

(1972) 02 DEL CK 0018

In the Delhi High Court

Case No : Civil Writ Petition No. 1165 of 1970

Hoshiar Singh

APPELLANT

Vs

The Deputy Commissioner and Another

RESPONDENT

Date of Decision : 09-02-1972

Acts Referred:

Citation : AIR 1972 Delhi 260

Hon'ble Judges : D.K. Kapur, J

Bench : Single Bench

Advocate : S.S. Dalal, for the Appellant; Brijbans Kishore and J.P. Gupta, for the Respondent

Judgement

1. This Writ Petition has been instituted in this Court under Article 226 of the Constitution of India to challenge an order passed under the provisions of Delhi Land Holdings (ceiling) Act, 1960. For convenience, it is necessary to mention that under the provisions of the Act, a person together with his family cannot hold land in excess of 30 standard acres, but in the case of a family whose members exceed, that family is entitled to 5 additional standard acres for each member in excess of five. It is the admitted case between the parties that the petitioner is entitled to retain 45 standard acres. u/s 4 of the Act, every person holding land in excess of the ceiling is required to submit a return within 90 days of the commencement of the Act indicating the parcels of land not exceeding the limit which he desires to retain. Thus, within 90 days of the commencement of the Act, the petitioner could have submitted a return specifying the 45 standard acres that he could retain. But he did not do so. Section 5 of the Act further provides that if a person does not submit the return, the Competent Authority shall collect the necessary information. Section 6 provides that on receipt of the return u/s 4 of the Act, or after collecting information u/s 5, the Competent Authority after giving the person affected an opportunity of being heard and holding an enquiry, shall determine the total area of land held in excess of the ceiling limit. He may also determine the specific parcels of land which the person

is to return and other similar questions which need not be elaborated at this stage.

2. In the present case, when the Competent Authority dealt with the matter u/s 6 of the Act, he prepared a draft list as required by rule 9 of the Delhi Land Holdings (Ceiling) Rules, 1961. In this list, he showed that the petitioner and Mst. Surjan owned a total area of 537 Bighas and 16 Biswas. The petitioner filed objections as required by the said rule and the Competent Authority gave a decision to the effect that the petitioner's family consisted of eight persons and he was entitled to retain 45 standard acres as against 57 standard acres held by him. He was, Therefore, required to return 12 standard acres out of the area, the petitioner was further directed to make the selection of the area he wanted to retain within 15 days from the date of the order. Against this order, the petitioner filed objections to the Deputy Commissioner u/s 9 of the Act. These objections were dealt with by Shri Dharam Dutt, Additional Collector. Delhi and have led to the impugned order. By the impugned order, it has been held that the petitioner is holding 851/2 standard acres, and it has, Therefore, been held that 401/2 standard acres of land are in excess which will vest in the government. The order also specifies the exact Khasra numbers of the 401/2 standard acres which have to vest in the government. I shall presently deal with the circumstances in which the area of land said to be owned by the petitioner has been increased by the Additional Collector.

3. The fact of the matter is, that the total area of land which the petitioner has been found to have an interest in has been calculated as 540 Bighas. The Competent Authority had determined that the petitioner held a half-interest in this land and Mst. Sarjan held the other half-interest. Thus, the area with both Hoshiar Singh and Mst. Sarjan was held by the Competent Authority to be 57 standard acres each. The Additional Collector first considered the objections of Mst. Sarjan and came to the conclusion that the land had to be divided into four equal shares and thus, the decision of the Competent Authority that Hoshiar Singh and Mst. Sarjan held a half share each was wrong. Actually, Mst. Sarjan held a 1/4th share by virtue of a mutation, No.166 dated 7th January, 1956, and Hoshiar Singh, Jawahar Singh son of Hoshiar Singh and Mst. Angoori, wife of Hoshiar Singh, each held a 1/4 the share. Thus, taking the whole area to be 114 standard acres the holding of Mst. Sarjan was held to be 28 1/2 standard acres, and the other three persons, were also holding 28 1/2 standard acres each. The Competent Authority had determined the excess in the hands of Mst. Sarjan as being 27 standard acres on the basis that her holding was 57 standard acres. The Additional Collector found that the holding being only 28 1/2 standard acres was less than 30 standard acres and consequently, it was held that Ms. Sarjan did not hold any excess land and her objections were, Therefore, accepted. As regards the balance of the land measuring 85 1/2 standard acres, it was held that though, it was in the names of three persons, all those persons were members of one and the same family. By reasons of the definition in Section 2 (d) of the Delhi Land Holdings (Ceiling) Act, 1960, the excess in the hands of the petitioner

was calculated on the basis that the land held by him and by the members of his family had to be clubbed together and the excess worked out. The total land held by the family being 951/2 standard acres, the excess of 401/2 standard acres over and above the ceiling had to vest in the Government.

4. The petitioner has challenged this order mainly on the ground that he does not in fact hold 851/2 standard acres and the case has wrongly been decided on the basis of the mutation No.166 dated 7th January, 1956. It is further urged that even if the decision is correct, as regards the excess land the selection cannot be made by the Additional Collector, but has to be made by the petitioner himself.

5. As regards the mistake in the area, the petitioner's case is that there has been a misreading of the provisions of the Act. Out of the land which has been considered to be vesting in the petitioner, two other persons have been declared Bhumidars of some portion, by decisions of the Civil Court and thus, the area which is left with the petitioner the 401/2 standard acres said to vest in the Government have been taken out will be practically nil. This argument was raised before the Additional Collector, who rejected the same on the ground that for the purpose of applying the ceiling the factual position existing on 10th February, 1950, has to be considered and not the fact that the petitioner is no longer a person holding an excess area. This is challenged by the petitioner as being an entirely erroneous reading of the Act. On the other hand, learned counsel for the respondents, Mr. Brijbans Kishore, has urged that there is an alternative remedy available under the Act by way of a revision to the Chief Commissioner u/s 20 of the Act, which has not been utilised by the petitioner. It is urged that the availability of an alternative remedy which has not been utilised should bar this Writ Petition. In reply to this, Mr. Dalal on behalf of the petitioner urges that this objections has not been taken in the return filed to the writ petition. He submits that the Writ Petition has been pending in this Court since October, 1970 and the return was filed on 5th January, 1971 without this objections being raised.

He also urges that the fact that an alternative remedy is available should not bar the Writ Petition when there is a total failure to enforce the provisions of the Act. If the order is entirely without jurisdiction, he urges that this Court should not refuse to exercise jurisdiction in favor of the petitioner merely on the ground of not utilising the alternative remedy. I have given this matter my anxious consideration. Although, normally a writ petition is to be dismissed if a petitioner fails to utilise an alternative remedy, this is not an invariable rule. The petitioner submits in this case, that his case is not that the order of the authorities below is wrong, but that there is some failure in the execution of the order. The case of the petitioner is that he should get 45 standard acres, and that is the case of the respondents also. The real question is, which 45 standard acres should be get. I have been referred to the provisions of the Act, and I am of the view that there has been some misunderstanding about the nature of the order that has to be passed in relation to any person's land under the Delhi Land Holdings (ceiling) Act 1960. I, Therefore, consider that I should not refrain my exercising

jurisdiction in the peculiar circumstances of this case when both parties agree as to the rights of the parties that there is only a failure of justice due to a misreading of the provisions of the Act.

6. In order to ascertain the real controversy between the parties, it is necessary to reproduce the relevant part of Section 4 of the Act. It reads as follows:-

"Submission of returns representing a family who at the commencement of this Act holds, or has at any time during the period between the 10th day of February, 1959, and such commencement held, land in excess of the ceiling limit shall submit to the competent authority, in such forum and within such time as may be prescribed, a return giving the particulars of all land held by him and indicating therein the parcels of land, not exceeding the ceiling limit, which he desires to retain."

The Section shows that the excess which has to be determined is the excess as existing on 10th February, 1959 and any excess that may come about later. It is next necessary to refer to Section 6 (2) of the Act. This sub-section reads as under:-

"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."

Thus, even though a person has transferred his land after 10th February, 1959 for the purpose of this Act, the land is to be deemed to be held by the transferor. Basing himself on this provision, the Additional Collector came to the conclusion that land which has ceased to belong to the petitioner by reason of somebody else being declared a Bhumidar thereof after 10th February, 1959, was still be deemed to be the petitioner's land for the purposes of this Act. This to my mind is based on a misconception of what land is to vest in the Govt., as excess land. The Section dealing with this question is Section 8 (1) which reads as under:-

"Excess land to vest in Government (1). Where any excess land of a Bhumidar is in his actual possession, the excess land shall vest in the Government.

.....

The first thing to be noted in this provision is that the excess land which is to vest in the Government is the land belonging to a Bhumidar in his actual possession. It so happened that the petitioner was an owner of 851/2 standard acres on the date the Act came into force i.e., on 10th February, 1959, but qua 98 Bighas and 6 bids was of this land, one Nihal Singh has been held to be a Bhumidar by the decision of the Civil Court and Qua 37 Bighas, Shri Chandgi has been declared to be Bhumidar. This land can obviously not be considered to be a part of the land of which the petitioner is in actual possession as a Bhumidar. The procedure to be adopted under the Act is quite a simple one. First of all, it has to be ascertained as to which portion of the land is in the Bhumidari of the

petitioner. Out of this area, 45 standard acres have to be returned by the petitioner and the balance is to vest in the Government.

The Act does not provide for taking away the land of non-Bhumidars. Therefore, there is a clear misreading of the Act by the Additional Collector. In order to avoid the obviously unjust result of having the land belonging to another Bhumidar treated as within the Bhumidari of the petitioner, it is necessary to quash the order impugned in this Writ Petition and to direct the Competent Authority to ascertain the excess of land in the hands of the petitioner which is included in his Bhumidari holding. This means that the petitioner is entitled to select 45 standard acres out of his Bhumidari and retain the same. If his Bhumidari is less than 45 standard acres, there will be no excess and no part of the land will vest in the Government. If, on the other hand the petitioner is found to hold more than 45 standard acres as a Bhumidar then the balance will vest in the Government. For this purpose, it is quite irrelevant to determine as to what portion of the land was held by the petitioner as an owner on 10th February, 1959. In fact, there is no mention of the ownership in the entire Act. The Act only applies to Bhumidars and Asamis and to no one else.

Thus, the question to be ascertained is not how much land the petitioner owned on 10th February, 1959, but of what portion of the land he became Bhumidar. Now it may be said for argument that the petitioner was declared a Bhumidar of 851/2 standard acres initially. But, as a result of subsequent events, some other persons have been declared Bhumidars of a large portion of this land. The Bhumidari declaration is to be based on the possession of the tenants and others at the commencement of the Delhi Land Reforms Act, 1954. Thus, even though the declaration of Bhumidari may be made in 1963, as in the case of the Civil Suit, it would date back to 1954 which would be earlier than 10th February, 1959. The Additional Collector has made the mistake of taking the date of the decree by the Civil Court as decisive instead of the fact that the decree dates back to the commencement of the Delhi Land Reforms Act, 1954. Thus, there will have to be a re-determination of the facts of the case in the light of the above observations.

7. I, Therefore, accept this Writ Petition, quash the order of the Additional Collector holding that the petitioner has to give up 401/2 standard acres out of the land in his possession. I also issue a writ of mandamus directing the Competent Authority to ascertain the area held by the petitioner as a Bhumidar and also to determine the excess if any which has to vest in the Government under the provisions of Section 8 (1) of the Act. In case there is any excess, the petitioner is entitled to select 45 standard acres out of the entire area held by him as a Bhumidar, which he has to retain. After this has been done, the balance of the land, if any, will vest in the Government. I do not however award any costs, as I affirm the order that the petitioner is entitled to retain 45 standard acres.

8. Petition allowed.