Gaon Sabha And Anr vs Nathi And Ors on 23 March, 2004

Equivalent citations: AIRONLINE 2004 SC 643

Author: G.P. Mathur

Bench: S. Rajendra Babu, Ar. Lakshmanan, G.P. Mathur

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           CASE NO.:
Appeal (civil)  3105 of 1997

PETITIONER:
GAON SABHA AND ANR.

RESPONDENT:
NATHI AND ORS.

DATE OF JUDGMENT: 23/03/2004

BENCH:
S. RAJENDRA BABU & DR. AR. LAKSHMANAN & G.P. MATHUR

JUDGMENT:
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JUDGMENT 2004(3) SCR 354 The Judgment of the Court was delivered by G.P. MATHUR, J. Civil Appeal No.3105 of 1997 has been preferred by Gaon Sabha and another against the judgment and decree dated 7.11.1991 of Delhi High Court in RFA No. 209 of 1986. Civil Appeal No. 2183 of 1993 has been preferred by Union of India and another against the judgment and decree dated 30.5.1991 of Delhi High Court in RFA No. 167 of 1986. The controversy involved in both the appeals is identical and, therefore, they are being disposed of by a common order. Civil Appeal No. 2183 of 1993 was initially allowed by this Court on 7.2.1997 but the order was recalled on 25.7.2003 on the ground that some of the respondents had died and their heirs had not been brought on record when the matter was heard and decided at the earlier stage.

2. We will mention the facts CA No. 3105 of 1997 which has been preferred by Gaon Sabha and Union of India against Nathi and 38 others. Proceedings for acquisition of a large tract of land were initiated by issuing notifications under Section 4(1) and 6 of the Land Acquisition Act. The Collector made an award but a dispute arose regarding the right to receive compensation between the Gaon Sabha and the private respondents. He accordingly made seven references for decision of the Court under Section 30 of Land Acquisition Act. The learned Additional District Judge decided all the seven references by common judgment and order dated 22.2.1986 wherein he held that it was the Gaon Sabha which was entitled to receive the compensation amount and not the private respondents. Being aggrieved by the aforesaid award decree of the Addl. District Judge, Nathi and others preferred RFA No. 209 of 1986 before Delhi High Court. The High Court, following its earlier judgment and decree dated 30.5.1991 in RFA no.167 of 1986 given in the case of Sher Singh and Ors. allowed the appeal on 7.11.1991 by a short order and held that respondents were entitled to entire

amount of compensation and not the Gaon Sabha. It is this judgment and decree which is subject matter of challenge in the present appeal which has been preferred by Gaon Sabha and Union of India.

3. In view of the fact that the impugned judgment does not deal with the controversy raised and the High Court has allowed the appeal only on the basis of its earlier judgment rendered in the case of Sher Singh and Ors. in RFA no. 167 of 1986, it becomes necessary to look to the reasoning given for deciding the said matter. Even otherwise the judgment and order dated 30.5.1991 in RFA no. 167 of 1986 is under challenge in CA No. 2183 of 1993 filed by Union of India.

4. The land in dispute is situate in village Tekhand and in Khasra girdwari it was recorded as Gair Mumkin Pahar. The case of Gaon Sabha was that the land being Gair Mumkin Pahar it had had vested in it under the Delhi Land Reforms Act, 1954 (hereinafter referred to as 'the Act'), that it was in possession over the land when the same was acquired and that the government took possession of the land from the Gaon Sabha. The respondents herein (private parties) pleaded that as the land was Gair Mumkin Pahar it could not vest in the Gaon Sabha and they were owners/proprietors of the same. Sher Singh and Ors. further submitted that there had been a prior litigation regarding title of the land in dispute in the civil court wherein a decree had been passed in their favour. The Gaon Sabha however relied upon a judgment dated 8.12.1982 of Delhi High Court (Justice M.L. Jain) in CWP No. 1019 of 1972 wherein it was held that land recorded as Gair Mumkin Pahar is waste land which would vest in the Gaon Sabha. The Addl. District Judge chose to follow the later judgment delivered in the write petition and further held that in the civil suit ultimately the High Court in second appeal (RSA no. 73 of 1972) had remanded the matter for fresh consideration- by the Deputy Commissioner and as such there was no final determination of the rights of the property. Accordingly it was held that the Gaon Sabha was entitled to entire amount of compensation and the private respondents were not entitled to get anything and their claim was rejected. Against the decision of the Addl. District Judge dated 22.2.1986 in LAC No. 257 of 1984 Sher Singh and Ors. preferred RFA no. 167 of 1986 in the High Court. The High Court in this case basically relied upon the civil suit filed by Nathan and Ors. which came to be decided in RSA no. 73 of 1972 on 22.05.1980 and also upon an earlier decision taken by the same Branch in RFA no.332 of 1968 (Union of India and Anr. v. Mamleshwar Prasad and Ors.) and held that the order of vesting of the disputed land in Gaon Sabha was not correct and the private respondents were the owners of the land. The appeal was accordingly allowed, the award decree of the Addl. District Judge was set aside and the respondents were held to be entitled to the compensation amount.

5. Since the High Court has based its judgment mainly upon the earlier civil suit, it is necessary to refer to the same and take note of the decision finally rendered therein in the second appeal.

6. The Deputy Commissioner had passed an order under section 7 (2) of the Act vesting the land in the Gaon Sabha. Nathan and Ors. on their own behalf and on behalf of the co-sharers of Thok Didhori filed a suit in the Court of senior Sub-Judge, Delhi seeking a declaration that the vesting of the land in Khewat no. 36/312 in the Gaon Sabha Tekhand was illegal and void and had no effect on the rights of the plaintiffs and other co-sharers. The plaintiffs claimed that they were proprietors in the possession of land which was shown as Gair Mumkin Pahar and banjar qadim in khasra girdwari

in the year 1953-54. Alternatively the plaintiffs claimed that they were in cultivatory possession of the land and accordingly became Bhumidhar thereof further as the land was Gair Mumkin Pahar it could not vest in the Gaon Sabha. The Gaon Sabha contested the suit on various grounds and one of the important pleas taken was that the civil Court had no jurisdiction to try the suit in view of section 185 of the Act. The trial Court held that the civil Court had jurisdiction to try the suit and further that the order of the Revenue Assistant vesting the land in the Gaon Sabha was without jurisdiction. The appeal preferred by Gaon Sabha was initially allowed and the suit was dismissed but subsequently the judgment was reviewed and the decree of the trial Court was affirmed. The Gaon Sabha carried the matter in second appeal (RSA No. 73 of 1972) and urged that the civil court had no jurisdiction to try the suit and that the Gaon Sabha was the owner in possession of the disputed land. The second appeal was however dismissed by a learned Single Judge of the High Court (Justice D.K. Kapur) on 22.5.1980 and the operative portion of the order, which has a bearing on the controversy in dispute, is being reproduced below :

> "It does not mean that the Deputy Commissioner cannot re-decide the matter. In fact, he should re-consider the question and hear the parties to determine whether the order is in accordance with the law.
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> Now turning to the effect of this reasoning in this appeal, I would hold that the courts below were perfectly right in holding that the order under challenge is beyond the scope of the Act and is, therefore, ultra vires and liable to be quashed. The grant of a declaration to this effect is entirely called for in the circumstances of this case. However, I would also like to clarify that this does not by any means end the matter. The Deputy Commissioner is authorised to reconsider the matter and decide the same after giving the parties opportunity of being heard and after considering the facts of the case it can be determined whether the land in question is waste land or land of common utility which was divested from the proprietors and was to vest in the Gaon Sabha. It would be open for the Deputy Commissioner to also find whether the land or any part thereof is within the holding of anyone of the individual proprietors. In the present case as very large area of land is involved and the suit is a representative suit on behalf of many persons, it may be that part of the land is waste land, part of the land is under proprietory cultivation and part of the land is not covered by the definition of 'waste land' or 'land of common utility', or it may be that all the land is not covered by the definition. As these facts have to be ascertained and have not been ascertained, the order has to be struck down but leaving the Deputy Commissioner to re-decide the matter.
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> I would accordingly dismiss the appeal but the direction just set out will allow the Deputy Commissioner to re-examine the question so that the real and the true legal rights of the parties in the suit are fully established. The parties will bear their own costs in this Court.
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> (Emphasis supplied)

7. The learned judges in their judgment dated 30.5.1991 in RFA Mo.167 of 1986 have also quoted a passage from another judgment of theirs in RFA No. 332 of 1968 (Union of India v. Mamleshwar Prasad and Ors.) and as it has some relevance, it is being reproduced below:

> "Reading the definition of the "holding" as mentioned aforesaid and the provisions of Sections 7 and 154 of the Act, the learned Additional District Judge was of the view that the definition of holdings given in section 3 (11a) would not be applicable. Section 3 which deals with the definitions starts with the words unless the context otherwise requires. This is now being objected to by the Union of India. But we find that if we literally apply the definition of holding as given in clause (11a) of section 3 it will certainly lead to absurdity while finding out as to what the waste land would be in explanation to section 7 of the Act. As noted above, waste land would not be included in the holdings of such proprietor or proprietors. We are , thus of the view that land other than "khud khast"

of the holding of the individual proprietor did not vest in Gaon Sabha because it has not been treated as waste land by virtue of exception provided under clause (1)(a) of Explanation of section 7 read with definition of holding in the Punjab Land Revenue Act, 1987. Further same mode for purposes of vesting waste land in Gaon Sabha has been adopted for purposes of Section 154 of the Act."

On the aforesaid basis and also the decision in RSA no. 73 of 1972 it was held that the disputed land could not be described as waste land within the meaning of explanation to section 7(1) of the Act and, therefore, the order vesting the land in Gaon Sabha was not correct and Slier Singh and Ors. (appellants before the High Court) were held entitled to the compensation amount.

8. We have heard Shri Mukul Rohtagi, Addl. Solicitor General and Shri Saurabh Kirpal, for the appellants and several counsel who appeared for various respondents in considerable detail and have given our anxious consideration to the controversy in hand. With respect, we find a complete misdirection on the part of the High Court in holding that the private respondents are the proprietors of the land and that they are entitled to receive the entire amount of compensation.

9. The main plank of the respondents is that the disputed land was recorded as Gair Mumkin Pahar and consequently it could not vest with the Gaon Sabha and the order of the Deputy Commissioner passed under section 7 (2)of the Act is wholly illegal and without any authority of law. They further rely upon the decision of the civil suit and contend on its basis-that the matter attained finality and the same would operate as res judicata between the parties. The plea of the Gaon Sabha is that the disputed land was not in the holding of the private respondents and they had no rights over the same and further that the same had vested with the Gaon Sabha itself which had become owner thereof and was thus entitled to receive the entire amount of compensation. In order to judge the validity of the pleas taken by the parties, it is necessary to examine the issue with reference to Delhi Land Reforms Act. Section 3 of the Act gives the definitions and sub-section (11a) and (12A) thereof and Sections 4 and 5 of the Act are being reproduced below:

(11a) "holding"means-(a) in respect of -(i) Bhumidhar or Assami; or

(ii) tenant or sub-tenant under the Punjab Tenancy Act, 1887, or the Agra Tenancy Act, 1901; or

(iii) lessee under the Bhoodan Yagna Act, 1955-

A parcel or parcels of land held under one tenure, lease; engagements or grant; and

(b) in respect of proprietors, a parcel or parcels of land held as sir or Khud-khast";

(12A) "Khudkhast" means land (other than Sir) cultivated by a proprietor either by himself or by servants or by hired labour:-

(a) at the commencement of this Act, or

(b) at any time during the period of five years immediately before the commencement of this Act, whether or not it was so cultivated at such commencement, provided that it has not, at any time after having been so cultivated, been let out to a tenant.

Section (4) (1) There shall be, for the purposes of this Act, only one class of tenure-holder; that is to say, 'Bhumidhar' and one of class of sub-tenure holder, that is to say, 'Asami', (2) Tenure-holder means a person who holds land directly under and is liable to pay land revenue for that land to the State, and sub-tenure holder is a person who holds land from a tenure-holder or Gaon Sabha and is liable to pay rent therefore to the tenure-holder or a Gaon Sabha:

Provided.....(omitted as not relevant) Section 5 Bhumidhar - Every person belonging to any of the following classes shall be a Bhumidhar and shall have all the rights and be subject to all the liabilities conferred or imposed upon a Bhumidhar by or under this Act, namely:-

(a) a proprietor holding Sir or Khukhast land, a proprietor's grove holder, an occupancy tenant under Section 5 of the Punjab Tenancy Act, 1887, paying rent at revenue rates or a person holding land under Patta Dawami (or Istamrari) with rights of transfer by sale, who are declared Bhumidhars on the commencement of this Act;

(b) every class of tenants other than those referred to in clause (a) and sub-tenants who are declared Bhumidhars on the commencement of this Act; or

(c) every person who, after the commencement of this Act, is admitted to land as Bhumidhar or who acquires Bhumidhari rights under any provisions of the Act.

Section 6 defines 'Asami' and is lays down that every person belonging to any of the classes mentioned in the section shall be an 'Asami' and shall have all the rights and be subject to all the

liabilities conferres or imposed upon an Asami by or under the Act. Sections 11 and 15 of the Act enumerate the classes of the person who may be declared as Bhumidhars. Section 154 is important and provides for vesting of certain lands etc. in the Gaon Sabha .Sub-section (1) of this sections is reproduced below:

> "Section 154 - Vesting of certain lands etc., in Gaon Sabha-(1) On the commencement of this Act-
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> (i) all lands whether cultivable or otherwise, except land for the time being comprised in any holding or grove,
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> (ii) all trees, other than trees in a holding or on the boundary thereof or in a grove or abadi (or planted by a person other than a proprietor on land other than land comprised in is holding),
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> (iii) Public wells, (iv) fisheries,
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> (v) Hats, bazars and meals except hats, bazars and meals held on land to which provisions of clauses (c) to (e) of sub-section (1) of section 11 apply,
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> (vi) tanks, ponds, water channels, pathways and abadisites,
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> (vii) forests, if any; situate in a Gaon Sabha Area, shall vest in Gaon Sabha :
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> Provided that if the uncultivated area situate in any Gaon Sabha is, in the opinion of the Chief Commissioner, more than the ordinary requirements of the Gaon Sabha, he may exclude any portion of the cultivated area from vesting in the Gaon Sabha under this section and may make such incidental and consequential orders as may be necessary.
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> (10) The effect of Section 154 (1) is that all lands and all other kinds of properties enumerated therein shall vest in the Gaon Sabha on the commencement of the Act, with an exception that land for the time being comprised in any holding or grove shall not so vest and in such land in view of section 4, Bhumidhar's or Asami's right would accrue . The proprietors ceased to exist with effect from the commencement of the Act.

Ownership rights have also been conferred over all private wells in or outside holdings, tanks, groves and abadis, all trees in abadi and all buildings situate within the limits of an estate belonging to or held by a proprietor tenant or other person by virtue of Section 8 of the Act. The scheme of the Act and also the creation of rights thereunder' has been examined by this Court in Hatti v. Sunder Singh. [1970] 2 SCC 841 and relevant part of para 3 of the Report where this matter has been discussed is being reproduced below:

> ".....Sections 6,11,13 and 154 of the Act read together, thus, show that, after the Act came into force, proprietors of agricultural land as such ceased to exist. If any land was part of a holding of a proprietor, he became a Bhumidhar of it. If it was part of a holding of some other person, such as a tenant or a sub-tenant etc., he became either a Bhumidhar or an Asami, whereupon the rights of the proprietor in that land ceased. Lands, which were not holdings of either the proprietor or any other person, vested in the Gaon Sabha. In the case of proprietors, their rights in the land continued to exist only in respect of holdings which, under the definition, must have been either their Sir or Khudkasht at the commencement of the Act. If it was not Sir or Khudkasht of a proprietor, it would not be his holding and consequently, such land would vest in the Gaon Sabha under Section 154, the result of which would be that the rights of the proprietor would be extinguished. It appears that it was in view of this scheme of the Act that, under Section 84, the right to institute a suit for possession was granted only to a Bhumidhar, or an Asami, or the Gaon Sabha. The Act envisaged only these three classes of persons who would possess rights in agricultural land after the commencement of the Act. Proprietors as such having ceased to exist could not therefore, institute a suit for possession. This aspect of the case has been lost sight of by the High Court and the lower courts, because it appears that their attention was not drawn to the provisions of Section 154 of the Act, under which all lands of proprietors, other than those comprised in their holdings, vested in the Gaon Sabha, thus extinguishing their proprietary rights."

(Emphasis supplied)

11. A Division Bench of Delhi High Court (Prakash Narain C.J. and S.S. Chadha, J.) in Nathu v. Hukam Singh, AIR (1983) Delhi 216 examined the provisions of the Act in considerable detail. The Bench took note of the statement of objects and reasons for making the Act which is as under:

> "A Land Reforms Committee consisting of Members of State Legislature and an M.P. was soon set up. After careful consideration and examination of the complex problems involved it was decided that while unifying the two existing systems of tenure, the Zamindari system should be disintegrated by divesting the Zamindars, who are merely a body of peasant proprietors of some of their rights and placing them more or less on the same levels of tenants with security of tenure. At the same time the tenants should be given opportunities to rise to the level of peasant proprietors so that the resultant picture be one of a democratic peasantry. It was also decided that in view of the Zamindars being petty proprietors and the State being so small, a direct and simple method for the payment of compensation to the Zamindars should be evolved as it would not be possible for the State to undertake the elaborate and expensive procedure of acquiring the rights, title and interest from the proprietors for monetary considerations and then reforming the tenancy system after realisations from tenants for securing them better rights."

The Bench then held that the proprietors of agricultural land ceased to exist and new classes of tenures known as Asami and Bhumidhar came into existence after the commencement of the Act. Para 8 of the report is being reproduced below:

> "8. To put it in other words combined reading of the statutory provisions referred to above shows that the proprietors of agricultural land ceased to exist and instead a new class of tenure holders called Bhumidhars and sub- tenure-holders called Assamies came into existence. The provisions referred to above make it clear that a certain class of tenants became Bhumidhars and a certain class of proprietors became Bhumidhars if they were in self cultivatory actual possession of agricultural land. Certain other persons became Asamis. A person could either be a Bhumidhar or an Asami and there is no other class of proprietors or tenure holders of the agricultural land after coming into force of the Act. The proprietors of each village had certain rights in waste land, pasture land of common utility etc. By force of section 7, there is acquisition of these rights of the proprietors and they vest in the Gaon Sabha and compensation is paid to the proprietors for that. Even though there is no acquisition of the rights of the proprietors in the agricultural land, the policy underlying the provisions of the Act is to abolish ownership and to confer new rights. The vires of the Statute are not open to challenge as the Act is in the Ninth Schedule to the Constitution. The legislature could pass a law abolishing ownership in the land of the proprietors and instead declaring them as Bhumidhars, resulting in the deprivation of the compensation. Section 8 of the Act further provides that all private wells in or outside holdings, all tanks, groves and all trees in abadi and all buildings situate within the limits of an estate belonging to or held by a proprietor, tenant or other persons, whether residing in the village or not, shall continue to belong to or be held by such proprietor tenant or persons, as the case may be, on such terms and conditions as may be prescribed by the Chief Commissioners. Except to this limited extent of certain rights in private wells, trees in abadi and buildings, the proprietors of agricultural land as such ceased to exist after the Act came into force ."

(Emphasis supplied) Therefore the legal position in absolutely clear that a persons can be either a Bhumidhar or an Asami of the agricultural land in a village. He can also be an owner of the property of the type which is enumerated in Section 8 of the Act, like private wells, tanks, groves, ababis, trees and buildings. Except for these, all other kinds of lands and property would vest in the Gaon Sabha. The proprietors and the concept of proprietors of land stands totally abolished with the enforcement of the Act. The respondents neither claimed to be Bhumidhar nor an Asami of the land which has been acquired. The acquired land does not come within the purview of Section 8 of the Act. In such circumstances the only inference possible is that the land stood vested with the Gaon Sabha on the date of the commencement of the Act and it was the Gaon Sabha which was the owner thereof and was entitled to receive the entire amount of compensation.

12. The plea of res judicata is based upon the decision in the Second Appeal (RSA no. 73 of 1972). The question then arises is whether the civil Court had the jurisdiction to entertain the suit which ultimately came to the High Court in second appeal. The High Court in Second Appeal held that the

civil court had the jurisdiction to entertain a suit wherein a declaration was sought that the order passed under section 7 (2) of the Act vesting the land in Gaon Sabha is illegal. The passage quoted from the judgment in RSA No. 73 of 1972 shows that the High Court though held that the civil court had jurisdiction to try the suit but remanded the matter to the Deputy Commission that for a fresh decision. In fact the Deputy Commissioner was directed to re-determine the question as to whether the proprietors had been divested from the disputed land and the same had vested in the Gaon Sabha and further whether any part thereof was within the holding of any one of the individual proprietors. The Deputy Commissioner, however could not carry out the exercise as mean-while the land had been acquired. The rights of individual persons having not been finally determined as directed by High Court no question of res-judicata would arise.

13. Section 185 provides for outster of the jurisdiction of the civil court and sub-section (1) thereof reads as under:m Section 185. (1) Except as provided by or under this Act no court other than a court mentioned in column 7 of Schedule 1 shall, not withstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application or proceedings mentioned in column 3 thereof ."

Sub-section (2), (3) and (4) of Section 185 provide for first appeal and second appeal in certain situations and also the forum for preferring such appeals. As discussed earlier the plaintiffs in the suit could not have sought declaration of any kind in their capacity "as proprietor of the land" as the said concept of proprietorship stood abolished after the enforcement of the Act. They could only seek a declaration of their rights as Bhumidhar or Asami which they could do only in one of the courts mentioned in column 7 of the Schedule to the Act and not in civil court. This position was also clearly stated in Hatti v. Sundar Singh, [1970] 2 SCC 841 and relevant part of para 7 of the report is being reproduced below:

> ".....The Act is a complete Code under which it is clear that anyone, wanting a declaration of his right as a Bhumidhar, or aggrieved by a declaration issued without notice to him in favour of another, can approach the Revenue Assistant under Item 4 of the First Schedule and this he is allowed to do without any period of limitation, because he may not be aware of the fact that a declaration has been issued in respect of his holding in favour of another. A declaration by a Gaon Sabha of the right of any person can also be sought without any period of limitation. If there is dispute as to possession of agricultural land, the remedy has to be sought under Section 84, read with Item 19 of the First Schedule. All the reliefs claimed by the respondent in the present suit were, thus, within the competent jurisdiction of the Revenue Assistant, and the Civil Court had no jurisdiction to entertain the suit."

14. It appears that some conflicting judgments had been delivered by learned Single Judges of Delhi High Court on the question of jurisdiction of the Civil Court and accordingly the matter was referred to a larger bench and the controversy was then resolved by a Division Bench (Jagjit Singh and Avadh Behari JJ.) in Gaon Sabha of Lado Sarai v. Jage Ram, ILR (1973) 1 Delhi 984. The Division Bench specifically dealt with land which is recorded as Gair Mumkin Pahar or banjar qadim or banjar jadid and held that in view of notification no. 6073-R dated December 23, 1929 issued under

Rule 2 sub-rule (2) of Land Revenue Assessment Rules, 1929 which were framed by the Governor-General in exercise of the powers conferred by Section 60 of the Punjab Land Revenue Act, 1887, the land recorded as gair mumkin, banjar jadid and banjar qadim is also agricultural land. The real issue arising in such kind of suits filed before the civil court was posed by the Bench in the following manner:

> "It will inevitably happen that when a plaintiff, a Bhumidhar or an Assami comes to court and challenges the vesting order of the Revenue Assistant regarding his land in the Gaon Sabha then he invariably asks that he (the plaintiff) is entitled to the Bhumidhari rights and that a declaration be made in his favour. Unless the civil court can first grant a declaration that the plaintiff is entitled to Bhumidhari rights, no order can be passed about the vesting order of the Revenue Assistant in the Gaon Sabha."

The Bench thereafter went on to hold that when the plaintiff seeks a declaration that the order of vesting of land in Gaon Sabha is illegal, It is inextricably linked with the declaration that the land is included in the plaintiffs' holding and he is entitled to declaration of his Bhumidhari rights. In such circumstances, the first relief is consequential upon plaintiffs being granted the second relief as the substantive relief claimed by the plaintiff is that he is entitled to the declaration of Bhumidhari rights. It was accordingly held that the civil court will have no jurisdiction to entertain the suit even if the land involved is Gair Mumkin Pahar or banjar quadim. It will be useful to reproduce the findings recorded by the Bench which are as under:

> "Section 185 (1) of the Delhi Land Reforms Act enacts a complete bar to the jurisdiction of the civil court. Item 4 in Schedule 1 to the Act mentions applications for declaration of Bhumidhari rights in column 3 and the Court of the Revenue Assistant is the court of original jurisdiction for such application in column 7. In all the cases under appeal the plaintiff prays for a declaration decree in his favour and against the Gaon Sabha to the effect that the order of the Revenue Assistant regarding the inclusion of the plaintiffs land in question in Land Reform Form No.2 as the property of the Gaon Sabha is illegal and the plaintiff claims that he is entitled to be declared a Bhumidar of the said land..... .....
>
> In none of the cases a civil court will have jurisdiction to entertain the suit whether the land involved is banjar quadim or ghair mumkin pahar or ghair mumkin khandrat. The aggrieved party must seek his remedy within the four corners of the Act. Where a plaintiff, a Bhumidhar or an Assami comes to Court and challenges the vesting order of the Revenue Assistant regarding his land in the Gaon Sabha, then he invariably asks that he (the plaintiff) is entitled to the Bhumidhari rights and that a declaration be made in his favour. Unless the civil court can first grant a declaration that the plaintiff is entitled to Bhumdhari rights, no order can be passed about the vesting order of the Revenue Assistant in the Gaon Sabha.

> Held, therefore, that as the plaintiffs claim in substance is that he has Bhumidhari rights in the suit land and the vesting order contrary to law, such a suit could not be brought in the civil court by reason of the said section of the Act."

15. The legal position is therefore absolutely clear and there cannot be even a slightest doubt that the civil court had no jurisdiction to entertain the suit which was filed seeking a declaration that the order of vesting of land in Gaon Sabha is illegal. It is indeed surprising that in spite of the aforesaid Division Bench decision of the Delhi High Court which was rendered in 1973 which had settled the legal position and was a binding precedent and the decision of this Court in Hatti v. Sunder Singh (supra) which was also brought to the notice of the learned Single Judge hearing the second appeal (RSA No.73 of 1972), he chose to bye-pass the same by some queer logic and went on to hold that the civil suit was maintainable. Once we come to the legal position that the civil court had no jurisdiction to entertain the suit, the inevitable consequence is that the decree passed in the aforesaid suit including that of the High Court is wholly without jurisdiction. In such circumstances the principle laid down in Kiran Singh v. Chaman Paswan, AIR (1954) SC 340 would come into play that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings and further a defect of jurisdiction whether it is pecuniary or territorial or whether it is in respect of the subject matter of the action, strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. Therefore, the finding that the order passed under section 7 (2)of the Act vesting the property in the Gaon Sabha is illegal recorded in the civil suit (including that by the High Court in second Appeal) has to be completely ignored.

16. Learned counsel for the respondents have contended that no notification under section 7(2) of the Act could be issued with regard to land in dispute as it was not a waste land. We are unable to accept the contention made. The definition of " waste land" in Explanation (i) appended to Section 7 is inclusive definition and the only exception is "uncultivated land included in the holding of such proprietors". The expression "such proprietor" here refers to such types of persons who are described in main part of sub-section (1) of Section 7. As mentioned earlier the disputed land was not included in the holding of the respondents and therefore a notification under section 7 (2) could validly be issued with regard to the land in dispute.

17. The judgment rendered by the Delhi High Court in RFA no.332 of 1968 (Union of India v. Mamleshwar Pershad and Ors.) a portion of which has been extracted in para 7 earlier is reported in 1991 (4) Delhi Lawyer 375. In our opinion, the view taken in the said decision is wholly erroneous. The High Court held that the definition of the word "holding " as given in Section 3 (11a) would not be applicable but chose to rely upon the definition of words "estate" and "holding" as given in Sections 3(1) and 3(3) respectively of Punjab Land Revenue Act, 1887. For doing so, the High Court took recourse to Section 3(24) of the Act. Section 3(24) of the Act says that such words and expressions as are not defined in the Act and are used in the Agra Tenancy Act, 1901 or the Punjab Tenancy Act, 1887, shall have the meaning assigned to them in the aforesaid Acts. But the words "estate" and "holding" have been defined in Sub-sections (8) and (11a) of Section 3 of the Act. It is, therefore, not permissible to refer to Punjab Tenancy Act, 1887 for ascertaining the meaning of the

aforesaid terms. In the course of discussion, The High Court has observed -"We are, thus, of the view that land other than 'khudkasht' of the holding of the individual proprietor did not vest in the Gaon Sabha because it has not been treated as waste land....." This means that only khudkasht land would vest with the Gaon Sabha and other land would not But this is plainly contrary to Section 5(a) of the Act which clearly provides that a person having 'khudkasht' land would become Bhumidhar thereof and consequently such land would not vest with the Gaon Sabha. Therefore, the view taken by the High Court in Union of India v. Mamleshwar Pershad, which has also been relied upon for deciding the matter of Sher Singh is legally incorrect.

18. What was the precise case set up by the respondents can be ascertained from the objection which was filed by them before the Land Acquisition Collector (ME), Delhi in response to the public notice issued under Section 9 of the Land Acquisition Act and para 1 thereof is being reproduced below:

> "That the claimants were the owners of the above said land which was notified to be acquired vide the above said notifications being co-sharers of Thok Pudhori, Patti Moharaja."

In para 2 it is state that the land was wrongly and illegally shown in the revenue record of Gaon Sabha Tehkhand and on its dissolution and urbanisation of revenue estate, in the name of Union of India. In para 3 it is stated that some of the co-sharers in their representative capacity filed a civil suit for a declaration that the Gaon Sabha is not the owner of the land and the said suit was decreed up to the stage of second appeal by the High Court and in para 4, mention is made of the writ petition which was filed in Delhi High Court. Para 5 contains the prayer clause that the claimants are entitled to compensation at the rate of Rs. 100 per sq. yard. The respondents have made the claim for compensation mainly on the ground that they are owners or proprietors of the acquired land. They do not claim to be Bhumidhar or Asami thereof. As discussed earlier, with the enforcement of the Act the very concept of proprietorship stands abolished and, therefore, they are not entitled to any compensation.

19. Shri R.K. Jain, learned senior counsel appearing for some of the respondents has submitted that this Court had dismissed special.leave petitions filed against the decision of Delhi High Court in some similar matters and therefore the present appeal should also be dismissed. An identical contention was raised before the Bench which had earlier heard CA No. 2183 of 1993 (Union of India v. Sher Singh and Ors.) but was repelled on the ground that the fact that leave had been granted in the said matter had not been brought to the notice of the respective benches which heard subsequent special leave petitions. The Bench also observed that the settled legal position is that the dismissal of special leave petition without speaking order does not constitute res-judicata and therefore it was open to the court to examine the question on merits. Having considered the submission made by learned counsel for respondents, we are also of the opinion that the question canvassed before us is of considerable importance and may effect large number of cases and, therefore, the mere fact that in some other similar cases leave was not granted and special leave petitions were summarily dismissed would not come in the way of this Court to examine the matter on merits. Shri Jain has also submitted that the question in issue being one of a local Act and the High Court having taken a particular view, this Court should not upset the same. We are afraid that

taking such a generalised view of the matter would render the power conferred upon this Court by Article 136 of the Constitution nugatory and would virtually amount to attaching finality to every judgment of the High Court involving a local Act. That apart the view taken by the High Court in the present matter is clearly contrary to two earlier Division Bench decisions of the same court rendered in Gaon Sabha of Lado Sarai v. Jage Ram, ILR (1973) 1 Delhi 984 and Nathu v. Hukam Singh, AIR (1983) Delhi 216 and also of this Court in Hatti v. Sunder Singh, [1970] 2 SCC 841.

20. In the result, Civil Appeal No. 2183 of 1993 and Civil Appeal No. 3105 of 1997 succeed and are hereby allowed with costs. The impugned judgment and decrees of the High Court in both the appeals are set aside and it is held that the Gaon Sabha is entitled to entire amount of compensation.