

(1974) 10 DEL CK 0011

In the Delhi High Court

Case No : Civil Writ Appeal No. 486 of 1973

Daryao Singh and Another

APPELLANT

Vs

The Competent Authority and Others

RESPONDENT

Date of Decision : 17-10-1974

Acts Referred:

Citation : (1975) ILR Delhi 377

Hon'ble Judges : V.S. Deshpande, J;S.I. Rangarajan, J

Bench : Division Bench

Advocate : Ramesh Chandra and H.S. Dhir, for the Appellant;

Judgement

S. Rangarajan, J.

(1) This judgment will dispose of C.W. 485 of 1973 also. However, it would be sufficient to state the facts in C.W. 486 of 1973 alone.

(2) The petitioners (Daryao Singh and Narain Singh) purchased land, described in paragraph I of the petition, situate in village Akbarpur Majra from Mange Ram (second respondent) by means of a registered sale deed; mutation was sanctioned in their favor by an order of the Naib Tehsildar dated 19-11-1968. By an order of the Revenue Assistant, dated 31-10-1967, Mange Ram was declared bhoomidhar. This declaration became effective from 20-7-1954, on which date the Delhi Land Reforms Act, 1954 came into force. The petitioners were continuing in possession of the said land and were cultivating the same ever since the date of purchase. When they obtained a copy of the Khatauni from the Patwari in the month of April, 1973, for the purpose of applying for an agricultural loan, they came to know that an entry had been made in the revenue records to the effect that the said land had been taken possession of under the Delhi Land Holdings (Ceiling) Act, 1960 on 11-5-1971. The said entry in the revenue records about the taxing possession of the land is attached being tactually incorrect: it is also criticised as being old since it is stated to record the delivery of an undivided half share in the land.

(3) On further enquiries the petitioners learnt that in proceedings held under the Delhi Land Holdings (Ceiling) Act it had been declared that one Deep Chand son of Birkha Ram (third respondent) owned the said land in excess of the ceiling limit and that the petitioners' land had been treated as surplus land in the hands of the said Deep Chand, and that it had been declared as such u/s 9 of the Delhi Land Holdings (Ceiling) Act. The petitioners assert that they did not receive any notice from any authority constituted under the said Act in respect of any proceedings under the said Act; Mange Ram also received no such notice. The petitioners further assert that their names and before them, the name of Mange Ram, were shown in the revenue records as being in possession of the above land.

(4) Mange Ram had filed a civil suit against Deep Chand in the court of Shri Harminder Singh Bakshi, Sub Judge 1st Class, Delhi (Suit No. 48 of 1964) for a declaration of bhoomidhari rights which was decreed on 28-11-1964. Mange Ram later applied on 11-10-1966 to the Revenue Assistant for mutation in his favor along with a copy of the decree since Deep Chand had been wrongly declared as bhoomidhar. The Revenue Assistant declared on 31-10-1967, on the application of Mange Ram, that he and not Deep Chand was a bhoomidhar of the land. The petitioners submit that they purchased the land on the basis of the said declaration and mutation.

(5) It must be noticed that till the Supreme Court decided in Hatti Vs. Sunder Singh, that a declaration of bhoomidhari rights could be granted only by the revenue court and not by the civil court; the practice in Delhi was for civil courts to grant such declarations. The further facts to notice is that even long before the above decision of the Supreme Court Mange Ram had applied, even on 11-10-1966, to the Revenue Assistant for a declaration that he was a bhoomidhar. The Delhi Land Holdings (Ceiling) Act, 1960 came into force on 16th April, 1962.

(6) The short point that arises for consideration in these writ petitions is not the effect of the declaration granted by the Revenue Assistant, which according to the respondent is said to have been made only on the basis of the declaration granted by the civil court without jurisdiction to do so but whether the proceedings under the Delhi Land Holdings (Ceiling) Act could have been taken without giving opportunity to the petitioners of being heard. It is necessary for this purpose to read sections 5 and 6 of the said Act:

5. Collection of information through other agency. If any person, who u/s 4 is required to submit a return, fails to do so in accordance with the provisions of that section, the competent authority shall collect the necessary information through such agency as may be prescribed.

6. Procedure for determination of excess land. (1) On receipt of any return u/s 4 or the information, u/s 5 or otherwise, the competent authority shall, after giving the persons affected an opportunity of being heard, hold an inquiry of such

manner as may be prescribed, and having regard to the provisions of section 7 and section 8 or any rules that may be made in its behalf it shall determine

(a) the total area of land held by each person representing the family; (b) the specific parcels of land which he may retain; (c) the land held by him in excess of the ceiling limit; (d) whether such excess land is held by him as a Bhumidhar or as an Asami : (c) the excess land in respect of which Bhumidhari rights may be acquired by an Asami ; (f) the excess land which may be restored to a Bhumidhar; (g) the excess land which shall vest in the Government: and (h) such other matters as may be prescribed.

(2) For the purpose of determining the excess land under this section, any land transferred at any time during the period between the 10th day of February, 1959 and the commencement of this Act shall, notwithstanding such transfer, be deemed to be held by the transferor.

(3) The competent authority shall prepare a list in the prescribed form containing the particulars determined by him under sub-section (1) and shall cause every such list to be published in the Official Gazette and also in such other manner as may be prescribed".

(7) Section 6 does require that the "persons affected" should be given an opportunity of being heard. The said expression is naturally wide enough to take in all persons in possession of the land because their right, even if it is nothing more than to be in possession could not be affected by an order passed under the said Act without giving the persons concerned an opportunity of being heard.

(8) Section 9(1) enables any person aggrieved by an entry published under sub-section (3) of section 6. within thirty days of the date of the publication thereof in the Official Gazette, to file objections before the Deputy Commissioner who is also given the power to entertain the objections after the expiry of the said period if he is satisfied that the objector is prevented by sufficient cause from filing the objection in time. Sub-section (3) of section 9 gives finality to the list published by the Deputy Commissioner after hearing such objections.

(9) The petitioners stated that they were not aware of the passing of any order under this Act till April, 1973, as noticed above. In these circumstances, it could not even be said that there is any alternative remedy which they failed to utilise. It is not stated by the respondents that notice was taken to the petitioners; all that is contended is that notice need not be sent to them because Deep Chand alone was the bhumidhar in respect of the land. This contention is obviously untenable in view of the fact that the notice to be taken u/s 6 is not confined only to bhumidhars but extends to all those who are affected by any order passed under this Act. The petitioners are, without doubt, affected by the impugned order passed under the said Act.

(10) It may be noticed that the notice u/s 6(3) of the Delhi Land Holdings (Ceiling) Act was issued only on 1-3-1967 ; this was subsequent to Mange Ram

having been declared by the civil court as a bhoomidhar. Even in the connected writ petition (C.W. 485 of 1973), it is conceded that the said notice u/s 6(3) was issued only subsequent to such declaration.

(11) It is further contended by the respondents that Deep Chand suffered a collusive decrees in favor of Mange Ram. This question could not be gone into without hearing the petitioners who had purchased the property; the issue of the said notice u/s 6(3), was after the declaration granted by the civil court.

(12) The entire proceedings taken under the Delhi Land Holdings (Ceiling) Act in respect of the land in question in this petition are thus liable to be quashed and are hereby quashed so far as the petitioners are concerned. It is needless to say that this leaves the respondent No. 1 free to take fresh proceedings against the petitioners under the said Act after giving them notice u/s 6(3) of the said Act.

(13) The Writ Petition is accepted accordingly. There will be no order as to costs.