

PREM NATH AND ORS. ETC.

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v.

FINANCIAL COMMISSIONER AND ORS. ETC.

FEBRUARY 10, 1994

[K. JAYACHANDRA REDDY AND G.N. RAY, JJ.]

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Delhi Land Reforms Act, 1954: Sections 2, 3, 4, 5 and 192.

'Bhumidhar'—Who is.

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Allottee of Evacuee Property—Tenants of allottee of evacuee property—Suit against tenants for relief under Punjab Tenancy Act—Tenants claim as Bhumidhars—Held Tenants not Bhumidhars—Change of character or evacuee property held not relevant for ascertaining status of bhumidhars—Provisions of Delhi Land Reforms Act held in-applicable to evacuee property—Relief under Punjab Tenancy Act held permissible.

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Respondent-3 was allotted evacuee property in 1970 which he sold to Respondent-4. The petitioners, tenants under the respondents, had taken the said land on half batai basis. They stopped payment to respondents whereupon Respondents filed petitions for appraisalment of the produce under the Punjab Tenancy Act which the petitioners contested on the ground that they had acquired bhumidhari rights. The Trial Court dismissed the petitions but, on appeal, the Additional Collector negated the petitioners' contention that they had become bhumidhars and held that the Punjab Tenancy Act was applicable. The appeals filed by the petitioners were dismissed by the Financial Commissioner.

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The petitioners filed petitions in this Court. It was contended on their behalf that when once the land which was an evacuee property was allotted to a person, the same ceased to be an evacuee property and the allottee automatically became a Bhumidhar and his tenants acquired Bhumidhari rights as per the protection given by the other provisions of the Act. Consequently, respondents could not seek eviction or any other relief against the petitioners under the provisions of the Punjab Tenancy Act, 1887 which were no more in force.

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On behalf on the respondents it was contended that by virtue of

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A Section 192 of the Delhi Land Reforms Act, 1954, the Act itself was not applicable to the land in question since it was an evacuee property and as a result, only the Punjab Tenancy Act was applicable and, therefore, the petitioners could not claim any Bhumidhari rights in the land.

Dismissing the petitions, this Court

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HELD: 1. The language of Section 192 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, the question of application of the Delhi Land Reforms Act to the land in question does not arise since it is an evacuee property. [831-G]

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2. By virtue of section 2 of the Delhi Land Reforms Act, 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. Consequently the Punjab Tenancy Act continues to apply to the evacuee properties also with regard to the tenancy of the land and connected matters. [835-C-E]

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3. Section 5 of the Delhi Land Reforms Act confers the status of Bhumidhar on persons 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. 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 had no relevancy in ascertaining the status of Bhumidhar under the Act. 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 had acquired rights 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 points of view. [836-C-E]

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Umrao Singh v. Man Singh and other, 1968 Delhi Law Times (Vol. 4),
H approved.

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C) A
No. 14867 of 1992.

From the Judgment and Order dated 10.8.92 of the Delhi High Court
in L.P.A. No. 19 of 1992.

WITH B

Writ Petition (C) Nos. 5444-46 of 1985.

(Under Article 32 of the Constitution of India)

Avadh Behari Rohtagi and T.S. Arora for the Petitioners. C

S.S. Vats and S.K. Bisaria for the Respondent.

The Judgment of the Court was delivered by

K. JAYACHANDRA REDDY, J. 1. In these Writ Petitions filed under D
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 E
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 respondent 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 F
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 G
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. H

A 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 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 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 v. Man Singh and others*, 1968 Delhi Law Times (Vol. 4) 562 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.

E 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 landowners 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 S.L.P. (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 S.L.P. arises in respect of the interim order passed in the writ petitions. Therefore we need not deal with the questions involved in the S.L.P. 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

A 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:

B "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'.

C (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;

D 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."

E 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 -

F 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:—

G (a) a proprietor holding Sir or Khudkasht land a proprietor's grove holder, an occupancy tenant under Section 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;

H (b) every class of tenants other than those referred to in clause (a)

A at such commencement, provided that it has not, at any time after having been so cultivated been let out to a tenant;"

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B (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;"

(emphasis supplied)

C Keeping in mind these definitions if we examine Section 5 what it lays down is that a proprietor holding khudhasht, a proprietor's grove holder, an occupancy tenant under Section 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

D 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

E 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 under Section 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

F 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

G not arise unless rights of Bhumidhari have been conferred on them. That is not the case.

H 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

A 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.

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8. Section 5 confers the status of Bhumidhar on persons 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 the 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 rights 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.

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S.L.P. (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 S.L.P. is disposed of. There will be no order as to costs.

G T.N.A.

Petitions dismissed.