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the nature of the expense change when, to achieve the same object and also for the same purpose, the wooden panels are fixed. We can see no distinction in putting the wooden panels in a different category than painting the walls with a cheap material or an expensive one.

There is no direct case bearing on the subject which could be said to be on all-fours with the present case. But there are certain decisions which have been cited before us which, by way of analogy, offer some assistance. Reference in this connection, may usefully be made to the decision of this Court in *The Commissioner of Income-tax, Punjab, Jammu and Kashmir and Himachal Pradesh, Simla* v. *The Sheikhupura Transport Company Limited, Jullundur* (12), the decision of Nagpur High Court in *R. B. Bansilal Abir Chand Spinning and Weaving Mills* v. *Commissioner of Income-tax, Madhya Pradesh* (13) and the decision of the Allahabad High Court in *Re-Hindustan Commercial Bank Limited* (14). These decisions have been merely referred to by way of illustration. In fact, all of them proceeded on their own peculiar facts.

On the facts and in the circumstances of the present case, we are clearly of the view that the expense incurred by the assessee in fixing the wooden panels is an expense of a 'revenue nature' and is not an expense of a 'capital nature.' In our view, the Appellate Assistant Commissioner had come to a correct decision and the Tribunal has gone wrong in reversing his well-considered decision. The question referred to us is answered in the negative. However, there will be no order as to costs of this reference.

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S. K. KAPUR, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

DIALI RAM,—*Appellant.*

versus

MAMLESHWAR PERSHAD AND ANOTHER,—*Respondents.*

Regular Second Appeal No. 36-D of 1962.

1965

March, 9th.

Delhi Land Reforms Act (VIII of 1954) as amended by Delhi Land Reforms (Amendment) Act (IV of 1959)—Whether colourable Legislation—Ss. 13 and 185—Delhi Land Reforms Rules (1954)—Rules 6-A and 8(4)—Legislature conferring Bhumidari rights on

(12) I.L.R. (1961) 1 Punj. 261=1961 P.L.R. 1.
(13) (1957) 31 I.T.R. 427.
(14) (1952) 21 I.T.R. 353.

tenants in land included within Town Extension Scheme and providing for payment of the compensation for land acquired under the Land Acquisition Act to Bhumidars—Whether valid—Application made under S. 13—Manner of disposal thereof indicated—Interpretation of Statutes—Rule of harmony stated.

Held, that the legislature could directly pass a law entitling the tenants to be declared Bhumidars which may ultimately result even in the compensation, payable under the Land Acquisition Act, being diverted to them. It cannot, therefore, be said that the Delhi Land Reforms (Amendment) Act, 1959, is a colourable piece of legislation because the legislature was thereby trying to achieve indirectly what it could not do directly.

Held, that reading sections 13 and 185 of the Delhi Land Reforms Act, 1954 and Rules 6-A and 8(4) of the Delhi Land Reforms Rules, 1954 together, it appears that the object was that classes of tenants specified in section 13 who held the land as such were to be straightaway declared as Bhumidars. If, however, any application was made under section 13 before such declaration, that had to be disposed of by the forum provided in the Schedule read with section 185. If either under rule 6-A or after disposing of the application made, the correctness of any entry in the forms of declaration is challenged, the person concerned had to be directed by the Revenue Assistant to file regular suits within two months of the issue of the form of declaration.

Held, that the Rules and the Act should be read in such a way that they harmonise with each other and to construe them in such a manner as will avoid the rule becoming *ultra vires* the Act.

Regular Second Appeal under Section 100 *of the Code of Civil Procedure (Act V of* 1908) *from the decree of the Court of Shri Barjinder Singh Sodhi, Additional District Judge, Delhi, dated the 26th day of August,* 1961, *affirming that of Shri V. K. Jain, Sub-Judge II Class, Delhi, dated the 22nd March,* 1961, *partially decreeing the suit of the plaintiffs and declaring that the declaration of Bhoomidari in favour of the defandant in Khasra No.* 200, *and* 2 *bighas of land out of Khasra No.* 199/1 *is illegal and wrong and that the plaintiffs are entitled to be declared bhoomidars of the same, but dismissing the suit with respect to the remaining land and leaving the parties to bear their own costs.*

V. D. MAHAJAN, ADVOCATE, for the Appellant.

N. D. BALI, ADVOCATE, for the Respondent.

ORDER

Kapur, J. KAPUR, J.—This judgment will dispose of Regular Second Appeals Nos. 9-D, 36-D, 39-D, 69-D, 119-D, 121-D, of 1962 and 153-D of 1961.

So far as R.S.A. 36-D/of 1962 is concerned it is by Diali Ram tenant, who was declared Bhumidar, under the Delhi Land Reforms Act, 1954. Mamleshwar Pershad and Kamta Parshad plaintiff-respondents were the owners of plots of land bearing *Khasra* numbers 198, 199 and 200 measuring in all 37 *bighas* and 17 *biswas* situate in village Chokri, Mubarakabad, Delhi. Diali Ram appellant was declared Bhumidar with respect to the entire area comprised in *Khasra* No. 198, 8 *bighas* and 18 *biswas* out of *Khasra* No. 199 and 5 *bighas,* 17 *biswas* out of *Khasra* No. 200. There is no dispute before me so far as *Khasra numbers* 198 and 200 are concerned and the only contention raised by the learned counsel for the appellant is that the total area comprised in *Khasra* No. 199 was 10 *bighas* and 18 *biswas.* That was taken by Diali Ram appellant along with other land on lease by a lease deed, dated the 25th of August, 1953. Thereafter the appellant surrendered possession of 2 *bighas* out of *Khasra* No. 199 and it was in view of this surrender that he was made a Bhumidar of an area of 8 *bighas and* 18 *biswas* in *Khasra* No. 199.

Mr. Mahajan, learned counsel for the appellant, submits that both the Courts below were in error inasmuch as they were under the impression that it was out of 8 *bighas* and 18 *biswas* that the appellant surrendered 2 *bighas.* According to the learned counsel the reading of the plaint itself shows that the total area comprising *Khasra* No. 199, i.e., 10 *bighas* and 18 *biswas* was taken by the appellant on lease and it was out of this area that he surrendered possession of 2 *bighas.* The learned counsel submits that the appellant was under the circumstances rightly declared Bhumidar with respect to an area of 8 *bighas* and 18 *biswas* in *Khasra* No. 199. Mr. Bali, learned counsel for the respondent, does not seriously dispute the contention raised by Mr. Mahajan. In my opinion there is force in the contention of Mr. Mahajan and he is entitled to succeed to the extent that the order of the lower appellate Court will stand modified to the extent that the declaration of Bhumidari in favour of Diali Ram, appellant, with respect to an area of 8 *bighas* and 18 *biswas* in *Khasra* No. 199 was legal and proper.

Now I come to the contentions of Mr. Bali, which arise in all the appeals. Before I deal with the contentions it is

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necessary to set out certain facts. The area in question is Town Extension Scheme Area which is shown as such in the plan of the village, Exhibit P.1. On 20th July, 1954, the Delhi Land Reforms Act came into force and admittedly it applied to the entire Town Extension Scheme Area (hereinafter referred to as the area). In 1956, the Act was amended and the amendment came into force on 8th January, 1957. The effect of the amendment was that the Act ceased to be applicable to the area. This fact again is not disputed. On 3rd September, 1957, the interim general plan and then the master plan for development of Delhi were brought into being and the area was notified for acquisition under section 4 of the Land Acquisition Act. That notification, I am told has been challenged in Court, and the matter is still pending.

On 12th March, 1959, the Act was again amended by amendment Act, No. 4 of 1959 and the result of this amendment was that the Delhi Land Reforms Act, 1954, again became applicable to the area in question. By reference to the various documents and the evidence of Chander Singh, *mukhtiar* of the plaintiff, who appeared as P.W. 2, an effort has been made by Mr. Bali, the learned counsel for some of the appellants, to show that in the area adjacent to the area in question, buildings had been constructed and the locality had fully developed into a residential colony. It is further pointed out by Mr. Bali, that the compensation under the Land Acquisition Act, has been assessed at Rs. 9,03,874 for the land which is the subject-matter of dispute in these appeals. While this compensation under the Land Acquisition Act, says Mr. Bali, will be paid to the tenants, who have been made Bhumidars under the said Act, the owners will get about Rs. 5,000 as compensation under the provisions of the said Act. In the light of the above facts Mr. Bali has raised the following contentions (1) that the said Act or at any rate the amendment Act 4 of 1959, is a colourable piece of legislation and by enacting this law the legislature has merely taken away the compensation which would have been paid to the owners under the Land Acquisition Act and given it over to the tenants who were declared Bhumidars, (2) that the Act of the Revenue Assistant in granting Bhumidari to the respondent-tenants on 19th September, 1959, was *mala fide* and a fraud on his statutory powers and (3) that rule 6(A) of Delhi Land Reform Rules is *ultra vires* to the Act.

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I will deal with these contentions in the order in which they have been set out. Regarding No. 1, the submission of Mr. Bali, is that the whole object of the legislature in bringing the area within the purview of the Act by amendment Act of 1959, was to transfer the compensation payable to the land-owners under the Land Acquisition Act to the tenants. By this amendment the land-owners have been deprived of their property against payment of a nominal compensation under the Land Acquisition Act and compensation has been diverted to the tenant-Bhumidars. According to the learned counsel, the legislature knew that notification under section 4 of the Land Acquisition Act had been issued on 15th September, 1957, but still the amendment was made with the object of transferring the compensation payable to the land-owners under the Land Acquisition Act to the pockets of the tenants Bhumidars. Mr. Bali, concedes that the Act as amended in 1959 is immune from attack on the ground of any violation of fundamental rights in view of the 17th amendment in the Constitution. He, however, submits and, in my opinion, rightly that the veil of protection cast by the 17th amendment does not immunise the Act against an attack on the ground that the same is outside the legislative competence or is a colourable piece of legislation. His main attack regarding validity is confined to amendment Act 4 of 1959, because it is by this amendment that the Delhi Land Reforms Act became determining applicable to the area. Mr. Bali submits that the test for determining whether legislation is colourable or not has been laid down by their Lordships of the Supreme Court in *K. C. Gajapati Narayan-Deo* v. *State of Orissa* (1) and *K. Kunhikoman* v. *State of Kerala* (2) in the following words:—

> "The question whether a law was a colourable legislation and as such void did not depend on the motive or *bona fides* of the legislature in passing the law but upon the competency of the legislature to pass that particular law, and what the courts have to determine in such cases is whether though the legislature has purported to act within the limits of its powers, it has in substance and reality transgressed those powers, the

(1) A.I.R. 1953 S.C. 375.
(2) A.I.R. 1962 S.C. 723.

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transgression being veiled by what appears, on proper examination to be a mere pretence or disguise. The whole doctrine of colourable legislation is based upon the maxim that you cannot do indirectly what you cannot do directly".

I am, therefore, remitted only to consider whether the legislature could directly pass a law entitling the tenants to be declared Bhumidars which may ultimately result even in the compensation, payable under the Land Acquisition Act; being diverted to them. If the legislature could directly pass such a law it cannot be said that the legislature was trying to achieve indirectly what it could not do directly. Mr. Bali, does not dispute that such a law would be within the Legislative competence. That, in my opinion, puts an end to the argument that there was any colourable exercise of legislative powers. Nothing has been shown why the act of the Revenue Assistant in granting Bhumidari was *mala fide*.

Mr. Bali next contends that rule 6-A is *ultra vires* the *Act*. His submission is that section 185 of the Act provides that except as provided by or under this Act no Court other than a court mentioned in column 7 of Schedule 1 shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, take cognizance of any suit, application, or proceedings mentioned in column 3 thereof. He then invites attention to item 4 in the Schedule and points out that in second column in the Schedule the sections mentioned are 10, 11, 12, 13, 73, 74, 79, and 85 and in column 3 which is "description of suit, application and other proceedings", it is stated "application for declaration of Bhumidari rights". From the said Schedule read with section 185 of the Act, Mr. Bali, seeks to deduce that an application under sections 10, 11, 12, 13 (the parties being concerned with section 13 in this case) requires a hearing and judicial determination while rule 6-A prescribes a mechanical method for declaration of *Bhumidars* and *Asamis* and dispenses with any hearing as contemplated by the Act. The learned counsel derives support from the observations of the Bench Decision in *Ramji Lal* v. *Lakhi, etc.* (R.S.A. 46-D/of 1961) decided on the 13th of March, 1963 and other R.S.As., which were referred to the Bench

that "there is certainly no provision for any contest in rule 6-A and the following rules at the stage of the preparation of the declaration certificates, the work apparently being more or less mechanical subject to the strict checks and counter checks in the rules". Mr. Mahajan, submits that the question regarding validity of rule 6-A was not raised in the Courts below and the appellant cannot now be allowed to raise the same. He also submits that the Division Bench has finally pronounced upon the validity of this rule and it is no longer open to the appellant to reagitate the question. Mr. Mahajan refers in this connection to the following observations in the Bench decision—

> "An attempt was made to argue that this procedure (procedure prescribed under rule 6-A and the following rules) was *ultra vires*. But this argument was simply based on the principles of natural justice which I do not think apply in a case of this kind".

According to Mr. Bali's submission the question of the validity of Rule 6-A was expressly left upon by the Division Bench and as a matter of fact it was assumed at that time that the rule was *intra vires* the Act.

Regarding the question having not been raised earlier I see no objection to the appellant being permitted to raise this question in the second appeal, since it relates to the very validity of the rules itself. Regarding the merits of the attack, I am afraid I do not agree with the learned counsel for the appellant. Section 185 and the Schedule have a limited application and merely contemplate and provide a form for the determination of an application if made under any of the provisions set out in column 2 of Schedule 1, namely, sections 10 to 13, 73, 74, 79 and 85. I can visualise a case where after the Act has come into force some one makes an application that he should be declared as a *Bhumidar* and the said application is contested, it would certainly fall to be disposed of in accordance with and by the forum provided by section 185, read with Schedule 1 of the Act, but that does not militate against a rule being framed in exercise of the rule-making power on the lines of rule 6-A. Rule 8(4) of the Delhi Land Reforms Rules, 1954, specifically provides that anyone who

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challenges the correctness of entries in the forms of declaration shall, except where it refers to a clerical omission or error, be directed by the Revenue Assistant to file a regular suit within two months of the date of the issue. Reading sections 13, 185 and Rules 6-A and 8(4) together it appears that the object was that classes of tenants specified in section 13, who held the land as such were to be strightaway declared as *Bhumidars*. If, however, any application was made under section 13, before such declaration, that had to be disposed of by the forum provided in the Schedule read with section 185. If either under rule 6-A or after disposing of the application made, the correctness of any entry in the forms of declaration is challenged, the person concerned had to be directed by the Revenue Assistant to file regular suits within two months of the issue of the form of declaration. On the well-established rules of construction, I am obliged to read the rules and the Act in such a way that they harmonise with each other and to construe them in such a manner as avoids the rule becoming *ultra vires* the Act. Reading the above provisions in the manner expressed by me above, there is no conflict between the rules and the Act.

In R.S.A. 39-D of 1962, the learned counsel for the appellant, further contends that a part of the land in dispute is *ghair mumkin rasta* and the defendant-respondent cannot be said to be in its possession as non-occupancy tenant. The learned Additional District Judge, did not allow this point to be raised since according to him this was never the plaintiff's case. I see no reason to allow the point to be raised now.

All other points have been disposed of by Division Bench judgment, dated the 13th March, 1963, given in these appeals. Except appeal No. 36-D of 1962, all other appeals fail and are dismissed. Appeal No. 36-D of 1962 succeeds to the extent that the declaration as Bhumidar in favour of Diali Ram, with respect to an area of 8 *bighas*, and 18 *biswas* in *Khasra* No. 199, was legal and proper.

There will be no order as to costs.

R.S.