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RIGHTS AND LIABILITIES OF BHUMIDHAR UNDER THE UTTAR PRADESH REVENUE CODE, 2006

SUBJECT
UP LAND LAWS AND LOCAL LAWS

Author Dishita
College: Gautam
Buddha University

ABSTRACT

Land is the contested and most valuable resource in a largely agrarian state like Uttar Pradesh. The law that decides who owns land and how shapes the lives of millions of farmers. The Uttar

Pradesh Revenue Code, 2006 replaced a collection of laws mainly the U.P. Zamindari Abolition and Land Reforms Act, 1950 with one clear law that deals with land ownership, land taxes and land administration in the state. At the centre of this ownership system stands the Bhumidhar. The Bhumidhar is, in terms the closest thing that Indian revenue law has to a full owner of agricultural land but the Bhumidhar is still under the control of the State. This paper looks at the rights and duties that come with being a Bhumidhar under the 2006 Code. It focuses on the difference between Bhumidhar with rights and Bhumidhar with non-transferable rights the rules that limit transfer of land (especially land owned by people of Scheduled Castes) the type of possession that a Bhumidhar enjoys and how courts, mainly the Allahabad High Court have read these rules. The paper uses a method. It relies on the text of the Code on other commentaries and on court decisions that have been reported. It finds that although the Code has made classification of ownership simpler than the 1950 Act many practical problems remain. Problems around converting Bhumidhar to transferable Bhumidhar and around the Collector's power to allow transfer keep causing legal disputes. The paper ends with a suggestions, for reform and a short conclusion.

Keywords: Bhumidhar, Uttar Pradesh Revenue Code 2006, transferable rights, nontransferable rights, tenure holder, land revenue, Asami.

1. INTRODUCTION

Uttar Pradesh has for a long time been governed by a fairly complicated set of land laws most of which trace their roots to the colonial period and to the zamindari system of land holding. After independence the State moved quickly to abolish interests through the U.P. Zamindari Abolition and Land Reforms Act, 1950 (commonly called the UPZA and LR Act) which created the tenure classes of Bhumidhar, Sirdar and Asami and vested a large amount of intermediary land directly in the cultivators. Over the five decades this Act was amended so many times and so many other separate statutes on ceiling, consolidation and revenue courts were added on top of it that the law became difficult even for practising lawyers to follow with confidence.

The word 'Bhumidhar' literally means one who holds land (bhumi) and under the scheme of the Code the Bhumidhar is the tenure holder who comes closest to ownership of agricultural land though even the Bhumidhars rights are not absolute and remain subject to the ceiling law to restrictions on transfer to certain categories of persons and to the general power of the State over land as an eminent domain. Understanding what a Bhumidhar can and cannot do with his land and what obligations come attached to that status is therefore central to any study of land law in Uttar Pradesh and this is the gap that the present paper tries to fill.

This paper defines a terms at the outset for clarity. 'Tenure holder' is used, following Section 3 of the Code to mean a person who holds land or who is entitled to hold land as a Bhumidhar, Asami or Government lessee. 'Transfer' includes sale, gift, mortgage, exchange and lease unless a narrower meaning is indicated by the context. 'Ceiling area' refers to the area of land that a person or family may hold under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 a separate statute that continues to operate alongside the 2006 Code.

The paper is organised as follows. After setting out the objectives, research questions and methodology it briefly reviews the existing literature on the subject. It then traces, in outline the background of land tenure reform in Uttar Pradesh before moving to the heart of the paper: the classes of tenure holders the rights of a Bhumidhar (including the crucial distinction between transferable and non-transferable rights) the restrictions, on transfer and the nature of possession the liabilities that attach to the status and the manner in which courts have read these provisions in reported decisions. The paper closes with findings, suggestions and a conclusion.

2. OBJECTIVES OF THE STUDY

This paper has been written with the following objectives in mind:

(a) To examine the classification of tenure holders under Chapter IX of the Uttar Pradesh Revenue Code, 2006 and to place the status of Bhumidhar within that classification.

(B) To study, in some detail the rights conferred on a Bhumidhar who has rights and on a Bhumidhar who has non-transferable rights and to bring out the practical differences between the two categories.

(C) To analyse the restrictions placed on the transfer of Bhumidhari land, including the special protection given to land belonging to persons of Scheduled Castes under Section 98 of the Code.

(D) To study the liabilities of a Bhumidhar, the duty to pay land revenue the restriction on land use and the consequences that follow when these duties are not observed.

(E) To review reported decisions mainly of the Allahabad High Court that interpret these provisions and to draw out the practical problems that continue to arise.

(F) To suggest, on the basis of this study, a few steps that could reduce litigation and confusion, around Bhumidhari rights.

3. RESEARCH QUESTIONS

The study is guided by the following questions:

1. What is the legal position of a Bhumidhar under the Uttar Pradesh Revenue Code, 2006, and how does this position differ as between transferable and non-transferable rights?

2. What restrictions does the Code place on the transfer of Bhumidhari land, and why have these restrictions been considered necessary, particularly for Scheduled Caste tenure holders?

3. What obligations and liabilities accompany the status of Bhumidhar. What happens when a Bhumidhar fails to meet obligations and liabilities?

4. How have courts interpreted provisions that relate to transfer, possession and conversion of tenure under the 2006 Code?

The paper does not test a hypothesis in the empirical sense because the study is doctrinal in character. It does however proceed on the working assumption that the 2006 Code even while simplifying the law considerably has left certain grey areas. Grey areas are around conversion of non-transferable rights into transferable rights and around the Collectors discretion, under Section 98. Grey areas continue to generate litigation.

4. RESEARCH METHODOLOGY

In this study we use a research method. We read the text of the Uttar Pradesh Revenue Code, 2006 especially Chapter VII about ownership of land and other property and Chapter IX about tenures. We also look at the Uttar Pradesh Revenue Code Rules, 2016 that go with the code. For background we refer to the U.P. Zamindari Abolition and Land Reforms Act, 1950 and to the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960. We gather decisions from the Allahabad High Court both reported and unreported through Indian Kanoon and other legal databases to see how the provisions have actually been applied. We also read law journal commentary and departmental notes on the code to understand the intent and how the tenure system works in practice. Because this study relies on published legal material and not on fieldwork or interviews it is analytical and comparative rather, than empirical.

5. REVIEW OF LITERATURE

A fair amount has been written about the U.P. Zamindari Abolition and Land Reforms Act, 1950. The U.P. Zamindari Abolition and Land Reforms Act, 1950 shaped land relations in the State for than fifty years. Much of the writing on tenure classes, especially the difference between Bhumidhar and Sirdar remains useful even after the U.P. Zamindari Abolition and Land Reforms Act, 1950 was repealed. Commentary written close to the time the 2006 Code was passed welcomed the consolidation of many old statutes into a single code and the creation of a simpler four-class tenure structure. However several writers pointed out that the actual transition, the conversion of former Sirdars into Bhumidhars with non-transferable rights would need time to settle in village records.

More recent writing, much of it in the form of case notes published after decisions of the Allahabad High Court has focused on questions. For example it examines the scope of the Collectors power under Section 98 to allow transfer of land belonging to Caste tenure holders. It also asks which authority is competent to declare that a person has become a Bhumidhar with rights. These case notes are useful because they show where practical friction actually lies. However they tend to deal with one provision at a time and do not always connect the point back to the scheme of rights and liabilities under the Code. There does not appear to be a reasonably compact academic account that brings together in one place the rights of a Bhumidhar, the restrictions on those rights and the corresponding liabilities while also using recent case law. This paper tries in a way to fill that gap, for a student audience.

6. HISTORICAL BACKGROUND OF LAND TENURE IN UTTAR PRADESH

Before independence most of the land in what's now Uttar Pradesh was managed under the zamindari system. In this system a zamindar collected rent from farmers on behalf of the state and often had a lot of control over them. After independence Uttar Pradesh passed the U.P. Zamindari Abolition and Land Reforms Act, 1950. This was one of the most significant land reform laws in India. It ended the zamindari system removed the role of middlemen and created a link between the state and the actual farmers. New landholding categories were introduced—Bhumidhar, Sirdar and Asami.

Under the 1950 Act a Bhumidhar had an more secure right to the land than a Sirdar. Over the years the law was changed times to improve the status of Sirdars. These changes allowed them to gain Bhumidhari rights by paying a multiple of the land revenue. By the 2000s the law had become a mix of the original 1950 Act dozens of amendments the Ceiling Act of 1960 the Consolidation of Holdings Act, 1953 and the old colonial Land Revenue Act, 1901. This old law still governed revenue administration and revenue courts. To make things simpler reading all these laws together to answer a question—like who can transfer land and under what terms—was a difficult task.

To fix this problem the Uttar Pradesh Revenue Code, 2006 was introduced. It was meant to be a complete law covering land revenue, surveys, record of rights, land use, transfer of land, partition and revenue courts. Although it was passed in 2006 and later re-enacted as U.P. Act No. 8 Of 2012 the Code did not come into effect until 11 February 2016. That was when the final Rules of 2016 were ready. From that date Sirdars under the system and people who held non-transferable Bhumidhari rights were grouped into one category: 'Bhumidhar with non-transferable rights. Those who were already Bhumidhars with rights continued to hold that status under the new Code. This is why Section 76 of the 2006 Code still refers to the law to determine when someone becomes eligible, for transferable rights.

7. CLASSES OF TENURE HOLDERS AND THE MEANING OF BHUMIDHAR

Section 74 of the Code tells us that there are four types of people who own land in Uttar Pradesh. The types are Bhumidhar who can transfer their land Bhumidhar who cannot transfer their land Asami and Government lessee. I find it interesting that the old word "Sirdar" is not used in the Code.

A Sirdar from the 1950 Act simply turned into a Bhumidhar with rights when the 2006 Code started. So for use a Sirdar and a Bhumidhar with non-transferable rights are basically the same kind of land holder.

An Asami is covered by Section 77. An Asami is someone who has land by a lease or another agreement from a Bhumidhar from the Gram Panchayat or from the State. The rights that an Asami has are much weaker than the rights of a Bhumidhar. Usually an Asami cannot pass his land to someone and he must follow the wishes of the person who let the land to him but the law does protect him from being kicked out without reason. A Government lessee is a type of holder. A Government lessee holds land on a lease that comes from the State Government. These leases are normally for a fixed period and for a purpose like building an industry.

The Bhumidhar, whether the Bhumidhar can transfer the land or not is the type of holder that the Code recognises. For all purposes the law treats a Bhumidhar as the "owner" of farm land. Even though the top title of all land in the State is still with the State Government according to Section 108 of the Code a Bhumidhar is treated as the real owner. When I talk with people in a village, in Uttar Pradesh they often say they own land. What they really mean is that they hold that land as a Bhumidhar.

7.1 Bhumidhar with Transferable Rights

Section 75 of the Code explains who is considered a Bhumidhar with rights. In general this group includes, first every person who had Bhumidhari rights right before the Code started being used. It also includes any person who gets these rights on or after that day either through the Code itself or through some law. Basically once someone is recognized as a Bhumidhar with rights that person has the most complete form of agricultural ownership that is allowed in Uttar Pradesh. This comes with the freedom to sell, give away take a loan against rent out or handle the land in any way.. This freedom is subject, to the rules that will be discussed later in this paper.

7.2 Bhumidhar with Non-Transferable Rights

Section 76 of the Code creates a category that's more limited. A person becomes a Bhumidhar with rights that cannot be transferred. This can happen if the person already had this status before the Code began. It can also happen if the person is given this status after the Code begins by the Bhumi Prabandhak Samiti, which's the group that manages land for the Gram Panchayat. Additionally it can happen if the person received land under the U.P. Bhoodan Yajna Act of 1952 or under the U.P. Imposition of Ceiling on Land Holdings Act of 1960.

The extra part of Section 76 also discusses a situation. If the land that a person owns with any other land they own in the State is more, than the maximum allowed under the 1960 Ceiling

Act then that person receives only rights that cannot be transferred on the portion of the land that when added to their other land stays within the allowed limit.

That makes this category especially important for the purposes of this paper is sub-sections (2) and (3) of Section 76 which include an upgrade mechanism. Under sub-section (2) a person who was already a Bhumidhar with -transferable rights before the Code came into effect and who had held that status for five years or more by the date the Code started automatically became a Bhumidhar with transferable rights on the day the Code began. Under sub-section (3) any person who becomes (or became) a Bhumidhar with -transferable rights whether before or after the Code commenced becomes a Bhumidhar with transferable rights when ten years have passed from the date they first acquired non-transferable status. In words non-transferable rights are not meant to last forever. They grow into transferable rights after a set time. This waiting period is the contested part of Section 76. Disputes often arise over when the ten-year (or five-year) countdown began for a person.

Sub-section (4) of Section 76 adds a condition. If a person after becoming a Bhumidhar with rights, through this process sells their land they lose the right to be granted on lease any land that belongs to the Gram Panchayat, the State Government or land that has been declared surplus under the Ceiling Act. This rule is clearly designed to prevent a person from gaining rights just to sell the land for profit and then return to the State for a new land allocation.

8. RIGHTS OF A BHUMIDHAR UNDER THE CODE

The Code confers a fairly wide bundle of rights on a Bhumidhar, though, as noted already, the exact content of these rights differs depending on whether the Bhumidhar holds transferable or non-transferable rights. This chapter deals with the main rights in turn.

8.1 Right of Exclusive Possession

Section 78 of the Code gives a Bhumidhar the right to exclusive possession of his holding and to use it for the purpose of agriculture, horticulture or animal husbandry and for purposes connected with these activities, such as pisciculture and poultry farming. This right of possession is really at the core of Bhumidhari tenure: it means that so long as a person holds this status, no other person and not even the Gram Panchayat can interfere with his physical possession of the land without following due legal process. A though narrower right of exclusive possession is given to an Asami under Section 82 of the Code in respect of the holding, for which he is an Asami.

8.2 Right to Use Land for Industrial, Commercial or Residential Purposes

Sections 79 to 81 allow a Bhumidhar to use his land or some part of it for commercial or residential purposes.. He must first get a declaration from the right authority. The right authority is usually the Sub-Divisional Officer or another officer who is given this responsibility. Section 80 explains what happens after this declaration is given. Section 81 talks about how the declaration can be taken. Also there is a rule that says once the declaration is given or canceled it must be written down properly in the land records. This is an important right, for businesses. Without this declaration land that is used for farming cannot legally be used for purposes. If someone changes the use without permission they might face punishment according to the law.

8.3 Rights in Trees and Mines

Chapter seven of the Code talks about some rights that come with land but are handled separately because they are different in nature. Section 56 covers the rights people have in trees that are growing on Bhumidhari land. It usually says that the Bhumidhar has the right to those trees long as they are on his own land.. This is only true if there are no other rights that were already there before the Code was introduced. Section 55 on the hand says that just because a mineral is under a Bhumidhars land it doesn't mean he automatically has the right to dig it up or take it out. That right is still controlled by a law called the Mines and Minerals (Development and Regulation) Act, 1957 which is a national law. This is a point to remember. Even though Bhumidhari rights are very broad they are not the same as ownership. Ownership in the way people usually think about it like when someone builds a house on land they own in a city is different. The mineral wealth, under the ground still belongs to the State.

8.4 Right of Transfer

Section 98 of the Code when read along with the rules about transferring land says that a Bhumidhar who has the right to transfer can pass on his share of the land or part of it through selling, giving as a gift mortgaging or renting to any person. This is allowed only if there are restrictions that are explained in the chapter. This right to transfer is really what makes a Bhumidhar with rights different from a Bhumidhar with non-transferable rights. The second type as the name suggests usually cannot transfer their land by selling, giving as a gift or mortgaging all. There are a few very specific situations where the Code allows it, like a mortgage without possession for a co-operative society or a scheduled bank to get a loan for improving the land.

8.5 Right to Lease Out Land

The Code allows a Bhumidhar in some cases to rent out his land or part of it to a registered company, firm, trust, co-operative society or agricultural institution. It also allows renting for setting up power facilities. This is allowed though older laws used to discourage land being owned by people who do not live on it and being rented for long periods. This rule shows a modern and slightly more open attitude compared to the 1950 Act, which had strict rules about subletting.

8.6 Right to Compensation and to Improvements

When land is taken for a purpose a Bhumidhar is entitled to compensation under the law that deals with land acquisition. This is because the Bhumidhars interest in the land is seen as a property right, not just a right to live on the land. The Code also protects the improvements made by the person who holds the land. For example there are rules that say an improvement made legally cannot be removed or destroyed without paying the person who made it. This gives a Bhumidhar some confidence that any work done on the land like leveling, watering or developing it in ways will not just be taken away without being paid for.

8.7 Right of Inheritance

When a Bhumidhar dies the interest in the land they had passes to their heirs according to the rules set out in the Code starting from Section 108. This follows ideas to those, in personal inheritance law but is adjusted to fit agricultural land. The aim is to keep the land within the family that works it and to avoid making pieces of land too small and hard to manage..

9. RESTRICTIONS ON TRANSFER AND THE NATURE OF POSSESSION

Although a Bhumidhar who has rights enjoys a wide right of transfer this right is not absolute. The Code, following the policy of Indian agrarian law places several restrictions on transfer mainly to protect small and marginal farmers to protect vulnerable communities and to prevent land from passing out of agricultural use or out of Indian ownership without proper scrutiny.

9.1 The Ceiling Restriction

No Bhumidhar can by purchase or gift acquire Bhumidhari land if the result of the acquisition would be that the Bhumidhar with land already held by the Bhumidhar or by the Bhumidhar's family ends up holding land beyond the ceiling limit fixed under the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960 which currently works out to a little over five hectares for an ordinary holder. This restriction is meant to prevent landholders from quietly reassembling big estates through a series of individual purchases which would defeat the entire purpose of the land ceiling law.

9.2 Restriction on Transfer by Bhumidhar with Non-Transferable Rights

As already noted, a Bhumidhar with non-transferable rights cannot in the ordinary course sell, gift or mortgage the Bhumidhar's holding. The policy reason is straightforward: this category is meant to protect smaller landholders (often those who received land through Bhoodan allotment or ceiling-surplus allotment) from being pressured or induced into selling the Bhumidhar's only asset before the Bhumidhar has held it long enough to be considered financially secure. Once the qualifying period under Section 76 is completed the Bhumidhar's holding automatically graduates into transferable rights and the restriction falls away.

9.3 Restriction on Acquisition by Persons Who Are Not Indian Citizens

The Code also restricts acquisition of Bhumidhari land by persons who are not citizens of India except with the previous sanction of the State Government reflecting a broader policy under Indian law that agricultural land is not ordinarily to be permitted to pass into foreign private ownership without government scrutiny.

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9.4 Special Protection for Scheduled Caste Bhumidhars — Section 98

The heavily litigated restriction and one this paper looks at in some detail is contained in Section 98 of the Code. Section 98 provides that a Bhumidhar belonging to a Scheduled Caste cannot transfer, whether by sale, gift, mortgage or lease any Bhumidhari land to a person who does not belong to a Scheduled Caste except with the permission of the Collector given in writing. The Uttar Pradesh Revenue Code Rules, 2016 Rule 99 lay down the conditions under which the Collector may grant such permission for instance where the Bhumidhar genuinely needs money for medical treatment for a daughter's marriage or, for similar pressing personal needs or wishes to shift the Bhumidhar's residence and the Rule sets out a closed list of grounds rather than leaving the matter to the Collector's unguided discretion.

If land is transferred in violation of Section 98 without the Collector's permission Section 104 of the Code says the transfer is invalid. Section 105 adds consequences usually meaning the land ends up with the Gram Panchayat, not the person who gave it away or the one who received it. The clear purpose of Section 98 is to protect people. Without this rule weaker Scheduled Caste landholders could be easily convinced to give up their only productive asset. Their land. The restriction is meant to slow that process down and bring it under control.

Two decisions from the Allahabad High Court show how this rule works in life. In Inder Jeet v. State of Uttar Pradesh the Collector denied permission to transfer land because the daughter's marriage was not considered a reason under Section 98 as interpreted by Rule 99. The High Court looked closely at the conditions in the proviso to Section 98(1) along with Rule 99(8). It said that when the Collector uses discretion the reasons must match the conditions set out in the law. If the Collector considers factors or rejects an application for reasons not allowed by the rule the order cannot stand. The court quashed the Collector's decision. Sent the case back for a fresh decision that follows the law exactly. This case reminds us that even though Section 98 gives the Collector some oversight that power must stay within the limits set by the rules.
Personal views or opinions cannot replace the conditions.

In another set of cases the Allahabad High Court dealt with an issue. How a person becomes a Bhumidhar with transferable rights under Section 76. One case involved a tenure holder who asked the Sub-Divisional Officer to issue a declaration that he had become a Bhumidhar, based on Sections 131A and 131B of the old 1950 Act and Section 76 of the 2006 Code. The Court said the Sub-Divisional Officer cannot make such a declaration by accepting a written request. That would be an action without a proper hearing. The correct way for someone to claim they have become a Bhumidhar with rights is to file a declaratory suit under Section 144 of the Code. In such a suit the State and the Gram Panchayat must be. Given a chance to respond. The Court also said that a writ of mandamus cannot be granted unless there is a legal duty on the officer.

Since the power to make such a declaration administratively was not a duty a mandamus could not be issued.

Together these two decisions show that the courts are careful. They do not allow revenue officers to use their power in a way when denying permission to transfer land. At the time they insist that issues, about legal status. Like whether someone has really become a Bhumidhar with transferable rights. Must be settled through a proper legal process not through informal administrative orders.

9.5 Nature of Possession under the Code

Possession under the Code is closely linked to the record of rights usually called the Khatauni, which the Assistant Record Officer prepares and keeps for every village. Entries in the Khatauni are assumed, under the Code to be correct until something else proves otherwise. Because of that a person recorded as having possession under the name Bhumidhar has a practical advantage in any dispute even though the Khatauni entry alone does not prove ownership. Physical possession that lasts for a unbroken time openly and with the true owner knowing about it can also in principle turn into ownership through the law of adverse possession. This rule is a rule of property law not a rule made by the Revenue Code. When a dispute about possession happens the Code sends disputes to the revenue courts set up by the Code. The first level of those courts may include the Assistant Collector, the Sub-Divisional Officer and other officials that the Code names. Appeals go to courts. The ordinary civil courts normally do not have authority, over matters that the Code puts into the hands of revenue courts.

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10. LIABILITIES OF A BHUMIDHAR

Rights under the Code come attached to corresponding duties, and a Bhumidhar who does not observe these duties can, in a fairly serious case, even lose his tenure altogether. The main liabilities are considered below.

10.1 Liability to Pay Land Revenue

The basic liability of every tenure holder, including a Bhumidhar is the duty to pay land revenue assessed on the holding to the State Government. Land revenue is, all the original purpose for which revenue law exists. Failure to pay land revenue when it falls due can lead to recovery proceedings, against the defaulting Bhumidhar. In an enough case this can include attachment and sale of the holding itself though such extreme steps are ordinarily preceded by notice and an opportunity to clear the arrears.

10.2 Liability Arising from Unauthorised Change of Land Use

A Bhumidhar who uses his land for industrial, commercial or residential purposes without first getting the required declaration under Sections 79 to 81 of the act is, in breach of the Code. The consequences of action can include a penalty. In a case the land may also be restored to its original agricultural condition. This liability exists to ensure that the right to change land use is not simply claimed by the landholder on their own. Instead the right to change land use must be exercised after proper permission is obtained.

10.3 Liability for Unauthorised Transfer

As discussed already, a transfer made in violation of the restrictions the Code imposes, for instance a sale by a Bhumidhar with non-transferable rights, or a transfer of Scheduled Caste land without the Collector's permission under Section 98, is void under Section 104, and Section 105 spells out what happens next, generally resulting in the land, or the benefit of the void transaction, vesting in the Gram Panchayat. A Bhumidhar who attempts such a transfer therefore risks losing not only the transaction but potentially his interest in the land itself, which is a significant deterrent.

10.4 Liability to Maintain Boundary Marks

The Code places a duty on Bhumidhars, along with the Gram Panchayat, to maintain proper boundary marks demarcating their fields and the village limits. Where a Bhumidhar fails to erect or maintain such marks after being directed to do so, the Collector may have the marks erected and recover the cost from the Bhumidhar concerned, treating the amount as if it were an arrear of land revenue.

10.5 Extinction of Interest on Misuse or Abandonment

The Code also provides that the interest of a Bhumidhar with non-transferable rights, or of an Asami, can come to an end where the holding is used in a manner that contravenes the conditions attached to it, or, in the case of an Asami, where the tenure comes to an end under the terms of the lease or arrangement. This is a fairly serious liability, since it means that the tenure itself, and not merely a penalty, is at stake if the conditions attached to a non-transferable holding are persistently disregarded.

10.6 General Duty Not to Cause Waste

Finally, like any person in lawful possession of land, a Bhumidhar is expected not to commit waste on the holding, for example by permanently damaging its productive capacity, since doing so could affect the value of the land and, indirectly, the revenue the State is able to assess on it in the future. This obligation is less sharply defined in the Code than the others discussed above, but it flows naturally from the overall scheme of the legislation, which treats agricultural land as a resource to be preserved and cultivated rather than one to be exploited and abandoned.

11. FINDINGS

Based on the study described earlier we can note the following findings:

First, the Uttar Pradesh Revenue Code, 2006 has truly simplified the tenure structure that existed under scattered legislation. It has cut the number of tenure categories to four and removed confusing terms such as Sirdar and Adhivasi.

Second the difference between Bhumidhar with rights and Bhumidhar with non-transferable rights remains the single most important classification for practical purposes. It directly decides whether a person can sell, gift or mortgage land. The automatic conversion mechanism under Section 76 though well intended still creates disagreements about when the qualifying period began for each Bhumidhar.

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Third the limits on transfer the ceiling restriction and the special protection for Scheduled Caste tenure holders under Section 98 show a continuing and according to this paper perfectly justified policy that protects vulnerable and small landholders. However the discretion given to the Collector under Section 98 must be used carefully. The Allahabad High Court has had to correct orders than once when they were issued on grounds that the Rules do not allow.

Fourth questions about a tenure holder's status – for example whether a person has become a Bhumidhar with rights – are now being directed by the courts firmly to the declaratory suit procedure under Section 144 instead of informal administrative applications. This is an approach but it means that tenure holders sometimes must go through full litigation just to have their existing rights formally confirmed.

Fifth the obligations that come with Bhumidhari status – the duty to pay land revenue and the restriction on unauthorised change of land use – are reasonably clear in the Code. Yet awareness of these obligations among landholders, in rural areas still seems low judging by the many disputes that reach revenue courts over basic questions of use and transfer.

CASE LAWS

1. Inder Jeet v. State of Uttar Pradesh, Allahabad High Court (writ petition under Section 98 of the U.P. Revenue Code, 2006).

2. Allahabad High Court decision held that a Sub-Divisional Officer cannot grant a declaration of Bhumidhar rights with status on the administrative side. The remedy lies in a suit under Section 144 of the U.P. Revenue Code, 2006.

3. Ramji. Anr. Vs Brigunath And Ors. (1963). According to the apex court bhumidhari rights are absolute and heritable. Bhumidhari rights do not differentiate between sons and daughters or between a son and a Hindu or Muslim widow in respect of rights over the land. Thus the female bhumidhar, by virtue of her share in the land has a transferable and ownership right, not merely a life interest.

4. Banshidhar v. Smt. Dhirajadhari (1971). Deo Nandan v. Ram Saran (2000). According to the court bhumidhar rights accrue to the heir by virtue of the declaration by the authority or his action in accordance with the law (i.e. Making the deposit as required by the Assistant Collector) not from the issuance of the certificate.

5. Mahendra Singh v. Attar Singh. The court reiterated that the transferability of the land as provided by the statute overrides any personal law such as joint family property governed by

Hindu law or Muslim law. Thus a bhumidhar is, at liberty to transfer the land to the provisions of the Act.

12. SUGGESTIONS

Based on the findings this paper offers a few modest suggestions:

(a) The revenue administration could consider periodically updating village records to flag well before the ten-year or five-year period under Section 76 is due to expire, which non-transferable Bhumidhars are approaching automatic conversion so that the change is reflected in the Khatauni without the tenure holder having to apply or litigate for it.

(b) The grounds on which the Collector may grant permission under Section 98 read with Rule 99 could be publicised widely at the village and tehsil level in simple language so that Scheduled Caste tenure holders and revenue officials alike are clear about what is and what is not a valid ground for permitting transfer.

(c) Basic legal literacy programmes on land rights perhaps organised through Gram Panchayats or legal aid clinics could help reduce the number of disputes that arise simply because landholders are not fully aware of the restrictions and liabilities attached to their tenure.

(d) Digitisation of records of rights which is already underway in Uttar Pradesh in forms should be accompanied by a simple accessible mechanism for tenure holders to verify and correct their recorded status since disputes, over whether a person is recorded as holding transferable or non-transferable rights lie at the root of a good deal of the litigation this paper has reviewed.

13. CONCLUSION

The Uttar Pradesh Revenue Code, 2006 shows an attempt to bring order to a part of the law that had, over years become broken into many different laws. At the heart of the system it creates is the Bhumidhar, whose rights, the right to be the only one to use the land the right to change how the land is used as long as they get permission the right to pass it on (if the rights can be passed on) the right to rent the land out and the right to pass it on to others when they die are very close to owning the land completely while still being under the control of the State. Also the Code puts duties on this position the main one being to pay the land tax and the rule that they cannot pass on the land or change its use without permission and it supports these duties with serious results including taking away the rights completely in some situations.

The difference between the rights that can be passed on and those that cannot and the limits on passing them on for land held by people from Scheduled Caste groups proves that the Code has not given up on the older protective ideas of Indian land reform even while changing the way the laws are written and organized. As the court cases talked about in this paper show courts have usually looked at these rules in a clear way saying that government workers must use their power only within the rules that the law and the rules actually state while also sending more difficult questions about who has the rights to the proper court cases instead of simple official decisions. Overall therefore the goals mentioned at the start of this paper seem to have been achieved: the different groups of land users the rights and duties of the Bhumidhar the limits on passing the rights on and how the courts look at these rules have all been looked at and the ideas given above are meant as a small real help in making things less confusing in this important area of land law, in Uttar Pradesh.

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