

Dev Lata Vs. Chond

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Court : Delhi

Decided On : Oct-23-1970

Reported in : 7(1971)DLT207

Judge : P.S. Safeer, J.

Acts : Himachal Pradesh Abolition of Big Landed Estate and Land Reform Act, 1953 - Sections 2(17) and 27(4)

Appeal No. : Miscellaneous Second Appeal No. 10 of 1968

Appellant : Dev Lata

Respondent : Chond

Advocate for Pet/Ap. : T.C. Chitkara,; Chabildas and;Bhim Sen. Advs

Judgement :

P.S. Safeer, J.

(1) This appeal was filed against a decision recorded by the District Judge, Mahasu, on the 5th December 1967.

(2) In the course of the appeal Civil Miscellaneous Petition No. 148 of 1969 was filed for recording a compromise as between the appellant and the legal representatives of Chitaku deceased. The Civil miscellaneous petition was dealt

with by a Division Bench of this Court. By an order dated 20th August, 1970, the said petition was dismissed and it was directed that the present appeal be decided on merits. It may also be noticed that during the pendency of this appeal C. M. P. No. 224 of 1969 was filed by one Parsa with the prayer that he being in possession of the land in dispute be made a party. That petition was dismissed on the 28th May 1970. There is a finding recorded by the learned District Judge that Chitaku was the tenant in cultivatory possession and was thus entitled to the transfer of the rights within the meaning of sub-section (4) of Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as the Act) I have allowed Mr. Chitkara to deal with all aspects of this appeal without being confined to the aforesaid finding of fact. The learned counsel for the appellant has pointed out that in the Jamabandi for the years 1954- 55. Dev Lata was recorded as the occupancy tenant and Chitaku was recorded as non-occupancy tenant liable to pay rent at the rates mentioned in the relevant column of that Jamabandi to the occupancy tenant. The entries containing the same situation stand repeated in the Jamabandi pertaining to the years 1962- 63. The learned counsel took me through the Exhibits C.W, 1/A dated 11th September, 1959 and stressed that Chitaku had relinquished his right. It is noteworthy that the present appellant's name is not mentioned in that document. Chitaku's statement dated 30th May, 1967 recorded by the Compensation Officer has been read out to me by Mr. Chitkara. In that statement Chitaku stated that so long he could work he did not allow any body else to touch the land in question, but for the last six years Parsa was tilling that land on his behalf. In his statement certain words are used which would literally mean that Chitaku had resigned from his rights in respect of that land but then the land which was to be given in lieu thereof was not made over to him and for that reason he did not give up the actual cultivatory possession of the land in dispute. I was taken through the statement of Karam Singh OW-1 and it was urged that he being the general attorney of Rani Sahiba who was looking after the interest of Dev Lata, the latter being a minor, had dealt with Chitaku at the time when OW. 1/A was executed. Both the versions have been brought to my notice. One being that Chitaku gave up his rights on the 11th September, 1959 in respect of the disputed land and the other contained in Chitaku's statement that he did not actually give up the possession because the

land which was to be given to him. In exchange was never in fact given to him. Karam Singh OW-1 who was looking after the interest of the present appellant stated in the course of his statement that he never asked the Patwari to record the change resulting from the execution of Exhibit OW. 1/A. He nowhere stated that the minor was cultivating the land herself. He did not mention the name of any person through whom the minor may have cultivated the land at any time after the 11th of September, 1959 when Exhibit OW -1/A was executed. It was put to Karam Singh that the signature, of Chitako were obtained on OW-1/A on the 11th September, 1959 by making a false representation that he will be given some other land in exchange. That suggestion was denied by Karam Singh.

(3) It defies imagination as to why no change in the revenue papers was sought by Karam Singh or any body else acting on behalf of the present appellant if Chitaku had really relinquished his rights in the land in dispute and had given up his cultivatory possession. If he had really parted with possession and if somebody else started ploughing the land and cultivating it in that way then his name would have certainly appeared in the Khasra-girdawaris as from 1954-55 to 1962-63. The entries contained in the Jamabandi for the years 1962-63 provide presumptive evidence and in this case clinching evidence to the effect that it was Chitaku who remained in cultivatory possession of the land in dispute throughout.

(4) I have been taken through the statements of the other witnesses as well. The case which is being pleaded on behalf of the appellant is not supported by any evidence. As I have said earlier it has not at all been mentioned by any one as to who it was who was actually tilling the land on behalf of Dev Lata. If any person had actually cultivated the land on her behalf he would have certainly been mentioned by the witnesses. He would have been produced to repel Chitaku's assertions and Khasra-girdawari entries would have been produced showing actual cultivation by a tenant other than Chitaku paying rent at a particular rate to the present appellant. As the evidence stands at present the appellant has failed to establish that Chitaku ever gave up the actual possession of the land in consequence of Exhibit OW-1 /A and that he ever ceased to be a tenant.

(5) The provisions of Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 have been referred to by the counsel for the parties in order to make their respective submissions. Section 27 of the said Act is :-

'(1)Notwithstanding anything contained in the foregoing provisions of this Chapter, a landowner who holds land, the annual land revenue of which exceeds Rs. 125.00 per year, the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government free from all encumbrances. (2) Nothing contained in sub-section (1) shall apply in respect of such land which is under the personal cultivation of the landowner. 3. The landowner whose rights are acquired under subsection (1) by the State Government, shall be entitled to receive compensation which shall be determined by the Compensation Officer having regard to sections 17 and 18 of this Act, in accordance with the provisions of Schedule I, but in the case of such occupancy tenant who is liable to pay rent in terms of land revenue for the multiple of land revenue the compensation payable to his landowner shall be computed in accordance with Schedule I. (4) The right, title and interest of the landowner acquired under subsection (1) or (2) shall be transferred by the State Government on the payment of compensation in accordance with schedule I to such tenant who cultivates such land. (5) The State Government shall give rehabilitation grant according to the rules framed under this Act, to such small landowner whose right, title and interest have been extinguished and who does not have any other other means of livelihood.'

(6) A para appraisal of sub-section (1) of Section 27 would affirm that as soon as the Act became operative an automatic vesting of the property belonging to the landowner paying annual land revenue exceeding Rs. 125.00 took place and the State-Government became the transferee of all the rights of such landowner free from all encumbrances. It was rightly held by a Full bench of this Court in 0065/1968 : AIR1968 Delhi255 that the date of vesting under the Act is the 26th of January, 1955. Interpreting the provisions of section 27 of the Act the Full Bench said :-

'AGAIN, by sub-section (5) of section 27, the State Government is obliged to pay rehabilitation grant to small landowner whose right, title and interest 'have been extinguished'. That again goes to show that the operation of Section-27 was intended to be immediate. The word 'acquired' in sub section (3) and (4) appears to have been used in the general sense meaning ' divesting of the interest of the landowner vesting thereof in State' has no link with date of vesting. In my opinion, the words 'the right, title and interest of such owner in such land shall be deemed to have been transferred and vested in the State Government' can have no other meaning except that the vesting is immediate.'

(7) Considering Section 27 and looking at the purpose and the scheme of Act, I hold that as on the 26th January, 1955 the Land in dispute stood transferred to the State Government free from all encumbrances by operation of law.

(8) The question is to whom could the proprietary-rights to acquired by the Government be transferred in terms of sub-section (4) of Section 27 of the Act. In sub-section (4) the words which require interpretation are:-

'SHALL be transferred by the State Government on the payment of compensation in accordance with Schedule I to such tenant who cultivates such land'.

The elementary principle of statutory interpretation is that the words used by the Legislature should be given their ordinary meaning If that is not done then the Legislative intent would be interfered with. If a reference is made to the ordinary dictionary meaning then cultivator is a person who tills the soil. The' words used-in sub-section (4) are :-

'SUCH tenant who cultivates such land'.

These words, according to me, cannot mean anything else than this that the tenant must be a tenant actually ploughing the land, sowing the seed and harvesting the crop.

(9) 'TENANT' as such is defined in the Act. Section 2 (17) is:-

'(17)'Tenant' means a person who holds land under another person, and is, or but for a contract to the contrary would be liable to pay rent for that land to that other person ; but it does not include..... ..!'

(10) It was contended by Mr. Chitkara that Chitaku was a sub-ten-ant. While saying so he made a reference to the entries in the Jamabandi. In the column of 'Lagan', the rent payable by Chitaku to the occupancy tenant is mentioned. It is obvious that a person so liable to pay rent would be a person holding land under another person and would be a tenant within Section 2 (17) of the Act. I cannot accept the argument that Chitaku was a sub-tenant. It was submitted that the word 'person' in sub-section (17) of Section 2 means an owner. That submission is meritless because the Legislature has purposefully used the word 'person'. It has not used the word 'landowner' which has been otherwise freely used in this Act. The word 'person' in Section 2 (17) would include an occupancy tenant and one cultivating land under such 'person' would be a tenant within the meaning of Section 2 (17). While enacting sub-section (4) of Section 27 of the Act the Legislature purposefully qualified the word 'tenant' so as to indicate that the transfer will be made not only to a tenant but to such a tenant who may be cultivating such land. The words 'such land' indicate the land which stood transferred and vested in the State Government on the 26th January, 1955 in terms of Section 27 (1) of the Act.

(11) It has been submitted by the Teamed counsel for the respondents that the entries to be looked into for the purposes of sub-sections (J) and (4) of section 27 of the Act would be the same. He has referred me to Form 'K' contained in the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms (Mode of Payment of Compensation and Grant of Proprietary Rights) Rules, 1863. That form begins by the words:-

'CERTIFICATE of conferment of proprietary rights on Tenant.'

(12) Obviously Form 'K' framed under Rule 16 of the rules is directly referable to the provisions of sub-section (4) of Section 27 of the Act. The word 'years' occurring in the form has a star mark, which refers to an Explanationn that it has been used with reference to the 'Jamabandis pertaining to vesting date'. I hold that at the time of transferring the right, title and interest in terms of sub-section 4 of

section 27 of the Act the entries in the Jamabandis as on 26th January, 1955 have to be followed. So far as this litigation is concerned the entries as in the Jamabandi for the years 1954-55 stand repeated in the Jamabndi for the years 1962-63, No revenue papers, even Khasragir. dawaris, were ever produced by the d.ppellantto show that anybody other than Chitaku ever cultivated the land in dispute. Had there been any relinquishment then Karam Singh OW-1 or anybody else on behalf of the appellant would have in the natural course of events applied for changing the entries in the Khasra .girdawaris and in the Jamabandi for the years 1962-63. I am satisfied that the Court below has recorded a correct decision which does not call for any interference. The appeal is dismissed with costs Counsel's fee is assessed at Rs. 250- in this case.

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