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MUSTAQ ALI KHAN (DEAD) BY LRS.

v.

DEPUTY DIRECTOR OF CONSOLIDATION AND ORS.

NOVEMBER 30, 1995

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[K. RAMASWAMY AND S.B. MAJMUDAR, JJ.]

*U.P. Zamindari Abolition and Land Reforms Act, 1950 : Section 21(1)(h).*

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*Disabled person—Successor in interest of—Also a disabled person—Held such a person is Asami and therefore Sirdar.*

D

*Disabled Sirdar—Sub lease of land to Adhivasis—Death of Sirdar—Father successor in interest of Sirdar—Also a disabled person—Claim of Asami right by father—Adhivasis in possession and enjoyment of land for over 45 years—Equitable directions by Supreme Court—Directions to Adhivasis to pay half the market value to successor in interest—Declaration of Adhivasis as Bhumidars.*

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The appellant's son, a disabled Sirdar, sub leased 40.99 acres of land, which is the subject matter of this appeal, to respondents 3 to 10. Subsequent to the death of his son the appellant, also a disabled person, succeeded to his estate. The respondents, who were cultivating the land and have Bhumiswami rights, claimed the status as Adhivasis under the U.P. Zamindari Abolition and Land Reforms Act, 1950 while the appellant

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claimed the Asami right. The Assistant Settlement Officer rejected the appellant's claim and held that the respondents became Adhivasis under the Act. On appeal it was held that the appellant is a disabled person and that therefore, he became the Asami. On revision the Deputy Director (Consolidation) held that the appellant was not entitled to the status as a disabled person. The High Court upheld the order of the Deputy Consolidation Officer. Hence this appeal.

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Disposing the appeal, this Court

**HELD : 1. A disabled person and a successor-in-interest who is also disabled is also Asami and, therefore, he is Sirdar. [6-F]**

2. The respondents in possession and enjoyment of land for over 45 A years have been claiming the status as Adhivasis and thus entitled to claim Bhumidar rights under the Act. They are all small holders cultivating the land for their livelihood. Considered from this perspective, equity should be worked out. Accordingly, the Deputy Director (Consolidation) is directed to determine the prevailing market rate of the lands as on February 26, 1970, the date on which the Consolidation Officer has upheld the claim of the respondents as Adivasis. The respondents should pay half of the market value to the appellant and on payment they should be declared as Bhumidars. [6-G-H, 7-A]

*Richpal v. Desh Raj, [1982] 1 S.C.R. 368, relied on.* C

*Dwarika Singh v. Dy. Director of Consolidation, (1981) ALJ 484, approved.*

*Smt. Maya v. Raja Dulaji & Ors., (1970) ALJ 476, referred to.* D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 788 of 1975.

From the Judgment and Order dated 11.8.71 of the Allahabad High Court in C. Misc. W.P. No. 627 of 1971. E

E.C. Agrawala, Atul Sharma and Anant V. Palli for the Appellant.

Ambrish Kumar for the Respondents.

The following Order of the Court was delivered : F

This appeal speaks of several events that have taken place during the pendency of the litigation. About 40.99 acres comprising of Plot Nos. 63, 66, 96, 34, 53, 37 & 102 situated in Village Lakhimpur, Pargana Suar, in former Rampur State are the subject matter of this appeal. It is the claim of the appellant that his son is disabled Sirdar. Consequently, he had sub-leased the properties to respondents 3 to 10. On his demise on October 21, 1954, the appellant-his father succeeded to the estate. He also is a disabled person. The U.P. Zamindari Abolition and Land Reforms Act, 1950 (for short 'the Act') was brought into force in the State of Rampur with effect from January 26, 1956. The respondents claimed the status as G H

- A Adhivasis as they were cultivating the land and have Bhumiswami rights. The appellant claimed the Asami right. The Assistant Settlement Officer by his proceedings dated September 30, 1963 negatived the claims of the appellant and held that the respondents became Adhivasis under the Act. On appeal, the Assistant Settlement Officer held that the appellant is a disabled person and that, therefore, he became the Asami. On revision, the Deputy Director (Consolidation) while holding that the appellant is a disabled person following the Judgment of the Allahabad High Court in *Smt. Maya v. Raja Dulaji and Ors.*, (1970) ALJ 476 held that the appellant is not entitled to the status as a disabled person. When the matter was carried in writ petition, the High Court following the Full Bench judgment in *Maya*'s case upheld the order of the Deputy Consolidation Officer by his order in Writ Petition No. 627/71 dated August 11, 1971. Leave has been granted by this Court. This appeal has come up for hearing.

- D So far as the legal position is concerned, it is now settled by the decision of this Court in *Richpal v. Desh Raj* reported in [1982] 1 SCR 368. At page 378, it is held that Shrimati Ram Kali was a disabled person on April 9, 1946, Dan Sahai (successor in interest of Smt. Ram Kali) was also a disabled person, the land-holder on the date of vesting, who incidentally happened to be Dan Sahai, would be entitled to the benefit of s.21(10)(h) and the respondents (successor of Uttam Singh and Murli Singh) would remain Asamis and cannot be said to have become Sirdars. It is also not in dispute that a later Bench of five Judges of the Allahabad High Court in *Dwarika Singh v. Dy. Director of Consolidation*, (1981) ALJ 484 had also taken the same view which was noted by this Court and approved of the correctness thereof. It would thus be seen that a disabled person and a successor-in-interest who is also disabled is also Asami and, therefore, he is Sirdar.

- G The question is whether this is a fit case for our interference under Art. 136 of the Constitution. It is not in dispute that the respondents have been in possession and enjoyment for over 45 years and claiming the status to be as Adhivasis and thus entitled to claim Bhumidhar rights under the Act. They are all small holders and they have been in possession and enjoyment and cultivating the land for their livelihood. Considered from this perspective, equity would be worked out. Accordingly, we direct the
- H Dy. Director (Consolidation) to determine the prevailing market rate of

the lands as on February 26, 1970, the date on which the Consolidation Officer has upheld the claim of the respondents as Adhivasis. The respondents are directed to pay half of the market value to the appellant and on payment declare the respondents as Bhumidars and action accordingly be taken.

The appeal is accordingly disposed of. No costs.

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T.N.A.

Appeal disposed of.