

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

Decided on: 12.04.2018

+ **LPA 438/2010, C.M. APPL.11567-11570/2010, 401-403/2011 & 38966/2017**

SHAKUNTALA DEVI

..... Appellant

Through : None.

versus

MADAN JHA

..... Respondent

Through : Sh. Raghuvinder Varma, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A.K. CHAWLA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

%

1. None appeared on behalf of the appellant.

2. The appellant is aggrieved by the judgment and the order of the learned Single Judge rejecting her writ petition.

3. The appellant had applied for mutation of agricultural lands (hereafter “the lands”) in her favour. The appellant is the daughter of Siri Lal who died in 1965. She got married in 1977. Later, the contesting respondents (hereafter referred to collectively as “Jai Singh”) sought for mutation of the lands, arguing that by virtue of Sections 50 and 51 of the *Delhi Land Reforms Act, 1954* [hereafter “the 1954 Act”], the appellant could not claim mutation and instead, they, as the nearest male relatives of the deceased, are the owners of the agricultural lands in Village Alipur to an extent of area measuring 79-04 bighas and that the lands had to be registered in their

favour. The Revenue authorities, by an order dated 16.08.1988 accepted the contentions on behalf of Jai Singh, who is now represented by his legal heirs. The appellant was aggrieved and carried the matter in appeal to the Additional Collector, who by an order dated 28.02.1994 confirmed the view of the Revenue authorities. A further round of litigation ensued; the appellant questions the order of the Additional Collector before the Financial Commissioner under Section 66 of the 1954 Act. The Financial Commissioner dismissed the plea and confirmed the findings of the lower authorities by the following reasoning:

“4. I find that the appellant inherited ½ share of the estate of her father on his death in the capacity of an unmarried daughter of the deceased. It is an undisputed fact that the appellant got married in the year 1977. That being so, the rights of the appellant came to an end under section 51 of the aforesaid Act and the mutation opened at that point of time itself. There is no merit in the arguments of the learned counsel for the appellant that the period of 3 years is applicable to these proceedings. On the other hand, in terms of Rule 165 of the Delhi Land Revenue Rules cited by the respondents’ counsel. Only penalty can be levied for delayed petition. Once it is decided that the rights of the appellant had extinguished under section 51 ibid, the mutation has to take place in terms of section 50 of the said act. It has not been challenged on behalf of the appellant that the respondents do not inherit the share of the deceased after the extinction of the rights of the appellants. It, therefore, follows that the orders, passed by the two lower courts, do not suffer from any infirmity. The appeal having no force deserves to be dismissed. I order accordingly.

5. Before I part with the case, I am constrained to observe that there has been a scandalous discrepancy between the proceedings recorded and the detailed order in this case,

though this does not in manner have any bearing upon the determination of the appeal by me. In the proceedings dated 28.2.94, it has been recorded that the case is remanded in per detailed order placed on file, while in the detailed order the appeal has been dismissed. Regardless of the fact that it has no effect in the matter of the disposal of the case by this Court, I find that this required probe by the Deputy Commissioner, Delhi, to whom a copy be sent separately, and he is called upon to submit a report to this and within two months.

Appeal dismissed. Order announced.”

4. The appellant urges that Jai Singh could not have applied for the mutation after a belated interval. It is urged that the reliance on Section 51(1)(a) of the 1954 Act was of no avail because the respondents, by virtue of their conduct, are deemed to have relinquished their share in her favour in 1966.

5. Jai Singh is represented through his legal heirs. It is argued on behalf of Jai Singh that with the marriage of the appellant in 1977 she lost any claims towards ownership of the lands and furthermore, there is no bar on limitation as to when an application could be made by the two legal heirs. It is pointed-out that Jai Singh in fact belonged to the class of heirs who were originally entitled to inherit property. All that the Revenue authorities and the lower authorities did was to conform to the law in holding that he was entitled.

6. At the outset, it would be relevant to note Sections 50 and 51 of the 1954 Act, which reads as follows:

“50. General order of succession from males. - Subject to the provisions of section 48 and 52, when a Bhumidhar or Asami

being a male dies, his interest in his holding shall devolve in accordance with the order of the succession given below:

(a) Male lineal descendants in the male line of the descent:

Provided that no member of this class shall inherit if any male descendant between him and the deceased is alive:

Provided further that the son or sons of a predeceased on how low so ever shall inherit the share which would have devolved upon the deceased if he had been then alive:

- (b) Widow*
- (c) Father*
- (d) Mother, being a widow;*
- (e) Step mother, being a widow;*
- (f) Father's father*
- (g) Father's mother, being a widow;*
- (h) Widow of a male lineal descendant in the male line of descent;*
- (i) Brother, being the son of same father as the deceased;*
- (k) Unmarried sister;*
- (l) Brother's son, the brother having been a son of the same father as the deceased;*
- (m) Father's father's son;*
- (n) Brother's son's son;*
- (o) Father's father's son's son;*
- (p) Daughter's son.*

51. Succession in the case of a woman holding an interest inherited as a widow, mother, daughter etc. - (1) When a Bhumidhar or Asami, who has after the commencement of this Act inherited an interest in any holding as a widow, mother, step-mother, father's mother, unmarried daughter or unmarried sister, [(Note: Subs by s.10 of Delhi Act 16 of 1956 for the words "dies, marries, abandons or surrenders such holding or part there of, the holding or the part") dies or marries or the Asami abandons or surrenders such holding, it] shall devolve upon the nearest surviving heir (such heir being ascertained in accordance with the provisions of section 50) of the last male Bhumidhar or Asami other than one who inherited as a father's father.

(2) When a Bhumidhar who has before the commencement of this Act, inherited an interest in any holding as a widow, mother, step- mother, father-mother, father's mother, daughter, sister or step- sister."

7. In the Division Bench judgment of this Court in *Nirmala and Others v. Govt. of NCT of Delhi and Ors.* 2010 (170) DLT 577, this Court has clarified that the effect of the amendments to the *Hindu Succession Act, 1956* (made in 2005) [hereafter referred to as "the 1956 Act" or "the Amendment Act"], was that the exclusion of any reference to revenue laws pertaining to consolidation etc. has resulted in female heirs also being entitled to the benefit of the amendments to the 1956 Act. Resultantly, in the successions which opened after 2005, female legal heirs became entitled to shares in agricultural holdings as well, after the coming into force of the Amendment Act. The reasoning of this Court in *Nirmala (supra)* is as follows:

"29. Section 4(2) as it existed prior to its omission in 2005 declared that nothing contained in the HSA would be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of

tenancy rights in respect of such holdings. This Court, in the case of *Ram Mehar (supra)* found that the DLR Act was such a law and because of Section 4(2), the rule of succession laid down in the DLR Act would be unaffected by the provisions or rule of succession prescribed under HSA. It was only because of Section 4(2) that this Court, in *Ram Mehar (supra)* decided that the applicable rule of succession would be as provided under the DLR Act. Had Section 4(2) not been there, *Ram Mehar (supra)* would have been decided differently and the rule of succession given in the HSA would have been applicable.

30. It is necessary to examine Section 4 of HSA which stipulates that the HSA is to have an over-riding effect. Sub-section (1) specifically provides as under:-

“4. Over-riding effect of Act. – (1) Save as otherwise expressly provided in this Act, -

(a) any text, rule or interpretation of Hindu law or any custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;

(b) any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained in this Act.”

31. By virtue of clause (a) of sub-section (1) of section 4 of the HSA, any text, rule or interpretation of Hindu Law or any custom or usage as part of that law in force ceased to have effect upon the commencement of the HSA in respect of any matter for which provision was made in the HSA. In other words, in respect of matters provided in the HSA, Hindu law including any custom or usage as part of that law stood abrogated. Similarly, by virtue of clause (b) of Section 4(1) of the HSA, any other law in force immediately before the commencement of the HSA, ceased to apply to Hindus in so far as it was inconsistent with any of the provisions of the HSA. The

laws in force, of course, included statute law such as the DLR Act. Thus, by virtue of Section 4(1)(b), Section 50 of the DLR Act would cease to operate and apply to Hindus to the extent it was inconsistent with the HSA. In *Ram Mehar (supra)*, this Court held that the said provisions of the DLR Act were inconsistent with the HSA. Thus, if no reference was made to sub-section (2) of Section 4 as it then existed, the HSA had virtually abrogated the provisions of Section 50 of the DLR Act in its application to Hindus to the extent of the inconsistency between the rule of succession prescribed in the HSA and the rule of succession stipulated in the said Section 50 of the DLR Act.

32. It is only because of sub-section (2) of Section 4 of the HSA that the operation and effectiveness of the provisions of the DLR Act was saved inasmuch as it was declared that nothing in the HSA shall be deemed to affect the provisions of any law for the time being in force providing for (1) the prevention of fragmentation of agricultural holdings or (2) for the fixation of ceiling or (3) for the devolutions of tenancy rights in respect of such holdings. Since the DLR Act was held to be such a law, its provisions, which included Section 50, were unaffected by the enactment of the HSA. It is apparent that while there was a general abrogation / repeal of laws – personal, customary and statutory – to the extent they were inconsistent with the provisions of the HSA, the provisions of certain laws like the DLR Act were specifically saved or excluded from the general abrogation / repeal.

33. Now, the omission of sub-section (2) of Section 4 of the HSA by virtue of the Amendment Act of 2005 has removed the specific exclusion of the DLR Act from the overriding effect of the HSA which hitherto existed because of the said sub-section (2). The result is obvious. The protection or shield from obliteration which sub-section (2) provided having been removed, the provisions of the HSA would have overriding effect even in respect of the provisions of the DLR Act. It is, in fact, not so much a case of implied repeal but one where the protection from repeal / abrogation which hitherto existed has

now been removed. The omission of sub-section (2) of Section 4, by virtue of the amendment of 2005 is very much a conscious act of Parliament. The intention is clear. Parliament did not want this protection given to the DLR Act and other similar laws to continue. The result is that the DLR Act gets relegated to a position of subservience to the HSA to the extent of inconsistency in the provisions of the two acts.

34. We shall now deal with the contention of the learned counsel for the respondent Nos. 3 to 5 that in view of the decision of this Court in Smt Har Naraini Devi (supra), Section 50 of DLR Act cannot be the subject matter of challenge because of Article 31B of the Constitution and because the DLR Act had been placed in the Ninth Schedule to the Constitution in 1964. It is true that in Smt Har Naraini Devi (supra), we had concluded that Section 50(a) of the DLR Act could not be challenged because of Article 31B but, we must not forget that in that case, the challenge was on the ground of alleged violation of Articles 14, 15 and 21 of the Constitution. Here, the challenge is also based on an amendment of the statute. We have seen that the immunity granted under Article 31B is subject to the power of any competent legislature to repeal or amend the protected Act (in this case the DLR Act). The HSA and the Amendment Act of 2005 have been enacted by Parliament and there is no challenge to Parliament's competency. We have already indicated as to how the effect of omission of sub-section (2) of Section 4 of the HSA is to abrogate the provisions of the DLR Act to the extent of inconsistency with the provisions of the HSA. Clearly, the immunity under Article 31B is not a blanket immunity and is subject to the power of any competent legislature to repeal or amend the protected Act. This is exactly what Parliament has done. Thus, the argument raised on behalf of the Respondent Nos. 3 to 5 is clearly untenable.

35. For the aforesaid reasons, we hold that the provisions of the HSA would, after the amendment of 2005, have over-riding effect over the provisions of Section 50 of the DLR Act and the latter provisions would have to yield to the provisions of the

HSA, in case of any inconsistency. The rule of succession provided in the HSA would apply as opposed to the rule prescribed under the DLR Act. The petitioners are, therefore, entitled to succeed to the disputed agricultural land in terms of the HSA. The respondent Nos. 1 & 2 are directed to mutate the disputed agricultural land, to the extent of Late Shri Inder Singh's share, in favour of the petitioners and respondent Nos. 3, 4 and 5 as per the HSA."

8. In the present case, this Court notices that the succession opened in 1965 when the bar in Section 50 of the 1954 Act was not fully operational. Furthermore, the mutation was done in 1988. Also the conditions spelt-out in Section 51(1)(a) of the 1954 Act, i.e. the death of the widow of late Siri Lal and subsequently the marriage of the appellant took place. In these circumstances, the Revenue authorities had no option but to register Jai Singh as the lawful owner of the property and carry out the mutation in his favour. Learned Single Judge, therefore, cannot be faulted. The appeal is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT
(JUDGE)

A.K. CHAWLA
(JUDGE)

APRIL 12, 2018