
(2010) 07 DEL CK 0313

In the Delhi High Court

Case No : Regular Second Appeal No. 6 of 1986

Sudhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-07-2010

Acts Referred:

Delhi Land Holdings (Ceiling) Act, 1960 — Section 24, 24(2), 25, 3, 3(1)

Citation : (2010) 07 DEL CK 0313

Hon'ble Judges : Indermeet Kaur, J

Bench : Single Bench

Advocate : J.P. Sengh, B.S. Saini and Sumit Batra, for the Appellant; Rajesh Katyal, for R-1 and Ruchi Sindhwani, for R-2 and R-3, for the Respondent

Final Decision : Dismissed

Judgement

Indermeet Kaur, J.—These two appeals have been directed against the impugned judgment dated 4.11.1985 passed by the Court of Additional District Judge endorsing the finding of the first Court dated 22.7.1980 whereby the suit of the plaintiffs/appellants had been dismissed.

2. Briefly stated the facts of the case are as follows:

(i) The appellants before this Court namely Sudhan Singh and Shiv Charan along with another person Prehlad had filed three respective suits namely suit Nos. 1186/73, 1174/73 and suit No. 1185/73 against the Union of India.

(ii) Proceedings qua Prehlad are not relevant as he has not filed any appeal.

(iii) Appellants/plaintiffs Sudhan and Shiv Charan were in cultivatory possession of land in their respective khasras as described in their respective plaints. This land is situated in village Ghalibpur, Delhi. Their contention was that they are bhumidhars of the said land and are in the cultivatory possession from the time of their forefathers.

(iv) Appellants had become bhumidhars of the land in terms of the decree of Civil

Court dated 21.4.1962 and the land was accordingly transferred in their name by report No. 194.

(v) Appellants learnt that the possession of the suit land had been taken over by the government on 27.6.1971 vide report No. 192.

(vi) Respondents/defendants have further threatened to take over the physical possession of the land, which action is without jurisdiction and against the provisions of Delhi Land Holding (Ceiling) Act 1960 (hereinafter referred to as the "said Act").

(vii) Contention of the appellants is that the provisions of the Act and the Rules framed therein have been flouted; without following the procedure as contained u/s 6 of the said Act, the order of vesting of the land with the government was passed illegally on 27.6.1971.

(viii) Respondents in their written statements had taken the objection of the bar of jurisdiction of the Civil Courts to entertain such a suit in terms of Section 24 of the said Act. Their contention was that the procedure as contained in the said Act has been followed and due notice had been given to Hargobind who was the owner and in possession of the excess land at the relevant time i.e. period between 10.2.1959 up to 16.4.1962 (the date of the promulgation of the said Act). Notice was not required to be served on the present appellants who had become bhumidhars in terms of the collusive decree of the Civil Court only on 21.4.1962.

(ix) Trial Court framed five issues. While disposing of issue No. 1, it was held that the jurisdiction of this Court was barred u/s 24 of the said Act. The testimony of the witnesses including that of the appellants/plaintiffs had been examined. Reliance upon Section 6(2) of the said Act had been placed. It was held that in terms of the decree dated 21.4.1962 the appellants had become bhumidhars only on the said date; as such prior to that period i.e. during the relevant period which was between 10.2.1959 to 16.4.1962 the land was deemed to be held by Hargobind. It was further held that the demarcation in terms of the possession report, Ex.DW-1/C and Ex.DW-1/4 had evidenced that the actual physical possession had been taken over on 27.6.1971. The finding of the Civil Judge and the written statement of the defendant Ex.PW-2/1 in the said suit proceedings which were then pending in the Court of Sh. P.K. Jain, Sub Judge where the appellants were also a party were also relied upon to endorse a finding that the plaintiffs were not in possession of the suit land at the relevant time as it had been declared excess and allotted to the said defendants. Suit was dismissed.

(x) Additional District Judge endorsed the finding of the Trial Court. Reliance upon provisions of Section 25 of the said Act had also been made.

3. This is a second appeal before this Court. On 22.1.2010, the following substantial question of law had been formulated:

Whether Civil Court had the jurisdiction to entertain the suit?

4. Counsel for the appellants has addressed arguments at length. It is submitted that admittedly even as per the finding of the two Courts below the notice of the proceedings u/s 6 and 9 of the said Act had been notified to Hargobind only and not to the present appellants. This has caused a gross miscarriage of justice; the appellants were the affected persons and u/s 6 of the said Act they were mandatorily required to be notified. For this proposition, reliance has been placed upon a judgment of this Court report in Daryao Singh Vs. State of Madhya Pradesh, . wherein while expounding the provisions of Section 6 of the Delhi Land Holding (Ceiling) Act 1960, the Court had held that "all persons affected" should be given an opportunity of being heard; contention of the petitioners that they did not receive any notice from any authority constituted under the said Act had been upheld and the proceedings under the said Act had been quashed.

5. Learned Counsel for the appellant has also placed reliance upon Hoshiar Singh Vs. The Deputy Commissioner and Another, . to substantiate his submission that ownership of the land has no relevancy to the proceedings u/s 6 of the said Act and provisions of Section 6 have to be complied with qua a bhumidhar.

6. Counsel for the appellants has also placed reliance upon 50 (1993) DLT 492 Shiv Kumar Chadha v. M.C.D. and Ors., Dhulabhai and Others Vs. The State of Madhya Pradesh and Another, . to substantiate a submission that even where the special statute has an exclusivity Clause and the jurisdiction of the Civil Court is barred, nevertheless in special cases where there has been a "jurisdictional error" on the part of the statutory body a suit is maintainable. It is submitted that in this case admittedly the notice u/s 6 of the said Act had been issued only to Hargobind and not to the present appellants who were the directly affected parties; the procedure of the said Act not having been followed in true letter and spirit; there has been a jurisdictional error on the part of the Courts below. This could only have been rectified by way of suit which the plaintiffs had filed and which had been dismissed arbitrarily and unfairly.

7. Arguments have been countered by the learned Counsel for the respondents. It is stated that the parameters of entertaining a second appeal are only confined to a substantial question of law as has been formulated by this Court on 22.1.2010; the factual submissions made by the appellants cannot be gone into; this Court is not doing a fact finding inquiry. The finding of the Courts below calls for no interference.

8. The Delhi Land Holding (Ceiling) Act 1960 was promulgated w.e.f. 16.4.1962 which was a statute to provide for the imposition of ceilings on land held in the Union Territory of Delhi and for matters connected therewith. This is contained in the Preamble of the Act. Section 3 which is the part of Chapter II deals with ceiling of holdings; any person either by himself or through his family whether as a bhumidhar or as an assami cannot hold land in excess of that mentioned in Section 3(1) of the said Act.

9. Procedure for the determination of excess land is contained in Section 6. It

presupposes a return of the excess land to be filed u/s 4. On receipt of this return the Competent Authority shall after giving the persons affected an opportunity of being heard hold an inquiry with due recourse to the provisions of Section 7 and 8 of the said Act. Section 6(2) deals with the determination of this excess land; it specifically states that at any time during the period between appointed date and the commencement of the Delhi Land Holding (Ceiling) Amendment Act 1976 notwithstanding any transfer the said land shall be deemed to be land held by the transferor.

10. The Trial Judge had placed reliance upon provisions of Section 6(2) of the said Act. It clearly stipulates that all lands held prior to the date of commencement of the said Act i.e. prior to 16.4.1962 notwithstanding any transfer shall be deemed to be held by the transferor. Applying this provision, the Trial Court had endorsed a finding that admittedly the appellants had become bhumidhars in terms of their civil decree only on 21.4.1962 and as such prior to this period i.e. the period prior to commencement of the said Act i.e. preceding 16.4.1962 the disputed land was held by Hargobind. The plaintiffs/appellants have in fact not disputed that the notice had not been issued to their predecessor i.e. Hargobind; their contention being they were the affected persons and as such should have been notified.

11. This submission of the learned Counsel for the appellants has no force. The factual finding of the Trial Judge that prior to 16.4.1962 the land vested with Hargobind was an infallible finding. Trial Judge had relied upon the testimony of PW-5 Sudhan (the plaintiff) who had categorically admitted that Hargobind was having the possession and ownership of the disputed land between 10.2.1959 to 16.4.1962. This is a factual finding endorsed by the Appellate Court as well. In view of this fact finding as also the statutory provision as engrafted in Section 6(2) of the said Act, notice was not required to be issued to the appellants.

12. That apart Ex.DW-4/1 which is the order passed by the Competent Authority on 17.2.1968 has specifically recorded the presence of the present appellants. Their averment in para 4 of the plaint (which was filed on 30.10.1973) that "it was only sometime back that the plaintiff learned that the suit land had vested with the government" was clearly a false and dishonest averment; as way back as on 17.2.1968 they knew that the Competent Authority had directed the respondent/Hargobind to follow the procedure u/s 7 of the said Act and to select the area which he wishes to retain. The suit for injunction filed by the plaintiff was liable to be dismissed on the ground of such a patently false disclosure as well; relief of injunction being discretionary which the court is not bound to grant, such relief should be refused to a person who does not come to the court with clean hands.

13. The finding of the two Courts below cannot be faulted with. The contentions raised by the appellants in the present appeals were the very same which have been raised before the two Courts below. Finding of facts have been endorsed by the said two Courts below. Both the two Courts below have conclusively held that

at the relevant time Hargobind was the bhumidhar; it was he who was in cultivatory possession of the disputed land. Procedure of Section 6 had been followed qua him. The submission of the appellants/plaintiffs that they were not notified was even otherwise incorrect as on 17.2.1968 presence of the appellants had been marked before the Competent Authority. In fact the presence of Hargobind was not recorded; it is obvious that Hargobind has no interest left in the land; after the decree of 21.4.1962 the bhumidari stood transferred in the name of the plaintiffs/appellants; they were contesting all proceedings. Order dated 17.2.1968 of the Competent Authority was confirmed on 7.8.1968 (Ex.DX) by the Additional Collector; it did not lie in the mouth of the appellants to state that they were unaware of the said proceedings; principles and rules of natural justice have been complied with.

14. The prayer made in the present suit was that the defendants/Union of India should be permanently enjoined from dispossessing the plaintiffs from the disputed land. This prayer is related to the act of the Competent Authority and the order passed by it on 27.6.1971 which was to direct the revenue staff to take possession of the said land. This was pursuant to the order dated 17.2.1968 whereby the plaintiffs/appellants in their presence, had been notified that the respondent Hargobind will select the area which he wishes to retain which was an order passed in terms of the Section 7 of the said Act. Besides the fact that the procedure followed by Competent Authority was clearly in accordance with law and in terms of the provisions of the said Act, it was not for the Civil Court to decide as to whether the plaintiffs/appellants had been duly notified u/s 6 of the said Act or not. The order dated 17.02.1968 was challenged and the Appellate Authority i.e. the Additional Collector endorsed the finding that the decree dated 21.04.1962 was a collusive decree.

15. u/s 24(2) of the said Act there is a complete bar on the Civil Court to entertain any suit or proceeding in so far as it relates to any matter which the Competent Authority or the Deputy Commissioner is empowered by or under this Act to decide. The questions raised in the suit were all matters in the domain of the Competent Authority & the Deputy Commissioner. There is no jurisdictional error committed by the Competent Authority or the Additional Collector which would entitle the appellants/plaintiffs to maintain a suit against the government. Courts below had rightly held that the jurisdiction of Civil Court is barred.

16. The judgment in the case of Daryao Singh (supra) relied upon by the learned Counsel for the appellants would not apply to the facts of the instant case. In that case the petitioner Daryao Singh and Narain Singh had purchased land from one Mange Ram by means of a registered sale deed. Thereafter without notice either to Mange Ram or to Daryao Singh and Narain Singh proceedings under the Delhi Land Holding (Ceiling) Act had been taken. Notice u/s 6(3) of the said Act had been issued only on 1.3.1976 i.e. much after Mange Ram had been declared bhumidhar; neither Mange Ram nor the petitioners, Daryao Singh or Narain Singh had been informed of the proceedings under the said Act; Deep Chand had

been notified when he by an order of the Revenue Assistant dated 31.10.1967 was declared not to be a bhumidhar and Mange Ram had been declared as bhumidhar; it was in these circumstances that the Court had held that the "person affected" i.e. Mange Ram and the petitioner had to be notified. The facts in this case are distinct. Ex.DW-1/4 which is the order of the Competent Authority of Sh. S.S. Malhotra has clearly recorded the presence of both appellants i.e. Shiv Charan S/o Ram Nath as also Sudhan S/o Mir Singh. This order dated 17.2.1968 was passed in their presence. This order had been upheld on 07.08.1968 (Ex. DX) which orders have since attained a finality. Even otherwise in the judgment relied upon by learned Counsel for the appellants the question of the bar of the jurisdiction of the Civil Court had not been gone into; it was in a writ petition, facts of which are clearly distinct.

17. The second judgment of Hoshiar Singh (supra) relied upon by the appellants is also distinct on facts; the proposition that not ownership but bhumidari is relevant qua the provisions of Section 6(2) of the said Act is an undisputed proposition. However, in the instant case, the appellants have been declared bhumidhar only on 21.4.1962; the relevant period is the period prior i.e. between 10.2.1959 to 16.4.1962.

18. There is no fault in the findings of Courts below.

19. The substantial question of law is accordingly answered as follows. The Civil Court had no jurisdiction to entertain the suit as has been held by both the Courts below and rightly so. Second appeal is without any merit. It is dismissed.

20. Trial Court record be sent back. File be consigned to record room.