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ABDUL QADIR (DEAD) BY LRS.

v.

SMT. MAIMOONA KHATOON (DEAD) BY LRS. AND ORS.

FEBRUARY 14, 1996

B

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

*Custodian of Evacuee property Act, 1950/U.P. Zamindari Abolition and Land Reforms Act:*

C

*Section 7/240-J—Property declared as evacuee property—Thereafter purchased by the appellant—Consolidation proceedings—Appellant claiming to be in adverse possession and entitled to be recorded as Sirdar in one Khata and Bhumidar in the other khata—Consolidation Officer and Settlement Officer upheld the claim—Deputy Director reversing the finding, holding that the appellant was not in adverse possession—Division Bench upholding the view of Deputy Director, held that since respondent was not impleaded in the proceedings under the U.P. Zamindari Abolition Act, the claim settlement did not bind her and she was entitled to the benefits of consolidation—On appeal held, as regards adverse possession, it is a finding of fact upheld by the Division Bench and it cannot be interfered with—Compensation statement signed and sealed is final between land-holder and State alone—In the absence of Adhivasi being a party to the proceedings, any finding recorded would not bind the Adhivasi.*

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*Avdesh Singh v. Bikaram Ahir, AIR (1975) Allahabad 324, held inapplicable to the present case.*

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 547-548 of 1976.

From the Judgment and Order dated 30.7.73 of the Allahabad High Court in S.A. Nos. 1038 and 1205 of 1969.

G

V.J. Francis for the Appellants.

Mrs. Rani Chhabra, (NP) and Ms. Rachna Gupta and I.P. Singh for the Respondents.

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The following Order of the Court was delivered :

The chequered history of this case is coming to a close after three decades of litigation. On May 21, 1956, 1/3rd share of Smt. Shahida Khatoon was declared evacuee. In the proceedings initiated under the custodian of Evacuee Property Act, 1950, under Section 7 declaration, it was recorded as evacuee property and thereafter the appellant had purchased the same. In the consolidation proceedings under the Consolidation Act the objections came to be filed by the respondent. The appellant claimed that he was in adverse possession and that, therefore, he is entitled to be recorded as a sirdar in one Khata and Bhumidar in other Khata. Though the Consolidation Officer and the Settlement Officer on appeal upheld the finding, but in revision the Dy. Director upset the finding and held that the appellant was not in adverse possession. That order came to be made on November 18, 1965. Calling in question that order, the appellant had filed a writ petition. The respondent also filed another writ petition against a part of the order of the Dy. Director wherein in respect of khata No. 90 it was held that she was not entitled to the declaration that she was the sirdar. Both the writ petitions were dismissed. When special appeal was filed, the Division Bench, while reversing the finding of the single Judge that the appellant had adverse possession, concluded the finding that he was not in adverse possession as recorded by the Dy. Director. On the finding with regard to the title in Khata No. 90, it was held that since the respondent was not impleaded in the proceedings of the U.P. Zamindari, Abolition Act the claim settlement made, did not bind her she being in possession as the sirdar and accordingly, she was entitled to the benefits of consolidation. Thus this appeal by special leave against the order of the Division Bench dated July 30, 1974 in Special Appeal No. 1038 of 1969 etc.

Shri Francis, learned counsel for the appellant contended that the High Court and the Dy. Director were not right in recording the finding that the appellant was not in adverse possession in the face of the proceedings initiated by the Asstt. Director of the Custodian of Evacuee Property and sale thereof by them. The question whether the appellant is in adverse possession is a finding of fact recorded by the Dy. Director as upheld by the Division Bench. Under those circumstances, we cannot go into the question for the first time in this appeal. In respect of Khata No. 218 relating to 1 bigha 9 biswas, it being a finding of fact, we cannot interfere with the same.

A It is then contended that in view of the judgment of the Full Bench of the Allahabad High Court in *Avdhesh Singh v. Bikarna Ahir*, AIR (1975) Allahabad 324, the appellant is entitled to the relief on second point, in view of the finding No. 1 as recorded by the Full Bench. We find that the contention is not wholly sound. It is to be read in conjunction with the finding on point No. 2 referred to be larger Bench of 5 Judges. The Full Bench recorded thus :

C "Finality of Compensation Statement under Section 240- J, U.P. Zamindari Abolition and Land Reforms Act extinguishes the rights and title of the land-holder and the land-holder is debarred from showing in collateral or separate proceedings that the land is not held by an Adhivasi, except in cases where the provisions of the Act have not been followed or where the Compensation Statement has been prepared in disregard of the fundamental principles of judicial procedure (*Katikara Chintamani Dora v. Guatreddi Annamanaidu*, AIR 1974 SC 1069). If the requirements of the Act have not been complied with or the fundamental principles of judicial procedure have been disregarded, the Compensation Statement signed and sealed by the Compensation Officer under Section 240-J (2) of the Act can be assailed in collateral proceedings.

E The Compensation Statement signed and sealed under Section 240-J (2) of the Act is final between the land- holder and the State alone.

F The land-holder against whom compensation Statement has become final and who has received compensation has no locus standi to reagitate his rights in respect of the land in question."

G Though on finding No. (1) it was held that finality of Compensation Statement under Section 240-J of the U.P. Zamindari Abolition and Land Reforms Act extinguishes the rights and title of the land-holder and the land-holder is debarred from showing in collateral or separate proceedings that the land is not held by an Adhivasi, except in cases enumerated later. The Compensation Statement as found in point No. 2 signed and sealed H under Section 240-J is final between the land-holder and the State alone.

In the absence of Adhivasi being a party to those proceedings, any finding recorded would not bind the Adhivasi. The High Court, therefore, has held that the Adhivasi was entitled to be recognised under the Act. This being the finding, though on point No. 1 the appellant may have a case, on point No. 2, he cannot get the relief. A

The appeals are accordingly dismissed. No costs. B

G.N.

Appeals dismissed.