IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : Land Reforms Act'

LA.A. No. 650 of 2008 and CM No. 9226/2008

Reserved on : October 23, 2008

Pronounced on : January 27, 2009

Kalawati . . . Appellant
through : Mr. S.B.S. Vashisht, Advocate

VERSUS

Union of India and Ors. . . .Respondents
through : Mr. Sanjay Poddar, Advocate
for the respondent No.1.
Mr. Suryakant Singla with
Mr. Shanto Mukherjee, Advocates
for the respondent Nos. 2 to 4.

CORAM :-
THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MR. JUSTICE MANMOHAN SINGH

A.K. SIKRI, J.

1. The appellant, who is the cousin sister of the respondent Nos. 2 to 4, is claiming 1/3rd share in the compensation given for a part of the land in village Bawana, Delhi which was acquired by the Union of India (respondent No.1) vide Award No. 9/99/2000. Said land was bearing Khasra Nos. 15/1 (4-16) and 4/21/3 (1-4) situate in the revenue estate of village Bawana, Delhi. This land was in the name of the three brothers, namely, Shri Sohan Lal, Shri Bhudatt and Shri Bishan Dutt, who were also jointly declared as bhumidars of the aforementioned land under the Delhi Land Reforms Act, 1954 (hereinafter referred to as the 'Land Reforms Act'). All these brothers have since died. The appellant is the daughter of late Shri Sohan Lal, who died in the year 1952, i.e. before the promulgation of Hindu

Succession Act, 1956 (hereinafter referred to as the 'Hindu Succession Act'). Respondents No. 2 to 4 are the sons of late Shri Bhudatt and late Shri Bishan Dutt.

2. For claiming 1/3rd share, the appellant made application to the Land Acquisition Collector (LAC), who sent a reference under Section 30 and 31 of the Land Acquisition Act, 1894 (for short, the 'Act') in respect of 1/3rd share of late Shri Sohan Lal in view of the dispute created by the respondent Nos. 2 to 4 contending that after the death of Shri Sohan Lal in the year 1952, his share also devolved upon the male persons in the family and could not go to the daughter (appellant herein). As there was no dispute about the remaining 2/3rd share of the compensation payable to respondent Nos. 2 to 4, LAC disbursed that portion of the share to the respondent Nos. 2 to 4.

3. Vide judgment dated 21.4.2008, the learned ADJ has held that the appellant would not be entitled to any compensation as there was no law under which the daughter could inherit share in the property of her father after father's death and under the provisions of the Land Reforms Act, said share of late Shri Sohan Lal devolved upon respondent Nos. 2 to 4, who are male members in the family; albeit the nephew, and in fact mutated in their names as well in the revenue records on 11.7.1995.

4. The learned ADJ noted that certain facts were not in dispute and for proper appreciation of the matter, it would be necessary to reproduce those facts, which are as under :- (i) Shri Bhudatt, Shri Bishan Dutt and Shri Sohan Lal, all sons of Shri Ami Lal were in possession and cultivating the land comprised in khasra Nos. 15/1 min (4-16), 4/21/3 min. (1-4) of village Bawana since prior to 1954. (ii) Shri Sohan Lal died on 14.08.1982 (the appellant has placed on record death certificate of Shri Sohan Lal, which is Ex.IP4/C). (iii) After the death of Shri Sohan Lal in the year 1952, the above-said land was continued to be cultivated by his brothers/co-sharers Shri Bhudatt and Shri Bishan Datt only. (iv) Appellant was 12 years of age at the time of her father's death and she got married in the year 1953. After her marriage, she has normally been residing at her matrimonial home in Sonepat, Haryana. (v) Appellant never cultivated the above-said land. (vi) Although Shri Sohan Lal died in 1952, but in the revenue record, he was continued to be shown to be in possession of the said land. (vii) AS a result of the fact that Shri Sohan Lal was continued to be shown in the revenue record to be in possession of the said land even after his death, he was also declared bhumidar along with his brothers Shri Bhudatt and Shri Bishan Datt

on commencement of the Land Reforms Act, on the basis of possession entries in the khasra girdawaries for the year 1953-54. (viii) After the death of Shri Bhudatt and Shri Bishan Datt, the names of respondent Nos. 2 to 4 were recorded in the revenue record as their legal heirs, successors and legal representatives with respect to the above-said land, as described at (i) above. (ix) Notification under Section 4 of the Act for acquisition of the land of revenue estate of village Bawana including above said land was issued on 6.7.1998 and physical possession of the above said land was taken over by the Government on 21.8.1998. (x) The possession of the above said was taken over from respondent Nos. 2 to 4 on 21.8.1998. (xi) The controversy as to the entitlement of the appellant arose on the acquisition of land, as, for the first time, after the acquisition, she claims to be entitled to Shri Sohan Lal's 1/3rd share in the compensation.

5. A perusal of the judgment of the learned ADJ reveals that the appellant had claimed 1/3rd share in the compensation on the ground that she being the only child/daughter and, thus, only Class-I LR of late Shri Sohan Lal, as per the Hindu Succession Act, she was entitled to entire share of compensation which belonged to late Shri Sohan Lal. This plea was not accepted on the ground that Hindu Succession Act came into effect only in the year 1956, whereas Shri Sohan Lal died before that, i.e. on 1952. The learned trial court also opined that even if Hindu Succession Act were to apply with retrospective effect, the appellant would not have inherited the said land, inasmuch as, on the death of Shri Sohan Lal in the year 1952, the said land had yet not been acquired by the Government and, therefore, the matter of succession with respect to the land could not have been governed by the Hindu Succession Act in view of the judgments of this Court in Ram Mehar v. Mst. Dakhan, ILR (1972) 2 Delhi 922 and Jai Parkash and Anr. v. Smt. Pushpa and Anr., 81 (1999) DLT 519. The learned trial court also stated that even the Land Reforms Act came into force with effect from 20.7.1954, i.e. after the death of Shri Sohan Lal and, thus, could not govern the succession. It is further opined by the learned trial court that even if this Act were to be held applicable, the appellant could not stand to gain in any manner. It is because of this reason that clause (1) of Section 50 of the Land Reforms Act, which provides general order of succession from males, stipulates that unmarried daughter shall inherit the interest of a male only in the absence of a lineal descendant. Section 51 further provides that if a female, who is unmarried daughter, inherits the interest after the commencement of the Land Reforms Act and marries, then the interest in the land shall devolve upon the nearest surviving heirs of the last bhumidar,

in terms of Section 50. Therefore, even if the appellant had inherited her father's interest in the said land by virtue of Section 50, the same would have been reverted back to respondent Nos. 2 to 4 after her marriage in the year 1953. The judgment of the learned trial court further reveals that the learned trial court also discussed the argument of the respondent Nos. 2 to 4, namely, as per customary law, daughters were not entitled to any share in the father's property and only male descendants of the deceased Hindu were entitled to succeed that share. After discussing the evidence on record as well as legal position, the learned trial court accepted the aforesaid contention of the respondent Nos. 2 to 4 holding that even as per customary law, the appellant was/is not entitled to inherit her father's share in the said land and this share could go only to respondent Nos. 2 to 4.

6. There is yet another reason given by the learned ADJ in concluding that only respondent Nos. 2 to 4 were entitled to compensation, namely, they were in continuous cultivatory possession of the land and the appellant had never cultivated the same as she was only a minor at the time of Shri Sohan Lal's death and within one year she got married. Therefore, even as per the provisions of Section 85 of the Land Reforms Act, it is the brothers of late Shri Sohan Lal, and for that matter respondent Nos. 2 to 4, who became entitled to be declared as bhumidars of the land in question by virtue of their continuous possession of that land since 1952 till the acquisition of land.

7. To sum up, the learned trial court has decided the reference against the appellant holding the respondent Nos. 2 to 4 to be entitled to the entire compensation on the following grounds :- (a) Hindu Succession Act, 1956 is not applicable in this case as appellant's father died in the year 1952 and, therefore, the appellant could not seek benefit thereof on the basis that she was the only Class-I heir of late Shri Sohan Lal. Even if it was applicable, the provisions thereof could not advance her case as the matter of succession with respect to this land could not have been governed by the Hindu Succession Act. (b) Likewise, Land Reforms Act was also not applicable, which was enacted in the year 1954, i.e. after the death of Shri Sohan Lal. Even if it was applicable and the appellant had inherited the share of her father, by virtue of Section 51 of the said Act, on her marriage in the year 1953, it would have reverted to respondent Nos. 2 to 4 in terms of Section 50.. (c) As per customary law prevailing in the year 1952, it is only respondent Nos. 2 to 4, being male lineal descendants, who were entitled to inherit the share of late Shri Sohan Lal. (d) Since respondent Nos. 2 to 4 remained in possession of the land and cultivated the same to the exclusion

of the appellant, who admittedly never cultivated this land, it is the respondent Nos. 2 to 4 who became entitled to be declared as 'bhumidars' under the Land Reforms Act and, therefore, as bhumidars, they were the persons who could get the compensation in respect of the entire land.

8. Interestingly, learned counsel for the appellant has not disputed the aforesaid position in law and/or the findings of the learned ADJ. He has taken an altogether different contention. His submission is that Constitution of India was brought in the year 1950 and any custom, having force of law/pre- constitution law, would be void if found inconsistent with any of the fundamental rights guaranteed to the citizens under the Constitution. His submission was that as the customary law which prevailed in pre-constitution era would be discriminatory qua female Hindu as she was not treated on equal footing as far as succession of the property is concerned, such law would not withstand the test of Article 14 of the Constitution of India and, therefore, was void. It was also submitted that even after his death in the year 1952, name of Shri Sohan Lal continued in the revenue records upto the year 1995 as a co-bhumidar when the names of respondent Nos. 2 to 4 were mutated in the revenue records, that too on the basis of a false death certificate. He referred to the following judgments in respect of his proposition based on Articles 13 and 14 of the Constitution :- (i) John Vallamattom and Anr. v. Union of India AIR 2003 SC 2902 (ii) Giani Ram and Ors. v. Ramji Lal and Ors., AIR 1969 SC 1144 (iii) Sant Ram and Ors. v. Labh Singh and Anr., AIR 1965 SC 314 (iv) Gazula Dasaratha Rama Rao v. State of Andhra Pradesh and Ors., AIR 1961 SC 564 (v) In Re, Smt. Amina, AIR 1992 Bombay 214

9. Learned counsel for the respondent countered the aforesaid submissions by contending that the custom which was prevailing in the year 1952 as per which daughters were not entitled to inherit the father's property does not make any distinction between females belonging to different castes. Females by themselves become one class and none of the females inherit their father's share in agricultural land. This custom came into existence to prevent further fragmentation of land holdings. Hence, the contention that the custom became ``bad in law'` on the coming into force of the Constitution is without any force. Even the sisters of Sohan Lal did not get any share in the agricultural land on the demise of their father Ami Lal. It is further submitted that Shri Sohan Lal died on 14.08.1982. The respondents 2 to 4 thereafter came into cultivatory possession of the deceased's share, as owners. Their possession was hostile and adverse to one and all. They

always claimed themselves to be the owner. They became owners by adverse possession after 12 years thereof. For this reason also, it does not lie in the mouth of the appellant now to say that the custom was bad in law or that she is entitled to share in compensation.

10. There is no quarrel with the proposition that if any pre-constitution law or any custom having force of law is found inconsistent with any of the fundamental rights guaranteed by the Constitution or, for that matter, if such law is found contrary to any provisions of the Constitution, that law would be void in the light of Article 13 of the Constitution.

11. In Gazula Dasaratha Rama Rao (supra), the Supreme Court is concerned with the validity of provisions of Section 6(1) of the Madras Hereditary Village Offices Act, 1895, a pre-constitution law. As per that, the village offices were inheritable, i.e. they were required to be given on the basis of descent. As per that provision, in choosing the persons to fill the new offices, the Collector was to select the persons whom he could consider the best qualified from among the families of the last holders of the offices. The Supreme Court held such a provision to be violative of the fundamental right under Article 16(2) of the Constitution as such a provision was discriminatory on the ground of descent only and, thus, contravened Article 16(2) of the Constitution. While holding so, the Apex Court described the legal position as under :- ``9. Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15 prohibits discrimination on some special grounds-religion, race, caste, sex, place of birth or any of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, clause (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Art. 14 guarantees the general right of equality; Arts. 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general that Art. 16, the latter being confined to matters relating to employment or appointment to any office under the State. It is also worthy of note that Art. 15 does not mention 'descent' as one of the prohibited grounds of discrimination, whereas Art. 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Art. 16 in the matter of employment or appointment to any office under the State

should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to Services or to provisions in the earlier Constitution Acts relating to the same subject..... xx xx xx 13. There can be no doubt that section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the persons to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Art. 16(2) of the Constitution.'`

12. Likewise, in Sant Ram (supra), the Constitution Bench of the Apex Court treated preemption on the ground of vicinage by custom as 'law' under Article 13(3)(a) of the Constitution and 'law in force' in Article 13(3)(e) of the Constitution. It further held that such a custom having force of law was void as it offended fundamental rights and particularly right under Article 19(1)(f) of the Constitution inasmuch as it imposed unreasonable restriction on the right to acquire, hold and to dispose of the property.

13. Likewise, in John Vallamattom (supra), the Apex Court was concerned with the constitutionality of Section 118 of the Succession Act, 1925, again a pre- constitutional law. This section places restriction on a person having a nephew or niece or any nearer relative as regards his power to bequeath his property for relatives or charitable use. Section 118 places such a restriction only on Indian Christians. The Supreme Court held that this provision was not based on any intelligible differentia and was discriminatory in nature and, therefore, unconstitutional being violative of Article 14 as well as Articles 25 and 28 of the Constitution.

14. In the light of the aforesaid position in law, the question which falls for determination in the present case is as to whether the custom which was applicable till the enactment of Land Reforms Act and thereafter Hindu Succession Act would be violative of Article 14 of the Constitution. Learned counsel for the appellant, while contending that it would be so, relied upon the order of reference passed by a Single Judge of the Bombay High Court in In Re: Smt. Amina (supra). Perusal of that order indicates that the learned Single Judge has noted an earlier Division Bench judgment of the Bombay High Court in the case of State of Bombay v. Narasa Appa Mali, AIR 1952 Bom 84 (DB). The Division Bench in that case was concerned with the validity of the provisions of Bombay Prevention of Hindu Bigamous

Marriages Act, 1946. The said Act provided for the prevention of bigamous marriages amongst Hindus. Challenge to the provisions of the said Act was laid on the ground that it discriminated against the Hindus in preference to the Christians and Parsi citizens of the State insofar as it subjected the Hindus alone to the specially severe provisions as to punishment and procedure. The Division Bench negatived the challenge.

15. The learned Single Judge of the Bombay High Court in In Re: Amina (supra) was of the opinion that the aforesaid Division Bench judgment did not lay down law correctly and required consideration by a larger Bench of at least three Judges. The learned Single Judge, in that case, was presented with a petition filed by Smt. Aminabhai, widow of Ismail Shaikh for being appointed as a guardian of two minors under the Guardian and Wards Act VIII of 1890. The two minors were the son and daughter. As per the provisions of Personal Sunni Muslim Law, the son was entitled to double the share than the daughter on inheritance. According to the learned Single Judge, such a provision was violative of Article 14 of the Constitution. The learned Single Judge also noted provisions of Section 51 of the Indian Succession Act and opined that the Court had jurisdiction to determine the constitutional validity of the said provision. In this context, the aforesaid Division Bench judgment in Narasa Appa Mali (supra) was taken note of and it was opined that the same required consideration by a larger Bench of at least three Judges. The learned Single Judge observed that no law, whether made by a legislature or Judge made, customary or otherwise, can be enforced by any Court in our country if it is inconsistent with or repugnant to guarantee of fundamental rights unless expressly saved under a specific provision of the Constitution itself like Articles 31-A, 31-B and 31-C. 'Personal Laws' are 'law' and 'laws in force' under Article 13 of the Constitution of India and are enforceable in Courts subject to provisions of the Constitution and not otherwise. Even customs and usages having the force of law are void if found inconsistent with any of the fundamental rights guaranteed by the Constitution. It could not be the intention of founding fathers of our Constitution to create any immunity in favour of personal laws. It is observed that the Constitution is a living document and it is impossible to ignore patent discrimination resulting from some of the provisions of personal laws sought to be enforced in our Courts. Some of these provisions appear to be clearly unjust, for e.g. :- (i) a Mohammedan male being entitled to marry four wives; (ii) a Mohammedan husband being entitled to divorce his wife unilaterally by pronouncing of the word ``Talaq'' thrice; (iii) gross inequality and inequality in matter of inheritance merely on

the ground of sex; (iv) provisions of old Hindu law depriving daughters of their right to inherit the property of their father if the deceased left a widow and a son behind him. The learned Single Judge further observed that personal laws are not made by the legislature but are enforced by Courts. The question to be asked is as to whether the Court can be asked to enforce a provision of personal law which appears to be repugnant to the fundamental rights. Personal laws shall have to yield to fundamental rights and all laws, whether made by the legislature or otherwise, must necessarily conform to fundamental rights. In the aforesaid circumstances, following order of reference was made :- (a) Whether 'personal laws' are subject to Part III of the Constitution of India? (b) Whether the High Court has no jurisdiction to examine the question as to whether the impugned provision of 'personal law' is in conformity with Constitution of India or not and is bound to enforce it as it is, even if it appears to be repugnant to one or other of the fundamental rights guaranteed under Part III of the Constitution of India? (c) Whether the provisions of Sunni Muslim 'Personal Law' sought to be enforced in the Courts of Law to the effect that a son is entitled to double the share than that of a daughter on inheritance is violative of Article 14 of the Constitution of India?

16. We may, however, point out that counsel have not been able to place the outcome of the said reference. Even with our own efforts to this effect, we have not been able to find out as to whether the Full Bench has answered the reference or it is still pending or what was the fate of this reference. It is possible that reference may not have been answered at all as a Single Judge was not competent to question the correctness of the Division Bench judgment and make a reference. Be that as it may, reliance upon the aforesaid order of reference may not be of much avail as it was only an order of reference and we have no decision on that reference before us.

17. However, in the present case it is not necessary to decide this issue at all. Reason is simple. The judgment of the learned ADJ needs to be affirmed for other reasons, about which there is hardly any challenge. In the facts of this case, where the appellant was not concerned with the land after her marriage, it is the respondents No. 2 to 4 who remained in cultivatory possession thereof and became bhumidars under the provisions of the Land Reforms Act. Even the land stands mutated in their name. It is this Act which governs the field and on the basis of rights accrued to the persons in possession of the land under this Act that the compensation payable to them would be determined. There is no concept of 'ownership' over the land in the

scheme of the Land Reforms Act. The compensation under the Land Acquisition Act is payable to the bhumidars declared as such under the Land Reforms Act On that reckoning, it is the respondents who would be entitled to compensation to the exclusion of the appellant.

18. On this ground alone, therefore, this appeal is bound to fail. We, accordingly, dismiss this appeal, but leave the parties to bear their own costs.

Sd/-
(A.K. SIKRI)
JUDGE

Sd/-
(MANMOHAN SINGH)
JUDGE