
(1978) 05 RAJ CK 0004
In the Rajasthan High Court
Case No : Civil Writ Petition No. 373 of 1976

Bhagwat Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-05-1978

Acts Referred:

Rajasthan Land Reforms and Acquisition of Land Owners Estates Act, 1963 — Section 10(1), 10(2)

Citation : (1978) WLN 176

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

G.M. Lodha, J.—The petitioner is the ex-ruler of the Mewar State in the State of Rajasthan. In this writ petition he has challenged the notice of the Collector, Udaipur in case No. 51 of 1975 issued on 7-11-75 under the provisions of the Rajasthan land Reforms and Acquisition of land-owner's Estate Act, 1963 therein after referred to as "the Act" (sic) with Amendment Ordinance, 1975. In this case, the Collector, Udaipur directed the petitioner to deliver possession of the estates; description of which was annexed with it by 5th of November, 1975. The notice purports to have been given u/s 9A of the Act read with Rule 8 of the Rajasthan land Reforms and Acquisition of landowners Estate Rules, 1964 (thereinafter called "the Rules") as amended by notification dated May 1, 1975. The list attached to it contained 10 properties which are gardens and plots appertaining to the various palaces of the petitioner item No. 11 is in relation to the various forests where the petitioner has got limited right to collect fuel and fodder. Item No. 12 relates to the various forests where the petitioner go right to "Shikai" and to collect dry fuel and grass. Item No. 13 relates to lakes where the petitioner has got right of fishing & shooting. Item No. 14 relates to lands & 15 No. relates to gardens appertenant to Sahelion-ki-bari. Item No. 16 relates to various lands in Tehsil Bhilwara and maval. Then there is an ommbus item which says any land which comes under the Act.

2. The petitions filed a reply through his advocate B.L. Vyas on November 27,

1975 in which he prayed that the determination should be left to the Commissioner u/s 10(2) and a reference would be made to him. He also said that the notice is without jurisdiction and submitted that no land mentioned in the notice is covered by the provisions of the Act. On December 9, 1975, the Collector Udaipur passed order mentioning that in spite of notice u/s 9A of the Act, possession has not been given and some references have been made to the Compensation Commissioner. He ordered that under Rule 8 the estate which has been described therein be taken possession of by the State and it must be proclaimed by beat of drum and pasting of notice. The Tehsildar notified to the petitioner that he is coming to take possession on 27-2-76 and it appears that the petitioner thereupon approached this Court a day earlier i.e., on 26-2-76.

3. A bare reading of the provisions of the Rajasthan Land Reforms & Acquisition of Landowners Estates (Amendments) Act, 1975 and the earlier Act No. 11 of 1964, reveal that Section 10 is an exception to the general scheme of the Act. As the very heading of Section 10 suggests, the private lands, buildings, wells, house, & enclosures have been exempted and the land owner would continue to own them and possess them. Sub-section (1) of Section 10 of the Act classified these private properties which are exempted from the provisions of this Act and it is obvious from it that the exemption relates only to the specified class of properties under the Act and to none.

4. Mr. Bhandari contends that the Collector was justified in rejecting the prayer for reference because these properties are not covered by Section 10(1) of the Act.

5. It appears that earlier this Court after admitting writ application, passed an order on 27-2-76 directing the petitioner to put an application before the Collector, Udaipur stating the grounds on which the property mentioned in the said order, be treated as property exempt from the operation of the said Act u/s 10. The petitioner was directed to obtain a finding and produce it. In pursuance of this it appears that the Collector passed an order dated 10-3-76. This order has been (sic) on record. In this order, the Collector has observed that the petitioner was repeatedly given opportunity to prove his assertion by documents and other evidence but the petitioner did not care to cite even a single document in this respect. The reason given to the Collector was that copies of the documents were presented before the High Court and could not be presented before him. He was of the opinion that petitioner's apprehension that the Compensation Commissioner could go into this question only if a reference is made by the Collector and not otherwise, was only, put in his own words "a phantom fear by which the petitioner seems to be haunted".

6. Be that as it may, I am of the opinion that it would be a futile exercise now to find out whether it was the petitioner who was to be blamed for not filing the certified copies of the documents before the Collector at the initial stage or the Collector who ignored them. In any case, before the order was passed, the Collector had seen the certified copies of the documents which according to him

should have been produced before him rather than the High Court and, then at least he should have applied the provisions of Section 10 Sub-section (2) of the Act.

7. The Collector is not correct in saying that he is not to do the work of a "rubber stamp" in as much as, it is the Legislature's wisdom which has left no discretion to him u/s 10(2) but 15 make a reference, the moment a dispute arises whether the property is of the nature referred to in Sub-section (1) of Section 10. The Collector has to obey the mandate, inspite of any exaggerated sense of ego of office which he may have. The functionaries of the Government and even otherwise all statutory functionaries are supposed to discharge their functions according to the statute.

8. As we are having ruled of law, nobody can claim superiority to superior sense of wisdom that the law envisages to him in a given case. I am of the opinion that u/s 10(2), the moment a dispute is raised, the Collector has got no option but to make a reference to the Commissioner for adjudicating, whether the properties for which notice has been given, falls within the category of Sub-clause (1) of Section 10.

9. It has been strenuously urged by Mr. Bhandari for the State that the Collector, Udaipur, was justified in rejecting the claim of Mr. Bhagwat singh of Udaipur because the point was not pressed. I am unable to appreciate this submission as the Collector had made a grievance in his second judgment that he could not be compelled to be a "rubber stamp" only. This shows that the point was pressed before the Collector and he was requested to make a reference to the Commissioner, for deciding whether the various gardens, lakes, the right of fishing and shooting, the right to take fodder from the various forests and the hills are the personal properties as contemplated by section. If of the Act. If this point would not have been pressed, then the question of becoming a "rubber stamp" would not have arisen. The Collector in the order dated 10-3-76 has further pointed out that the petitioner should make this grievance before the Commissioner himself and if this is so, there was all the more reason for him to have made a reference.

10. It is true that the question whether the right of shooting in a forest or a hill, right to take fodder and dry leaves from various forests given to the ex-ruler are such rights which can be termed as rights of personal properties as envisaged by Section 10 of the Act, may be debatable one. But I am not required to adjudicate that matter in this writ petition.

11. The Act defines "Estate". Section 2(b) reads as under:

2(b) "estate" means land or right, title or interest in land held by a land owner.

The right or interest in land is also an estate and if an ex-ruler was taking a right of shooting and taking the forest produce & fishes from the lakes as per the covenant entered into between him and the Central Government at the time he

entered into the agreement to surrender his State in India, then the question would be whether such a right is (sic) by the coming into force of this Act.

12. This raises an important question regarding the interpretation of the word "estate" u/s 2(b) Of the Act. Land has further been defined in Clause (f) of Section 2 as under:

2(f) "land" means every class or category of land forming part of an estate and includes.

(a) benefits to arise out of such land,

(b) things attached to the earth or permanently fastened to anything attached to the earth,

(c) sites of villages and towns,

(d) beds of tanks, ponds, embankments rivers and water channels,

(e) surface of hills and

(f) quarries and mines.

but does not include forts, palaces, buildings and building plots, specified in the inventor.

Section 10 of the Act categorically lists the properties which are private, as lands, buildings, wells, house sites and enclosures of the ex-rulers. All open enclosures in the possession of the landowner where used for agricultural or domestic purposes, all private buildings, places of worship, and wells stipulated in and tree, standing on, lands, included in such enclosures or house-sites, as are specified in Clause (1) of Section 10 etc. So far as the forests or hills are concerned, they do not find place in Section 10. In the very nature of things, forests and hills cannot be property of the ex-rulers because with the change of Government the merger of the Udaipur State in Rajasthan and earlier with the signing of the covenant when the State came in the mainstream of the country, then the forests, lakes and the hills which always are the property of the society as a whole, and not of individual, also came to the State. One cannot conceive of their personal occupation and the personal ownership of the ex-rulers. But I am not deciding it, as it is not in issue in this case.

13. The point however which calls for determination and adjudication in this particular case is where a question is raised regarding the right of shooting, right of fisheries, right of fodder etc., whether those rights are covered u/s 10 of the Act, the Collector cannot decide it and the adjudication has been left to the Commissioner by enactment of Sub-clause (2) of Section 10. It being so, neither the Collector can refuse to make a reference by saying that he cannot act as a "rubber stamp", nor this Court can convert itself into the court of the Commissioner to determine it u/s 10.

14. I am of the opinion that in view of the facts and circumstances mentioned

above, the Collector refused to exercise jurisdiction b, refusing to make a reference to the Commissioner for determination whether the properties list of which was attached to the notice u/s 9 of the Act, were the properties which can fall under Sub-section (1) of Section 10 of the Act. He further failed to exercise jurisdiction by saying that the party can approach the Commissioner directly. The jurisdiction of the Collector was not advisory one He is a statutory functionary under the Act and he is supposed to act only according to the law.

15. Mr. Mehta appearing on behalf of the petitioner finally urged that the order was passed during emergency and the Collector was keen to show that he has acted promptly to take possession of the property of the ex-ruler. I am not here to make any comment on this because this is outside the scope of this case and no pleadings have been raised to this effect.

16. In view of my findings, that the Collector was bound to make a reference u/s 10(2) of the Act regarding the properties and the rights in properties, a list of which Was annexed with the objection filed by the ex-ruler of Udaipur before the Collector, against the proposed notice u/s 9 for taking their possession and as I have held further that failing to make a reference, he has failed to exercise jurisdiction vested in him, I quash both his orders dated 10-3-75 and 9-12-75 to the extent that reference has not been made. In other words that part of the first order in which reference has been made, will not be quashed. I further direct the Collector, Udaipur, to make a reference u/s 10 Sub-section (2) of the Act to the Compensation Commissioner for adjudication whether these properties are private lands, buildings, wells and the enclosures etc., as contemplated by Section 10 of Clause (1) of the Act.

17. It would be open to the Compensation Commissioner to take decision regarding the character of properties including the rights of shooting, collecting fodder, fisheries etc., claimed by the ex-ruler and to decide whether they are covered by Section 10(1) or not.

18. I may mention here that in case the right to shooting, fodder, fisheries etc, as claimed by the ex-ruler have already been taken away by any central enactment as urged by the State in para 15 of the reply, the Commissioner would take note of it also.

19. The writ petition is accordingly accepted as mentioned above. No order as to costs.