

Sailen Krishna Majumdar

Vs

Malik Labhu Masih (Deceased) Represented by Smt. Jassi and Others

Civil Appeal No. 2193 of 1982

(G. L. Oza, K. N. Saikia JJ)

21.02.1989

JUDGMENT

K. N. SAIKIA, J. –

1. This appeal by special leave is from the judgment of the High Court of Punjab and Haryana in the appellant's regular second appeal No. 706 of 1973 dismissing the appeal and allowing the respondent's civil writ petition against the order passed by the Assistant Collector.

2. Late Wg. Cdr. K. K. Majumdar, of the Indian Air Force, father of the appellant laid down his life during the second world war. He was conferred a gallantry award posthumously by the Government wherewith 442 kanals and 10 marlas of land bearing Chak Nos. 535-G-V situated in Tehsil and District Layallpur was granted to him and was allotted to the appellant Shri S. K. Majumdar who took possession on July 24, 1947. Consequent to the partition of the country the family of late Wg. Cdr. K. K. Majumdar had to migrate to India where the Government allotted 69 standard acres and 2 units of land to the appellant in village Dhogri, Tehsil and District Jullundhur as compensation for the land left behind at Layallpur, Pakistan. Out of this land 19 standard acres came under possession of the respondents Malik Labhu Masih (now deceased) as a tenant.

3. On February 26, Malik Labhu filed an application under Section 18 of the Punjab Security of Land Tenures Act, 1953, hereinafter referred to as 'the Act', to the Assistant Collector stating that he was a tenant in respect of the land in question and should be granted permission to purchase it. As per order of the Assistant Collector Grade I Jullundhur dated January 5, 1962 the said Labhu Masih was granted the requisite permission subject to the payment of Rs. 21,007.88 in 10 equal yearly instalments of Rs. 2100.80 each. The appellant appealed therefrom to the Collector Jullundhur who upheld the permission to purchase but enhanced the amount payable to the appellant as landlord to Rs. 23,133.53. During the pendency of the said proceedings the appellant moved an application under Section 9 read with Section 14-A of the Act for ejectment of the respondents and obtained an order on September 27, 1961. The respondents moved a revision petition before the Commissioner in the proceedings initiated under Section 18 of the Act and the Commissioner made recommendation to the Financial Commissioner for setting aside the orders of the Assistant Collector and the Collector allowing the purchase of land by the respondents on the ground that the application of the appellant for ejectment of the respondent has since been allowed. The Financial Commissioner accordingly set aside the order of purchase. The respondents impugned that order in the High Court of Punjab & Haryana in Writ Petition No. 1158 of 1963 and the High Court quashed that order on August 30, 1966. On July 3, 1970 the appellant filed a suit against the respondents for possession of the lands contending that the respondents had entered on a part of the land as tenant and subsequently applied for purchase of the land under Section 18 of the Act but by virtue of

Section 19-DD of the Act, which was inserted on August 3, 1968 with retrospective effect, the suit property of gallantry award was exempted from the provisions of the Act and as such the respondent could not purchase of the land under Section 18 of the Act and the orders passed by the Assistant Collector as also the High Court were nullity and respondents was consequently liable to be ejected. The trial court dismissed the suit. The appellant's appeal therefrom also having been dismissed by the Additional District Judge Jullundhur, the appellant preferred second appeal to the High Court of Punjab & Haryana which also dismissed the appeal holding that Section 19-DD of the Act was not applicable to the suit land and the tenant could purchase it under Section 18.

4. Dr. Y. S. Chitale the learned counsel for the appellant submits that the High Court was in error in the holding the land in question having been granted to the appellant S. K. Majumdar, the landlord, in the year 1946 the same could not be said to be covered by the provisions of Section 19-DD of the Act. We are inclined to agree. Though the Memorandum No. 2354-C Lahore dated March 30, 1946 from D. S. D. to the Commissioner, Lahore, Rawalpindi and Multan Division on the subject 'Award of land in the Punjab for acts of gallantry in the field' with reference to Punjab Government Memorandum No. 3583-C, dated November 30, 1944 contained the instructions to allot two squares rectangles of land to the heir of the grantee noted in the margin in accordance with the orders contained in the aforesaid Memorandum, and showed the appellant Shri S. K. Majumdar, it could not be said that the grant itself was to the appellant. The said Memorandum No. 3583-C, dated November 30, 1944 clearly showed that the Government had decided that in the case of posthumous grants allotment would be made to the heirs in the following order :

(a) the male lineal descendants of the deceased in the male line of descent.

It having not been in dispute that the appellant S. K. Majumdar was the male lineal descendant of the deceased Wg. Cdr. K. K. Majumdar, the allotment was to be made in his name and hence it was done so.

5. Section 19-DD of the Act which was inserted by the Punjab Act 12 of 1968 and was to be deemed always to have been inserted said :

Notwithstanding anything contained in this Act, where any land is granted for gallantry at any time before January 26, 1950 to any member of the armed forces, whether maintained by the Central Government or by any Indian State, then, so long as such land or, any portion thereof, as the case may be has not passed from the original grantee into more than three successive hands by inheritance or bequest, and is held by the grantee, or any of such hands, such land or portion, as the case may be, shall not be taken into account in computing the surplus area under this Act, nor shall any tenant of such land or portion have the right to purchase it under Section 18 :

Provided that where such land or portion has passed into more than three such hands and the person holding such land or portion, immediately before August 3, 1967, is a person to whom it has passed by inheritance or bequest, the exemption under this section shall apply, to such land or portion thereof, as the case may be, during the lifetime of such person.

6. From the language of this section and from the fact that the date of the award of the grant of the land for gallantry having been before January 26, 1950 so long as such land or, any portion thereof, as the case may be, had not passed from the original grantee into more than three successive hands

by inheritance or bequest and was held by the grantee, or any of such hands, such land or portion, as the case may be, should not be taken into account in computing the surplus area under the Act, nor shall any tenant of such land or portion have the right to purchase it under Section 18.

7. Mr. R. K. Garge the learned for the respondents, while not refuting the proposition of law, points out that the land in respect of which the respondents has obtained the order of purchase as tenant is not the land granted to Wg. Cdr. K. K. Majumdar for gallantry award. That land was in Layallpur and the suit land in respect of which the respondent acquired socially beneficial right of purchase is situate at village Dhogri Tehsil and District Jullundhur in the State of Punjab and as such if cannot be exempted under Section 19-DD. Dr. Chitale answers that this land was given a compensation for the gallantry award land left behind by the award family at Layallpur as a result of partition of the country and as such equity demands that privilege of exemption should be acquired by the compensation land. Besides, Dr. Chitale, submits, that equity is in favour of the appellant who has acquired the right to purchase as tenant in occupation after a long time.

8. We are referred to the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. It is an Act to provide for the payment of compensation and rehabilitation grants to displaced persons and for matters connected therewith. We have not been shown in it any provision to the effect that any land given as compensation to a displaced person for loss of gallantry award land may imbibe the convenient of exemption available under Section 19-DD of the Act. We are consequently of the view that there is no basis for holding that the exemption in respect of the gallantry award land will be available in respect of the land given under the Displaced Persons (Compensation and Rehabilitation) Act, 1954 as compensation for the loss thereof. We find no infirmity in the High Court judgment on this court.

9. Equity is being claimed by both the parties. Under the circumstances we have no other alternative but to let the loss lie where it falls. As the maxim is, 'in equally jure, melior est condition possidentis'. Where the equities are equal, the law should prevail. The respondent's right to purchase must, therefore, prevail.

10. In the result, this appeal fails and hence dismissed, but without any order as to costs. The stay order stands vacated.

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