

Roop Kaur Vs. Union of India

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Court : Delhi

Decided On : Feb-20-1998

Reported in : 1998IIAD(Delhi)305; 72(1998)DLT157; 1998(44)DRJ727

Judge : Jaspal Singh, J.

Acts : [Constitution of India, 1950](#) - Articles 226 and 227; Delhi Land Holding (Ceiling) Act, 1960; [Hindu Succession Act, 1956](#); Delhi Land Reforms Act - Sections 50

Appeal No. : CW 417/77

Appellant : Roop Kaur

Respondent : Union of India

Advocate for Def. : Mr. Arvind Nigam & others and ; Rekha Palli, Adv.

Advocate for Pet/Ap. : : Mr. Ishwar Sahai, (deceased through LRs) Sr. Adv. and; Mr. Atul. Shanker Mathur, Adv

Judgement :

ORDER

Jaspal Singh, J.

1. On 4th July, 1976 Mr.M.L.Aggarwal, respondent No.4, as Competent Authority and Revenue Assistant Delhi while acting under the Delhi Land Holding (Ceiling) Act, 1960 dismissed the petition of Roop Kaur dated 28th May, 1976 seeking to exclude the land allegedly belonging to her from the holding of respondent No.5 Tej Pratap Singh for the purpose of fixing the ceiling limit. This was followed by an order passed by Sh.A.C.Kher, Additional Collector, Delhi on April 1, 1977 by which the objections of respondent No.5 Tej Pratap Singh under section 9 of the said Act were dismissed. By that order too the contention of respondent No.5 Tej Pratap Singh that a portion of the land belonged to the petitioner was rejected. The petitioner by way of this writ petition seeks to get these orders quashed as far as her claim in the land is concerned.

2. Since there has been a long drawn litigation leading to the filing of the writ petition in question I do feel that what is called for at this juncture is a glance over its history in necessary detail.

3. Rai Bahadur Narain Singh owned huge chunks of land in the revenue estate of village Mandoli, Illaqa Shahdara. Sardar Jagmer Singh was his son. Rai Bahadur executed a will by which Sardar Jagmer Singh was given life estate with regard to land measuring 428 bighas and 7 and a half biswas. After the death of the Rai Bahadur and while Sardar Jagmer Singh was enjoying the life estate in consequence of the will of his father the provisions of the Delhi Land Reforms Act, 1954 came into force. Admittedly after the enforcement of the said Act Sardar Jagmer Singh was declared Bhumidar of the said 428 bighas and 7 and a half bids was of land which is detailed in paragraph 1 of the writ petition. On March 15, 1968 Sardar Jagmer Singh died issueless leaving behind his widow Smt. Roop Kaur who was the original petitioner before me. The case of the petitioner is that Sardar Jagmer Singh fraudulently and surreptitiously got the mutation of the Bhumidari rights in his name. This came to be known to Roop Kaur in the last week of May, 1976. However, much before that and to be precise on April 16, 1962 the Delhi Land Holding (Ceiling) Act, 1960 had come into force. The 1975 amendment of the Act came about by ordinance No. 27 of 1975. By virtue of that Act the Lt. Governor called for the returns to be filed in Form AA and under section 4 of the said Act. In the last week of May, 1976 Roop Kaur not only came to know

of her land having been mutated in the name of Tej Pratap Singh but so also about his having filed his return including therein the land of which S.Jagmer Singh had been declared the Bhumidar. It was thus the time for Roop Kaur to act and in May 28, 1976 she filed an application before the Competent Authority that she being the absolute Bhumidar of the land being the sole successor of S.Jagmer Singh, mutation in favor of Tej Pratap Singh was wrong, illegal and not binding upon her. The same day she filed a civil suit for declaration to the effect that she being the sole heir of S.Jagmer Singh, was entitled to succeed to the Bhumidari rights of her deceased husband. She also challenged the mutation in favor of Tej Pratap Singh with regard to the said land. On 2.3.1976 she filed her own return under section 4 of the Delhi Land Holding (Ceiling) Amendment Act with regard to the land in question. It was dismissed on the very next day. On the 22nd day of June, 1976 Roop Kaur filed an appeal against the order of November 18, 1969 by which mutation had been sanctioned in favor of Tej Pratap Singh. On August 23, 1978 the Additional District Magistrate (Revenue) set aside the order of November 18, 1969 holding that it was passed without notice to Roop Kaur and without enquiry.

4. On January 28, 1997 the civil suit instituted by Roop Kaur culminated in a judgment and a decree in her favour. The Subordinate Judge declared her to be the sole heir in possession of the property left by S.Jagmer Singh. Admittedly no appeal was filed against that judgment and decree which, thus, has become final.

5. In the year 1980 Roop Kaur died. Her allegedly adopted daughter Amrit Kaur has carried on the battle.

6. On April 8, 1987 the Revenue Assistant passed order of mutation in the name of Roop Kaur from March, 1968 till 1980 and thereafter in favor of Amrit Kaur. The position thus boils down to this: (a) S.Jagmer Singh was the Bhumidar of the suit land; (b) although initially the mutation with regard to the land of S.Jagmer Singh was done in favor of Tej Pratap Singh ultimately that order was set aside and the mutation was affected in favor of Roop Kaur; (c) in the civil suit Roop Kaur was declared as the sole heir of S.Jagmer Singh, (d) the land belonging to S.Jagmer Singh of which he was the Bhumidar stands clubbed with the land of Tej Pratap Singh for purposes of the Delhi Land Holding (Ceiling) Act and (e) that the

objections filed not only by Tej Pratap Singh but also by the petitioner with regard to her land stand dismissed. The petitioner claims that while dealing with the land of Tej Pratap Singh the authorities could not include the land inherited by that petitioner as Bhumidar through Jagmer Singh and that the rejection of Roop Kaur's application dated 28th May, 1996 by order dated 4th June 1976 passed by the Competent Authority and so also the rejection of her return was bad and that the Additional District Magistrate's order dated 6th April, 1977 confirming the order of the Competent Authority too is unsustainable and that consequently the entire proceedings under the Delhi Land Holing (Ceiling) Act were bad.

7. The writ petition has not been challenged by Tej Pratap Singh who is arrayed as respondent No.5. The Union of India, however, has contested the same. The objections raised by it are four-fold. (a) The petitioner could file a revision petition against the order dated June 4, 1976 passed by the Competent Authority and as an efficacious remedy was available to petitioner under the statute the writ petition is not maintainable; (b) S.Jagmer Singh had only a life estate and therefore after his death the land relating to his life estate was rightly mutated in favor of Tej Pratap Singh; (c) the judgment and decree passed by the learned Subordinate Judge was collusive and as the authority under the Delhi Land Holding (Ceiling) Act was not a party to those proceedings the petitioner cannot rely upon the said judgment and decree, and (d) Amrit Kaur is not the adopted daughter of Roop Kaur.

8. True, under the will of Rai Bahadur Narain Singh, Sardar Jagmer Singh had only a limited life estate but then admittedly he was declared as a Bhumidar with regard to the land falling to his share as life estate. It is not challenged that he could not be declared as a Bhumidar and rightly so because section 4 of the Delhi Land Reforms Act provides classes of tenures and sub tenures namely Bhumidari and Assami and the effect of this provision is that a person can either be a Bhumidar (one class of tenure holder) of an agricultural land or he could be an Assami (one class of sub tenure holder) and there could be no other kind of right in the agricultural land. Implicitly thus the provisions of the Act abolishes the ownership right of the agricultural land and creates new rights for its purposes. In short, thus, even if Sardar Jagmer Singh had a life estate the proprietary rights

came to an end and he became a Bhumidar. Admittedly again with regard to succession of Bhumidari rights we have to look towards not the Hindu Succession Act but section 50 of the Delhi Land Reforms Act and if that be so after his death the rights devolved upon his widow Roop Kaur. The mutation in favor of Tej Pratap Singh was thus not proper and did not either create a title in his favor nor extinguish any of the rightful heir of Sardar Jagmer Singh. In any case the fact remains that there is a judgment and decree from the civil court in favor of Roop Kaur and as already noticed above the application against mutation in favor of Tej Pratap Singh was allowed by the A.D.M. (Revenue) and the matter was remanded and it was not disputed that consequent upon that order of remand mutation was effected in the name of Roop Kaur and with effect from her date of death in favor of Amrit Kaur. This being the position the dismissal of Roop Kaur's application dated May 28, 1976 by the Competent Authority by his order dated June 4, 1976 and also the rejection of her return cannot be considered to be H and if so the order dated 4th June, 1977 passed by the A.D.M. confirming the order of the Competent Authority would also fall. In short a fresh look will have to be given by the Competent Authority with regard to the rights of Roop Kaur.

9. It was contended by the learned counsel appearing for respondents No.1 to 4 that the judgment and the decree passed by the civil court was collusive and that in any case there was nothing on the record to show that Roop Kaur had adopted Amrit Kaur. These are the questions which I think it is not possible for me to determine in this writ petition. The learned counsel for the parties agree that if available to the respondents No.1 to 4, they may take the said pleas before the Competent Authority or in some other appropriate legal proceeding.

10. The result of my above discussion is that the order dated 4th June, 1976 passed by the Competent Authority dismissing the application of Roop Kaur and also rejecting her return and the subsequent order of 6th April, 1976 passed by A.D.M. confirming the order of Competent Authority stands set aside. I also declare that respondents No.1 to 4 acted without jurisdiction in including the Bhumidari land of Sardar Jagmer Singh in the holding of respondent No.5 for the purposes of fixation of ceiling limit. The parties concerned are directed to give a fresh look to the entire matter in the light of what has been noticed above. No

order is made as to costs.

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