

Pyare Vs. the Financial Commissioner and Others

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Court : Delhi

Decided On : Sep-25-2001

Reported in : 94(2001)DLT348; 2001(60)DRJ695

Judge : Mr. Anil Dev Singh and; Mr. Madan B. Lokur, JJ.

Acts : [Delhi Land Reforms Act, 1954](#) - Sections 65A, 67, 85, 185 and 185(1); [Land Acquisition Act, 1894](#) - Sections 4, 4(1), 6, 9(2), 11, 12(2) and 18; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 9

Appeal No. : Civil Writ Petition No. 2146 of 1989

Appellant : Pyare

Respondent : The Financial Commissioner and Others

Advocate for Def. : Ms Geeta Luthra, ; Mr. Sanjeev Sahay and ; Mr. Deepak,

Advocate for Pet/Ap. : Mr. Ramesh Chandra, Senior Adv. and; Mr. Anand Yadav,
Adv

Disposition : Writ petition dismissed

Judgement :

ORDER

Anil Dev Singh, J.

1. This is a writ petition whereby the petitioner seeks quashing of the order of the Financial Commissioner dated July 3, 1989, the order of the Additional Collector dated June 2, 1989 and the order of the Sub Divisional Magistrate dated February 11, 1987. The facts giving rise to the petition are as follows:-

2. The petitioner claims to be in cultivatory possession of land measuring 3 bighas 1 bids was comprised in Khasra No. 59/11 situated in the revenue estate of village Pooth Kalan, Delhi, for about two decades. As a consequence of being in possession of the land, he asserts to be a Bhumidhar of the land. On September 17, 1981 the petitioner filed an application under section 85 of the [Delhi Land Reforms Act, 1954](#) in the court of the Revenue Assistant for being declared as Bhumidhar of the land. While the proceedings before the Revenue Assistant were pending, the land was acquired under the [Land Acquisition Act, 1894](#), as per the following details:-

Date of issuance of Notification under Section 4 of the Land Acquisition Act 11.12.1981
Date of issuance of Declaration under section 6 of the Land Acquisition Act 11.04.1984
Date of Award No. 20/85-86 covering the land in question. 11.11.1985
Date of taking over of symbolic possession of the land. 13.11.1985

3. On February, 1987 the Revenue Assistant dismissed the application of the petitioner on the ground that since the land stood acquired, the revenue court had no jurisdiction to try the case. Not being satisfied with the order of the Revenue Assistant the petitioner filed an appeal before the Additional Collector, Delhi. The Additional Collector refuse to interfere with the order of the Revenue Assistant and dismissed the appeal on June 2, 1989. Being aggrieved by the order of the Additional Collector, the petitioner approached the Financial commissioner by way of a second appeal. The Financial commissioner on July 3, 1989 dismissed the appeal as he was of the view that the questions relating to bhumidhari rights is outside the purview of the revenue court because of the acquisition of the land.

4. Mr. Ramesh Chandra, learned senior counsel appearing for the petitioner submitted that the land originally belonged to the Gaon Sabha and has been in possession of the petitioner for a long period of two decades. He contended that since the Gaon Sabha did not file a suit under section 84 of the Delhi Land

Reforms Act for ejectment of the petitioner within a period of three years from the date of the occupation of the land by him, the petitioner became a Bhumidhar by virtue of the provisions of section 85 of the Delhi Land Reforms Act. He further canvassed that the revenue authorities were not right in their view that once the land is acquired by the State the Revenue Assistant loses jurisdictional to decide the question whether or not the person taking or retaining possession of the land becomes a Bhumidhar. Relying on the decision of the Supreme Court in Hatti v. Sunder Singh, : [1971]2SCR163 , Mr. Ramesh Chandra argued that it is the Revenue Assistant which is authorised to determine the question whether or not a person has become a Bhumidhar due to taking over of the possession of the agricultural land otherwise than in accordance with the provisions of law, and the civil courts will have no jurisdiction to entertain a suit in which the plaintiff claims that he is the Bhumidhar of the land in view of section 185(1) of the Delhi Land Reforms Act.

5. We have considered the submission of the learned counsel. The Land Acquisition Act is a self contained code. Under Section 11 of the Land Acquisition Act, the Collector is required to enquire into the objection which any interested person makes pursuant to a notice under section 9 to the measurements made under section 8 and into the value of the land at the time of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming compensation. The Collector is required to make an award under his hand incorporating the following features:-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

6. As is evident from the provisions of section 11, the question of apportionment of compensation is to be gone into by the Collector. In case a person is not satisfied with the award, he can ask the Collector to make a reference to the District Judge

under Section 18 of the Land Acquisition Act. At this stage it will be appropriate to set out Section 18 of the Land Acquisition Act:-

'18. Reference to Court: (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the person to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,-

(a) i the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under Section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.'

7. It is clear from a reading of Section 18 of the Land Acquisition Act it appears to us that the District Judge is vested with the jurisdiction to enquire into the interest which a party may have in the land. This power is a necessary concomitant to the power conferred upon the District Judge to determine the question as to the persons to whom the compensation is payable and to the apportionment of the same amongst the interested parties. Obviously the apportionment of the compensation will depend upon the interest which a party will have in the land. We may also note that under Section 9(2) of the Land Acquisition Act, persons interested in the land can appear personally or by an agent before the Collector to state the nature of their interests in the land and the amount and particulars of their claim to compensation for such interests. The Collector, as already noted, is required to enquire into the same before making his award. It seems to us that a

person can stake his claim to compensation for the land under acquisition on the ground of being possessed of Bhumidari rights. Thus, the nature of interest in the land is determinable by the Collector (Land Acquisition) under section 11 and the District Judge under section 18 of the Land Acquisition Act. Once the possession of the land, actual or symbolic, is taken, the land vests absolutely in the Government free from all encumbrances. Since in the present case the land has been acquired by the Collector the interest of the petitioner, if any, in the land stands extinguished. This position also clearly follows from section 67 of the [Delhi Land Reforms Act, 1954](#). Section 67 reads as follows:-

67. Extinction of the interest of a Bhumidhar. - The interest of a Bhumidhar in his holding or any part thereof shall be extinguished-

(a) when he dies intestate leaving no heir entitled to inherit in accordance with the provisions of this Act,

(b) when the land comprised in the holding has been acquired under any law for the time being in force relating to the acquisition of land,

(bb) when a declaration in respect of such holding or part is made under clause (a) of sub-section (b) of section 65A,

(c) when he has been ejected in accordance with the provisions of this Act, or

(d) when he has been deprived of possession is barred by limitation.

8. Thus, under clause (b) of section 67, the interest of a Bhumidhar automatically gets extinguished when the land comprised in his holding is acquired under any law, such as the Land Acquisition Act, or any other Act relating to the acquisition of the land. Since the interest of the petitioner, assuming that he was a Bhumidhar, stands extinguished under section 67(b) of the Delhi Land Reforms Act, the revenue court ceases to have jurisdiction in the matter. thereforee, the application filed by the petitioner under section 185 of the Delhi Land Reforms Act seeking declaration of Bhumidhari rights was not maintainable and the Revenue Assistant rightly held that it had no jurisdiction to try the case. Both the Additional Collector and the Financial Commissioner also took the correct view in upholding the order

of the Revenue Assistant. The decision of the Supreme Court in Hatti (supra) to which our attention has been drawn by Mr. Chandra is of no avail to the petitioner inasmuch as this was not a case where Bhumidhari rights of the appellant stood extinguished by virtue of the acquisition of the land under the Land Acquisition Act. Section 185 applies in a case where the Bhumidhar rights do not stand extinguished. Once the Bhumidhari rights stand extinguished, section 185 of the Delhi Land Reforms Act will have no application.

9. It was submitted by Mr. Ramesh Chandra, learned senior counsel for the petitioner that in case it be held that section 185 of the Delhi Land Reforms Act has no application to the present case since bhumidhari rights stand extinguished on acquisition of the land in question, the petitioner will certainly have a right to file a civil suit to establish his right as a Bhumidhar of the land. We have considered the submission of the learned senior counsel. Under section 9 of the Code of Civil Procedure, 1908, the courts have jurisdiction to try all suits of civil nature excepting suits of which their cognizance is either expressly or impliedly barred. In case the petitioner wishes to establish bhumidhari rights over the land after acquisition but with reference to a period prior to the acquisition of the land, for the purposes of claiming compensation the suit will not be maintainable as the question relating to apportionment of compensation and all questions incidental thereto including the question as to who is entitled to receive compensation, as already noted, are to be gone into by the Collector under section 11 of the Land Acquisition Act. Again, in reference proceedings under section 18 of the Land Acquisition Act, power has been conferred upon the District Judge to determine the question as to the persons to whom compensation is payable. Since the question as to who is entitled to receive compensation is required to be determined by the Collector under section 11 of the Land Acquisition Act and the District Judge in reference under section 18 of the land Acquisition Act, a suit for the purpose of establishing bhumidhari rights over the land for the purpose of claiming compensation is barred by implication, the Land Acquisition Act being a self contained code. In case the petitioner seeks to establish bhumidhari rights over the land for the purpose other than seeking compensation, the remedy by way of civil suit would be available to him.

10. In view of the aforesaid discussion, we find no merit in the petition. The writ petition, therefore, fails and is hereby dismissed. The interim order stands vacated.

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