

Fateh Singh And Another Etc vs Sewa Ram And Others Etc on 13 September, 1983

Equivalent citations: 1983 AIR 1093, 1983 SCR (3) 929, AIR 1983 SUPREME COURT 1093, 1984 (1) SCC 36

Author: A. Varadarajan

Bench: A. Varadarajan, D.A. Desai, O. Chinnappa Reddy

PETITIONER:
FATEH SINGH AND ANOTHER ETC.

Vs.

RESPONDENT:
SEWA RAM AND OTHERS ETC.

DATE OF JUDGMENT 13/09/1983

BENCH:
VARADARAJAN, A. (J)
BENCH:
VARADARAJAN, A. (J)
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1983 AIR 1093 1983 SCR (3) 929
1984 SCC (1) 36 1983 SCALE (2) 378

ACT:
Delhi Land Reforms Act, 1954 -S. 15 read with s. 13
Interpretation of Persons who can be declared Bhumidhars.-
Declaration of Bhumidhars mandatory -In spite of delay in or
absence of declaration the tenant entitled to acquire
Bhumidhari rights acquires those rights.

HEADNOTE:
A certain extent of land was acquired under the Land
Acquisition Act, 1894. The acquired land included a piece of
land which had been mortgaged by its owners and let out by
the mortgagee to a tenant who in turn had let out to the
first respondent in both the appeals. The Collector awarded
compensation to the land-owners. The first respondent
objected to the award on the ground that since he had

acquired the status of Bhumidhar under the Delhi Land Reforms Act, 1954 he was entitled to receive the entire compensation. On an application made by the first respondent the Collector made a reference to the District Judge. In the meantime in disposing of an application under s. 15 of the Delhi Land Reforms Act made by the land-owners for redemption of mortgage, the Revenue Assistant declared that the first respondent was Bhumidhar of the land which was in his possession as sub-lessee with effect from the date of commencement of that Act. The Additional District Judge held that the first Respondent was entitled to the entire compensation. The appeal filed by the land-owners was dismissed by the High Court. In this appeal the land-owners submitted that since they had redeemed the mortgage by resort to the provisions contained in s. 15(1) of the Delhi Land Reforms Act, they had become Bhumidhars under s. 15(2) of that Act and were, therefore, entitled to the entire compensation as Bhumidhars which was rightly paid by the Collector.

Dismissing the appeals,

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HELD: The first respondent is entitled to the Bhumidhar's portion of compensation. [937G]

Section 15(2) of the Delhi Land Reforms Act, 1954 says that if the proprietor mortgagor applies for redemption of the mortgage under sub-sec. (1) of sec. 15, he shall be declared as Bhumidhar only in respect of the mortgaged area which was in the personal cultivation of the mortgagee. In the present case, before the commencement of the Delhi Land Reforms Act, the mortgagee Ram Swarup had let the land in question to one Inder Singh and he in turn

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had sub-let the land to the first respondent Sewa Ram and he was in possession of the same on the date of commencement of that Act. Therefore, the appellants in Civil Appeal 1195 of 1970 as owners could not have become Bhumidhars in respect of that portion of land. [936 B-D]

Sub-sec. (4) of sec. 15 states that where any portion of the mortgaged land has been let out to tenants they shall be declared as Bhumidhars of the area let out to them. Therefore, the appellants in C. A. 1195 of 1970 could not in law have been declared as Bhumidhars under s. 15(2) of the Delhi Land Reforms Act when that land was admittedly under the cultivation of the first respondent Sewa Ram as subtenant under the mortgagee's tenant. [936 E-F]

Section 13(1) of the Act lays down that on the commencement of that Act, the Deputy Commissioner shall declare certain classes of tenants as Bhumidhars who shall, with effect from the same date, have all the rights and be subject to all the liabilities conferred or imposed upon Bhumidhars under that Act. There could be no doubt that the first respondent Sewa Ram would have acquired Bhumidhari rights under s. 13(1) of the Act on the date of its

commencement. Merely because there is some delay in the Deputy Commissioner or Revenue Assistant declaring a tenant as Bhumidhar under the provisions of the Act or because there is no such declaration at all the tenant entitled to acquire such rights under the Act from the date of its commencement cannot be said to have not acquired those rights having regard to the words of s. 13(2) of the Act which says that any person who acquires Bhumidhari rights under any provisions of this Act shall have all the rights and shall be subject to all the liabilities conferred or imposed upon Bhumidhars under this Act with effect from the date of acquisition of those rights. Subsections (2) and (4) of s. 15 cast an obligation on the Deputy Commissioner to declare as Bhumidhars persons who have become entitled to that right under the provisions of the Act by admission or acquisition under the provisions of the Act as Bhumidhars. [936 G; 937 A, D-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1195 & 1780 & of 1970.

Appeals by Special leave from the Judgment and order dated the 30th Day of January, 1970 of the Delhi High Court in Civil Regular First Appeal No. 55 and 56 of 1963.

B. Datta and H.K. Puri for the Appellant in CA. 1195/70.

V.D. Mahajon and M.C. Dhingra for Respondent. M.S. Gujaral, P.D. Sharma and Ms. Bani Gujaral for Respondent in CA. 1195 & Appellant in CA. 1780/70.

H.K. Puri for Respondent in CA. 1780/70.

V.D. Mahajan and M.C. Dhingra for Respondent in CA. 1780/70 The Judgment of the Court was delivered by VARADARAJAN, J. These appeals by certificate are directed against the judgment of a Division Bench of the Delhi High Court in Regular First Appeals 55 and 56 of 1963 filed against the judgment dated 24.7.1961 of the Additional District Judge, Delhi in reference made by the first respondent Sewa Ram under s. 18 of the Land Acquisition Act, 1894 which was treated as a reference under s. 32 of that Act. Pursuant to a notification issued under s. 4 of the Land Acquisition Act, 1894 in February or March, 1955, 2626 bighas and 14 biswas of land situate in Khampur village beyond Alipur on the Karnal road was acquired for the construction of a short-wave transmitter for the All India Radio. Various persons including the appellants in these appeals put forward claims for compensation, some of them claiming as owners of some pieces of the land, some as non- occupancy tenants and some as sub-tenants inducted by tenants or mortgagees. The Collector considered the claims and passed an Award dated 27.2.1965 and a supplementary Award dated 13.3.1965. Some of the tenants objected to the award of compensation to the landlords on the ground that under s.8 . Of the Delhi Land Reforms Act, 1954 they had acquired the status of Bhumidhars and as such were

entitled to receive the entire compensation in respect of the portion of land which was in their possession on the date of acquisition to the exclusion of the landlords. Thereupon, the Collector made a reference to the District Judge, Delhi under s. 32 of the Land Acquisition Act on 23.7.1956 in one case. The landlords contended before the Additional District Judge, before whom the Collector's reference came up for consideration that the tenants had no present right to receive any compensation. The Additional District Judge found on the basis of the tenants' application dated 28.10.1955 that they had sought only a declaration under s. 13 of the Delhi Land Reforms Act and that since the requisite declaration in their favour had not been made by the Deputy Commissioner to the effect that they have acquired bhumidhari rights under the Act they had no right to claim compensation for the lands in respect of which they claimed to be non-occupancy tenants. The Additional District Judge found that even if the allegation of the tenants that they had applied for grant of bhumidhari rights was correct they had no present right and they were, therefore not entitled to claim the compensation. Before the Single Judge of the High Court they took up the stand that the declaration under s. 14 of the Delhi Land Reforms Act had been issued and they had thus acquired bhumidhari rights, entitling them to the compensation. But they failed to prove that claim and had not produced any such declaration dated 23.6.1956 with retrospective effect from 20.7.1954 when the Delhi Land Reforms Act came into force. They did not produce any such declaration before the learned Judges who constituted the Division Bench in LPA Nos. 103 and 108 of 1960. The learned Judges, therefore, held that they were not entitled to assail the judgment of the Additional District Judge on a different ground in the Letters Patent Appeals. They agreed with the learned Single Judge that the tenants cannot lay claim to the compensation without proving their case that they have acquired bhumidhari rights and dismissed the appeals observing, however, that the observation of the Additional District Judge that it will not be difficult for the tenants to claim the compensation if they subsequently obtained the declaration regarding acquisition of bhumidhari rights with retrospective effect is correct.

The present appeals arise out of the judgment of a Division Bench of the Delhi High Court in Regular First Appeals 55 and 56 of 1963 which had been filed against the order of the Additional District Judge, Delhi in Land Acquisition Case 18 of 1959. Inder Singh and his brothers, appellants in C.A. 1780 of 1970 which arises out of RFA 55 of 1963, who had been recorded in the revenue accounts as owners of 196 bighas out Of the extent acquired had executed a possessory mortgage over that piece of land in favour of one Ram Swarup. The mortgagee Ram Swarup had leased that land to one Inder Singh who in turn had sub-leased that land to Sewa Ram, who is the first respondent in these two appeals. The owners, mortgagee, tenant and sub-tenant claimed compensation in respect of the said 196 bighas of land. The Delhi Land Reforms Act, 1954 came into force on 20.7.1954 prior to the date of notification made under s. 4 of the Land Acquisition Act. That Act provides for abolition of the zamindari system with the object of creating a uniform body of peasant proprietors without intermediaries and has brought about two categories of persons in relation to the lands, namely, Bhumidhars and Asamis. The sub-tenant Sewa Ram did not either claim any compensation before the Collector as Bhumidhar or challenge the claim of the owners for the compensation in respect of the said 196 bighas of land which was under his cultivation, but claimed compensation only for the extinguishment of his right as sub-lessee. The Collector found Sewa Ram to be in possession of that extent out of the acquired land and assessed the total compensation in respect thereof at Rs. 29,774.07 and awarded that amount to the owners and only a

sum of Rs. 500 to Sewa Ram as compensation for the extinguishment of his rights as sub-lessee and paid those amounts to the owners and Sewa Ram on 19.3.1956. But the other claimants 35 to 56 before the Collector who were tenants of some other extents out of the acquired land claimed compensation in respect of those extents on the ground that they were prospective bhumidhars under the Land Reforms Act and challenged the rights of the owners to claim any share in the compensation. This claim gave rise ultimately to LPA Nos. 103 and 108 of 1960 referred to above. The first respondent Sewa Ram who had received only Rs. 500 on 19.3.1956 as compensation for the extinguishment of his rights as sub-lessee made an application before the Collector on 1.5.1956 for a reference being made to the Civil Court under s. 18 of the Land Acquisition Act. Then he claimed that he was entitled to the entire compensation as Bhumidhar or to at least a sum of Rs- 17,000 on account of improvements effected by him. The Collector made the reference under s. 18 of the Land Acquisition Act to the District Judge, Delhi on 4.5.1959 in this case. Meanwhile, an application under s. 15 of the Delhi Land Reforms Act, 1954 was made by the owners for redemption of the possessory mortgage executed in favour of Ram Swarup before the Revenue Assistant, Delhi who disposed of that application on 20.7.1959 declaring that the sub-tenant Sewa Ram was Bhumidhar of the said 196 bighas of land which was in his possession as sublease with effect from the date of commencement of the Delhi Land Reforms Act, 1954. The Additional District Judge treated the reference under s. 18 as one under s. 32 of the Land Acquisition Act and issued notices to the owners who had already received the compensation of Rs. 29,774.07 on 19.3.1956 and ultimately held that the first respondent Sewa Ram was entitled to the entire compensation and passed a decree for payment of that amount to him against the owners of that portion of the land and the Union of India for whose benefit the acquisition was made. The owners and the Union of India filed RFA 55 of 1963 and RFA 56 of 1963 respectively challenging that decree.

The first point raised by the owners before the High Court was that the Revenue Assistant, Delhi who had issued the Bhumidhari Certificate to Sewa Ram had not been empowered by the Chief Commissioner to exercise the powers of a Deputy Commissioner in that behalf and, therefore, the certificate was not valid in law. This contention was rejected by the learned Judges of the High Court on the ground that the definition of Deputy Commissioner in s. 3 (6) of the Delhi Land Reforms Act, as it stood then, included a Collector and a Revenue Assistant, and they held that the Revenue Assistant was competent to declare the sub-tenant Sewa Ram as Bhumidhar under the provision of the Act. The learned Judges rejected the second contention raised by the owners that the sub-lessee's application under s. 18 of the Land Acquisition Act was barred by time. The third contention raised by the owners was that as the notification under s. 4 of the Land Acquisition Act was made after the date of commencement of the Delhi Land Reforms Act, the provisions of the latter Act would not apply in respect of the compensation payable for the acquired land. This contention was also rejected by the learned Judge of the Delhi High Court. The fourth contention urged on behalf of the owners was that as the sub-tenant Sewa Ram had not made any claim for compensation before the Collector as Bhumidhar or as a prospective Bhumidhar, he was not entitled to claim any compensation subsequently as Bhumidhar. This contention also was rejected by the learned Judges of the High Court on the ground that by operation of law the sub-tenant became Bhumidhar from the date of commencement of the Delhi Land Reforms Act, which was prior to the date of notification issued under s. 4 of the Land Acquisition Act. The fifth contention raised by the owners was that the decision of the Additional District Judge Delhi dated 8.12.1956 which culminated in the

decision of the High Court in the aforesaid LPA 103 of 1960 constituted resjudicata. That contention was rejected on the ground that the sub-tenant Sewa Ram was not a party to that decision, and he is, therefore, not bound by it. None of these five objections was urged before us by the learned counsel for the appellants in both the appeals.

The only contention urged before us was a part of the last contention urged before the learned Judges of the High Court, namely, that the Additional District Judge could not have passed the decree for a sum of Rs 29,774.07 against the owners much less the Union of India. The learned Judges allowed RFA 56 of 1963 filed by the Union of India on the ground that before the amount was actually paid to the owners on 19.3.1956 the sub-tenant Sewa Ram did not make any claim to the compensation as Bhumidhar or as prospective Bhumidhar. In so far as the sub-tenant Sewa Ram is concerned, the learned Judges of the High Court held that he had been declared to be the Bhumidhar with effect from the date of commencement of the Delhi Land Reforms Act, 1954 in respect of the said 196 bighas of land and he was entitled to the compensation of Rs. 29,774.07. They dismissed RFA 55 of 1963 filed by the owners. Hence these appeals by certificate.

Mr. B. Datta, Senior Counsel appearing for the appellants in C.A. 1195 of 1970, admitted that the first respondent Sewa Ram was in actual possession of the said 196 bighas of land on the date of the notification under s. 4 of the Land Acquisition Act made after the date of commencement of the Delhi Land Reforms Act, 1954 as sub-tenant who had been inducted by the tenant to whom the land had been leased by the mortgagee Ram Swarup and submitted that subsequent to the notification under s. 4 of the Land Acquisition Act the mortgagors had redeemed the mortgage by resort to the provisions contained in s. 15 (1) of the Delhi Land Reforms Act within the period of nine months prescribed therefor and had thus become Bhumidhars under s. 15 (2) of that Act and they are, therefore, entitled to the aforesaid sum of Rs. 29,774.07 as Bhumidhars and were rightly paid by the Collector on 19.3.1956.

Sections 15 (1) and (2) of the Delhi Land Reforms Act, 1954 read thus:

"15 (1) A mortgagee in possession of an estate or share therein shall cease to have any right in such estate or share, if the proprietor mortgagor deposits the mortgage money together with interest thereon in Government treasury and applies for redemption of the mortgage in the proper court, within a period of nine months from the commencement of this Act. (2) If the proprietor mortgagor deposits the amount and applies for redemption as provided in sub-

section (1), he shall be declared as Bhumidhar in respect of the mortgaged area which was under the personal cultivation of the mortgagee on the date of such application for redemption and, if any part of the mortgaged area was on the said date let out to a tenant, such tenant shall be declared as Bhumidhar in respect of the area that was so let out to him."

Sub-section (4) of s. 15 which has to be noticed, reads thus:

"15 (4) Where the area mortgaged or part thereof is let out to tenants, the mortgagee shall be declared as the Bhumidhar of the part under his personal cultivation and the tenants shall be declared as Bhumidhars of their respective areas let out to them".

The argument of Mr. Datta overlooks the important part of s. 15(2) of the Delhi Land Reforms Act which says that the mortgagor shall be declared as Bhumidhar only in respect of the mortgaged area which was in the personal cultivation of the mortgagee when he submitted that the owners became Bhumidhars of the land under the provisions of s. 15 (2) of the Act. It is common ground that before the commencement of the Delhi Land Reforms Act, the mortgagee Ram Swarup had let the land in question to one Inder Singh and he in turn had sub-let the land to the first respondent Sewa Ram and he was in possession of the same on the date of commencement of that Act. Therefore, the appellants in C.A.1195 of 1970 as owners could not have become Bhumidhars in respect of that portion. If they had obtained any such declaration under s. 15 (2) of the Delhi Land Reforms Act, it could have been only by misleading the Court to believe that the said portion was under the personal cultivation of the mortgagee and not in the possession of any tenant under the mortgage or his sub-tenant. The argument of Mr. Datta also overlooks the provisions of sub-section (4) of s. 15 which states that where any portion of the mortgaged land has been let out to tenants they shall be declared as Bhumidhars of the area let out to them. Therefore, the appellants in C.A. 1195 of 1970 could not in law have been declared as Bhumidhars under s. 15 (2) of the Delhi Land Reforms Act when that land was admittedly under the cultivation of the first respondent Sewa Ram as sub-tenant under the mortgagee's tenant. Section 13 (1) of the Delhi Land Reforms Act lays down that on the commencement of that Act, the Deputy Commissioner shall declare certain classes of tenants as Bhumidhars who shall, with effect from the same date, have all the rights and be subject to all the liabilities conferred or imposed upon Bhumidhars under that Act. An occupancy tenant, except a tenant under s. 5 of the Punjab Tenancy Act, 1887, and a non-occupancy tenant who pays rent at the revenue rates with or without Malikhana are two of the categories of tenants mentioned in s. 13 (1) of the Act. It has been contended before us by the learned counsel for the appellants in both the appeals that the first respondent Sewa Ram would not fall under any of these two categories of tenants or that any distinction has been made in the Delhi Land Reforms Act between a tenant and a sub-tenant. Therefore, there could be no doubt that the first respondent Sewa Ram would have acquired bhumidhari rights under s. 13 (1) of the Act on the date of its commencement. Section 15 (2) of the Act was no doubt substituted by s. 7 of the Central Act IV of 1959 for the original sub-section. It has not, however, been contended before us that sub-section (4), as substituted, will not have effect from the date of commencement of the principal Act, namely, 20.7.1954. Section 13 (2) of the Act says that "every person, who after the commencement of this Act is admitted to land as Bhumidhar or who acquires Bhumidhari rights under any provisions of this Act, shall have all the rights and be subject to all the liabilities conferred or imposed upon Bhumidhars under this Act with effect from the date of admission or acquisition, as the case may be". The present case before us is one of the tenant acquiring bhumidhari rights under the Act on the date of its commencement and not of his being admitted to Bhumidhari rights after the date of commencement of the Act. Merely because there was some delay in the Deputy Commissioner or Revenue Assistant declaring a tenant as Bhumidhar under the provisions of the Act or because there is no such declaration at all the tenant entitled to acquire such rights under the Act from the date of its commencement cannot be said to have not acquired those rights having regard to the words of s. 13 (2) of the Act which says

that any person who acquires bhumidhari rights under any provisions of this Act shall have all the rights and shall be subject to all the liabilities conferred or imposed upon Bhumidhars under this Act with effect from the date of acquisition of those rights. Sub-sections (2) and (4) of s. 15 cast an obligation on the Deputy Commissioner to declare as Bhumidhars persons who have become entitled to that right under the provisions of the Act by admission or acquisition under the provisions of the Act as Bhumidhars. In these circumstances, it is not possible to accept the contention of Mr. Datta that the appellants in C.A. 1195 who were owners, have become Bhumidhars by reason of redemption of the mortgage under the provisions of s. 15 (1) of the Act and that the first respondent Sewa Ram will not be entitled to the Bhumidhar's portion of the compensation.

Mr. M.S. Gujral, Senior Counsel appearing for the appellants in C.A. 1780 of 1970 submitted that Inder Singh and Bhagwati Prasad alone has received the sum of Rs. 29,774.07 and, therefore, they alone should be made liable to pay that amount to the first respondent if the appellants fail to succeed in these appeals. Inder Singh is the third respondent in C.A. 1195 of 1970 and the first appellant in C.A. 1780 of 1970. Bhagwati Prasad is the second appellant in C.A. 1195 of 1970, and fourth respondent in C.A. 1780 of 1970. They were respondents 2 and 4 in LPA 103 of 1960. There is no doubt an admission of these two persons that in a partition the portion which was under the cultivation of the first respondent Sewa Ram had been allotted to their share and that consequently they alone had received the compensation of Rs. 29,774.07. But that is a matter between the appellants in these appeals and those two persons Inder Singh and Bhagwati Prasad. It cannot bind the first respondent Sewa Ram. Therefore, the request of Mr. Gujral cannot be complied with.

The appeals fail for the reasons mentioned above and are dismissed with the first respondent's costs. Advocate fee one set.

H.S.K.

Appeals dismissed.