* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 25th February, 2015.

\+ **W.P.(C) No.8967/2014**

DEEPAK YADAV ..... **Petitioner**

Through: Mr. Sachin Datta, Sr. Adv. with Mr. Dinesh Sharma, Ms. Ritika Jhurani, Advs.

Versus

GOVERNMENT OF NCT OF DELHI & ORS ..... **Respondents**

Through: Mr. Akshay Makhija, CGSC with Ms. Mahima Bahl & Mr. Rohitendra Deb, Advs. for UOI.
Mr. Arush Bhandari for Mr. Yeeshu Jain, Adv. for L&B Deptt.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. This petition under Article 226 of the Constitution of India impugns Section 33 of the Delhi Land Reforms Act, 1954, as constitutionally invalid.

2. Section 33 prohibits a *bhumidhar* (of agricultural land) from transferring by sale or gift or otherwise any land to any person where as a result of the transfer, the transferor shall be left with less than eight standard acres of land. However Sub-Section (2) of Section 33 clarifies that the said prohibition shall not preclude the transfer of land by a *bhumidhar* who holds

less than eight standard acres of land, if such transfer is of the entire land held by him.

3. It is the case of the petitioner that his father was in possession of 4.5 *bighas* of land situated at Daulatpur Village, Najafgarh; on the demise of his father, the said land was divided equally between the petitioner and his brother; that the petitioner is thus in possession of 2.25 *bighas* of the said land; that the petitioner wishes to sell 1 *bigha* out of 2.25 *bighas* of land in his possession but is enable to do so by virtue of the aforesaid provision.

4. Alleging, (i) that there is no direct and proximate nexus or a reasonable connection between the restrictions so imposed and the object sought to be achieved; and, (ii) that the said provision is arbitrary in as much as the same does not prohibit transfer of 1 *bigha* of land by a person who may be holding, say, nine standard acres of land and who after transfer of the said 1 *bigha* would still be left with eight standard acres of land and is thus arbitrary and creates two classes, one comprising of those in possession of more than eight standard acres of land and the other comprising of those holding less than eight standard acres of land, this petition is filed. It is also contended that due to the changing societal needs, there is no need for such restrictions.

5. We have heard the senior counsel for the petitioner.

6. The purpose of enacting Section 33 was to prevent fragmentation of agricultural holdings to uneconomical sizes. It is thus not as if the restriction placed by Section 33 is without any basis. A Division Bench of this Court as far back as in ***Ram Mehar Vs. Dakhan*** 9 (1973) DLT 44, while dealing with the question whether the Delhi Land Reforms Act provides for prevention of fragmentation of holdings held that the same undoubtedly provides for prevention of a holding of a *bhumidhar* being less than eight standard acres. Reference in this regard, besides to Section 33, was made to various other provisions thereof. Reference was also made to the Statement of Objects and Reasons of the Act which also mentioned, avoidance of multiplication of uneconomical holdings and prohibition against creation of uneconomical holdings. We may mention that ***Ram Mehar*** was otherwise concerned with devolution of rights in agricultural holdings and held that the purpose of the succession to an agricultural holding being restricted to certain persons was prevention of fragmentation of holdings to uneconomical sizes. Upon amendment of the Hindu Succession Act, 1956 w.e.f. 9th September, 2005 *inter alia* by deletion of Section 4(2) of the said Act, a Division Bench of this Court in

Nirmala Vs. Government of NCT of Delhi MANU/DE/2717/2010 has held that the line of succession provided under the Delhi Land Reforms Act would not prevail over the Hindu Succession Act. However the same is of no relevance to the present context.

7. Another Division Bench of this Court in ***Subhash Chand Aggarwal Vs. Union of India*** MANU/DE/2744/2011, while dealing with a challenge to the *vires* of Rule 6 (j) (v) of Delhi Holding (Consolidation and Prevention of Fragmentation) Rules, 1959 prohibiting an allottee of industrial plot from transferring or selling the same in any manner or from amalgamating it with other land, on the ground of the same being violative of Articles 14 & 19 of the Constitution of India and on the ground that it suffers from the vice of excessive delegation, being beyond the scope and sphere of East Punjab Holding (Consolidation and Prevention of Fragmentation) Act, 1948 noticed that the object of the consolidation proceedings is to ensure better cultivation by consolidating the fragmentations and in this context observed that the object and purpose of Section 33 is not to prevent transfer of interest by a *bhumidhar* but to ensure that the *bhumidhar* must retain eight standard acres of land as the said area is regarded as an economic holding. It was further held that Section 33 does not prevent a *bhumidhar* from selling his entire

holding whereby he reduces his holding to nil and that there is no provision under the Reforms Act and / or Rules which completely bars or prohibits transfer of land. Finding Rule 6 (j) (v) supra to be containing an absolute prohibition, the same was struck down but with the clarification that the restrictions and conditions imposed by the Reforms Act on transfer do not get affected and shall continue to apply.

8. The same Division Bench in ***Rajender Mohan Rana Vs. Prem Prakash Chaudhary*** 184 (2011) DLT 454 (SLP(C) CC No.2794/2012 whereagainst was dismissed on 17th February, 2012) also held that the Reforms Act is a complete code and Section 33 stipulates that where as a result of transfer, the transferor is left with less than eight standard acres of land, certain consequences will flow. It was further held that the said provision is to prevent fragmentation of holdings into uneconomical sizes.

9. It is thus not as if there is no nexus between the restriction imposed by Section 33 and the object sought to be achieved. In fact, the said question, in view of judgments supra and without regard to which this petition is filed, is not even *res integra*. There is thus no merit in the said ground urged for having the said provision declared unconstitutional.

10. As far as the contention of the petitioner of the said provision, while

placing a restriction on a *bhumidhar* having less than eight standard acres and not placing such restriction on a *bhumidhar* having more than eight standard acres is concerned, the same also, as aforesaid has a nexus to the rationale behind the said provision. The purport of the Section is to prohibit a *bhumidhar* from, by transfer, reduce his holding to below the minimum size prescribed for economically viable holding. Thus the restriction is on transfer when the *bhumidhar* would be left with an agricultural holding of size below the minimum prescribed. The legislature was concerned with a *bhumidhar* and has not deemed it necessary to restrict a *bhumidhar*, who after transfer will still have more than eight standard acres left, from transferring even if the transferred holding is less than eight standard acres. Similarly, where the holding is already less than eight standard acres, then also legislature has also not deemed it necessary to restrict transfer subject of course to the condition that the *bhumidhar* is not left with a yet smaller holding. The emphasis, clearly, is on prohibiting *bhumidhars* from reducing the size of their holding to below minimum economically viable size or when their holding is already below the minimum economically viable size, from reducing the size still further. This Court in ***Rajender Mohan Rana*** supra held that there is nothing in the Act preventing continuance of holdings less than minimum prescribed or transfer where holding is in any case less than that prescribed. Seen in this light, we do not find the classification so created to be arbitrary or without any nexus to the purpose sought to be achieved by the legislation. The purport is that a *bhumidhar* whose holding is already below the minimum size prescribed, should not further sub-divide the holding.

11. We may also notice that the object of the Delhi Land Reforms Act was to modify the *zamindari* system, unify the Punjab and Agra systems of tenancy laws and to make a provision for other matters connected therewith. The Reforms Act created a new single category of tenure rights in the agricultural land i.e. *bhumidhari* rights and only one class of sub tenure rights that is to say *Asamis* (refer ***Ram Mehar*** supra). With the enactment of the said law, proprietors of agricultural land ceased to exist and if any land was part of a holding of a proprietor, he became a *bhumidhar* of it; if it was a part of a holding of some other person such as a tenant or a sub tenant he became either a *bhumidhar* or an *Asami*, where upon the rights of the propertor in that land ceased. Lands, which were not holdings of either the proprietor or any person, vested in the Gaon Sabha. A *bhumidhar*, though has a right to exclusive possession of the land in his holding but has a right

to use it for agricultural and related purpose only. A *bhumidhar* is prohibited from using the land in his possession for purposes other than agriculture and has only a limited right to effect a mortgage and is debarred from effecting any lease of his land and if makes any such transfer with possession, the same is deemed to be a sale. The interest of a *bhumidhar* is quite different from that of a proprietor or a tenant. A *bhumidhar* has not an unrestricted interest of his land. He is given the right to use the land in a particular manner. To the same effect is the judgment of another Division Bench in ***Nathu Vs. Hukam Singh*** AIR 1983 Delhi 216.

12. Thus, the rights in agricultural land asserting which this petition has been filed are quite distinct from rights in other immovable property. The petition has been filed on the premise of *bhumidhari* rights being identical to ownership / proprietorship right and which is not the correct position in law. No challenge to converting the proprietary rights in land to *bhumidhari* rights has been made. We may notice that the Reforms Act was placed under the Ninth Schedule to the Constitution of India and the Division Bench of this Court in ***Nathu*** supra held that the *vires* thereof are thus not open to challenge. Once the matter is seen in the light of nature of rights of the petitioner in the said 2.25 *bighas* of land being *bhumidhari* rights only

and not ownership or proprietary rights, the grounds on which the *vires* of Section 33 is challenged in any case disappear.

13. In fact, the challenge to the constitutionality of Section 33 itself is not maintainable for the reason of the Delhi Land Reforms Act having been placed in the Ninth Schedule to the Constitution of India and Article 31B thereof, and in ignorance of all of which the petition is being pursued. We may notice that the challenge to the mode of succession prescribed in the Act, as aforesaid was struck down in ***Nirmala*** supra not because of the same being violative of Article 14 or Article 21 (see ***Har Naraini Devi Vs. Union of India*** MANU/DE/4931/2009) but because of the amendment of the year 2005 in Hindu Succession Act and for which reason Article 31B was not considered to be an impediment.

14. Though the senior counsel for the petitioner has not pointed out but we may take notice of a practice rampantly prevalent. A person as the petitioner, even if desires to transfer 1 *bigha* out of his 2.25 *bighas*, would transfer 1 *bigha* and would simultaneously execute / transfer Sale Deed of the remaining 1.25 *bigha* in the name of a confidante or nominee or family member and which 1.25 *bigha* remains under the control of that person. Though the legislature in Section 33 has mandated sale of entire holding

when less than eight standard acres but has not mandated such sale to one person only. However this deficiency in law (and which practise was also noticed in ***Rajender Mohan Rana*** supra) also does not permit us to hold the provision to be *ultra vires* on the grounds alleged.

15. There is another aspect of the matter. The petitioner obviously cannot cultivate the holding of 1.25 *bigha* which would be left with him after effecting the sale of 1 *bigha*. The petitioner obviously intends to use the same for non-agricultural activities and which also is not permitted. Thus, the purport of the petition is to indulge in illegality and on which ground also the petition cannot be entertained. Writ cannot be issued at the instance of such a person. It was held in ***A.P. State Financial Corporation Vs. Gar Re-rolling Mills*** (1994) 2 SCC 647 that equity is always known to defend law.

There is thus no merit in the petition which is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 25, 2015
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