

(1994) 02 SC CK 0082

In the Supreme Court Of India

Case No : SLP (Civil) No. 14867 of 1992 with Writ Petition (C) No's. 5444-46 of 1985

Prem Nath and Others

APPELLANT

Vs

Financial Commissioner and Others
Shri Prakash and
Others Vs Lt. Governor and Others

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Delhi Land Reforms Act, 1954 — Section 192, 3(12A), 5

Citation : (1994) 1 JT 486 : (1994) 1 SCALE 464 : (1994) 2 SCC 572 : (1994) 1 SCR 827 : (1994) 1 UJ 378

Hon'ble Judges : K. Jayachandra Reddy, J;G. N. Ray, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

K. Jayachandra Reddy, J.—In these Writ Petitions filed under Article 32 of the Constitution, the petitioners are the same. The point that arises in this Writ Petitions is whether the provisions of Delhi Land Reforms Act ('Act' for short) apply to the land in question which originally was an evacuee property and which was later in the year 1970 allotted to respondent No. 3 Prem Nath under the provisions of the Displaced Persons (Compensation and Rehabilitation Act). The contention of the petitioners is that respondent No. 3 Prem Nath is a Bhumidhar and the petitioners are his tenants and by virtue of the provisions of the Act they have become Bhumidhars and respondents No. 3 can not seek eviction or any other relief under the provisions of The Punjab Tenancy Act, 1887 which are no more in force. The stand taken by the contesting respondent namely respondent No. 3 is that the provisions of the Act do not apply to evacuee property by virtue of Section 192 of the Act and consequently the petitioners can not claim any rights under the Act. To appreciate these points involved, it is necessary to state a few more facts.

2. The land in question is situated in the revenue estate of Village Jhangaula,

Delhi. Admittedly it is an evacuee property owned by certain muslims who migrated to Pakistan and the same is allotted on 22.9.70 to respondent No. 3. Respondent No. 3 eventually transferred the land in question to Risal Singh, respondent No. 4 by way of sale and mutation took place in the year 1983. The writ petitioners were tenants of respondent No. 3 having taken the land on half batai basis and they stopped payment to respondent No. 4. When respondent Nos. 4 to 6 filed petitions for payment and for appraisal of the produce under the provisions of the Punjab a Tenancy Act, that was resisted by the petitioners contending that they themselves have acquired Bhumidhari rights under the ACT. The petitions filed by respondent Nos. 4 to 6 were dismissed. They carried the matter in appeal and the Additional Collector, Delhi who heard the appeals allowed the same holding that the Punjab Tenancy Act applies and thereby negated the contention of the petitioners Judgment dated February 10, 1994 in S.LP.(C) No. 14867 of 1992 with W.P.(C) Nos. 5444-46 of 1985 (Shri Prakash and Ors. v. Lt. Governor and Ors.) that they have become Bhumidhars under the Act. In that order the learned Additional Collector also referred to a decision of the Delhi High Court in Umrao Singh Vs. Man Singh and Others, wherein it is held that the Delhi Land Reforms Act does not apply to a land which was an evacuee property. The further appeals were filed against the order of the Additional Collector before the Financial Commissioner by the petitioners but the same were dismissed. The petitioners claiming rights under the Act have filed these Writ Petitions straightaway in this Court stating that since there is an earlier judgment rendered by the High Court against them, no useful purpose would be served by again filing writ petitions in the Delhi High Court.

3. Pending the Writ petitions, interim order was passed by this Court granting stay subject to the condition that the writ petitioners should furnish security in a sum of Rs. 20,000/- towards the past profits in the trial court within two months from the date of the order and in respect of future profits the petitioners should deposit a sum of Rs. 1500/- and also furnish security in the sum of Rs. 1500/- every year in the trial court. It appears that the writ petitioners offered their residential houses as security and the same was accepted by the Assistant Collector namely the trial court. The land-owners namely respondents were aggrieved because they were not given opportunity to raise objections. On that ground they sought that the stay should be vacated but the same was dismissed by this Court. Thereafter the contesting respondents again sought the interference of the trial court but that was rejected on the ground that the Supreme Court has already passed an order. Then they filed a revision petition and the Financial Commissioner directed the trial court to get the security point decided in terms of Section 60 C.P.C. That was challenged by the writ petitioners by filing a writ petition in the High Court. A learned Single Judge of the Delhi High Court allowed the writ petition. The respondents filed a letters' patent appeal but that was rejected. Therefore they have filed SLP (Civil) No. 14867 of 1992 in this Court against the order of the High Court. At this stage it may be mentioned that we are concerned mainly with the writ petitions filed under

Article 32 and the SLP arises in respect of the interim order passed in the writ petitions. Therefore we need not deal with the questions involved in the SLP namely sufficiency of the security etc.

4. According to the learned Counsel for the petitioners, the expression "Bhumidhar" in the Act has to be given a wide meaning and that the Act is a welfare legislation for the benefit of the cultivating tenants who are actually the tillers and as per Section 2 of the Act the provisions of the Punjab Tenancy Act are not at all applicable in respect of the land covered by the provisions of the Act. The contention of the respondents, on the other hand, is that the Act itself is not applicable to the land in question since it is an evacuee property and as a result and it is only the Punjab Tenancy Act that applies and therefore the petitioners can not claim any Bhumidhari rights in the land. The respondents mainly relied on Section 192 of the Act in support of their contentions. Section 192 reads thus:

192. SAVING -

Nothing contained in this Act shall apply to any land which is evacuee property as defined in the Administration of Evacuee Property Act, 1950 (31 of 1950), except in the following cases-

(1) Evacuee land held by tenants under lease or agreement entered into before the 15th day of August 1947, and

(2) Evacuee's share in lands of common utility which would vest in the Gaon Sabha." The language of this Section makes it clear that the provisions of the Act would not be applicable to any land which is an evacuee property except in respect of the lands mentioned in Sub-clauses (1) and (2). Admittedly the land in question does not fall under these exceptions. Therefore as it is, the question of application of the Delhi Land Reforms Act to the land in question does not arise since it is an evacuee property. But what the learned Counsel for the petitioners submits is that when once the land which is an evacuee property is allotted to a person, the same ceases to be an evacuee property and the allottee automatically becomes a Bhumidhar and his tenants would acquire Bhumidhari rights as per the protection given by the other provisions of the Act. To appreciate this contention it becomes necessary to refer to the other provisions of the Act. Section 4 defines the classes of tenure and sub-tenure and also spells out the meaning of Bhumidhar. It reads as under:

4. CLASSES OF TENURE AND SUB-TENURE-

(1) There shall be, for the purposes of this Act, only one class of tenure-holder, that is to say, 'Bhumidhar' 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 or Gaon Sabha and is liable to pay rent

therefore to the tenure-holder or Gaon Sabha;

Provided that land given in exchange to a tenure-holder or a sub-tenure holder, as a result of consolidation of holdings, shall for the purposes of this Act be deemed to be land originally held by the tenure holder or the sub-tenure holder, as the case may be.

The next important Section with which we are concerned is Section 5 which gives the meaning of 'Bhumidhar' for the purposes of the Act and it reads thus:

5. Bhumidhar-

Every person belonging to any of the following classes shall be a Bhumidhar and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidhar by or under this Act, namely:

(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 Bhumidhars 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 Bhumidhars on the commencement of this Act; or

(c) every person who, after the commencement of this Act, is admitted to land as Bhumidhar or who acquires Bhumidhari rights under any provisions of this Act." To understand the real implications of Section 5 it is also necessary to refer to the definitions of certain expressions used in this Section, as defined in Section 3. These are as under:

"3. Definitions-

in this Act, unless the context otherwise requires:

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(Ha) "holding means-

(a) in respect of-

(i) Bhumidhar or Asami; or

(ii) tenant or sub-tenant under the Punjab Tenancy Act, 1887, or the Agra Tenancy

Act, 1901; or

(iii) lessee under the Bhoodan Yagna Act, 1955,

a parcel or parcels of land held under one tenure, lease, engagement or grant; and

(b) in respect of proprietors, a parcel or parcels of land held as Sir or khud-

khast." xxx xxxx xxxxx "(12A) "Khudkasht means land (other than Sir) cultivated by a proprietor either by himself or by servants or by hired labour,

(a) at the commencement of this Act, or

(b) at any time during the period of five years immediately before the commencement of this Act, whether or not it was so cultivated at such commencement, provided that it has not, at any time after having been so cultivated been let out to a tenant;" xxx xxxx xxxxx (17) "proprietor" means as respects an estate a person owning, whether in trust or for his own benefit the estate and includes the heirs and successors-in-interest of a proprietor;

Keeping in mind these definitions if we examine Section 5 what it lays down is that a proprietor holding khudkasht, a proprietor's grove holder, an occupancy tenant u/s 5 of the Punjab Tenancy Act, every class of tenants other than those referred to in Clause (a) and sub-tenants who are declared Bhumidhars on the commencement of the Act and every person who, after the commencement of Act, is admitted to land as Bhumidhar or acquires Bhumidhari rights under any provisions of this Act, shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidhar under the Act. So far as the instant case is concerned, Clauses (b) and (c) of Section 5 are not relevant. So far Clause (a) is concerned, a proprietor holding khudkasht etc. will come within the meaning of Bhumidhar but "khudkasht" as defined means land cultivated by a proprietor either by himself or by servants or by hired labour at the time of commencement of this Act or at any time during the period of five years immediately before the commencement of this Act. Leaving aside bar u/s 192 for a moment, we fail to see as to how the allottee of evacuee property particularly in the year 1970 comes under the meaning of "Bhumidhar". It can not be said that he is " a proprietor holding sir or khudkasht land" within the meaning of Section 5(a) read with Section 3(12a) at the commencement of the Act. Well that being the position, it can not be held that respondent No. 3 is a Bhumidhar within the meaning of Section 5 and if he is not a Bhumidhar, the question of petitioners becoming Bhumidhars under the Act by virtue of their being tenants, does not arise unless rights of Bhumidhari have been conferred on them. That is not the case.

5. Learned counsel, however, submitted that though the land in question is an evacuee property and though it continued to be so till 1970 when it was allotted to respondent No. 3, yet the Central Government which came into possession as custodian of this property in the year 1954, should be treated as Bhumidhar and respondent No. 3 to whom the land was allotted in turn became a Bhumidhar and then consequently the petitioners must be treated as tenants on whom the rights of Bhumidhari should be conferred as provided under Chapter III of the Act. We are unable to accept this argument as the above relevant provisions do not yield to such interpretation even in a remote manner.

6. That apart, as mentioned above, Section 192 makes the provisions of the Act

inapplicable to the evacuee properties and Section 2 of the Act which deals with repeal is in the following terms:

2. Repeal-

(1) The following Acts, in so far as they apply to areas to which this Act extends, are hereby repealed-

(i) the Punjab Tenancy Act, 1887, as modified by Punjab Act No. 9 of 1939,

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It can be seen that the Punjab Tenancy Act ceases to apply to the areas to which the Delhi Land Reforms Act applies and by virtue of Section 192 the Delhi Land Reforms Act is not applicable to the lands which are evacuee properties and consequently the Punjab Tenancy Act continues to apply to the evacuee properties also with regard to the tenancy of the land and connected matters.

7. Now we shall consider the judgment of the Delhi High Court in Umrao Singh's case (*supra*). That was also a case where evacuee property which was acquired by the Central Government was eventually transferred to one Ranjit Singh and by him to the other parties who figured as contesting respondents before the High Court in the civil litigation. They filed original suit for eviction and it was contested by the opposing party on the ground that Ranjit Singh was a Bhumidhar and therefore the transaction by him in favour of the respondents was hit by Sections 33 and 42 of the Delhi Land Reforms Act. Therefore the question was whether Ranjit Singh was a Bhumidhar? In deciding this question, a learned Single Judge of the Delhi High Court referred to Section 192 as well as Sections 4 and 5 of the Act and held that Ranjit Singh or others who derived their rights through him, can not be held to be Bhumidhars in respect of the land which was evacuee property at the commencement of the Act and even if the character of the property is changed by allotment or by subsequent transfer by the allottee yet the provisions of the Delhi Land Reforms Act would not be applicable. We are of the opinion that the view taken by the learned Single Judge is correct.

8. Section 5 confers the status of Bhumidhar on person possessing certain qualifications particularly at the time of the commencement of the Act and also further lays down the manner in which such status can be acquired by those persons on or after the commencement of the Act. Well that being the clear scope of Section 5, it is not open to devise any other method of acquiring the status. The change of character of the evacuee property later has no relevancy in ascertaining the status of Bhumidhar under the Act, as discussed above. If on the date of its commencement, the Act does not apply to the land in question then the said Act would not be applicable to it any time later. Even otherwise in the instant case, respondent No. 3 was not a Bhumidhar at the date of the commencement of the Act nor he has acquired right of Bhumidhar as provided under the said Act. Therefore the provisions of the Act would not be applicable

since he does not come within the meaning of Bhumidhar from either point of view. Therefore the Writ Petitions deserve to be dismissed and the same are dismissed accordingly. There will be no order as to costs. SLP (Civil) 14867 of 1992:

9. No further orders are necessary in view of the orders passed in Writ Petitions Nos, 5444-46 of 1985. However, the amounts deposited pursuant to the order of conditional stay granted by this Court, would lie in deposit in the trial court namely the Additional Collector. After ascertaining the mesne profits due to the contesting respondent, the said amount shall be adjusted and paid to him. Accordingly this SLP is disposed of. There will be no order as to costs.