A

KANPUR SUGAR WORKS LTD.

v.

STATE OF BIHAR & ORS.

March 6, 1970

B

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Bihar Land Reforms Act (30 *of* 1950), *ss.* 5(1) *and* 7(1)—'*Used as factory—Scope of.*

The appellant was engaged in the business of manufacture of sugar, in the respondent-State. It was in possession of Zamindari property. C Part of the area in its possession consisted of two enclosures The factory buildings were situated in the inner enclosure and the outer was used for residential quarters, garages, kitchens, clubs, dispensaries, rest houses, out houses, office buildings, tubewell and water tank, godown, cattle shed, weighbridge house etc.

Under the notification issued under the Bihar Land Reforms Act, D 1950, the Zamindari vested in the State but homestead lands and lands of the factory remained in the occupation of the appellant.

On the question whether the outer enclosure was homestead land not liable to assessment under s. 5(1) of the Act or was liable to assessment under s. 7(1).

HELD : Under s. 5(1) an intermediary is entitled to retain possession of homestead lands as a tenant under the State free of rent; and E under s. 7(1) an intermediary is entitled to retain possession as a tenant buildings or structures together with the lands on which they stand, subject to payment of such fair and equitable ground rent as may be determined by the Collector if they are used *as* golas, factories or mills, for the purpose of trade, manufacture or commerce. The expression employed is 'used *as*' and not 'used *for*'. Therefore, merely because a factory has for the benefit of the workmen and managerial staff working F in the factory, constructed buildings as quarters, clubs, kitchens, garage, dispensary, rest houses, out houses etc., they cannot be deemed to fall under s. 7(1) when they are not directly used *as* factory or mill buildings. The definition of 'factory' in the Factories Act whose object and scheme are entirely different, cannot be a guide in determining the meaning of the expression 'factory' as used in Bihar Land Reforms Act. [907 B-G]

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 169 of 1967.

Appeal from the judgment and decree dated October 28. 1965 of the Patna High Court in Misc. Judicial Case No. 1262 of 1962.

H *M. C. Chagla, D. N. Mishra, J. B. Dadachanji* and *O. C. Mathur,* for the appellant.

D. Goburdhun, for the respondents.

The Judgment of the Court was delivered by

Shah, J. Kanpur Sugar Works Ltd.—a public limited Company—is engaged in the business of manufacturing sugar in village Marhowrah, District Saran, in the State of Bihar. Prior to 1956 it possessed a considerable *zamindari* property. Under a notification issued in exercise of the power under the Bihar Land Reforms Act 30 of 1950 the entire *zamindari* vested in the State with effect from January 1, 1956. But by the provisions of the Act homestead lands and lands of the factory remained in the occupation of the Company. The Circle Officer commenced a rent assessment proceeding under the Bihar Land Reforms Act for determining the rent payable by the Company. The Company cliamed to classify lands in its occupation under three heads : (i) 12 *bighas* 9 *kathas* 7 *dhurs* on which the factory buildings stood, and on that account assessable to rent under s. 7 of the Bihar Land Reforms Act, 1950; (ii) 50 *bighas* 3 *kathas* 13 *dhurs* of cultivable land under Khas cultivation of the Company liable to assessment of rent under s. 6 of the Act; and (iii) 71 *bighas* 2 *kathas* 12 *dhurs* as homestead land not liable to assessment under sub-s. (1) of s. 5 of the Act.

By order dated February 10, 1961 the Circle Officer fixed rent at the rate of Rs. 187-8-0 per *acre* in respect of 80 *bighas* 16 *kathas* 15½ *dhurs* of land under s. 7 of the Act. The Circle Officer rejected the contention of the Company that 71 *bighas* 2 *kathas* 12 *dhurs* of land on which there stood residential bungalows, quarters, garage, kitchens, clubs, dispensary, rest house, outhouses, office buildings, tube-well and water tank, godown, cattle-shed, weighbridge house etc. was homestead and was on that account exempt from liability to pay rent. Appeal against that order was dismissed by the Collector of Saran by his order dated August 6, 1962.

The Company then moved a petition in the High Court of Patna for a writ quashing the order of the Circle Officer and the Collector fixing the rent under s. 7 of the Bihar Land Reforms Act, 1950, in respect of the land claimed to be homestead. The High Court rejected the petition. In the view of the High Court the expression "factory" could not mean merely the place where the machinery is installed and the process for the manufacture of sugar or distillation of liquor is carried on, but the whole area of land including the courtyard necessary for carring on various operations. The High Court recorded the conclusion as follows :

> ".....the buildings and structures used for the aforesaid ancillary purposes of the factory must also be held to form part of the factory and the land on which

A they stand must include not only the actual site on which the structures are erected but also the adjacent land necessary for the convenient use of the said structures and buildings. The whole of the land covered by the outer enclosure would, therefore, be, on a reasonable interpretation of s. 7(1) of the Act, included B within the words "buildings or structures" used as factories for the purpose of the said sub-section, eventhough that area may include some vacant land as well."

The High Court further observed that the proviso to s. 5(1) of the Act had no application, because (1) the staff quarters cannot C be clearly demarcated from the other structures and buildings located within the outer enclosure used for the purpose of the factory, such as rest house, outhouses, office-buildings, tube-well, water tanks, godowns, cattle-shed, weighbridge etc.; and (2) though the occupants of the staff quarters pay rent to the factory, nevertheless it cannot be said that those quarters are used "for D the purpose of letting out on rent". The High Court then proceeded to state that "the mere fact that some rent is incidentally collected from the occupants will not detract from the main purpose for which the quarters are used, namely, to facilitate the proper working of the factory. The occupation by a member of the staff of the factory of those quarters is that of a servant of the E factory and not that of an ordinary tenant. It was not alleged, nor is there a finding to the effect, that he can continue to occupy the quarters if he ceases to be a member of the staff of the factory or else that he can sub-let the house to some other person like an ordinary tenant. The relationship between the occupant of these quarters and the factory continues to be that of a master and servant and not that of an ordinary landlord and tenant." F Against the order dismissing the writ petition, this appeal has been filed with certificate granted by the High Court.

In our view, the order passed by the High Court cannot be sustained. It appears that there are two enclosures which comprise the total area of 83 *bighas* odd in respect of which the G dispute arises. One is the inner enclosure in which are situate the buildings of the factory in which sugar is manufactured and the process of distillation of liquor is carried on. The outer enclosure consists of an area of 71 *bighas* 2 *kathas* and 12 *dhurs*. In the statement of land in the *Khas* possession of the Company all these lands are described as used for residential quarters, H *cutcheri*, dispensary, rest-house, bungalows, outhouses, kitchen quarters, latrines, garage, club, control office, water-tank, bakery house, cane office quarters, godowns, cattle-shed, weighbridge

house, tube-well etc." The dispute raised by the Company is that the land on which these buildings stand is homestead, and is governed by s. 5 of the Act.

By a notification issued under s. 3 of the Bihar Land Reforms Act, 1950, the State Government may declare that an estate or tenure of the proprietor or tenure-holder, specified in the notification has passed to and become vested in the State. The consequences of vesting are set out in s. 4. But the vesting under ss. 3 & 4 is subject to the provisions of ss. 5, 6 & 7. Under sub-s. (1) of s. 5 it is provided :

> "With effect from the date of vesting, all homesteads comprised in an estate or tenure and being in the possession of an intermediary on the date of such vesting shall, subject to the provisions of sections 7A and 7B be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent :
>
> Provided that such homesteads as are used by the intermediary for purposes of letting out on rent shall be subject to the payment of such fair and equitable ground-rent as may be determined by the Collector in the prescribed manner."

Section 6 deals with the right of the previous holder of land used for agricultural or horticultural purposes which were in *khas* possession of an intermediary on the date of vesting. In this case, we are not concerned with any dispute relating to such land. By s. 7(1), insofar as it is relevant, it is provided :

> "Such buildings or structures together with the lands on which they stand, other than any buildings used primarily as offices or *cutcheries* referred to in clause (a) of section 4, as were in the possession of an intermediary at the commencement of this Act and used as *golas*, factories or mills, for the purpose of trade, manufacture or commerce or . . . and constructed or established and used for the aforesaid purposes before the first day of January 1946, shall, ... be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of such buildings or structures together with the lands on which they stand as a tenant under the State subject to the payment of such fair and equitable ground-rent as may be determined by the Collector . . . ."

A It is clear from a bare perusal of sub-s. (1) of s. 7 that the buildings which are primarily used as offices or *cutcheries* referred to in cl. (a) of s. 4 as were in the possession of an intermediary at the commencement of the Act are excluded from the terms of s. 7(1). Again, sub-s. (1) only applies to such buildings or structures together with the lands on which they stand which are B used as *golas*, factories or mills for the purpose of trade, manufacture or commerce or used for storing grains or keeping cattle or implements for the purpose of agriculture. The expression employed by the Legislature is "used as *golas*, factories or mills" and not "used for *golas*, factories or mills". The expression "lands on which they stand" may include the land which is necessary for C the efficient user of the buliding for the purpose for which it is intended to be used. We are unable however to hold that because a factory has, for the benefit of the workmen and managerial staff working in the factory, constructed buildings used as bungalows, quarters for employees, clubs, kitchens, garage, clubs, dispensary, rest house, outhouses etc., but which are not directly used as D factory or mill buildings, the buildings would be deemed to fall within s. 7(1) as buildings in the possession of an intermediary and used as *golas*, factories or mills. In our judgment, these lands are homestead and are claimable by an intermediary under s. 5(1) : if they are used for the purpose of letting out they would be liable to pay fair and equitable ground-rent under the proviso E to sub-s. (1) of s. 5.

The High Court was, we think, in error in relying upon the definition of "factory" used in the Factories Act, 1948. The scheme and object of the Factories Act are different : the Act is intended to regulate labour in factories, to protect workmen from being subjected to unduly long working hours, for making pro- F vision for healthy and sanitary conditions of service, and for protecting the workmen from industrial hazards. The definition of "factory" in the Factories Act cannot be a guide, much less a useful guide, in determining the meaning of the expression "factory" as used in the Bihar Land Reforms Act, 1950. The liability to pay rent under the Bihar Land Reforms Act, 1950, G on the footing that the land remained in the possession of the intermediary on which buildings or structures used as *golas*, factories or mills, for the purpose of trade, manufacture or commerce must be determined on the terms used in the Bihar Land Reforms Act, and not by incorporating words used in another statute of which the scheme and object are different.

H

The revenue authorities erred in holding that the entire area of 83 *bighas* odd was liable to be assessed to rent under s. 7(1) of the Bihar Land Reforms Act, 1950. Undoubtedly an area of

12 *bighas* 9 *kathas* 7 *dhurs* in liable to be assessed to rent under s. 7(1) of the Act. If there are other lands which strictly fall within the expression "buildings or structures together with the lands" used as *golas*, factories or mills for the purpose of trade, manufacture or commerce, it will be open to the Collector to assess those lands to rent under s. 7(1), but the lands not covered by buildings and structures used for *golas*, factories or mills, will be governed by s. 5(1) of the Act.

We are, on the materials on the record, unable to specify the buildings and lands falling within s. 7 of the Act for the purpose of determination of assessment of rent. The evidence on the record before us is not clear as to what structures or buildings stand on the lands in the outer enclosure and the purpose for which they are used. We are also not clear as to the precise meaning of the expression "*golas*" used in s. 7—the expression not being defined in the Act.

The appeal is allowed and the orders of the Circle Officer and of the Collector assessing rent in respect of 71 *bighas* 2 *kathas* and 12 *dhurs* in the outer enclosure in respect of which rent has been assessed under s. 7 of the Bihar Land Reforms Act, 1950, are quashed. The appellant will be entitled to its costs in this Court and in the High Court.

Y.P. *Appeal allowed.*