
(2009) 03 RAJ CK 0023
In the Rajasthan High Court

Babu Singh

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 82

Citation : (2009) 2 WLN 4

Hon'ble Judges : R.S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dt. 06.07.1994 passed by the Additional Collector whereby a reference was made to the Board of Revenue with regard to mutation which was opened in favour of the petitioner. The petitioner has also challenged the order of the Board of Revenue dt. 28.04.1995 whereby the reference was allowed and the mutation made in favour of the petitioner was set aside and the land was directed to be mutated in the name of Mandir Shri Madangopalji Maharaj Virajman Moja Bahrawali.

2. The brief facts of the case are that the land situated in village Bahrawali, Tehsil Roopbas, District Bharatpur bearing Khasra Nos. 142, 156, 163, 140, 159, 160, 161, 246, 245, 157, 158, 162 and 163 were shown as a "muafi land" of Pandit Gordhan Singh as far back as Samvat Year 1978-79. However, in the year 1945, the said land was shown in the revenue record, in the name of Mandir Gopalji Maharaj and in the name of petitioner's father, Prabhu, as "Ghair Morusidar Pattedar" (sub-tenant). On 20.06.1957, Prabhu applied to the SDO for confirmation of khatedari rights u/s 19 of the Rajasthan Tenancy Act. Vide order dt. 24.05.1958, the SDO allowed the application and conferred khatedari rights. It is pertinent to note that despite the fact that both the State Government and the temple were parties before the SDO, they did not challenge the order dt. 24.05.1958. Hence, the said order achieved finality. In pursuance of the order dt. 24.05.1958, a mutation, Mutation No. 138 was attested in the name of Prabhu

and he was recorded as a khatedar of the said land. After the delay of almost thirty-five years, one Charan Lal Sharma filed an application u/s 82 of the Rajasthan Land Revenue Act before the Additional Collector, Bharatpur, respondent No. 2. The petitioners filed the reply. Vide order dt. 06.07.1994, the Additional Collector made a reference to the Board of Revenue. The Board of Revenue, vide order dt. 28.04.1994 accepted the reference and passed the order as indicated above. Hence, this petition before this Court.

3. Mr. R.K. Goyal, the learned Counsel for the petitioner, has vehemently contended that firstly the order dt. 24.05.1958 passed by the SDO had achieved finality. Therefore, the Board of Revenue could not circumvent the said order. Secondly, the reference has been made after a delay of thirty-five years. The reference u/s 82 has to be made within a reasonable time. The said reference cannot be made and should not have been accepted after delay of thirty-five years. In order to buttress his contention, he has relied upon the case of Anandi Lal Vs. State of Rajasthan and Others,

4. On the other hand, Mr. Zakawat Ali, the learned Dy. GA for the State, has contended that the land belonging to a deity actually belongs to a minor. The said land needs to be protected from being sold by or being converted in favour of third party. As far back as 1945, the said land was entered into in the name of Mandir Shri Gopalji Maharaj. Therefore, a reference could be made with regard to the illegal declaration of the petitioner's father as khatedar of the said land. Hence, he has supported the impugned orders.

5. Section 82 of the Land Revenue Act is as under:

Power to call for records and proceedings and reference to State Government or Board.--The Settlement Commissioner or the Director of Land Records [or a Collector] may call for and examine the record of any case decided or proceedings held by any revenue Court or officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings;

and, he is of opinion that the proceedings taken or order passed by such subordinate Court or officer should be varied cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board, if the case is of a judicial nature or connected with the settlement, or for the orders of the State Government if the case is of a non-judicial nature not connected with Settlement;

and the Board or the State Government, as the case may be, shall thereupon pass such order as it thinks fit.

6. A bare perusal of the said provisions clearly reveal that no period of limitation has been prescribed for making a reference to the Board by the Collector. The question whether the reference can be made by the Collector to the Board after inordinate delay attracted the attention of this Court in Anandi Lal's case (supra).

7. In Anandi Lal's case, the Hon''ble Court observed is as under:

23. The contention that the land was a Muafi Murti Mandir Land, therefore, the power could be exercised after any length of time, cannot be accepted. The question is not with regard to the nature of the land. The question which is required to be examined is as to whether the revisional power conferred upon the authority concerned under the provisions of Section 82 of the Act of 1956 and under the provisions of Section 232 of the Act of 1955, could be exercised after unreasonable period of time. As held by the Supreme Court in the aforesaid decisions, the power could be exercised within reasonable time whenever the statute does not provide for the period of limitation. What would be the reasonable period, would depend upon the facts of the case and the nature of the order sought to be revised.

24. In our opinion, the settled legal position as stated above, would apply to the agricultural land in possession of the tenants/khatedars also once the cases of such tenants/khatedars are decided and their rights have been concluded and pursuant to the same they are in possession of the land. Ordinarily the revisional power u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, cannot be exercised after a period of one year from the date of the order sought to be revised. Once a tenant/ khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenants/khatedars are required to be treated at par, for all purposes, with all other tenants/khatedars who acquired tenancy/ khatedari rights over the land. To permit the exercise of revisional powers u/s 82 of the Act of 1956 and/or u/s 232 of the Act of 1955 after unreasonable delay, would amount to putting imprimature of the Courts on the unreasonable and arbitrary exercise of power. Within a period of one year the tenant/khatedar of the land would have spent money for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on this basis and made many commitments. Therefore, ordinarily revisional powers u/s 82 of the Act of 1956 and u/s 232 of the Act of 1955, cannot be exercised after a period of one year. If this requirement of reasonable length of time is not read into the aforesaid provisions, the provisions would become unconstitutional.

8. In the present case, the petitioners' father was given khatedari rights as far back as 1958. Obviously, between 1958 to 1993, the family would have spent a sufficient part of their earning for the improvement of the land. The family would have become dependent for their livelihood upon the said land. Therefore, after inordinate delay of thirty-five years neither the title nor the possession to the said land can be disturbed. Therefore, the additional Collector has committed illegality while making the reference to the Board. Similarly the Board has failed to consider the fact that the reference was made after inordinate delay of thirty-five years. Hence, this Court has no hesitation in quashing and setting aside the order dt. 06.07.1994 passed by the Additional Collector and the order dt. 28.04.1995 passed by the Board of Revenue.

9. In the result, this petition is, hereby, allowed. There shall be no order as to costs.