

Sailen Krishna Majumdar vs Malik Labhu Masih (Deceased) ... on 21 February, 1989

Equivalent citations: 1989 AIR 1596, 1989 SCR (1) 817, AIR 1989 SUPREME COURT 1596, 1989 SCFBRC 191, 1989 PUNJ LJ 545, (1990) 1 RRR 165, (1989) 1 JT 361 (SC), 1989 SCC (SUPP) 1 302

Author: K.N. Saikia

Bench: K.N. Saikia, G.L. Oza

PETITIONER:
SAILEN KRISHNA MAJUMDAR

Vs.

RESPONDENT:
MALIK LABHU MASIH (DECEASED) REPRESENTEDBY SMT. JASSI & ORS.

DATE OF JUDGMENT21/02/1989

BENCH:
SAIKIA, K.N. (J)
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SAIKIA, K.N. (J)
OZA, G.L. (J)

CITATION:
1989 AIR 1596 1989 SCR (1) 817
1989 SCC Supl. (1) 302 JT 1989 (1) 361
1989 SCALE (1)461

ACT:
Displaced Persons (Compensation & Rehabilitation) Act, 1954: Exemption in respect of gallantry award land-Whether available in respect of land allotted under this Act.
Punjab Security of Land Tenures Act, 1953: Sections 9, 14A, 18 and 19DD--Grant of land for gallantry before January 26, 1950--Whether to be taken in account in computing surplus area.
Practice and Procedure: Whether equities are equal--Law should prevail.
Word and Phrases: 'In aequali jure, melior est conditio possidentis'--Meaning of.

HEADNOTE:

The father of the appellant was conferred a gallantry award posthumously by the Government wherewith a piece of land situated in Lyallpur district was granted to him, and was allotted to the appellant who took possession on July 24, 1947. Consequent to the partition of the country the family migrated to India where the Government allotted about 69 standard acres of land in Jullundur district as compensation for the land left behind in Pakistan. Out of this land 19 standard acres came under the possession of the respondent as a tenant.

On February, 1961 the respondent filed an application under s. 18 of the Punjab Security of Land Tenures Act, 1953 to the Assistant Collector stating that he was a tenant in respect of the aforesaid land and should be granted permission to purchase the same. The Assistant Collector granted the requisite permission subject to the payment of Rs.21,007.88P in ten equal half yearly instalments. The appellant appealed to the Collector who upheld the permission to purchase, but enhanced the amount payable to the appellant as landlord.

During the pendency of these proceedings the appellant moved an application under s. 9 read with s. 14A of the Act for ejectment of the

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respondent and obtained an order on 27th September, 1961.

The respondent moved a revision petition before the Commissioner in the proceedings initiated under s. 18 of the Act, and the Commissioner made a recommendation to the Financial Commissioner for setting aside the orders of the Assistant Collector and the Collector allowing the purchase of land by the respondent on the ground that the application of the appellant for the ejectment of the respondent had since been allowed. The Financial Commissioner, set aside the order of purchase. The respondents' writ petition challenging this order was allowed and the High Court quashed that order on 30th August, 1966.

On July 3, 1970 the appellant filed a suit against the respondent for possession of the land contending that the respondent had entered on a part of land as tenant and subsequently applied for the purchase of the land under s. 18, but by virtue of s. 19 DD of the Act inserted on August 3, 1968 with retrospective effect, the suit property of gallantry award was exempted from the provisions of the Act. The Trial court dismissed the suit. The order was affirmed in appeal by the Additional District Judge, and the second appeal to the High Court was also dismissed holding that s. 19 DD of the Act was applicable to the suit land and the tenant could purchase it under s. 18.

In the appeal to this Court, it was contended on behalf of the appellant that the High Court was in error in holding that the land in question having been granted to the appellant, the landlord in the year 1946 the same could not be said to be covered by the provisions of s. 19 DD of the

Punjab Security of Land Tenures Act, 1953. It was also contended that equity is in favour of the appellant as the land was as compensation for the gallantry award land left by the awardee family at Layallpur as a result of partition of the country, and that the privilege of exemption should be acquired by the compensation land, and that the appellant has acquired the right to purchase as a tenant in occupation after a long time.

Dismissing the appeal, the Court,

HELD: 1.1. From the language of s. 19 DD of the Punjab Security of Land Tenures Act, 1953 which was inserted by the Punjab Act No. 12 of 1968 and from the fact that the date of the award of the grant of the land for gallantry having been before the 26th day of January, 1950 so long as such land or, any portion thereof, had not passed from the original grantee into more than three successive

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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 s. 18 .
[822C-D]

1.2. 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. There is no infirmity in the High Court judgment on this Court. [823A-B]

1.3. Equity is being claimed by both the parties. Under the circumstances there is no other alternative but to let the loss lie where it falls. As the maxim is, 'in aequali jure, melior est conditio possidentis' Where the equities are equal, the law should prevail the respondent's right to purchase must, therefore, prevail. [823B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2 193 of 1982.

From the Judgment and Order dated 29.5.1980 of the Punjab and Haryana High Court in Regular Second Appeal No. 706 of 1973.

Dr. Y.S. Chitale and Ashok Grover for the Appellant. R.K. Garg and D.K. Garg for the Respondents. The Judgment of the Court was delivered by K.N. SAIKIA, J. 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. 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 gallantary 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 respondent Malik Labhu Masih (now deceased) as a tenant.

On February 26, 1961 Malik Labhu Masih 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 15th January, 1962 the said Labhu Masih was granted the requisite permission subject to the payment of Rs.21,007.88 P. in 10 equal half yearly instalments of Rs.2100.80 P. 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 P. During the pendency of the said proceedings the appellant moved an application under section 9 read with section 14A of the Act for ejectment of the respondent and obtained an order on 27th September, 1961. The respondent 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 respondent on the ground that the application of the appellant for ejectment of the respondent had since been allowed. The Financial Commissioner accordingly set aside the order of purchase. The respondent impugned that order in the High Court of Punjab and Haryana in writ petition No. 1158 of 1963 and the High Court quashed that order on 30th August, 1966. On July 3, 1970 the appellant filed a suit against the respondent for possession of the lands contending that the respondent 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 the land under section 18 of the Act and the orders passed by the Assistant Collector as also of High Court were nullity and the respondent was consequently liable to be ejected. The trial court dismissed the suit. The appellant's appeal therefrom was also having been dismissed by the Additional District Judge Jullundhur, the appellant preferred second appeal to the High Court of Punjab and 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. Dr. Y.S. Chitale the learned counsel for the appellant submits that the High Court was in error in holding that 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 the 30th March, 1946 from D.S.D. to the Commissioner, Lahore, Rawalpindi and Multan Divisions 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 30th November, 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 been said that the grant itself was to the appellant. The said Memorandum No. 3583-C dated 30th November, 1944 clearly showed that the Government had decided that in the case of posthumous grants allotments would be made to the heirs in the following order:

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

I, 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.

Section 19 DD of the Act which was inserted by the Punjab Act No. 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 the 26th day of January, 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 on 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 the 3rd August, 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 life time of such person."

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 the 26th day of January, 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 on 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.

Mr. R.K. Garg the learned counsel for the respondents, while not refuting the proposition of law, points out that the land in respect of which the respondent 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 situated at village Dhogri Tehsil and District Jullundhur in the State of Punjab and as such it cannot be exempted under section 19 DD. Dr. Chitale answers that this land was given as compensation for the gallantry award land left behind by the awardee 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.

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 imbibed the benefit 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 count.

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 aequali jure, melior est conditio possidentis'. Where the equities are equal, the law should prevail. The respondent's right to purchase must, therefore, prevail.

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

N.V.K.

Appeal dismissed.