(2013) 02 RAJ CK 0042

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6898 of 2006

Amar Singh Jat APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 10, 18
Rajasthan Tenancy Act, 1955 — Section 221, 232, 88

Citation : (2013) 3 CDR 1197

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Advocate : J.L. Purohit, with Mr. C.R. Jahkhar, Mr. Sudheer Sharma, Mr. Khet Singh and Mr. Rajesh Choudhary, for the Appellant; R.L. Jangid, AAG and with Mr. H.S. Bishnoi, for the State and Mr. D.S. Rajvi, for the Municipal Council, Nohar, for the Respondent

Final Decision : Disposed Off

Judgement

Vineet Kothari, J.—This batch of 32 writ petitions is being disposed by this common order. The facts apposite for the purpose of disposal of these writ petitions, illustratively, are taken from CW No. 6898/2006-Amor Singh Jat vs. State of Rajasthan & Ors. The petitioners, before this Court, in this batch of writ petitions, are aggrieved by the order of Board of Revenue dated 05th May, 2005, passed in Reference Case No. 6/93/TA/Ganganagar (State of Rajasthan vs. Krishna Giri (deceased) through LR''s Dayal Giri), whereby the learned Single Member of Board of Revenue (Sh. B.L. Meena) decided the reference/revision under Secs. 232 and 221 of the Rajasthan Tenancy Act, 1955 (for short, hereinafter referred to as ''Act of 1955'') against the judgment and decree of S.D.O., Nohar dated 26.02.1973 passed in Revenue Suit No. 22/68-Krishna Giri disciple of Takhat Giri, by caste Swami, Resident of Nohar vs. State of Rajasthan through Tehsildar, Revenue, Nohar.

2. The brief facts for disposal of the present batch of writ petitions to the extent

relevant are as under:--

3. The disputed land in question ad-measuring 2375 Bigha and 16 Biswa of land situated in Nohar, District Hanumangarh, was earlier "Jagir" land, which was resumed under the provisions of Jagir Resumption Act, 1952, and in respect of that land, several litigations cropped up between various parties even up to this Court by way of writ petition being DBCWP No. 1202/1982-State of Rajasthan Vs. Krishna Nand Giri & Ors. The said writ petition came to be disposed of by the Division Bench of this Court vide the judgment dated 13.11.1991, which order is quoted hereinafter in extenso, by which the Division Bench of this Court while remanding the matter back to the learned Board of Revenue, on the premise that even though prior to 1981, the Board of Revenue had no power to set aside the "decree" of the Revenue court while exercising its reference jurisdiction under Sec. 232 of the Act of 1955, but after amendment of 1981 with the inclusion of the word "decree" in Sec. 232, by way of amendment dated 05.10.1981, it has got such powers to set aside even the ''decree'' of revenue courts also in reference jurisdiction under Sec. 232 of the Act of 1955. But, even prior to the amendment, the Board had the revisional powers under Sec. 221 of the said Act and thereby even while dealing with the reference application under Sec. 232 of the Act, it could exercise its revisional jurisdiction under Sec. 221 of the said Act and set aside the decree if it came to such a conclusion. The Division Bench, therefore, held that in view of facts and circumstances of the present case, it ought to have disposed to the case exercising its power under Sec. 221 read with Sec. 232 of the Act of 1955 and dealt with the case on merits of the decree impugned before it, which it had earlier refused to do so vide its impugned orders dated 28.07.1991 and 11.07.1979.

4. In pursuance of the said order of remand by the Division Bench of this Court, the Single Member of Board of Revenue has passed the impugned order dated 05.05.2005 and while accepting the reference application made by the Collector, and it has set aside the decree of learned S.D.O., Nohar dated 26.02.1973 and also subsequent order dated 17.09.2002 for mutation entries, and directed the revenue authorities to record the entire land of 2375 Bigha and 16 Biswa in the name of State Government. The said order of learned Single Member of Board of Revenue has been assailed in the present batch of writ petitions, both by the State Government (Revenue Department), Municipal Council, Nohar and the private parties, who claimed that in the original decreed dated 26.02.1973, the learned S.D.O., Nohar had himself directed that 146 Bighas of land in Khasra No. 793/733 out of total 2375 Bighas and 16 Biswas of land, was to be recorded in the name of State Government; whereas only remaining land ad-measuring 2173 Bigha of land, was to be recorded in the name of decree-holder, Krishna Nand Giri, of which, necessary mutation entries were made in the revenue record on 01.08.1969.

5. Learned counsel for the petitioners (private land owners), Mr. J.L. Purohit, Sr. Advocate assisted by Mr. C.R. Jakhar, Mr. Sudheer Sharma, Mr. Khet Singh and

Mr. Rajesh Choudhary, submitted that out of land so recorded in the name of State in pursuance of decree dated 26.02.1973, these private parties are the subsequent purchasers or allottees and, therefore, the impugned order of Board of Revenue dated 05.05.2005 directing to record the entire land of 2375 Bigha and 16 Biswas in the name of State again, seriously prejudiced them and, therefore, the same deserves to be quashed and set-aside.

6. The learned counsel for the petitioners also brought to the notice of the Court that the finding of the learned Single Member of Board of Revenue (Sh. B.L. Meena) at internal page 4 of the impugned order dated 05.05.2005 (page 94 of the paper book) that as far as 20 Bigha and 4 Biswa of land was concerned, situated in Khasra Nos. 106, 107/223 and 108/224, the said Single Member had himself held that the present reference application under Sec. 232 of the Act, was liable to be dismissed being ineffective in view of the compromise decree dated 08.04.2002; and therefore, in the operative portion of the impugned order dated 05.05.2005, it could not have directed the entire disputed land of 2375 Bighas and 16 Biswas to be recorded in the name of State Government.

7. They also submitted that while disposing of a writ petition being SBCWP No. 2984/2005-Dayal Giri Chela Krishna Nand Giri R/o Nohar through Power of Attorney Holder Ami Lal S/o Uda Ram, R/o Village Silwala Khurd, Tehsil Tibbi, District Hanumangarh vs. The State of Rajasthan & Ors., which petition came to be decided on 29.11.2007, wherein this Court had already quashed and set aside the impugned order dated 05.05.2005 of Board of Revenue to the extent of aforesaid 20 Bigha and 4 Biswas of land. Therefore, in any case, the impugned last portion of the order dated 05.05.2005 of learned Single Member of Board of Revenue directing the entire land of 2375 Bigha and 16 Biswa is incorrect and cannot be sustained.

8. Mr. D.S. Rajvi, learned counsel for the Municipal Council, Nohar, drew the attention of the Court towards the facts stated by him in CW No. 3431/05-Lekharam vs. State & Ors. He also drew the attention of the Court towards the order dated 20.05.2005 (Annex. R/5/4) at Page 143 of the paper book of CW No. 3431/05 passed by District Collector, Hanumangarh, whereby the Collector had allotted 5.060 hectares of Government land to the Municipal Council, Nohar, in Khasra No. 107 on payment of price of the same @ Rs. 4,000/- per Bigha at Rs. 80,000/- including therein payment of "Malgujari" of Rs. 480/- and the Municipal Council, Nohar deposited the sum of Rs. 80, 480/- for said land measuring 5.060 hectares out of said 2375 Bigha and 16 Biswa, to be allotted to the Municipal Council, Nohar. According to learned counsel for the Municipal Council, Nohar, the Municipal Council paid the said price to the State Government vide Challan receipt produced by him at Page 154 of the paper book of writ petition on 24.05.2005. The Municipal Council, Nohar was also allotted another chunk of land measuring 3.795 hectares of Government land in the same Khasra No. 107 and price for that land of Rs. 2,40,360/- was also paid by the Municipal Council, Nohar vide Challan dated 24.05.2005 (Annex.R/5/8) at page 153 of the paper

book in CW No. 3431/05. He, therefore, submitted that the allotment of said land in favor of Municipal Council, Nohar could not be disturbed by the learned Single Member of Board of Revenue vide order dated 05.05.2005.

9. It appears from the record that several revenue suits were filed in the present case under Sec. 88 of the Act of 1955 for declaration of respective rights and one such decree dated 09.08.1982 is in case of Revenue Case No. 75/02 Lekhram S/o Mana Ram vs. State of Rajasthan, is Annex.P/2 (at Page 43 in CW No. 3431/05).

10. Mr. R.L. Jangid, AAG and Sr. Advocate assisted by Mr. H.S. Bishnoi, counsel for the State, however, supported the impugned order dated 05.05.2005 but could not contend anything against the proposed remand of the matter again to the Board of Revenue, required to be made to the Board of Revenue, in view of aforesaid situation.

11. I have heard learned counsels for the respective parties at length and perused the impugned order dated 05.05.2005 of the Single Member of Board of Revenue and record of the case, as well as the judgment/order of Division Bench of this Court dated 13.11.1991 and earlier order dated 29.11.2007 passed by this Court in CW No. 2984/05-Dayal Giri Chela vs. State of Rajasthan & Ors.

12. It is considered appropriate to first reproduce the relevant orders, referred to above. The order dated 13.11.1991 passed by the Division Bench of this Court deciding the DBCW No. 1202/1982-State of Rajasthan vs. Krishna Nand Giri & Ors., reads as under:--

This is a writ petition filed by the State of Rajasthan against the orders passed by the Board of Revenue dated 28th July, 1981 and 11th July, 1979.

Brief facts which are necessary for the disposal of this writ petition are that respondent No. 1 claims himself to be the disciple successor of Shri Takhat Giri and also claimed to be the successor of Maufidar Shri Hari Giri on the disputed land. A detailed chart of disputed land and various khasras has been submitted in the writ petition. The total land was 2375 Bighas and 16 Biswas. The aforesaid land was a Jagir (Maufi) land standing in the name of Hari Giri disciple of Prem Giri. Aforesaid land was resumed consequent to commencement of Rajasthan Lands Reform and Resumption of Jagir Act, 1952 (hereinafter referred to as the Act, 1952). The Assistant Collector, Zamindari and Vishvedari Sriganga Nagar vide his order dated 15/7/61/ and 1/8/61 ordered that the said land will be resumed and entered as Sarkari instead of, Jagir because of the resumption of Jagir. The respondent Maufidar. admitted that he has already taken the compensation and rehabilitation grant in resumption of Jagir and the land was mutated in the record as Govt. land. Harigiri filed an appeal against the said order and the said appeal was decided by the Board of Revenue vide order dated 27 Dec. 1961 observing that the rights of the parties would be decided in accordance with law in the manner prescribed after granting opportunity of hearing to the appellant respondent. However, the appeal was dismissed with these observations. Thereafter, Harigiri through his power of Attorney Holder Shri Krishna Nand Giri filed an application before the Tehsildar, Nohar under Secs. 10 and 18 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 for declaration of khud kasht of Harigiri in the land specified in the application. In the said application, it was prayed that all the lands which have been recorded, it was prayed that all the lands which have been recorded in the settlement record as khud kasht of the petitioner, should be entered as his khatedari. The application was forwarded by the Tehsildar to the Collector. The cultivators who were actually cultivating the land contested the application praying that they are the tenants. The Collector after hearing both the parties decided the application vide his judgment dated 8th Sept. 1967. The learned Collector divided the land into two parts. Category ''A'' was the land entered as khud Qabiz and Category ''B'' was the land which was in possession of the tenants and learned Collector observed in respect of these lands that there is no entry to this effect that these lands are khud kasht as they have been shown as cultivated by the various cultivators. He ordered that most of the land which was Khud Qabiz of the Harigiri was Banjar land and in view of the decision given in D.B. Civil Writ Petition No. 52/61 and connected writ petitions The State of Rajasthan Vs. Pooran Singh and Others, the entry of Khud Qabiz used in the Settlement record of the erstwhile Bikaner State cannot be treated as synonymous with Khud Kasht. The Collector came to the conclusion that Khud Qabiz land in possession of the petitioner cannot be treated as Khud Kasht and no khatedari rights can be claimed by the respondent. The Collector dismissed the application dated 6th July, 1964. The Maufidar did not take any further proceedings against the said order or agitate the matter before any competent court. Thus, the said order became final and subsequently Harigiri disciple of Prem Giri filed a suit for declaration before the S.D.O. Nohar through power of attorney holder Krishna Nand Giri claiming that he was the khatedar Kashtkar of the disputed land comprising of 2375 bighas and 16 biswas of land and settlement record of Samvat year 1985 contains a wrong entry that the petitioner was khud Qubiz and the same should be corrected as Khud Kasht. Petitioner further prayed that the mutation dated 1/8/1961 be declared null and void and he may be declared to be khatedar tenant of the aforesaid land. The petitioner State contested the suit denying the allegations of the respondent. During the pendency of the suit, Krishan Nand Giri applied for being substituted as the legal representative of deceased Harigiri and he was substituted accordingly. Against that order, State preferred a revision and the revision was allowed and the said revision No. 204/69 was decided on 4th August, 1971 by the Board of Revenue. Learned Member of the Board of Revenue set aside the order and the case was remanded to the trial court with the direction that a fresh order may be passed after hearing the parties in the light of the observations made in the order. However, no order was passed substituting Krishna Nand Giri as L.R. entitling to carry on the suit in the place of the deceased Harigiri. However, the learned S.D.O. vide judgment dated 26/2/1973 decreed the suit in respect of the Jagir land. The Tehsildar, Revenue, Nohar did not report the matter to the higher authorities and no appeal could be preferred against the judgment and decree passed by the S.D.O. Some of the tenants who were holding the lands in their possession applied for being impleaded as parties to the suit and their application was also dismissed. On 9th November, 1973, one Shri Pannalal Sharma, Secretary of Kashtkari Union representing the various tenants affected by the aforesaid order, applied to the Collector that Krishna Nand Giri in collusion with Tehsildar, Nohar obtained a decree regarding these lands causing loss of twenty lacks to the State Govt., hence proceedings should be taken against the aforesaid order. The Collector sent for the record and enquired into the matter and came to the conclusion that the above decree has been wrongly obtained. The Collector thereafter came to the conclusion that the matter is required to be referred to the Board of Revenue but before making a reference, he issued notice to the parties. After hearing both the parties, the Collector vide its order dated 29 Dec. 1976 made a reference to the Board of Revenue for quashing the judgment and decree dated 26.02.1973. The matter came up before the Board of Revenue and the learned Member of Board of Revenue came to the conclusion that since it was a reference and in reference, a decree passed by the subordinate Court cannot be set aside, therefore, by referring the decision in case of Karasingh, Ishwar Ram, Harji etc. vs. State Board of Revenue, (S.B. Civil Writ Petition 1276/1969 decided on 2nd Aug. 1978 by this Court) declined to interfere in the reference made by the Collector. Thereafter a review application was also filed before the Board of Revenue and it was prayed that this reference may be treated as a revision and the revisional power of the Board of Revenue under Sec. 221 of the Raj. Tenancy Act may be exercised but that review application was rejected by the order dated 28th July, 1981.

State has filed this writ petition challenging the orders of the Board of Revenue dated 11th July, 1979 and 28th July, 1981. The writ petition was admitted and notices were issued. Despite service on non-petitioner No. 1 Krishna Nand Giri, nobody has appeared to oppose this writ petition.

We have heard learned Addl. Govt. Advocate and perused the record. It is true that prior to the amendment of Sec. 232, the Board of Revenue could not have set aside a decree but Sec. 232 of the Rajasthan Tenancy Act has however undergone an amendment and the word ''decree'' had now been inserted in Sec. 232 by the amendment dated 5th October, 1981 but this matter is prior to 1981, therefore, the position obtaining prior to 1981 has to be examined. It is true that at that time, the decree passed by any competent court, cannot be set aside by the Board of Revenue by exercising its reference power under Sec. 232 of the Rajasthan Tenancy Act. But at that time also, the Board had a revisional jurisdiction u/s. 221 of the Rajasthan Tenancy Act. In fact when the matter was seized by the Board of Revenue, it could not have left the matter on that ground alone that since a decree has been passed by the competent Revenue Court, therefore, in a reference, the Board cannot set aside a decree. The Board should have at least examined the matter in his revisional jurisdiction also under Sec. 221 of the Rajasthan Tenancy Act. In fact, a review application was filed to this effect requesting that in case, Board is not inclined to examine this decree in view of Sec. 232 of the Rajasthan Tenancy Act, still the Board has jurisdiction under Sec. 221 of the Rajasthan Tenancy Act and it can be exercised but that review application was rejected being barred by limitation. Be that as it may, the fact remains that the Board of Revenue ''has a revisional jurisdiction as the higher court in the revenue side and in somewhat similar circumstances the matter came up before this Court in a case reported in 1981 R.R.D. page 356 wherein it was held that under Sec. 232, a decree cannot be set aside in reference by the Board of Revenue but notwithstanding that, the Board of Revenue has a revisional jurisdiction and it can interfere in the matter if it finds that there is a miscarriage of justice. It is not the case that Board of Revenue is helpless in exercising its jurisdiction. The Board of Revenue has ample power to examine the matter on merits and if it comes to the conclusion that the matter really warrants interference on account of the miscarriage of justice it can interfere in the given case, therefore, the view taken by the learned Member of the Board of Revenue that, he has no jurisdiction to set aside the decree, cannot be countenanced as he has a power u/s. 221 of Rajasthan Tenancy Act of superintendence over all the revenue courts below.

Therefore, it would be just and proper to set aside the orders of the Board of Revenue dated 11th July, 1979 and 28th July, 1981 and remand the case back to the Board of Revenue to decide the matter after hearing both the parties on merits and if it considers that case warrants interference looking to the peculiar facts and circumstances so as to justice then it will be open for the Board to pass the order in accordance with law.

Consequently, this writ petition is allowed and the case is remanded back to the Board of Revenue to decide the matter in accordance with law.

13. While dealing with same impugned order of Board of Revenue dated 05.05.2005 in CW No. 2984/05-Dayal Giri Chela vs. State of Rajasthan & Ors. this Court on 29.11.2007 held as under:--

8. Having heard learned counsel for the parties and considering the rival submission of the counsel made at the Bar, this Court is of the opinion that the learned Member of the Board of Revenue has clearly fallen in error in passing the impugned order dated 05.05.2005. Once the order passed by the Coordinate Bench of the Board of Revenue though an interim order dated 17.09.2002 had acquired finality having been challenged by the State before this Court up to the Division Bench of this Court, one fails to understand how any single Member of the Board of Revenue could pass a contrary order without making any reference to the orders passed by this Court at least to the order of learned Single Judge dated 28.04.2003 which was passed at least two years prior to the passing of the order on 05.05.2005. As far as the dispute relating 20.04 Bighas of land was concerned, that became final qua the petitioner and the reference with respect to that land was already rejected by the earlier Member of the Board of Revenue as having become infructuous and despite noticing this fact in the impugned order

dated 05.05.2005 the learned Single Member of the Board of Revenue chose to allow the entire reference and set aside the earlier order dt. 17.09.2002, ignoring this Court''s order.

9. This Court is of the opinion therefore that impugned order [Annexure 4] dated 05.05.2005 cannot be sustained in the eyes of law.

10. Consequently, this writ petition is allowed and the impugned order [Annexure 4] dated 05.05.2005 and consequential Mutation Entries vide [Annexure 12] dated 11.05.2005 made by the Tehsildar, Nohar are quashed and set aside to the extent of 20 Bighas 4 Biswa as aforesaid. The respondent Tehsildar, Nohar shall affect the necessary mutation entries in favour of the petitioner in terms of the previous order dt. 13.9.2002 for said 20 Bighas 4 Biswa land within a period of two months from today. No orders as to costs.

14. The operative portion of the impugned decree dated 26.02.1973 in Revenue Suit No. 29/68-Krishna Nand Giri Vs. State of Rajasthan, is also reproduced for ready reference:--

15. The learned Single Member of Board of Revenue in the impugned order dated 05.05.2005 has held as under:--

16. From the aforesaid, it appears that since the learned Single Member of Board of Revenue failed to take a comprehensive view of the entire disputed land of 2375 Bigha and 16 Biswa and passed self-contradictory orders in the impugned order dated 05.05.2005 itself as narrated above for 20 Bigha and 4 Biswa of land, dealt with in this Court in CW No. 2984/05-Dayal Giri Chela vs. State of Rajasthan & Ors., decided on 29.11.2007 and Board, has also to the extent of 146 Bigha and 2 Biswa of land decreed in favour of State vide decree dated 26.02.1973 itself, quoted above; and for which there was no occasion of reference to the Board under Sec. 232 arising out of the impugned decree dated 26.02.1973, but still the learned Single Member of Board of Revenue in the operative portion of the order dated 05.05.2005 has directed that the entire land 2375 Bigha and 16 Biswa be recorded in the name of State government giving rise to obvious incongruities in the order dated 05.05.2005, the part of which has already been quashed by this Court qua the petitioner, Dayal Giri in CW No. 2984/05, decided on 29.11.2007. Since the genesis of the present batch of writ petitions, 32 in number, as per Schedule appended with this judgment is the impugned order of Board dated 05.05.2005, this Court is of the considered opinion that the impugned order dated 05.05.2005 in its entirety cannot be sustained and it is required to be set aside. The same is accordingly set aside and the entire case again deserves to be remanded back to the Board of Revenue.

17. Obviously, the rival claims of private parties, Municipal Council, Nohar and the State have arisen in this litigation with respect to the said total land measuring 2375 Bigha 16 Biswas situated in Nohar, District Hanumangarh. Unless the complete and comprehensive view with respect to said entire land of

2375 Bigha 16 Biswas is taken by the final fact finding body i.e. the Board of Revenue, the various disputes, which have so far arisen on account of such different orders passed at different levels, cannot be put to an end. Therefore, there is a need for the Board of Revenue to deal with the matter again in total and comprehensive view of the entire matter in respect of the entire land in question measuring 2375 Bigha 16 Biswas, situated at Nohar, District Hanumangarh.

18. Accordingly, while remanding the matter back to the learned Board of Revenue, this Court is of the further opinion that the Bench of at least three members of Board of Revenue, headed by the Chairman of the Board of Revenue himself, should re-decide this reference/revision while exercising its powers under Secs. 232 and 221 of the Act of 1955 read together, instead of a Single Member and such larger Bench should consider all the previous orders, decrees and the judgments rendered by this Court with respect to said land in question. They should not only fully quote all these orders and other relevant events, while re-deciding this matter again, but also indicate their findings and reasons and impact of these orders and decisions on the various parts and portion of the said entire land of 2375 Bigha and 16 Biswas. The previous orders passed by the Board of Revenue and its lower revenue courts or Appellate Authority will not stand in the way of the said larger Bench of Board of Revenue and the Board of Revenue is expected, and is therefore, directed to rehear the entire matter after giving opportunity of hearing to all the concerned parties, namely, State through the Revenue Department, Municipal Council, Nohar and the private parties, who are involved in the present litigation in the present set of writ petitions before this Court. The Larger Bench of Board of Revenue of three members, headed by the Chairman, is expected to give their own reasons, findings after considering the entire material on record, original revenue record, various decrees and orders and judgments of this Court and thereafter decide the respective rights of the parties. While deciding the matter afresh, the Board of Revenue shall make the map of the entire land in question (measuring 2375 Bigha 16 Biswa), which will form the part of their judgment, showing their respective findings and allocation of the land in question with respective rights of the parties determined by them.

19. In some of the cases, pending before this Court, interim relief had been granted to the parties in the form of status quo orders, therefore, it is directed that till the Board of Revenue so re-decides the aforesaid matter, which it is expected to decide within one year from today, the status quo of the entire land 2375 Bigha and 16 Biswas in question, shall be maintained by all the concerned parties. No further alienation of the land in question falling within the said area of 2375 Bigha and 16 Biswas of the land shall be made by any party. With these observations and directions, all these writ petitions are disposed of. The order impugned dated 05.05.2005 passed by learned Single Member of Board of Revenue is set aside. All the parties either in person or through their respective counsels, in the first instance may appear before the Chairman of Board of

Revenue/Bench headed by him on 01.03.2013 and thereafter the learned Chairman of Board of Revenue may constitute the three members bench to expeditiously hear the aforesaid matter as indicated above and decide the same within one year from today. No order as to costs. A copy of this order be sent to the concerned parties and the Chairman, Board of Revenue, Ajmer, forthwith for information and necessary action.

