

CASE NO.:
Appeal (civil) 6255 of 1995

PETITIONER:
ADDL. DISTT. MAGISTRATE (REV.) DELHI ADMN. ETC.

RESPONDENT:
SHRI SIRI RAM ETC.

DATE OF JUDGMENT: 05/05/2000

BENCH:
S. SAGHIR AHMAD & S.N. PHUKAN

JUDGMENT:
JUDGMENT

2000 (3) SCR 1019

The Judgment of the Court was delivered by

PHUKAN, J. By this judgment we dispose of these appeals filed by the Delhi Administration against the judgment of the Division Bench of the Delhi High Court dated 7th January, 1995 passed in a batch of writ petitions. The High Court held that the amendments made to Rules 49, 63, 65 and 67 and also to Form P5 of the Delhi Land Revenue Rules by the Notification dated 8.11.1989 are ultra vires of the Provisions of Delhi Land Revenue Act, 1954 (for short the Land Revenue Act). We quote below the old and the new amended Rules :

OLD RULE

"49 - Inspection tours - (1) In order to maintain the map and field book, the patwari shall make three field to field inspections every year of every village in his Halka. The tours shall begin respectively on 1st September and 15th February, 15th October and 15th March. The first and the second tours shall be completed on 30th September and 15th February respectively; the third shall be completed within a fortnight.

(2) The Deputy Commissioner may, under special circumstances post-pone any tour for a period not exceeding 15 days."

NEW RULE

"49 - Inspection tours - (1) In order to maintain the map and field book, the patwari shall make three field to field inspections every year of every village in his Halka. The tours shall begin respectively on 1st September and 15th February, 15th October and 15th March. The first and the second tours shall be completed on 30th September and 15th February respectively; the third shall be completed within a fortnight.

(2) The Deputy Commissioner may, under special circumstances post-pone any tour for a period not exceeding 15 days."

Provided that nothing contained in this rule shall apply to land situated in the extended abadi.

Explanation :

For purposes of this rule "extended abadi" means the area earmarked and reserved for housing sites and for common purposes of the village during Consolidation of Holdings under the East Punjab Holdings (Consolidation & Prevention of Fragmentation) Act, 1948 as extended to the Union Territory of Delhi and includes any area which may be declared as such by the Administration by a notification published in the official Gazette.

"63 - Name of tenure holder and or sub-tenure holder Columns 4 and 5(1)- Entries in columns 4 and 5 shall be made from the Khatauni of the current year. Patwaries are pro-hibited from making any changes except on the basis of an order from a competent authority and recorded already in the current years Khatauni. Such a change shall be recorded in red ink in the relevant column and the relevant order quoted in columns 7, 8, 9 & 10 of the quardrennum Khatauni shall be reproduced in the remarks column of the Khasra.

Explanation - The term tenure-holder or sub-tenure holder does not include a purchaser for fruits or flow-ers, who is to be shown only in the column of remarks with brief details of his lease.

(2) - If there is more than one tenure holder or sub-tenure holder included in a Khatauni Khata the names of all the tenure holders and sub-tenure holders shall be entered against the first plot of the khata but against the subsequent plots should be entered only the first name followed by a reference to the first plot of the khata.

(3) - If a person other than the one recorded in column 4 or 5 is found to be in actual occupation of the plot at the time of the partial, his name shall be recorded in red ink in the remarks column as baqabza so and so.

[2000] 3 S.C.R. "63 - Name of tenure holder and or sub-tenure holder Columns 4 and 5(1)- Entries in columns 4 and 5 shall be made from the Khatauni of the current year. Patwaries are pro-hibited from making any changes except on the basis of an order from a competent authority and recorded already in the current years Khatauni. Such a change shall be recorded in red ink in the relevant column and the relevant order quoted in columns 7, 8, 9 & 10 of the qnardrennum Khatauni shall be reproduced in the remarks column of the Khasra.

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Note - All entries in such cases are intended to show the tact of possession; these shall under no circum-stances be held as recognition of any illegal transmission.

(4) - If a tenure holder or sub-tenure holder recorded in column 4 or 5, ceases to be in possession, for any reason and no one else is found to be in possession, the entry in the remarks column shall show the rea-son for the plot remaining unculti-vated by entering therein, the fact of decease of the tenure-holder or sub-tenure holder or surrender or aban-donment or his becoming untraceable etc., as the case may be. Even in these cases the entry in column 18 of the Khasra shall show the class or sub-class of uncultivated land."

Note - All entries in such cases are intended to show the fact of possession; these shall under no circum-stances be held as recognition of any illegal transmission.

(4) - If a tenure holder or sub-tenure holder recorded in column 4 or 5,

ceases to be in possession, for any reason and no one else is found to be in possession, the entry in the remarks column shall show the reason for the plot remaining uncultivated by entering therein, the fact of decease of the tenure-holder or sub-tenure holder or surrender or abandonment or his becoming untraceable etc., as the case may be. Even in these cases the entry in column 18 of the Khasra shall show the class or sub-class of uncultivated land."

(5) Notwithstanding anything contained in any law for the time being in force, nothing contained in this rule shall apply to any land -

(a) included in any estate owned by the Central Govt. or local authority;

(b) held and occupied for a public purpose or a work of public utility and declared as such under clause (c) of sub-section (2) of Section 1 of the Delhi Land Reforms Act, 1945 (Act No. 8 of 1954);

(c) situated in village-abadi or extended abadi;

(d) notified for acquisition under Section 6 of the Land Acquisition Act, 1984 or notified as such under any other law for the time being in force:

(e) vested in a Gaon Sabha;

(f) declared as 'wakf' property under the Wakf Act, 1954"

The existing rule 65A was substituted as follows :

Where any plot of land is lying vacant or uncultivated on account of failure of the crop and the same not having been re-sown or on account of not sowing any crop or for any reason whatsoever, the Patwari shall make the entry thereof in remarks column of the Khasra girdawari in Form-4.

In rule 67 sub-rule (7) and (8) was omitted.

In the Rules Form P-5 was substituted by a revised Form as appended to impugned rules.

After analyzing the various provisions of the Land Revenue Act and the Delhi Land Reforms Act, 1954 (for short the Land Reforms Act), the High Court was of the view that actual possession of land is the basis of rights and tide of the tenant and, therefore, it is of utmost importance that the fact of possession is recorded in the record-of-rights. The High Court held that if the amendments are given effect to possession of land of the person, will not be recorded in record-of-rights in "Excluded Areas" and other categories of land referred to in sub-rule (5) of Rule 63 and on this ground quashed the amended rules. The High Court also took note of the fact that by the amendments the rule making authority has classified different categories of land as stated in sub-rule (5) of Rule 63 which is contrary to the provisions of the Act.

According to Section 20 of the Land Revenue Act, the Revenue Authority has to prepare record-of-rights for each village and this record-of-rights shall consist of a register of all persons cultivating or otherwise occupying land. The said register shall also specify the particulars required by Section 40. According to Section 40 in the said register the following particulars shall be specified :-

(a) a tenure or sub-tenure as determined under the Land Reforms Act;

(b) revenue and cesses or local rates or any other dues payable by the tenure-holder or rent payable by the sub-tenure holder and

(c) any other conditions of the tenure or sub-tenure which may be prescribed by rules.

According to Section 21 of the Delhi Land Revenue Act, the Deputy Commissioner shall maintain the record-of-rights, and for that purpose shall annually, or at such longer intervals as may be directed, cause to be prepared an amended register mentioned in Section 20 and the said register shall be called the Annual Register. The Deputy Commissioner shall also cause to be recorded in the Annual Register all changes that may take place and any transaction that may affect any of the rights or interests recorded and shall correct any errors proved to have been made in the record-of-rights or in any Annual Register previously prepared. The record-of-rights and Annual Register shall be prepared for all the areas to which the Act extends and no area was excluded.

Old Rule 63 deals with instructions of filling up of columns 4 and 5 from Khatauni in Form P4 and against columns 4 and 5 names of tenure holder and sub-tenure holder as prescribed in the Khatauni are required to be recorded. Sub-rule (3) of Rule 63 provides that if a person other than one recorded in columns 4 and 5 is found to be in actual occupation of the land, his name is to be recorded in remarks column. By inserting new sub-rule (5) to Rule 63 henceforth, Rule 63 shall not apply to the lands classified in classes (a) to (f) of the said sub-rule. The name of a person other than one recorded in columns 4 and 5 will not be recorded in Form P4 even if he is in possession of the land.

The Land Revenue Act did not empower the rule making authority either to classify land or exclude any area from preparation of record-of-rights and Annual Register and therefore if the amendments are upheld, the result would be that a person would be deprived of his valuable right of possession in the excluded area as his name would not be recorded in the record-of-rights. Under Section 16 of the Land Revenue Act it is the duty of the Deputy Commissioner to maintain a map and field book of each village in accordance with rules made under Section 84 and to make necessary changes.

Under old Rule 49 the Patwari is required to make field to field inspection three times in a year, the object being to maintain the map and the field book properly. Rule 51 enjoins a duty upon the Patwari to compare the field one by one with the map and in every inspection shall note any change which might have occurred on the boundaries etc. By amending this rule the rule making authority has excluded certain classes of land which is defined as "Extended Abadi" from the operation of preparation of map and the field book. The Act does not authorise the rule making authority to exclude any area from the purview of Section 16 of the land Revenue Act. Thus the rule making authority acted beyond its power.

As noticed earlier while preparing record-of-rights under Section 20 of the Land Revenue Act persons cultivating or others occupying land as tenure or sub-tenure holder as determined under the Land Reforms Act have to be specified in the said register. This has to be done as record-of-rights would be used for determining the rights and liabilities of tenure and sub-tenure holder under the Land Reforms Act.

According to Section 4 of the Land Reforms Act, there is one class of tenure holder, that is to say, BHUMIDAR, and one class of sub-tenure holder, that is to say, ASAMI, and their rights and liabilities are mentioned in Section 5 of the said Act.

Under Section 65A, a tenure holder or a sub-tenure holder may be evicted by the Deputy Commissioner if land is not used for two consecutive years for a purpose connected with agriculture, horticulture etc. Section 8I of Land Reforms Act provides for ejectment of a Bhumidar or Asami for use of a land in contravention of the provisions of the Land Reforms Act. According to Section 41 of the land Revenue Act, all entries in the record of rights prepared under the Act shall be presumed to be true unless the contrary is proved. As a result of the amendments made in Rule 49 and Rule 63, the

rights of the tenure holder or a sub-tenure holder occupying land in "Extended Abadi" or six categories of lands mentioned in the new sub-rule (5) of Rule 63 would be adversely affected as their possession of the land in these areas would not be reflected in the record-of-rights and Annual Register. This is contrary to the provisions of both the Acts. The other amendments made in Rules 65A, 67 and Form P.5 are liable to be quashed on the self same ground.

It is well recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto. From the above discussion, we have no hesitation to hold that by amending the Rules and Form P.5, the rule making authority have exceeded the power conferred on it by the Land Reforms Act.

We, therefore, hold that the High Court has rightly quashed and set aside the impugned rules and, therefore, the appeals have no merit.

In the result, the appeals are dismissed. Parties to bear their own costs.