

Court No. - 34

Case :- WRIT - C No. - 43066 of 2024

Petitioner :- Ishwari Prasad And 7 Others

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Akash Pandey,Alok Ranjan,Raghvendra Yadav

Counsel for Respondent :- C.S.C.,Sher Bahadur Singh

Hon'ble Rohit Ranjan Agarwal,J.

1. Forefathers of petitioners Jhau was recorded as Class III tenure holder (Asami) in the basic year. Annual register (khatauni) for the fasli year 1360, appended as annexure no. 2 to the writ petition, which demonstrates the said fact. Proceeding for ejectment under Section 202 of U.P.Z.A. & L.R. Act, 1950 (hereinafter called as the 'Act of 1950) was initiated against the petitioners on the report of Tehsildar wherein an order for ejectment was passed on 7.10.2008. Petitioners filed Revision No. 52/2012-13 wherein specific family pedigree was disclosed in paragraph no. 3 and it was stated that the name of Jhau was recorded in the khatauni (record of fasli year 1360). The said revision was dismissed vide judgment dated 20.4.2024 without taking note the grounds raised by the petitioners.

2. Present writ petition has been filed by the petitioners assailing the orders passed by the revenue authorities on the ground that they should be extended the benefit as contained in Section 76 (1) (dd) of U.P. Revenue Code, 2006 (hereinafter referred as the 'Code of 2006') as they are in possession over the land in question as Asami prior to fasli year 1407. It is further contended that the ejection suit filed under Section 202 of the Act of 1950 was not maintainable as it was filed after 55 years of the right, which was granted to forefather of petitioners in the year 1952.

3. Learned ACSC has vehemently opposed the writ petition and submitted that asami rights had ceased to exist after five years and they were rightly ejected in proceeding under Section 202 of the Act of 1950.

4. I have heard learned counsel for the parties and perused the material on record. Before adverting to decide the issue in hand a cursory glance of sections of the Act of 1950 is necessary for better appreciation of the case.

5. Section 21 provides for non-occupancy tenants, sub-tenants of grove-lands and tenant's mortgagees to be *asamis*, which is extracted hereasunder;

“21. Non-occupancy tenants, sub-tenants of grove-lands and tenant's mortgagees to be asamis.- (1) *Notwithstanding anything contained in this Act, every person who, on the date immediately preceding the date of vesting, occupied or held land as-*

(a) a non-occupancy tenant of an intermediary's grove-land;

(b) a sub-tenant of a grove-land;

(c) a sub-tenant referred to in the proviso to sub-section (3) of Section 27 of the United Provinces Tenancy (Amendment) Act, 1947;

(d) a mortgagee [in actual possession] from a person belonging, to any of the classes mentioned in Clauses [(b) to (e)] of sub-section (1) of Section 18 or Clauses [(i) to (vii) and (ix)] of Section 19;

(e) a non-occupancy tenant of pasture land or of land covered by water and used for the purpose of growing singhara or other produce or of land in the bed of a river and used for casual or occasional cultivation;

(f) a non-occupancy tenant of land declared by the State Government by notification in the Gazette, to be intended or set apart for taungya plantation; or

(g) a tenant of land, which the State Government has, by a notification in the Gazette declared to be part of tract of shifting or unstable cultivation;

(h) [a tenant of sir of land referred to in sub-clause (a) of Clause (i) of the explanation under Section 16, a sub-tenant referred to in sub-clause (ii) of Clause (a) of Section 20 or an occupant referred to in sub-clause (i) of Clause (b) of the said section where the land-holder or if there are more than one land-holders, all of them were person or persons belonging-

(a) if the land was let out or occupied prior to the ninth day of April, 1946, both on the date of letting or occupation, as the case may be and on the ninth day of April, 1946; and

(b) if the land was let out or occupied [on or] after the ninth day of April, 1946, on the day of letting or occupation, to any one or more of the classes mentioned in sub-section (1) of Section 157;]

(i) [a lessee holding under a lease from a Court under sub-section (1) of Section 252 of the U.P. Tenancy Act, 1939]

shall be deemed to be an asami thereof.

Explanation. - (1) The expression "taungya plantation" means the system of afforestation in which the plantation of trees is, in the earlier stages, done simultaneously with the cultivation of agricultural crops which ceases when the trees so planted begin to form a canopy rendering the cultivation of agricultural crops impossible.

(2) Occupants of grove land. - Every person, who, on the date immediately preceding the date of vesting was a person recorded, in the manner stated in Clause (b) of Section 20, as occupant of any grove land, shall be called an asami of the land and shall, subject to the provisions of this Act, be entitled to take or retain possession thereof] [as an asami from year to year.]"

6. Section 133 of the Act of 1950 deals with Asami, which is reproduced hereasunder;

"133. Asami.- Every person belonging to any of the following classes shall be called an asami and shall have all the rights and be subject to all the liabilities conferred or imposed upon asami by or under this Act, namely-

(a) [every person who, as a consequence of the acquisition of estates, becomes an asami under Sections 11, 13 or 21;]

(b) [every person, who was admitted before the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 by a bhumidhar or sirdar or after such' Commencement, by a bhumidhar as a lessee of land comprised in his holding, in accordance with the provisions of this Act;]

(c) every person who, on or after the date of vesting, is admitted by the [Land Management Committee] or the person entitled as a lessee of land described in Section 132; and

(d) [every person who in any other manner acquires the rights of an asami under or in accordance with the provisions of this Act or of any other law for the time being in force.]"

7. Sub-section (b) of Section 133 clearly provides that every person, who was admitted before the commencement of the Uttar Pradesh Land Laws (Amendment) Act, 1977 by a bhumidhar or sirdar or after such commencement, by a bhumidhar as a lessee of land comprised in his holding, in accordance with the provisions of this Act called a asami. Further, sub-section (a) provides that every person who, as a consequence of the acquisition of estates, becomes an asami under Sections 11, 13 or 21.

8. Section 202 of the Act of 1950 prescribes the procedure for ejectment of asami. Section 204 provides for failure to institute a suit for ejectment under Section 202 or execute the decree

obtained thereunder. According to the said provision if the suit for ejectment is not instituted within the time prescribed thereunder the asami becomes bhumidhar with non-transferable rights.

9. U.P. Revenue Code, 2006 was enacted and came into force on 11.2.2016. The repeal and saving clause had saved the proceedings which were initiated earlier. Section 230 of the Code of 2006 provides for repeal of the enactment specified in First Schedule. Further, sub-section (2) is the saving clause which begins with a non-obstante clause and provides that the provision of sub-section (1) of Section 230 the repeal of such enactment shall not affect the previous operation of any such enactment or anything duly done or suffered there under.

10. Section 231 of the Code of 2006 provides for applicability of the code to pending proceeding. This provision saves the proceedings which had been initiated earlier by the State Government and are pending before the revenue courts.

11. In the instant case, proceeding under Section 202 of the Act of 1950 was initiated in the year 2007. The order for ejectment was passed ex-parte without any opportunity to petitioners to defend their case. In the revision filed by petitioners specific grounds were taken that the forefather of petitioners Jhau was recorded in the basic year as an asami and continued thereafter. The provisions of Section 21 and Section 133-B of the Act of 1950 safeguards the interest of the petitioners. Moreover, Section 204 of the Act of 1950 also protects the interest of the petitioners as no suit for ejectment could have been filed by Gaon Sabha at such a belated stage and the petitioners should have been accorded the benefit of becoming bhumidhar with non-transferable rights.

12. Appendix-III to U.P. Z.A. & L.R. Rules, 1952 provides for the period of limitation for instituting the suit for ejectment under Section 202 of the Act of 1950, which is three years. In the instant case, it is an admitted position that the name of forefather of petitioners was recorded as asami in the year 1952 and the suit for ejectment has been instituted in the year 2007 i.e. after more than 55 years. The suit filed by Gaon Sabha is barred as it has been filed after the period of limitation and Section 204 of the Act of 1950 specially provides that in case suit for ejectment is not instituted within the limitation period the asami shall become

bhumidhar with non-transferable rights.

13. After the enforcement of the Code of 2006, Section 76 (1) (dd) provides for extending the benefit to a person holding the asami rights to be granted the right of bhumidhar with non-transferable rights and recorded as class III tenure holder in the annual register (khatauni) of 1407 fasli.

14. Thus, looking from both the angles i.e. from the perspective of the Act of 1950 as well as the Code of 2006, the petitioners have become bhumidhar with non-transferable rights. Proceeding for ejectment cannot continue against them as they are asami recorded since the year 1952.

15. Considering the facts and circumstances of the case, the orders impugned dated 20.4.2024 passed by the Additional Commissioner (Judicial)-II, Bareilly Region, Bareilly in Case No. 871/2012-13 and the order dated 7.10.2008 passed by the Sub Divisional Magistrate, Tehsil Bahedi, District Bareilly in Case No. 67/2007-08, are hereby quashed.

16. Writ petition stands **allowed**. The revenue authorities is directed to consider the case of petitioners for declaring them bhumidhars with non-transferable rights in terms of Section 76 (1) (dd) of the Code of 2006 within a period of two months from the date of receipt of a certified copy of this order.

Order Date :- 31.7.2025

Shekhar