

(1965) 12 P&H CK 0024
In the Punjab And Haryana At Chandigarh
Case No : Second Appeal No. 247-D of 1962

Dr. Kidar Nath Sharma and Others

APPELLANT

Vs

Rattiram Mangli and Others

RESPONDENT

Date of Decision : 24-12-1965

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 11, 11(1), 12, 13, 13(1)

Citation : AIR 1966 P&H 321

Hon'ble Judges : S.S. Dulat, J;J.S. Bedi, J;Harbans Singh, J

Bench : Full Bench

Advocate : J.K. Seth, for the Appellant; R.K. Chopra, for the Respondent

Judgement

Harbans Singh, J.—By order dated 22nd of January. 1964, in Regular Second Appeal No 247 D of 1962, passed by Justice Gurdev Singh the following two questions were referred to a larger Bench:

"(1) Whether a Revenue Assistant can declare bhumidars u/s 13(1) of the Delhi Land Reforms Act 1954. without there being a notification of the Chief Commissioner in his favour empowering him to discharge all or any of the functions of the Deputy Commissioner under the Act ? and

(2) Whether a non-occupancy tenant, who is not a tenant in Shahdara Circle could be declared bhumidar under Clause (f) of Sub-section (1) of Section 13 of the Delhi Land Reforms Act. 1954?"

Regular Second Appeal No. 248-D of 1962 is connected with this appeal and three other appeals (Regular Second Appeals Nos. 138-D and 149 D of 1961 and 334 D of 1962). in which similar questions of law arise, have also been ordered to be heard along with the main appeal. As this Bench is required only to record answers to the two specific questions referred, it will not be necessary to go into the peculiar facts of each case which will be taken up before the learned Single Judge before whom these appeals will go after answer to the two questions have been recorded ,

2. For the purpose of understanding the circumstances in which these two questions have arisen, it would be sufficient to refer to the facts in Regular Second Appeal No. 247-D of 1962. The dispute between the parties relates to 28 Bighas and 6 Biswas of agricultural land situated in village Wazirpur. Delhi Onkar Nath, appellant in Regular Second Appeal No 248-D of 1962. was recorded as its owner Subsequently, in a suit filed by his sons Sunder Nath, Jagat Narain and Kakko alias Jai Raj it was held that the property belonged to the joint Hindu family consisting of these three sons and Onkar Nath Haiti Bam and Budhu were recorded as the non-occupancy tenants of this land. Acting under the provisions of Section 13 of the Delhi Land Reforms Act. the Revenue Assistant. Delhi, declared them as bhumidars. Challenging this declaration of these two persons as bhumidars of the land in dispute, two suits were filed-- one by Onkar Nath qua his 1/4th share and the other by Dr. Kidar Nath and the above-named three sons of Onkar Nath for a declaration that the grant of certificates of bhumidari rights in favour of the aforesaid two non-occupancy tenants was bad and not in accordance with law and that Onkar Nath, in one case, and Dr. Kidar Nath in the other, were entitled to be declared as bhumidars. In the case filed by Dr. Kidar Nath, an alternative prayer was made that if it is found that Kidar Nath had no title as a result of sale by the sons of Onkar Nath in his favour then the sons of Onkar Nath were entitled to Bhumidari rights. It was found by the Courts below that Dr. Kidar Nath had no right and we are not, therefore, concerned with that matter any more However, as remarked by the learned Single Judge, the rights of Onkar Nath in the one case and that of his three sons in the other have to be determined. The two main grounds, on which claim was made by the landlords in these two suits, were

(1) That the Revenue Assistant was not authorised to grant any declaration u/s 13 of the Delhi Land Reforms Act inasmuch as he was not invested with the powers of the Deputy Commissioner, who alone is authorised to make such a declaration; and

(2) That u/s 13 of the Delhi Land Reforms Act, 1954. non-occupant v tenants of the land which is not in Shahdara Circle (and the land in the present case is admittedly not in Shahdara Circle) are not entitled to the grant of such a declaration.

3. Both these points having been found against the plaintiffs in the two cases, they filed those second appeals in this Court. These two legal points, besides another, were dealt with by a Bench of this Court in Ramjilal v. Lekhi, Second Appeal No. 46-D of 1961, D/-13-3-1963 (Punj), on reference by a single Judge for an authoritative decision. That was also a case where bhumidari rights were granted by the Revenue Assistant to the non-occupancy tenants of the landlords with regard to the land which was situated in that part of Delhi where previously the Punjab Tenancy Act was applicable. The main question urged in that case, to which the major portion of the Judgment of the Division Bench is devoted, was based on the fact that the tenant was granted a certificate of his bhumidari rights

in the land in dispute by the Revenue Assistant without any notice to the proprietor. After going through the provisions of the law, the Bench came to the conclusion that

"..task of determining what individuals were entitled to the benefit of the general declaration of bhumidari rights made by the Deputy Commissioner in accordance with the entries in the revenue records of 1953-54 was obviously enormous and would take a very long period of years if there, was to be a contest in every case, or even in any considerable portion of cases, at the stage of preparation of the necessary certificates. In the circumstances I can see nothing either undesirable or wrong in principle in the procedure for the preparation and distribution of bhumidari certificates in accordance with the provisions of Rules 6-A and the following rules, and I consider that persons who wish to contest the certificates granted under this procedure have ample opportunity to do so since rule 8 (4) enjoins on them the filing of a regular suit. ..."

It is not necessary for us in the present case to go into this part of the argument which was not raised before us and in any case, has not been referred to this Full Bench.

4. In addition to this main argument raised in that case, two other objections were taken which form the two questions before us. With regard to the objection that the Revenue Assistant had no power to declare the defendants to be bhumidars, the learned Chief Justice delivering the judgment of the Bench referred to the definition of " Deputy Commissioner " as given in Section 3, Sub-section (6) of the Delhi Land Reforms Act. It runs as follows .

" "Deputy Commissioner" includes Collector and a Revenue Assistant or an Assistant Collector of the first class empowered by the Chief Commissioner by a notification in the official Gazette to discharge all or any of the functions of a Deputy Commissioner under this Act. " With regard to this, the learned Chief Justice observed as follows :

"It seems to me that as it stands, the definition requires some clarification since it is capable of two meanings. It could either have been drafted as D C includes (1) Collector (2) a Revenue Assistant or (3) an Assistant Collector of the 1st class empowered etc. etc. or else "D. C. includes (1) Collector and (2) Revenue Assistant or an Assistant Collector of the first class empowered etc etc." Neither of these interpretations imposes any strain on the language actually used "

It was however, not decided as to which of these two interpretations was correct because it was considered that the provisions of the law had been complied with in any case. It appears that the Deputy Commissioner after the enforcement of the Delhi Land Reforms Act made a general declaration declaring all the categories of tenants detailed in Section 18 to be bhumidars, and this was considered to be sufficient compliance with the provisions of the Act.

5. The other objection was based on subsection (24) of Section 3, which provided

that words and expressions, detailed therein. and any other expressions not defined in the Act and used in the Agra Tenancy Act, 1901, or the Punjab Tenancy Act, 1887, shall have the meaning assigned to (hem in those Acts, according as the context refers to Shahdara or the remaining circles. In that case, us in the present one bhumidari rights were granted u/s 13(1) (f). the tenant being treated as "a non-occupancy tenant, including a tenant of or over twelve years in Shahdara Circle." It was contended that the provisions in that case were not covered by the aforesaid clause, because the term "non-occupancy tenant" is not defined or used as such in the Punjab Tenancy Act and that inasmuch as in that case the property was situated in that part of Delhi where the Punjab Tenancy Act applied This was the only argument addressed, and it was negatived by the Bench observing as follows:

"It is, however, quite clear that under the Punjab Tenancy Act, those tenants, who were not occupancy tenants, were non-occupancy tenants and without the definition of the term or its use in any particular Section its meaning is quite obvious and such persons are undoubtedly intended to gel the benefit of Section 18(1) (f)".

6. Before the learned Single Judge, the argument addressed was altogether different and it was urged that inasmuch as that argument was not considered by the Bench, the Bench decision required reconsideration. Seeing force in the argument, the learned Single Judge formulated the two questions, quoted above, and the matter has been placed before the Full Bench by the Hon"ble the Chief Justice.

7. In order to understand the argument addressed before us it is necessary to refer to the relevant provisions conferring the bhumidari rights and giving the definition of Deputy Commissioner etc. The preamble of the Act shows that it was enacted for the purpose of "modification of Zamindari system so as to create a uniform body of peasant proprietor without intermediaries, for the unification of the Punjab and Agra systems of tenancy law in force in the State of Delhi .. " Section 4 provides as follows.

"4. (1) There shall be. for the purposes of this Act, only one class of tenure-holder, that is to say, "bhumidar" and one class of sub-tenure holder, that is to say "asami"

(2) Tenure holder means a person who holds land directly under and is liable to pay land revenue for that land to the State, and sub-tenure holder is a person who holds land from a tenure holder. Provided ...

Section a defines "bhumidar". There were two categories of land holders who were to become bhumidars at the commencement of the Act, they were as follows

""(a) a proprietor holding sir or khudkasht land a proprietor's grove holder, an occupancy tenant u/s 5 of the Punjab Tenancy Act, 1887, paying rent at revenue

rates or a person holding land under patta dawami or istamrari with rights of transfer by sale who are declared bhumidars on the commencement of this Act:

(b) every class of tenants other than those referred to in Clause (a) -and sub-tenants who are declared bhumidars on the commencement of this Act."

Section 11 deals with declaration of bhumidari rights in favour of proprietors and superior class of tenants referred to in sub Section (a) of Section 5, and runs as below :

"11. Subject to the provisions of Section 10, the Deputy Commissioner shall declare as bhumidar persons holding the following lands, namely

(a) Khudkasht land or a proprietor's grove in the tracts to which the Punjab Tenancy Act, 1887. was applicable or sir land or khudkasht land or a proprietor's grove in the tracts to which the Agra Tenancy Act. 1901. was applicable.

(b) Land held by occupancy tenants u/s 5 of the Punjab Tenancy Act. 1887 with right of transfer by sale; and (c) land held under patta dawami or istamrari by tenants with right of transfer by sale.

(2) For the purpose of Sub-section (1) the Deputy Commissioner shall take into consideration the entries in the revenue records which shall be presumed to be correct unless the contrary is proved Provided

(3) While making a declaration under Clauses (b) and (c) of Sub-section (1) the Deputy-Commissioner shall order the occupancy tenant or the pattadar to deposit in Government treasury an amount equal to four times the land revenue as ascertained in Sub-section (4) for the area of which he is declared as bhumidar as compensation thereof If he fails to deposit the amount within six months of the date of declaration, the same shall be realized as arrear of land revenue The amount deposited or so realized shall be disbursed to the proprietor under the order of the Revenue Assistant

Section 13 relate to the declaration of bhumidari rights regarding the class of persons referred to in Clause (b) of Section 5 and runs as follows:

13 (1) On the commencement of this Act, the Deputy Commissioner shall also declare the following classes of tenants as bhumidars who shall, with effect from the same date, have all the rights and be subject to all the liabilities conferred or imposed upon bhumidars under this Act namely

(a) a rent free grantee 01. a grantee at favourable rate of rent

(b) an exproprietary tenant in Shahdara Circle.

(c) An occupancy tenant, except those u/s 5 of the Punjab Tenancy Act, 1887.

(d) a non-occupancy tenant, who pays rent at revenue rates with or without malikana;

(e) a tenant of sir or a sub tenant declared as non-occupancy tenant u/s 10 or 12:

(f) a non occupancy tenant including a tenant of or over twelve years in Shahdara Circle;

(g) a tenant grove holder, and

(h) a holder of patta dawami or istamrari without any right to sell

(2) Every person, who after the commencement of this Act. is admitted to land as bhumidar or who acquires bhumidari rights under any provisions of this Act shall have all the rights and be subject to all the liabilities conferred or imposed upon bhumidars under this Act with effect from the date of admission or acquisition as the case may be." Sub-section (1) of Section 10 provides that in cases where in the fasli year immediately before the commencement of the Act. a proprietor of sir land or an occupancy tenant u/s 5 or a tenant holding patta dawami or istamrari (who, as seen above are covered by Section 11 (1) is not recorded as actually in possession, but is recorded as in possession by a tenant of sir land or sub-tenant of the occupancy tenants, etc., such land shall not be available to the proprietor of the sir land, or to the occupancy tenant or the tenant holding patta dawami or istamrari. for acquisition of bhumidari rights. By Sub-section (2) of Section 10, however, exception is made in cases of the following categories of persons:

"(i) a woman,

(ii) a minor,

(iii) a lunatic,

(iv) an idiot,

(v) a person incapable of cultivation by reason of blindness or physical infirmity, or

(vi) a person in the armed force of the Indian Union both at the commencement of tenancy and on the commencement of this Act,

(vii) a person prosecuting studies in a recognized institution and not exceeding 25 years in age or

(viii) a person under detention or imprisonment, on the commencement of this Act." Similarly Section 12 lays down

"12 (1) Every sub tenant--

(a) of an occupancy tenant other than an occupancy tenant u/s 5 of the Punjab Tenancy Act. 1887 or

(b) of an exproprietary tenant, or of a non-occupancy tenant of over twelve years or less, or for a rent free grantee or a grantee at a favourable rate of rent,

or

(c) of a tenant holding land under a patta dawami or istamrari. but without right of transfer by sale.

who is recorded as such in the fasli year before the commencement of this Act. shall be deemed to be a non-occupancy tenant of the land held by him and such land, for the purposes of Section 13 shall not be available to the occupancy tenant, exproprietary tenant non-occupancy tenant, rent free grantee or a grantee at favourable rate of rent or pattadar for acquisition of bhumidari rights

(2) The provisions of Sub-section (2) of Section 10 shall apply mutatis mutandis, to this section."

8. From the above, it is clear that Deputy Commissioner is required to declare particular classes of proprietors and tenants as bhumidars either u/s 11 or u/s 18. The difference between bhumindars declared under Sections 11 and 18 is only in respect of the amount of compensation that is payable by them, and we need not consider that matter. The definition of "Deputy Commissioner" as given in Sub-section (6) of S 3. has already been reproduced above and. as remarked by the learned Chief Justice it is capable of two different interpretations, as mentioned above. According to one interpretation, it is only an Assistant Collector of the first class, who need specially be empowered by the Chief Commissioner by a notification, and a Revenue Assistant as such, is included in the definition of "Deputy Commissioner" while according to the other interpretation, it is only a Collector, who is automatically included in the definition of Deputy Commissioner", while a Revenue and an Assistant Collector of the first class both fall in the same category and they must be specially invested by the Chief Commissioner with the powers to discharge all or any of the functions of the Deputy Commissioner.

9. Before us, on behalf of the appellants, it was urged that in the context of the provisions of this Act, it is the second interpretation that can properly apply Reference in this respect was made to the definition of "Revenue Assistant" as given in Sub-section (19A) of Section 3, as follows

"(19A) "Revenue Assistant" means an Assistant Collector of the first grade or class and includes an officer empowered by the Chief Commissioner to perform all or any of the functions of a Revenue Assistant under this Act."

According to this definition, all Assistant Collectors of the first class are "Revenue Assistants" within the meaning of the Act, and in that view of the definition it is impossible to hold that a Revenue Assistant occupies any special position, and can, as such, without any specific authorisation, exercise the powers of a Deputy Commissioner. All Assistant Collectors of the first class, being included in the definition of "Revenue Assistant", it is obvious that a Revenue Assistant, like all other Assistant Collectors of the first class has to be specially authorised to exercise powers of a Deputy Commissioner.

10. This now takes us to the second argument, which weighed with the Bench, namely, that in view of the general declaration Issued by the Deputy Commissioner, provisions of law must be taken to have been complied with. The declaration referred to is dated 23rd of June, 1956, and its copy is filed in suit, Shatrughan v. Sis Ram, No 231 of 1957 decided by Shri R. L. Segal. Commercial Judge of first class, Delhi, on the 29th of September, 1969. The relevant part of the notification runs as follows:

"In exercise of the powers conferred upon me, u/s 18 of the Delhi Land Reforms Act, 1964 I, C. B. Dube, I A.S., Deputy Commissioner, Delhi, hereby declare the following classes of tenants recorded as such in the fasli year immediately preceding the commencement of the Act, as bhumidars who shall, with effect from the date of the commencement of the Act, i.e. 20th July. 1964, have all the rights and be subject to all the liabilities conferred or imposed upon bhumidars under the said Act, namely:"

(Then follow Clauses (a) to (h) of Sub-section (1) of Section 18). "Excepting the sub-tenants of the persons referred to in sub-s. (2) of Section 10 of the said Act, namely: "

(Then Clauses (i) to (viii) of Sub-section (2) of Section 10 are reproduced.) "Action u/s 14 of the Act will be taken in due course." It may be mentioned here that Section 14 provides for determination of compensation and land revenue payable by the bhumidars declared as such u/s 18.

11. This so-called declaration, in no way, takes us any further than what is provided in the Act itself, Sub-section (2) of Section 11 clearly provides that for the purpose of Sub-section (1) of that Section the Deputy Commissioner shall take into consideration the entries in the revenue records. Though there is no such provision in Section 18, yet it is obvious that the revenue entries immediately preceding the, commencement of the Act have to form the basis for declaration. The present so-called declaration by the Deputy Commissioner is, thus, nothing more than repeating, to all intents and purposes. The provisions of Sub-section (1) of Section 13. read with Section 12 and sub-s. (2) of Section 11. It was not seriously pressed before us that this is the type of declaration that is meant to be made either u/s 11 or u/s 13 of the Act. The very fact, that under Sub-section (2) of Section 11, it is provided that the Deputy Commissioner shall take into consideration the entries in the revenue records, shows that it is for the Deputy Commissioner to make a declaration in respect of each particular proprietor or tenant, who is so recorded in the revenue records, and after having done so under Sub-section (3) of Section 11, it is the Deputy Commissioner, who shall have to order the occupancy tenant or the pattadar to deposit compensation. and if he fails to deposit the amount within the period provided, the same shall be realized as arrears of land revenue Once this amount has been deposited or realized, its disbursement to the proprietor is to be made under orders of the Revenue Assistant It is rather significant to note that in this Sub-section itself different functions are assigned to the Deputy Commissioner and

the Revenue Assistant A formal order to deposit the money has to be made by the Deputy Commissioner and this means that an order of declaration, on the basis of which the occupancy tenant or the pattadar is to be directed to deposit the amount provided, has also to be made by the Deputy Commissioner and not by a Subordinate Officer. The type of declaration that has been made by the Deputy Commissioner, as reproduced above, has, in fact, been already made by the Legislature and I have no doubt in my mind that the declaration intended either u/s 11 or u/s 18 is the declaration, which the Deputy Commissioner has to make, in respect of the individual persons, in accordance with the entries in the revenue records, and after making this declaration, he is to make an order for payment of compensation. No doubt in Section 14, which deals with compensation to be paid in cases of bhumidars declared u/s 13, there is no provision for any direction to be issued by the Deputy Commissioner to pay compensation. Different methods of calculation of compensation are laid down, and all that is provided is that the tenant or sub-tenant shall be liable to pay the amount calculated in the manner provided. That, however, to my mind would not make much difference, because I do not consider that two different methods of declaration of bhumidari rights are contemplated, one u/s 11 and the other u/s 18. The wording of the two sections are *pari materia*, and, in fact, the word "also" used in Sub-section (1) of Section 13 namely, "the Deputy Commissioner shall also declare" goes to indicate that the declaration u/s 13 is to be done in the same manner as is done under Sub-section (1) of Section 11. I am therefore, of the view that the declaration contemplated is the declaration in individual cases, and such a declaration cannot be made by the Revenue Assistant without there being a notification by the Chief Commissioner in his favour empowering him to discharge the functions of the Deputy Commissioner under the Act. Answer to the first question therefore, must be in the negative.

12. This now brings us to the second question, which is of greater importance being of substance rather than of procedure. Admittedly, in the present case, the defendants, who have been declared as bhumidars, can be covered only under Clause (f) of Sub-section (1) of Section 13.

13. According to the contention raised on behalf of the respondent-tenants, Clause (f) includes all non-occupancy tenants anywhere in Delhi irrespective of the fact whether the area concerned was previously governed by the Punjab Tenant Act or the Agra Tenancy Act. In other words, whether it is situated in Shahdarn Circle or outside it. This reading of Clause (f) would make Clause (d) absolutely redundant. I would reproduce Clauses (d) and (f) again as under:

"13 (1) (d) a non-occupancy tenant, who pays rent at revenue rates with or without malikana:

(f) a non-occupancy tenant, including a tenant of or for twelve years, in Shahdara Circle:

If Clause (f) covered all types of non-occupancy tenants, irrespective of the fact

as to the situation of their land or the amount of rent payable by them, then there was absolutely no need for putting in Clause (d), and even Clause (f) could have been made simpler by just saying "a non-occupancy tenant". In fact. Clauses (a), (e) and (g), which also relate to non-occupancy tenants of various types. would have been unnecessary

14. Clause (b) of Section 6, which states generally that every class of tenants other than those referred to in Clause (a) and sub-tenants, who are declared bhumidars. shall have all the rights and be subject to all the liabilities conferred or imposed upon bhumidars. does not in any way lend assistance because the classes of tenants and sub-tenants, who are declared as bhumidars. are referred to in detail only in Sub-section (1) of Section 13 read with Section 12.

15. Some help was sought by the learned counsel for the respondents to urge that Clause (f) should be interpreted to include all types of occupancy tenants, by referring to Clause (b) of Sub-section 1 of Section 12 reproduced above. According to this clause, every sub-tenant "... of a non-occupancy tenant of over twelve years or less... who is recorded as such in the fasli year, before the commencement of this Act, shall be deemed to be a non-occupancy tenant of the land held by him..." The argument was that inasmuch as "non-occupancy tenant" in Clause (b) refers to the tenants "of over twelve years or less." without any qualification whether they are in Shahdara Circle or otherwise, therefore, this Clause was of a general application, and that sub-tenants of all types of non-occupancy tenants "shall be deemed to be non-occupancy tenants of the land held by them." The inference drawn by the learned counsel was that all such non-occupancy tenants had to be granted bhumidari rights u/s 13, I am afraid, however, that there is no justification for drawing this inference. All that Section 12 provides is that if an occupancy tenant, or an exproprietary tenant, or a rent free grantee or a grantee at a favourable rate of rent, or a pattadar or a non-occupancy tenant, who was not in actual possession of the land on the relevant date and the land was in actual possession of sub-tenant under him. then such land "shall not be available to the occupancy tenant", etc. The section, however, does not confer any specific right on the subtenants. All that it says is that such a subtenant "shall be deemed to be a non-occupancy tenant", and the question whether as a non-occupancy tenant, any rights have been conferred on him by S 13 or not, has to be determined with reference to that section.

16. According to the arguments raised on behalf of the appellants, there are only two types of non-occupancy tenants, who have been granted bhumidari rights. One are those covered by Clause (d), who pay rent at revenue rates with or without malikana, and secondly, those who are covered by Clause (f) of sub-s, (1) of Section 13. Thus, if a sub-tenant, who is deemed to be a tenant under Clause (b) of Sub-section (1) of Section 12 falls in any one of these categories, he would be given bhumidari rights, and, if not, then he cannot be given any such rights. Merely because in Clause (b) there is no qualification qua the

situation in respect of the land held by a non-occupancy tenant of over 12 years or less, it does not mean that all non-occupancy tenants, whether in or outside Shahdara Circle, have a right to be declared as bhumidars under Sub-section. (1) of Section 13

17. As already indicated, before the Bench deciding the earlier case, the only argument urged was that the words "non-occupancy tenant" being unknown to the Punjab Tenancy Act, 1887. no non-occupancy tenant, whether he pays rent at revenue rates or otherwise, in the area where the Punjab Tenancy Act applies, could get bhumidari rights That argument was not seriously urged before us The Punjab Tenancy Act defines "occupancy tenants" Their rights and liabilities are specifically mentioned. All other tenants, who do not fall in the category of occupancy tenants, must, by exclusion, be treated as non-occupancy tenants. In fact, in the revenue records, such tenants are mentioned as gair morusi that is, non-occupancy The argument, which was not placed before the Bench and to which no proper answer could be given before us, is based cm the plain reading of the Section as a whole. Courts are required to give such an interpretation, as not to make any part of the statute as redundant, and Clauses (d) and (f) must stand together and make some sense, and that is possible only if the words "in Shahdara Circle" are taken to define the entire class, namely, a non-occupancy tenant, including a tenant of or over 12 years". In other words, this Clause has to be read as if comma after the words "non-occupancy tenant" did not exist, and the whole Clause relates only to the non occupancy tenants in Shahdara Circle.

18. Two further questions, however, immediately occur first, if Clause (f) was to cover all non-occupancy tenants in Shahdara Circle, then what was the necessity of adding words including a tenant of or over twelve veers"? Secondly, why a distinction has been made between a non-occupancy tenant in Shahdara Circle, who has been given bhumidari rights and the non-occupancy tenant in the area outside Shahdara Circle, who has been left out, and has not been given bhumidari rights, and, who in accordance with the definition of asami given, does not fall in that category either ?

19. The argument raised on behalf of the respondents was that the object of the Act was to bring about a unification of the Punjab and Agra systems of tenancy and to create only two types of land tenures by eliminating all other tenures, and that if Clause (f) is interpreted to cover only non-occupancy tenants in Shahdara Circle, a large number of non-occupancy tenants in the area, previously governed by the Punjab Tenancy Act, would not be covered by the beneficial provisions of this Act. It was. however, urged in reply on behalf of the appellants that under the Agra Tenancy Act, 1901, which was applicable to Shahdara Circle, the non-occupancy tenants had comparatively much wider rights and greater security than that enjoyed by the tenants under the Punjab Tenancy Act, 1887. It has to be noted that the Security of Land Tenures Acts enacted after 1958 in the Punjab, which conferred substantial security on non-occupancy tenants subsequent to 1958, were never extend ed to Delhi. Section 11 of the Agra

tenancy Act, 1901, provides that if a tenant has held the same land continuously for a period of twelve years, he shall have a right of occupancy in such land. Sections 12, 18 and 14 then give details of the time from which the period of twelve years begins to run and what is meant by the words "continuous holding" of land and "same land" as used in S U.S. 16 then provides as follows:

"16. Every tenant having a right of occupancy u/s 11 shall have all the rights and be subject to all the liabilities conferred and imposed on occupancy tenants by this Act."

20. It was urged on behalf of the appellants that probably the words "including a tenant of or over twelve years" in Clause (f) of Sub-section (1) of Section 18 of the Delhi Land Reforms Act, have been added as a matter of precaution lest there is any dispute as to the right of these non occupancy tenants, who by completion of a period of twelve years, would fall into the category of occupancy tenants, but who have not yet been recognized as such, due to some controversy over matters like the continuity of the period of having occupied the same land, etc.

21. Apart from this distinction between the non-occupancy tenants, governed by the Agra Tenancy Act, who automatically assume a higher position and become occupancy tenants by mere lapse of time, and the non-occupancy tenants under the Punjab Tenancy Act, who can never claim to acquire occupancy rights by mere lapse of time, reference was also made to Sub-section (2) of Section 20 of the Agra Tenancy Act, which makes the rights of the non-occupancy tenants as heritable. Under this Sub-section there is also a right of voluntary transfer amongst the tenants. who are co-sharers. The relevant provision runs as follows:

"20. (2) The interest of a non- occupancy tenant . is . . heritable but is not transferable.. .. other wise than by voluntary transfer between persons in favour of whom as co sharers in the tenancy such right originally arose, of who have become by succession co-sharers therein. "

22. Under the Punjab Tenancy Act, rights of non occupancy tenants are not heritable or transferable.

23. It was urged that it may be due to the fact that non-occupancy tenants in Shahdara Circle, thus, enjoyed much better rights than their counterparts governed by the Punjab Tenancy Act, and that Clause (f) of Sub-section (1) of the Delhi Land Reforms Act declared the non-occupancy tenants in Shahdara Circle to be entitled to bhumidari rights, but no such rights were given to the non occupancy tenants in the area where the Punjab Tenancy Act applied.

24. It is indeed very difficult to say whether the omission of " non occupancy tenants " governed by the Punjab Tenancy Act from the beneficial provisions of the Reforms Act was deliberate or accidental. No doubt it does appear to be unlikely that the omission was deliberate. because if that had been the case, some provision must have been made, at least to put them under the category of

asamis to ensure that no more than two categories of tenure holders existed in the entire area included in Delhi. Be that as it may, we have to interpret the Section as it is, and we cannot go on the basis of any conjectures. We find it extremely difficult to interpret Clause (f) as covering all types of non-occupancy tenants in or outside Shahdara Circle, because that would make Clause (d) altogether redundant. It is further to be noted that under Clause (b) of Sub-section (2) of Section 14, the compensation that has to be paid by the non-occupancy tenants, covered by Clauses (d) and (f), is exactly the same. So, the existence of Clause (d) cannot be justified even on the ground of different compensation being payable by the tenants covered by Clauses (d) and (f). Clause (b) of Sub-section (2) of Section 14 runs as follows :

"14. (1) .

(2) Every such person, other than a subtenant deemed to be a non-occupancy tenant u/s 10 or 12, shall--

(a)...

(b) be liable to pay as compensation in the Government treasury to the credit of the proprietor concerned, an amount which shall in the case of tenants.

under Clauses (b), (c) and (h) of Sub-section (1) of Section 13 be eight times the amount of land revenue so determined and in the case of non-occupancy tenants i.e.. tenants of sir or tenants under Clauses (a), (d), (f) and (g) of Sub-section (1) of Section 18, be sixteen times the land revenue so determined."

26. It appears that notwithstanding the intention of the Legislature, to create only two types of tenures non-occupancy tenants, previously governed by the Punjab Tenancy Act, except those who are specifically covered by clauses other than Clause (f), have remained uncovered by the Act This is rather an unfortunate result, but it cannot be helped, in view of the wording of various clauses of Sub-section (1) of Section 13. as they exist at present

26. or the reasons given above, therefore. I am constrained to hold that a non-occupancy tenant, who is not a tenant in Shahdara Circle would not be declared a bhumidar under Clause (f) of Sub-section (1) of Section 13 of the Delhi Land Reforms Act. 1954. and that this Clause (f) relates only to tenants in Shahdara Circle and thus, the answer to the second question must also be in the negative

27. The case will now go back to the learned Single Judge for decision in the light of the answers to the two questions referred to the Full Bench

S. S. DULAT, J .

28. I agree

J. S. BEDI, J.

29. I agree.