High Court, without considering these questions, held that the validity of the lease, executed by the Gaon Sabha in favour of the respondent, could not be legally examined by the Consolidation Authorities under the U.P. Consolidation of Holdings Act, 1953. Reliance for this purpose was placed by the High Court on the Full Bench decision of the Allahabad High Court in Similesh Kumar vs. Gaon Sabha, Uskar, Ghazipur and others, 1977 Revenue Decision 409 = AIR 1977 Allahabad 360 and Bhurey and another vs. Board of Revenue, U.P. and ors., 1984 Revenue Decision 294, in which the Allahabad High Court while considering the effect of amendment introduced in Section 210 held that a trespasser over the Gaon Sabha land cannot acquire sirdari rights even if he was in possession of that land for more than 12 years. The High Court also relied upon another decision in Chatar Singh vs. Sahayak Sanchalak, Chakbandi and others, 1979 A.C.J. 335, in which it was again held that even if a person was in possession over the property of the Gaon Sabha for more than 12 years, he would not acquire sirdari rights under Section 210 of the U.P. Zamindari Abolition and Land Reforms Act.

In the Full Bench decision of the Allahabad High Court, referred to above, it was held that the Consolidation Authorities have no jurisdiction to consider the question of cancellation of lease which could be considered only by regular courts. The decision of this Court in Gorakh Nath Dube vs. Hari Narain Singh and others, (1973) 2 SCC 535 = 1974 (1) SCR 339 = 1973 Revenue Decision 423, in which it was held that a void document which was liable to be ignored by the court would not affect the jurisdiction of the Consolidation Courts was distinguished. So also the decision of the Division Bench of the Allahabad High Court in Jagarnath Shukla vs. Sita Ram Pande and others, 1969 A.L.J. 768, which was affirmed by this Court in Gorakh Nath Dube's case (supra) was also distinguished. We have carefully considered these decisions and, in our opinion, the Full Bench of the Allahabad High Court was in error in distinguishing the decision of this Court in Gorakh Nath Dube's case (supra) which has since been followed by this Court in Dulari Devi vs. Janardan Singh 1990 Supp. SCC 216; Ashrafi Lal vs. Koili (1995) 4 SCC 163; and Muneshwar vs. Raja Mohammed Khan (1998) 6 SCC 582.

The decision of this Court in Gorakh Nath Dube's case (supra) was also followed by the Allahabad High Court in Ramanand vs. D.D.C. and others, 1987 Revenue Decision 430, and it was held that a document which is void and is, therefore, liable to be ignored by the courts, would not affect the jurisdiction of the Consolidation Courts and they would be within their jurisdiction in adjudicating upon that document so as to finally decide the rights of the parties. The Full Bench decision of the High Court in Similesh Kumar's case (supra) was distinguished.

In the instant case, in view of the provisions of Section 7(aa) and Section 9 of the U.P. Zamindari Abolition and Land Reforms Act, the land in dispute, which was held by the Consolidation Officer and Settlement Officer (Consolidation) to be the land appurtenant to the Staff

Quarter of the Sugar Mill, had not vested in the State under Section 6 of the Act as a consequence of the Notification issued under Section 4 of the Act. Once these plots did not vest in the State, it would not vest in the Gaon Sabha and the Gaon Sabha had, therefore, no jurisdiction to grant lease of those plots to the respondent. Such a lease was a void document from the inception and, consequently, the jurisdiction of the Consolidation Authorities was not affected. No other point was pressed before us.

The appeal is allowed. The impugned judgment dated 28.7.1989, passed by the Allahabad High Court as also the judgment dated 31.03.1975, passed by the Deputy Director of Consolidation, are set aside while the judgment dated 19.4.1969, passed by the Consolidation Officer and the judgment dated 25.11.1969, passed by the Settlement Officer (Consolidation) are upheld and the objections filed by the respondent under Section 9 of the U.P. Consolidation of Holdings Act, 1953 on the basis of the lease deed granted in his favour by the Land Management Committee claiming sirdari rights are dismissed. There shall be no order as to costs.