(2015) 08 RAJ CK 0107

In the Rajasthan High Court

Case No : Civil Special Appeal No. 642 of 2011

Bhagat Singh APPELLANT

Vs

The Additional Divisional Commissioner and Others RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Constitution of India, 1950 — Article 225
Rajasthan Land Revenue Act, 1956 — Section 136, 183
Rajasthan Tenancy Act, 1955 — Section 183, 193

Citation : (2015) 4 RLW 3017

Hon'ble Judges : Govind Mathur, J;Jaishree Thakur, J

Bench : Division Bench

Advocate : H.R. Chawla, for the Appellant

Final Decision : Allowed

Judgement

Jaishree Thakur, J—The present Special Appeal has been filed under Rule 134 of the Rajasthan High Court Rules, 1952 read with Article 225 of the Constitution of India to challenge the order dated 9.2.2011 dismissing the writ petition of the appellant.

2. In brief one Sh. Santa Singh was a Granthi and attached to the Gurudwara at Bikaner. Being a Granthi of the Gurudwara, the land in Chak No. 28-BB was allotted to him on the basis of a Notification that came to be issued on 5.6.1965 wherein it was decided that "the present Kotwals, Tarkhans, Nais, Pujari, Granthis and Molvis, if any, of the Ganganagar District who hold village service grants or muafi lands may now be notified that their services are no longer require and if they wish to secure khatedari rights in respect of the lands held by them in lieu of these village services, they will have to pay-

Necessary action may please be taken accordingly."

3. Pursuant thereto, a Notification dated 30.4.1966 was issued directing the concerned Kotwals, Parkhans, Nais, Pujari, Granthis and Molvis to apply to their

concerned Sub Divisional Officer within thirty days from the issuance of the Notification for obtaining khatedari rights in accordance with the instructions of the Government. Sh. Santa Singh applied and was allotted the land and, thereafter the appellant purchased the land in dispute from Santa Singh by way of agreement to sell dated 7.12.1973. The appellant filed a suit for specific performance of the contract and the same was decreed by the court by a judgment and decree dated 23.8.1994 and as a consequence thereto a sale deed was executed between the parties on 9.1.1995. The respondent Gurudwara filed suit to challenge the decree dated 23.8.1994 and the sale deed executed which was allowed on 16.2.2006. Against the said cancellation a suit has been filed for cancellation of the decree which is still pending. The respondent Gurudwara also filed a petition against Sh. Santa Singh under section 183 of the Rajasthan Tenancy Act 1955 which was decreed. The settlement department made entries for the year Samvant 2026 (corresponding to year 1969) in the revenue record in favour of Sh. Santa Singh who had obtained khatedari rights by the order of the Sub Divisional Officer on 26.5.1967. An application was moved under Section 136 of the Rajasthan Land Revenue Act, 1956 to the District Collector, Sri Ganganagar for the corrections of the revenue entries, which was allowed on 13.2.2006 holding that the entries made in Samvat Years 2026 to 2035 in the name of Gurudwara would be changed in favour of Santa Singh s/o Dhanna Singh. On appeal, the Additional Divisional Commissioner Bikaner reversed the order dated 22.12.2010 and it was held that name of Gurudwara would continue to stand reflected in the revenue records. The appeal was dismissed by the Assistant Divisional Commissioner Bikaner relying upon a suit filed by the Managing Committee of the Gurudwara against Sh. Santa Singh which was allowed on 16.2.2005. The learned Single Judge upheld the order passed by the Additional Divisional Commissioner while deciding that the name of Sh Santa Singh was entered into the revenue records as granthi of the Gurudwara and the land belonging to a perpetual minor could not have been transferred to anybody else and dismissed the writ petition in limine. Aggrieved against the said order of dismissal, the present appeal has been preferred.

4. Mr. H.R. Chawla, Advocate appearing for the appellant has argued that the learned Additional Divisional Commissioner has erred in treating the appellant as a trespasser while relying upon the judgment and decree passed by the Sub Divisional Officer, Karanpur in the suit filed by Gurudwara Managing Committee. It is contended that the suit filed by the Gurudwara was for possession and was not a suit for declaration of rights. The appellant had filed a suit for specific performance of an agreement to sell entered into with Sh. Santa Singh and the same was decreed in his favour as far back as 23.8.1994. The Gurudwara had also filed a complaint against Sh. Santa Singh on the ground of him being a trespasser and the complaint was rejected by the Additional District Magistrate(Vigilance) vide order dated 29.10.1994. Reliance has also been place upon a judgment reported as Swaranjeet Singh v. State of Rajasthan reported as 2005(10) RDD 4574 to contend that once land had been allotted to a village

servant pursuant to the letter dated 5.6.1965 and notification dated 3.4.1966 kahtedari rights would vest with the allottee and not the Gurudwara.

5. Per contra, the counsel for the respondent Gurudwara has contested the appeal on the ground that Sh. Santa Singh being a granthi had no right to sell the land in question and the District Collector had erred in effecting changes in the revenue record while recording the name of the appellant in revenue record as Khatedar.

6. We have heard learned counsel for the parties and have perused the record of the case.

7. Undisputedly, Sh. Santa Singh was a Granthi and had offered his services with Gurudwara at Bikaner. In lieu of his services, he had been allotted land. The Rajasthan Government in the year 1965 decided to abolish the system of keeping village servants, such as Kotwals, Tarkhans, Nais, Pujari, Granthis and Molvis etc. and in the letter dated 5.6.1965 and notification dated 3.4.1966, it was stated that services of village servants were no longer required and if they wish to secure khatedari rights in respect of the land held by them in lieu of the village services, they would have to pay the Government, the reserve prices settled. On an application by Sh. Santa Singh, the land was allotted to him in 1967 and all installments were paid.

8. An application was moved under Section 136 of the Rajasthan Land Revenue Act, 1956 for correction of the entry in the revenue records which reflected the name of the Gurudwara, claiming that the Gurudwara was no longer Khatedar of the land since the land in question had been allotted to Santa Singh after the Notification dated 3.4.1966. After due apperception of evidence the District Collector held that Sh. Santa Singh son of Dhanna Singh would be recorded as Khatedar. The Additional Divisional Commissioner set aside the order and held that the revenue entries would stand in the name of Gurudwara without going into the question as to how the Gurudwara could be held to be an owner/ khatedar of the land in question, especially in view of the fact that the land had been allotted to Sh. Santa Singh as far back as in 1967, after the abolition of village servants and by virtue of Section 193 of the Rajasthan Tenancy Act, 1955. The intention of the legislature was clear and unambiguous in allotting land to all village servants as Khatedar tenant in case their services were terminated by collector. There is nothing on the record to dispute the allotment made to Sh. Santa Singh in the year 1967 nor has the respondent Gurudwara been able to prove its khatedari rights or a better title to the land in dispute over and above the letter of allotment. Reliance made on any civil court proceedings will have no bearing on the matter since there is no challenge to the allotment made in favour of Sh. Santa Singh. What has to be borne in mind that the allotment as far back as in 1967 in favour of Santa Singh still stands and the same has not been cancelled to date.

9. Undoubtedly, the land which had been allotted to Sh. Santa Singh in lieu of his

service became his khatedari land, which could be disposed of by him. In the present case, the appellant had acquired a right in the said property by virtue of sale-deed executed in his favour even though, the said sale deed has been cancelled and appeal has been preferred against the said cancellation. The dispute re cancellation of sale deed between Sh Santa Singh and the appellant is subject matter of different proceedings and will have no bearing on these proceedings. Even the proceeding filed against Sh. Santa Singh under Section 183 of the Rajasthan Land Revenue Act would not override the allotment made in favour of the Sh. Santa Singh by virtue of Section 193 of the Rajasthan Tenancy Act 1955. These factors have been dealt with rightly by the District Collector while recording that change should be made in the revenue record in favour Of Sh. Santa Singh. Resultantly the Gurudwara itself has no right to be recorded as Khatedar.

10. In view of the above discussion, the above noted appeal is allowed and the orders passed by the Additional Divisional Commissioner and the learned Single Judge are hereby set aside, while restoring the order passed by the District Collector.

11. No order as to Costs.

