

Smt. Kasturi (Dead) by Lrs

Vs

Gaon Sabha

Civil Appeal No. 351 of 1974

(Ranganath Misra, Kuldip Singh JJ)

27.07.1989

JUDGMENT

RANGANATH MISRA, J. -

1. This appeal is by special leave and the sole legal representatives of the original plaintiff is in appeal.
2. The plaintiff sued for declaration that inclusion of the disputed property in the land records of the respondent Gaon Sabha on the basis that it had vested under the provisions of the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act') was wrong, void and without jurisdiction and for a further declaration that she was entitled to bhumidari rights in the property under Section 11 of the Act. Her suit was decreed in the trial court and the said decrees was affirmed in appeal but at the instance of defendant 1, Gaon Sabha, the High Court in second appeal reversed the decrees of the courts below and dismissed the suit.
3. The suit was instituted on August 16, 1966. The decision of this Court in the cases of Hatti v. Sunder Singh ((1970) 2 SCC 841 : (1971) 2 SCR 163 : AIR 1971 SC 2320) settled the legal position that a claim under Section 11 of the Act for declaration of bhumidari right was not maintainable in the civil court in view of Section 185 of the Act read with schedule I and exclusive jurisdiction for adjudication of such claims vested in the appropriate Revenue Court. This position of law is not disputed before us. In regard to the relief of bhumidari rights the High Court had, therefore, rightly held that the plaintiff's suit was not maintainable.
4. The only other submission advanced on behalf of the plaintiff for our consideration is that the disputed property did not constitute 'land' as defined in Section 3(13) of the Act and, therefore, the right title and interest of the appellant as proprietor of the property was in no way affected by the provisions of the Act and the inclusion of the property in LR 2 was void, and liable to vacation.
5. In paragraph 4(d) of the plaint, plaintiff pleaded that the suit land was not 'land' and was not banjar (waste) and did not come within Section 154(1)(i) to (vii) of the Act and therefore, there was no vesting in law. The proprietor, according to the plaintiff, grew fuelwood and partly used the property as ghatwars and used the stones for building purposes.
6. The High Court has found that the property came within the definition of 'land' and therefore, was subjected to the legal incidence of the statutory provisions. Section 3(13) defines land to mean :

Land held or occupied for purpose connected with agriculture, horticulture or animal husbandry including pisciculture and poultry farming and includes -

(a) buildings appurtenant thereto,

(b) village abadis,

(c) grovelands,

(d) lands for village pasture or land covered by water and used for growing singharas and other produce or land in the bed of a river and used for casual or occasional cultivation....

7. The definition of land in the Act is wide and in paragraph 4(d) the admitted position is fuelwood was being grown on the property. 'Horticulture', 'garden' and 'groveland' in the absence of statutory definitions, would have the common parlance meaning. 'Horticulture', as the Shorter Oxford English Dictionary indicates means :

The cultivation of the garden.

'Garden', according to the dictionary, means :

An area of land, usually planted with grass, trees, flower beds, etc.; an area of land used for the cultivation of ornamental plants, herbs, fruit, vegetables, trees, etc.

A grove, as the dictionary puts it means : "A small wood; small woodland area or plantation". A land on which fuelwood is grown would constitute groveland.

8. In view of the inclusive definition of 'land', the finding of the High Court that the disputed property constituted land cannot be said to be wrong. Reliance was placed on the decision of the Punjab High Court in *Nemi Chand, v. Financial Commissioner, Punjab* (AIR 1964 Punj 373 : 66 Pun LR 278 : ILR (1964) 1 Punj 780) where the meaning of land in Punjab Security of Land Tenures Act was under examination and the court was called upon to decide whether banjar jadid and banjar came within the definition. For that purpose the meaning of land occurring in the Tenures Act and the Punjab Tenancy Act of 1987 was examined. The court also referred to the definition of land in Punjab Alienation of Land Act, 1900. In the presence of a definition in the Act under consideration, we find no justification to refer to definitions in different statutes for finding out whether the disputed was land.

9. Appellant's counsel also placed reliance on the decision of a Full Bench of the High Court in the case of *Rajinder Prashad v. Punjab State* (AIR 1966 Punj 185 : ILR (1966) 2 Punj 38 (FB)). Here again the question for consideration was whether gair mumkin land was laid within the Punjab Security of Land Tenures Act. For the reason indicated above, we do not think that the appellant is entitled to any support from the Full Bench judgment. Lastly, reliance was placed on the decision of this Court in *Munshi Ram v. Financial Commissioner, Haryana* ((1979) 1 SCC 471). The court was considering the true meaning of 'permissible area' under the Punjab Security of Land Tenures Act and for that purpose the meaning of land was being examined; whether banjar jadid should be excluded with reference to the meaning of the land under the East Punjab Displaced Persons (Land Settlement) Act and the Punjab Tenancy Act was being debated before the court. We do not think in view of the statutory definition any digression (sic digression) is necessary. It is impermissible to

rely on definitions containing meanings different from the definition under the Act for a proper resolution of the dispute. The High Court, in our opinion, came to the correct conclusion when it held that the disputed property constituted land under the Act and became liable to vest in the Gaon Sabha under the Act. The judgment of the High Court, therefore, is upheld and the appeal is dismissed. In the peculiar facts of this case the parties are directed to bear their respective in this Court.

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