

A

UNION OF INDIA AND ANR.

v.

SHER SINGH AND ORS.

FEBRUARY 7, 1997

B

[K. RAMASWAMY AND S. SAGHIR AHMAD, JJ.]

Land Acquisition Act, 1894 :

C

S.4(1)—Acquisition of "gair mumkin pahar"—Compensation—Dispute regarding title to the land—Gaon Sabha claiming compensation on the ground that land stood vested to Gaon Sabha—Respondents claiming themselves as bhumidhars thereof—Held, land not being a Khudkhast land, respondents are not bhumidhars thereof—Land stood vested in Gaon Sabha.

Delhi Land Reforms Act, 1954 :

D

Ss.3(11), 3(13), 5, 7 and 154—"Land"—"gair mumkin pahar"—Held, is not a land cultivated by the proprietor and so it is not a Khudkhast land—Respondents are not bhumidhars thereof since they did not hold the land as proprietor, and, therefore, shall not have proprietary right in "gair mumkin pahar"—Land shall stand vested in Gaon Sabha.

E

Hatti v. Sunder Singh, [1971] 2 SCR 163, relied on.

Res judicata: Held, dismissal of special leave petition filed under Article 136 of the Constitution, without speaking order does not constitute res judicata—Constitution of India, 1950—Article 136.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2183 of 1993.

From the Judgment and Order dated 30.5.91 of the Delhi High Court in R.F.A. No. 167 of 1986.

G

Wasim Qadri for C.V.S. Rao for the Appellants.

M.C. Dhingra, Y.D. Nagar, L.C. Chechi and K. S. Rana for the Respondents.

H

The following Order of the Court was delivered:

This appeal, by special leave arises from the judgment of the Division Bench of the High Court of Delhi, made on May 30, 1991 in R.F.A. No. 167/86. A

The admitted facts are that notification under Section 4(1) of the Land Acquisition Act, 1864 was published acquiring certain lands for public purpose. Therein rival claims came to be made by Gaon Sabha, Tekhand and the respondents claiming title to the compensation. Since the Land Acquisition Officer/Collector was unable to decide the title to receive the compensation on reference under Section 30 of the Act, the District Court by award and decree dated February 22, 1986 held that the land in question stood vested in the Gaon Sabha under Section 7 read with Section 154 of the Delhi Land Reforms Act (for short, the 'Act'). Therefore, it is entitled to the compensation of the land acquired by the Union of India. Dissatisfied therewith, the respondents filed the above appeal. The High Court in the impugned judgment has held that "Gair Mumkin Pahar" is a cultivable land and, therefore, by operation of explanation to Section 7, it stands excluded from the vesting in the Gaon Sabha. Resultantly, the respondents being the owners of the property are entitled to the compensation. Thus, this appeal by special leave. B C D

Initially, Shri M.C. Dhingra, learned counsel for some of the respondents, has brought to our notice that since this Court had dismissed similar special leave petitions, this appeal does not merit consideration. We find no force in the contention. This Court, by then, had already granted leave in this appeal, but, unfortunately, that was not brought to the notice of the respective Benches including the one presided over by one of us (K. Ramaswamy, J.), when the matters had come up. As a consequence, without any speaking order some special leave petitions came to be dismissed. In view of the settled legal position by a catena of decisions of this Court that the dismissal of special leave petition without speaking order does not constitute *res judicata*, the question of law is at large to be gone into. Accordingly, we reject the objection and we have heard the counsel on both sides on merits. E F G

Shri Wasim A. Qadri, learned counsel for Union of India and Gaon Sabha, in a pains taking investigation and neat presentation, has brought to our notice the relevant provisions of the Act and the decision of this Court in *Hatti v. Sunder Singh*, [1971] 2 SCR 163 and contended that the H

- A object of the Act and the Delhi Land Reforms Rules, 1954 was to extinguish the pre-existing right, title and interest held by bhumidhar, sirdar, tenant, proprietor etc. and conferment of new rights in them. It is also envisaged that all other lands shall stand vested in the Gaon Sabha by operation of Section 154 of the Act read with Section 7 of the Act. The respondents are not bhumidhars. The land in question has been recorded in the revenue records as "gair mumkin pahar", in other words, it is an uncultivable waste land. It is not excluded from the definition of 'waste land' as explained in explanation to Section 7 of the Act. A reading of the relevant provisions of Sections 5, 7, 11 and 154 of the Act read with the definitions of 'land' defined in Section 3(13), 'holding' defined in Section 3(11A), 'khudkhasht' defined in Section 3(12)A and 'proprietor' under Section 3(17) of the Act, would clearly indicate that the respondents are not bhumidhars in respect of gair mumkin pahar. As a consequence, the land stands vested in the Gaon Sabha under Section 7 read with Section 154 of the Act. On the other hand, Shri Dhingra and Shri L.C. Chechi, learned counsel for the respondents contended that by operation of the comprehensive definition of 'waste land' in explanation to Section 7 of the Act read with the object of conferment of right under Section 11 read with Section 5 of the Act, the respondents are bhumidhars. As a consequence, the land is a cultivable land which confers them title to the land under the Act. It is also further contended that in a representative suit for a declaration that this gair mumkin pahar is cultivable land was declared to be so by the civil Court. The Deputy Commissioner's finding under the Act that it is a waste land is not correct. On an appeal against the decree, the High Court remitted the matter with an option to the Deputy Commissioner to decide afresh the matter. But the Deputy Commissioner had not decided that it is gair mumkin pahar. As a consequence, the vesting order passed by the Deputy Commissioner is *non est*. The High Court, therefore, had rightly gone into the question. In support thereof, the learned counsel placed reliance on a judgment of the learned single Judge in a second appeal. It is also contended that the view taken by the Division Bench of the High Court in that behalf is correct in law. It does not warrant interference.

G Having regard to the respective contentions, the question that arise for consideration is : whether gair mumkin pahar land is cultivable land coming within the meaning of explanation to Section 7 so as to exclude it from the operation of the main part of Section 7 of the Act? Section 3(13) defines 'land' thus :

"(13) "land" except in Sections 22, 23 and 24, means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes....."

A

Admittedly, the lands in question have been recorded in the revenue recorded as gair mumkin pahar. Therefore, the lands cannot be held or occupied or used in connection with agriculture, horticulture, animal husbandry including pisciculture and poultry farming etc.

B

'Holding' has been defined under Section 3(11) of the Act means:

"(a)

C

(b) in respect of proprietors, a parcel or parcels of land held as sir or khudkhast."

'Khudkhast' has been defined under Section 3(12A) means land (other than Sir) cultivated by a proprietary either by himself or by servants or by hired labour,

D

"(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."

E

Therefore, it is clear from the above provisions that the gair mumkin pahar is not a land cultivated by the proprietor and so it is not a khudkhast land.

F

Section 5 of the Act defines Bhumidhar thus :

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

G

(a) a proprietor holding Sir or Khudkhast land a proprietor's grover holder, an occupancy tenant under Section 5 of the Punjab Tenancy Act, 1887, paying rent at revenue rates or a person holding

H

A 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 the Act."

C Resultantly, the respondents are not bhumidhars, since they did not hold the land as proprietor and, therefore, shall not have proprietary right in gair mumkin pahar.

D Part B of the Act postulates acquisition of certain rights of proprietors. Section 7 under this Part postulates the rights of proprietary in waste lands, pasture lands of common utility etc. to vest in Gaon Sabha and compensation to be paid for the.....

E "(1) All rights of an individual proprietor or proprietors pertaining to waste lands, grazing or collection of forest produce from forest or fish from fisheries lands of common utility, such as customary common pasture lands, cremation or burial grounds, abide sites pathways, public wells, tanks and water channels, or Khalihans, whether covered by an existing contract between such proprietor or proprietors and any other person or not, shall with effect from the commencement of this Act be terminated in accordance with the provision of sub-section (2) and the said contracts, if any, shall become void with effect from such commencement.

G Provided that where such land was a result of consolidation of holdings made available for use for any purposes other than those referred to in this sub-section, land kept aside in exchange thereof, as a result of such consolidation, shall for the purposes of this Act be deemed to be land originally meant for purposes referred to in this sub-section.

H Explanation - For the purpose of this sub-section -

- (i) "Waste land" shall include cultivable and uncultivable waste area of the village including any land in the bed of a river, occupied or held by an Asami referred to in Section 6(a)(iii) of the Act except the uncultivated area - A
- (a) included in the holding of such proprietor or proprietors, or B
- (b) used for purposes other than those mentioned in clause (143) of Section 3 at any time before the 28th day of October, 1956 or
- (c) acquired by *bona fide* purchaser for value at any time before the 28th day of October, 1958 for purpose other than those mentioned in clause (13) of Section 3." C

Conjoint reading of Section 7 read with the explanation, it emerges that unless the waste land stands excluded from Section 7, the rights of the proprietors in waste lands, posture lands or community utility lands etc. shall vest in Gaon Sabha. The waste land included in the holding of the proprietor stands excepted from the waste land contemplated by Section 7. D

Section 11 of the Act provides declaration of Bhumidhari Rights in favour of proprietors and superior class of tenants, compensation and land revenue. Sub-section (1) provides that; E

"(1) Subject to the provisions of Section 10, the Deputy Commissioner shall declare as Bhumidhar persons holding the following lands, namely : F

(a) Khudkhast land or a proprietor's grover in the tracts to which the Punjab Tenancy Act, 1887, was applicable or Sir land or Khudkhast land or a proprietor's grove in the tracts to which the Agra Tenancy Act, 1901, was applicable; G

(b) land held by occupancy tenants under Section 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." H

A By operation of Section 11, all the lands including the holding of the Bhumidhar etc. shall be declared to be a Bhumidhar right. It is, thus, clear that by operation of Section 5 read with the definition of Khudkhasht land and the explanation to waste land under Section 7 of the Act, the lands not having been held by Bhumidhars, it cannot be treated to be a waste land for the purpose of exclusion under the explanation from the purview of Section 7 of the Act.

B What would be the consequence has been stated in Section 154 of the Act is to be seen. Section 154 reads thus :

C "154. *Vesting of certain lands etc. in Gaon Sabha* - (1) On the commencement of this Act -

(i) all lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,

D ~~xx~~ situate in a Gaon Sabha Area, shall vest in Gaon Sabha."

E Thus, it could be seen that except the land for the time being comprised in any holding or a grove, rest of all lands whether cultivable or otherwise vest in the Gaon Sabha from the date of the Commencement of the Act.

This question also no longer *res integra*. In *Hatti's* case (*supra*), this Court has gone into the relevant provisions of the Act and held thus :

F "Sections 6, 11, 13 and 154 of the Act read together, thus show that, after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he became a Bhumidar of it. If it was part of a holding of some other person, such as a tenant or a sub-tenant etc., he became either a Bhumidar or an Asami, whereupon the rights of the proprietor in that land ceased. Land, which were not holding of either the proprietor or any other person, vested in the Gaon Sabha. In the case of proprietors, their rights in the land continued to exist only in respect of holdings which, under the definition, must have been either their sir or khudkasht at the commencement of the Act. If it was not sir or khudkasht of a proprietor, it would not be his holding and, consequently, such land would vest in the

Gaon Sabha under Section 154, the result of which would be that the rights of the proprietor would be extinguished." A

As stated earlier, indisputably in the revenue records the land in question had been recorded as gair mumkin pahar. Under those circumstances, this gair mumkin pahar land which was not held by the respondents as khudkhasdars as proprietors thereof. As a consequence, the land shall stand vested in the Gaon Sabha. It is true that in the earlier civil suit filed in a representative capacity for a declaration, the High Court has gone into the question, but the entire matter was left at large stating that "it does not mean that the Deputy Commissioner cannot redecide the matter. In fact he should reconsider the matter and hear the parties to determine whether the order is in accordance with law..... However, I would also like to clarify that this does not by any means end the matter." Thus, there is no concluded finding recorded by the High Court in the second appeal with regard to the nature of the land. On the other hand, the matter was kept at large. At that stage, the acquisition proceedings were initiated. As a consequence, no further action has been taken by the Deputy Commissioner. Consequently, the entire issue was at large. Obvious therefore, that when there was conflict of decisions between two learned single Judges, the Division Bench has gone into the question. But, it had not properly considered the effect of the provisions of the Act and came to the conclusion that the explanation of 'waste land' under Section 7 includes cultivable, waste and gair mumkin pahar is cultivable waste land and the respondents became owners of the land and entitled to the compensation. In view of the above discussion, the view taken by the Division Bench is clearly in error. Accordingly, we set aside the judgment of the High Court and confirmed that of the District Court. B C D E F

The appeal is accordingly allowed, but in the circumstances, without costs.

R.P.

Appeal allowed.