

PETITIONER:
GHANSHIAM DAS

Vs.

RESPONDENT:
DEVI PRASAD & ANOTHER

DATE OF JUDGMENT:
11/03/1966

BENCH:

ACT:
U.P. Zamindari Abolition and Land Reforms Act (U.P. Act 1 of 1951), s. 9-Brick kiln whether 'building' within meaning of section.

HEADNOTE:

The respondents owned a brick kiln which they leased out to the appellants in 1950. They filed a suit against the appellants claiming rent for the period October 1, 1952 to September 30 1953. The appellants contended in defence that as a result of the operation of the U.P. Zamindari Abolition and Land Reforms Act the Land in question stood vested in the State of U.P. with effect from July 1, 1952 and no rent was payable to the respondents thereafter. The suit was partly decreed by the trial court but dismissed in toto by the first appellate court. In second appeal the High Court held that the brick kiln was a 'building' within the meaning of s. 9 of the Act and therefore the land did not vest in the State. The appellants came to this Court.

HELD : In the absence of a definition in the Act itself the question as to what is a 'building' under s. 9 must always be question of degree a question depending on the facts and circumstances of each case. The brick kiln in the present case was a mere pit with some bricks by its sides. It could not be said to be a 'building' within the meaning of S. 9 of the Act and the High Court therefore went wrong in holding that the land did not vest in the State. [878 E-F, H]

R. v. Neath Canal Navigation, 40 L.J.M.C. 197, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 80 and 81 of 1964.

Appeals by special leave from the judgment and decree dated the October 24, 1960 of the Allahabad High Court in Second Appeals Nos. 2510 and 2511 of 1957.

S. P. Sinha and M. I. Khowaja, for the appellant.

J. P. Goyal, for the respondents

The judgment of the court was delivered by

Ramaswami, J. The question of law involved in these appeals is whether the disputed brick kiln on plots nos. 596 and 597 in Mauza Sarwat, Pargana and District Muzaffarnagar and leased out to the appellant is a "building" within the meaning of s. 9 of the U.P. Zamindari Abolition and Land Reforms Act (U.P. Act 1 of 1951).

The respondents are the owners of a brick kiln located on the two plots nos. 596 and 597 in Mauza Sarwat, Pargana and

District Muzaffarnagar. They leased out the brick kiln to the 875

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appellant under a registered lease deed dated December 29, 1950. The lease was to take effect from January 1, 1951 and terminate on September 30, 1953. The rent was fixed at Rs. 41 per mensem payable annually in the month of October. The rent for the period October 1, 1952 to September 30, 1953 remained due against the appellant. The respondents filed a suit (no. 1125 of 1953) in the Court of Munsif Muzaffarnagar for the recovery of Rs. 492 being arrears of rent from October 1, 1952 to September 30, 1953. The suit was contested by the appellant who pleaded that after the passing of the U.P. Zamindari Abolition and Land Reforms Act (U.P. Act 1 of 1951)-hereinafter called the 'Act'-the plots of land had vested in the State of U.P. under s. 6 of the Act with effect from July 1, 1952 and the respondents were, therefore, not entitled to claim any rent from the appellant. By his judgment dated February 12, 1955 the Additional Munsif Muzaffarnagar held that the brick kiln did not vest in the State and as it occupied only 1/3rd of the total area of the land, the respondents were entitled to a decree for 1/3rd of the rent claimed. The Munsif accordingly granted a decree for a sum of Rs. 164 and dismissed the balance of the claim of the respondents. Against the judgment of the Additional Munsif both the parties filed appeals before the District Judge. Both the appeals were disposed of by the Civil Judge of Muzaffarnagar by a common judgement dated August 19, 1957. It was held by the Additional Civil Judge that the brick kiln could not be regarded as a "building" within the meaning of S. 9 of the Act and the entire area of the two plots nos. 596 and 597 had vested in the State. The Additional Civil Judge accordingly allowed the appellant's appeal and dismissed the appeal of the respondents. The net result was that the suit of the respondents for arrears of rent was dismissed as a whole. Against the judgment of the Additional Civil Judge the respondents filed two Second Appeals nos. 2510 and 2511 of 1957 to the High Court. The High Court held that the brick kiln was a "building" within the meaning of S. 9 of the Act and the title to the two plots of land did not vest in the State and the respondents acquired the right of statutory tenants under a. 9 of the Act and they had a right to demand rent from the appellant under the terms of the lease. The High Court accordingly allowed both the Second Appeals and granted a decree to the respondents for the entire amount of rent claimed.

Section 4 of the Act deals with the acquisition of the interest of intermediaries. The section provides as follows :

"4. (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 877

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(a) sets out the consequences of the vesting of an estate in the State. Section 6(a) reads as follows

"6. When the notification under s. 4 has been published in the Gazette, then, notwithstanding anything contained in any contract or document or in any other law for the time being in force and save as otherwise provided in this Act, the consequences as hereinafter set forth shall, from the beginning of the date of vesting, ensue in the area to which the notification relates, namely (a) all rights, title and interest of all the intermediaries- (i) in every estate in such area including land (cultivable or barren), grove-land, forests whether within or outside village boundaries, trees (other than trees in village abadi, holding or grove), fisheries, tanks, ponds, water-channels, ferries, pathways, abadi sites, hats, bazars and meals other than hats, bazars, and meals held upon land to which clauses (a) to (c) of sub-section (1) of section 18 apply and, (ii) in all sub-soil in such estate including rights, if any, in mines and minerals, whether being worked or not; shall cease and be vested in the State of Uttar Pradesh free from all encumbrances;"

Section 9 of the Act states

"9. 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 with the area.

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appurtenant thereto shall be deemed to be settled with him by the State Government on such terms and conditions as may be prescribed."

The word "building" has not been defined in the Act and must, therefore, be construed in its ordinary grammatical sense unless there is something in the context or object of the statute to show that it is used in a special sense different from its ordinary grammatical sense. In Webster's New International Dictionary the word "building" has been defined as follows

"That which is built specif : (a) as now generally used a fabric or edifice, framed or constructed, designed to stand more or less permanently, & covering a space of land for use as a dwelling, store house, factory, shelter for beasts or some other useful purpose. Building in this sense does not include a mere wall, fence, monument, boarding or similar structure though designed for

permanent use where it stands, nor a steamboat, ship or other vessel of navigation."

From this definition it does not appear that the existence of a root is always necessary for a structure to be regarded as a building. Residential buildings ordinarily have roofs but there can be a non-residential building for which a roof is not necessary. A large stadium or an open-air swimming pool constructed at a considerable expense would be a building as it is a permanent structure and designed for a useful purpose. The question as to what is a "building" under s. 9 of the Act must always be a question of degree a question depending on the facts and circumstances of each case. As Blackburn, J. observed in *R. v. Neath Canal Navigation* (1)

"The masonry on the sides of a canal is not sufficient to constitute it a 'building'. A London street, though paved and faced with stonework, would yet be 'land', whilst the Holborn Viaduct would be a 'building.'"

The question for determination in the present case, therefore, is whether the kiln leased out to the appellant is a "building" within the meaning of S. 9 of the Act. It has been found by the first appellate court that the brick kiln has no site and is not a roofed structure. It was a mere pit with some bricks by its sides. It is also admitted in this case that there was no structure standing on the Bhatta. Upon these facts, it is clear that the brick kiln has no walls and no roof but it is a mere pit dug in the ground with bricks by its side. In the circumstances, we are of the opinion that the brick kiln leased out to the appellant, in the present case, is not a "building" (1) 40 L J. M. C. 197.

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ding" within the meaning of s. 9 of the Act. It follows, therefore that the title to both the plots nos. 596 and 597 along with the brick kiln vested in the State Government with effect from July 1, 1952 and the respondents are not entitled to claim any rent from the appellant for the period from October 1, 1952 to September 30, 1953.

For the reasons expressed, we hold that suit no. 1125 of 1953 filed by the respondents should be dismissed and these appeals must be allowed with costs.

Appeal allowed.

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