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April 6.

STATE OF BOMBAY

v.

SARDAR VENKAT RAO KRISHNA RAO GUJAR

(A. K. SARKAR, K. SUBBA RAO and J. R. MUDHOLKAR, JJ.)

Abolition of Proprietory Rights—Settlement of sites of holdings in abadi—Uncovered ottas *and* chabutras, *whether buildings—Buildings, connotation of—M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M. P. I of 1951), s. 5(a).*

The proprietary interest of the respondent in his village was abolished by the M. P. Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950, and all rights, title and interest were vested in the State by s. 4. Section 5(a) of the Act provide that where any "buildings" belonging to the proprietor exist on any portion of the *abadi* land, that land together with the land appurtenant to those buildings shall be settled with the ex-proprietor. Land covered by *ottas* and *chabutras* on which sheds had been constructed was settled with the respondent but not the land on which open uncovered *ottas* and *chabutras* existed.

Held, that the respondent was entitled under section 5(a) of the Act to have the land on which uncovered *ottas* and *chabutras* existed, as also the land appurtenant thereto, settled with him. Uncovered *ottas* and *chabutras* fell within the term "buildings" as used in s. 5(a). The provisions showed that where the proprietor had spent money on constructing something on an *abadi* site within the limits of the village sites, that site had to be settled with him. Accordingly the word "buildings" has to be given its literal meaning as something which is built.

Moir v. *Williams*, (*1892*) 1 Q. B. 217, *Morrison* v. *Commissioners of Inland Revenue*, (1915) 1 K. B. 716 and *Samuel Small* v. *Parkway Auto Supplies*, 49 A. L. R. 1361, distinguished.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 455/59.

Appeal by special leave from the judgment and order dated January 16, 1956, of the former

Nagpur High Court, in Misc. Petition No. 448 of 1954.

N. S. Bindra and *D. Gupta*, for the appellants.

Purshottam Trikamdas, G. J. Ghate and *Naunit Lal*, for the respondents.

1962. April 6. The Judgment of the Court was delivered by

Mudholkar J.

MUDHOLKAR, J.—The respondent was a proprietor of *mauza* Bhivapur, Tehsil Umerer, District Nagpur. His proprietary interest in the village was abolished by the Madhya Pradesh Abolition of Proprietary Rights (Estates, Mahals, Alienated Lands) Act, 1950 (M.P. 1 of 1951). By virtue of s. 4 of the Act, all rights, titles and interests, among others, in all pathways, village sites, *hats*, bazars and melas in Bhivapur vested in the State of Madhya Pradesh for the purposes of the State free from all encumbrances under s. 4(1)(a) of the Act. Under the provisions of the States Re-organisation Act, 1956 those rights vested in the State of Bombay and now by virtue of Bombay Re-Organisation Act, 1960 (11 of 1960) in the State of Maharashtra. The provisions of s. 4(1)(a) are as follows:—

> "All rights, title and interest vesting in the proprietor or any person having interest in such proprietary right through the proprietor in such area including land (cultivable or barren) grass-land, scrub jungle, forest, trees, fisheries, wells, tanks, ponds, waterchannels, ferries, pathways, village sites, hats, bazars and melas;.....shall cease and be vested in the State for purposes of the State free of all encumbrances; and the mortgage debt or charge or any proprietary right shall be a charge on the amount of compensation payable for such proprietary right to the proprietor under the provisions of this Act."

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After the Act came into operation proceedings for compensation in respect of the village Bhivapur were started in the court of the Compensation Officer, Umrer, in Revenue case No. 583/1-A-4/1950-51 decided on January 19, 1952. The Compensation Officer held that 0.14 acres of land out of Khasra No. 61/1 which is recorded in the village papers as *abadi* wherein a bazar is held, should be settled with the respondent under s. 5(a).

On a portion of the land which was used for bazar, *ottas* and *chabutras*, with or without sheds, and separated by passages, exist. It is common ground that they belong to the respondent. It is also common ground that the land covered by *ottas* and *chabutras* on which sheds have been constructed were ordered to be settled on the respondent in the revenue case referred to above. The respondent's contention, however, was that not only the sheds and the land on which those sheds were erected but also the open uncovered *ottas* and *chabutras* should also have been settled w th him by virtue of the provisions of s. 5(a) of the Act along with the land appurtenant to those structures. The total area of this land, according to him, is 2.85 acres. The respondent, therefore, preferred an appeal against the order of the Compensation Officer which directed settling only 0.14 acres of land on him. That appeal was, however, dismissed by the Additional Commissioner of Land Reforms and Additional Commissioner of Settlement, Madhya Pradesh, on March 28, 1952. The respondent thereafter was asked to remove his *ottas* and *chabutras*.

Even so, the matter of settling land covered by *ottas* and *chabutras* on the ex-proprietors was being considered by Government. On May 16, 1952, a press note was issued by the Directorate of Information and Publicity, Government of Madhya Pradesh, the material portion of which runs thus:

"The Government consider that the option

given to ex-proprietors to remove the material etc., might cause hardship to them in such cases. Government have, therefore, decided on the following lines of action in such matters:

(i) where the *ottas* and *chabutras* were constructed in brick and stone, they should be allowed to remain with the ex-proprietors and the land thereunder should be settled with them under section 5(a) of the Madhya Pradesh Abolition of Proprietary Rights Act, 1950 (1 of 1951) on terms and conditions determined by the Government; and

(ii) where the *ottas* and *chabutras* are in mud, the land under them should be deemed to have vested in the State Government.

But after this press note was issued the Government, apparently on the advice of its law officers, issued instructions to the Deputy Commissioners on June 22, 1954, to give one month's notice all ex-proprietors to remove the materials, clear the site of *ottas* and *chabutras* other than those on which there were sheds. In pursuance of this, a notice was issued to the respondent on July 13, 1954.

Feeling aggrieved by this, the respondent preferred a petition under Art. 226 of the Constitution before the High Court of Nagpur for issue of a writ of mandamus or certiorari or other appropriate writ to quash the orders passed by the Compensation Officer and the appellate authority as well as the order of the State Government of Madhya Pradesh dated June 22, 1954, and the notice issued in pursuance thereto on July 13, 1954. The High Court allowed the petition and set aside the impugned orders and directed the State Government to settle the entire area of Khasra No. 61/1 of Bhivapur

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with the respondent on such terms and conditions as may be determined by it. It may be mentioned that the entire area of Khasra No. 61/1 is 12.85 acres or so. The State of Madhya Pradesh sought a certificate from the High Court under Art. 133(1)(c) of the Constitution. But the certificate was not granted. Thereupon a special leave petition was made before this Court under Art. 136 of the Constitution. Leave was granted by this Court by its order dated March 18, 1957. That is how the appeal has come up before us.

It may be mentioned that the High Court granted the petition of the respondent on the view that *ottas* and *chabutras* etc., are buildings within the meaning of s. 5(a) of the Act and that consequently the State Government was bound to settle the land covered by them with ex-proprietors along with land appurtenant to those structures. In the application made before the High Court for grant of certificate, the following three grounds were raised:

> "5. For that the total market area as claimed by the non-applicant being only 2.85 the entire abadi area of 12.85 acres in Khasra No. 61/1 could not be granted and settled with the ex-proprietor.
>
> 6. For that the *ottas* and *chabutras* in the bazar area could not be held to be buildings contemplated under section 5(1)(a) read with section 4(1)(a) of the Act 1 of 1941 and could not be settled with the ex-proprietor under the law.
>
> 7. For that the buildings envisaged in the provisions 5(1)(a) are those buildings which are situated in the abadi and not those standing in bazars even though the bazar may also be located in the abadi and that *ottas* and *chabutras* etc., in the bazar being an integral part thereof are clearly different from those other

buildings used for agricultural or domestic purposes."

It would, however, appear from para. 2 of the order of the High Court refusing certificate that the learned Advocate-General for the State did not challenge the correctness of the meaning given by the High Court to the word "buildings" in s. 5(a) of the Act. But the contention he pressed was that the words "*ottas* and *chabutras*" must be restricted to structures standing on the *abadi* of the village excluding that on which bazar was held, which under s. 4(1)(a) vests in the State. Before us however, Mr. Bindra reiterated the contention which was originally pressed in the High Court that *ottas* and *chabutras* cannot be regarded as buildings within the meaning of that word in s. 5(a) of the Act. According to him the concession made by the learned Advocate.General was on a question of law and the State is entitled to withdraw that concession.

In our opinion the question whether *ottas* and *chabutras* fall within the term "buildings" is not purely one of law and the State is not entitled to withdraw that concession. It would also appear from grounds 5 and 6 in the special leave petition that what was really sought to be urged before this Court was the contention actually pressed by the learned Advocate-General in support of the application for grant of certificate. All the same we allowed Mr. Bindra to urge the contention that *ottas* and *chabutras* are not included in the term "buildings" in s. 5(a) of the Act.

The relevant portion of s. 5(a) of the Act reads thus:

"Subject to the provisions in sections 47 and 63 -- all open enclosures used for agricultural of domestic purposes and in continuous possession for twelve years immediately before 1948-49; all open house-sites purchased for

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consideration; all buildings; .....within the limits of a village site belonging to or held by the outgoing proprietor or any other person, shall continue to belong to or be held by such proprietor or other person as the case may be; and the land thereof with the areas appurtenant thereto shall be settled with him by the State Government on such terms and conditions as it may determine;"

"Village site" means the *abadi* in an estate or a mahal.

Section 5(a) is an exception to s. 4(1)(a) of the Act. No. doubt, s. 4(1)(a) provides for the vesting in the State of the land on which bazar is held. But reading that section along with s. 5(a) it is clear that where any buildings belonging to the proprietor exist on any portion of the *abadi* land that land, together with the land appurtenant to those buildings, had to be settled with the ex-proprietor. Land on which the bazar is held is part of the village *abadi* land and, therefore, all buildings standing on such land would fall within s. 5(a) of of the Act and would have to be settled with the ex-proprietor.

The only question, therefore, is whether *ottas* and *chabutras* can be regarded as buildings. A perusal of that provision would show that where the ex-proprietor has spent money on constructing something within the limits of the village sites, that thing had to be settled with him. The word "buildings" should, therefore, be given its literal meaning as something which is built. Mr. Bindra's contention, however, is that for a structure to be regarded as a building, it should have walls and a roof and in support of this contention he relied upon the decision in *Moir* v. *Williams* (1) In that case Lord Esher has observed that the term building generally means all

(1) (1892) 1 Q.B. 217.

enclosures of brick and stone covered by a roof. But he has also made it clear that the meaning to be given to that word must depend upon the enactment in which the word is used and the context in which it is used. There, what was being considered was the provisions of the Metropolitan Buildings Act, 1855 (18 & 19 Vict. c. 122) which dealt with residential houses. He also relied upon the decision in *Morrison* v. *Commissioners of Inland Revenue* (1). That was a case under the Finance (1909-10) Act, 1910 (10 Miw. 7 c. 8). The observations on which he relied are as follows:

> "It is quite clear that the expression 'buildings' does not mean everything that can by any means be described as built: it means buildings in a more narrow sense than structures, because there are other structures of a limited class which under the terms of the sub-section may also be taken into consideration."

Far from these observations helping him they clearly show that the natural or ordinary meaning to be given to the word "Buildings" is something which has been built. That meaning would be modified if the provisions of law justify giving some other meaning. Finally he relied upon the decision in *Samuel Small* v. *Parkway Auto Supplies* (2). The observations relied on by him are as follows:

> "The word 'building' in its ordinary sense denotes 'a structure or edifice including a space within its walls and usually covered with a roof, such as a house, a church, a shop, a barn or a shed.'
>
> The word 'building' cannot be held to include every species of erection on land, such as fences, gates or other like structures. Taken

(1) (1915) 1 K.B. 176 at 722. (2) 49 A.I.R. 1361 at 1363.

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in its broadest sense, it can mean only an erection intended for use and occupation as a habitation or for some purpose of trade, manufacture, ornament or use, constituting a fabric or edifice, such as a house, a store, a church, a shed.....

These observations must be considered in the context of the Act which was being construed and in the context in which they were made. There the Court had to consider whether erection of gasoline pumps and construction of under ground gasoline tanks and pits with concrete sides sunken in the ground are within a restrictive covenant that no building of any kind shall be erected or maintained within a certain distance of a street. In the particular context buildings had, according to the Court, to be given its popular meaning. That case, therefore, does not assist the appellants.

In our opinion the High Court was quite right in holding that even uncovered *ottas* and *chabutras* fall within the term "building" as used in s. 5(a) of the Act and, therefore, along with the land appurtenant to them they must be settled with the respondent.

Mr. Bindra pointed out that the High Court was in error in asking the Government to settle the whole of Khasra No. 61/1 on the respondent because whereas its area is 12.85 acres, the land covered by the structures, including the appurtenant land, does not measure more than 2.85 acres. Mr. Purushottam Trikamdas, learned counsel for the respondent readily conceded this fact and said that the High Court has committed an error through an oversight and that all that the respondent wants is 2.85 acres of land and nothing more. Mr. Bindra then said that it would not be proper to give a direction to the Government to settle any particular area of the land and it should be left to the revenue authorities

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to determine the precise area covered by the structures and the passages separating these various structures. We agree with him. It would be sufficient to direct the Government to settle with the respondent the whole of the land covered by the structures as well as land appurtenant to those structures from out of Khasra No. 61/1. What the area of that land would be is a matter to be determined during the settlement proceedings. With this modification we dismiss the appeal with costs.

Appeal dismissed.

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April 9.

THE HIGH COURT, CALCUTTA

v.

AMAL KUMAR ROY

(B. P. SINHA, C. J., K. SUBBA RAO, N. RAJAGOPALA AYYANGAR, J. R. MUDHOLKAR and T. L. VENKATARAMA AIYAR, JJ.)

State Judicial Service—Power of High Court—Supersession of seniority of Munsif in promotion—If punishment or penalty—Suit, if lies—Constitution of India, Arts. 235, 311(2), 320(3)(c), 14,16(1)—Civil Services (Classification, Control and Appeal) Rules rr. 49, 55A.

This was an appeal by special leave by the Judges of the Calcutta High Court against the decision of the City Civil Court at Calcutta decreeing the respondent 1's suit. That respondent was a Munsif in the West Bangal Civil Service (Judicial) and had issued an injunction in his own favour in a case where he was the plaintiff. That order of injunction was set aside in appeal by the appellate Court. When the cases of several Munsif came up for consideration before the High Court for inclusion of names in the panel officers to officiate as Subordinate Judges, the respondent 1's name was excluded. He was told by the Registrar of the Court on a representation made by him that the Court had decided to consider his case after a year. As the result of such exclusion respondent 1, who was then the seniormost in the list of Munsifs, lost eight places in the cadre of Subordinate Judges before he was