
(1988) 02 RAJ CK 0029
In the Rajasthan High Court
Case No : Civil Writ Petition No. 340 of 1977

Bheru Lal	Vs	APPELLANT
State of Rajasthan		RESPONDENT

Date of Decision : 26-02-1988

Acts Referred:

Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963 — Rule 19

Citation : (1988) 1 RLW 568 : (1988) 2 WLN 27

Hon'ble Judges : Pana Chand Jain, J;Guman Mal Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

P.C. Jain, J.—By this writ petition, petitioner Bheru Lai seeks to issue a writ of certiorari, or any other writ, order or direction for quashing the judgment of the Board of Revenue for Rajasthan, Ajmer dated 15th October 1976.

2. Briefly stated the facts of the case are that the petitioner is the son of deceased Lakha who had 199 Bighas 12 Biswas of agricultural land entered in his Khata in the revenue records of village Laban, Tehsil Keshorai-Patan district Bundi, It is stated that the land is an ancestral property inherited by Lakha. It is also stated that out of the said land, 38 Bighas was gifted to Gopali Bai. It is further stated that the proceedings for the determination of ceiling area in relation to Lakha, father of the petitioner u/s 30 (C) were commenced & a report was submitted by the Tehsildar as per the Rules. According to the report, the following members were entered in the family of Lakha: (1) Lakha himself: (2) Bheru Lal (petitioner) son of Lakha-(3) Wife of Bheru Lal (4) Daughter of Bheru Lal and (5) Two sons of Bheru Lal

3. On the basis of the report, the Assistant Collector on, 16th June, 1972, determined the ceiling area and held that deceased Lakha was entitled" to 35 standard acres of land and after leaving 69 Bighas, the land measuring 119 Bighas, 5 Bighas was declared surplus, which was required to be surrendered by

the petitioner. Aggrieved by the order passed by the Assistant Collector, deceased Lakha filed an appeal before the Revenue Appellate Authority, Kota. Lakha expired on 26th May, 1972. Therefore, the petitioner as son of Lakha, Gopali Bai and Pana Bai as daughters were brought on record as legal representatives of Lakha. The appeal was decided by the Revenue Appellate Authority on 21st July, 1975, whereby the appeal was partly accepted and the case was remanded for recording evidence as to whether the land was irrigated or un-irrigated. On remand the Sub-Divisional Officer, Bundi recorded the evidence and held that the area was in Chambal Command and was irrigated by rotation and further held that the entire land was irrigated. Aggrieved by the judgment of the Sub-Divisional Officer, dt. 10th October, 1975, an appeal was preferred to the Revenue Appellate Authority, who dismissed the same by his judgment dated 3rd March, 1976. He upheld the judgment of the Sub-Divisional Officer. Against the order of the Revenue Appellate Authority a revision petition was filed before the Board of Revenue for Rajasthan, Ajmer and the revision petition was dismissed on 15th October, 1976. The petitioner has filed this writ petition against the said order of the Board Revenue.

4. Shri Kamlakar learned Counsel for the petitioner, assailed the order of the Board of Revenue of the following grounds:

[1] That petitioner Bheru Lal was the major son of the deceased, Lakha, and, as such, he was entitled to a separate unit. Thus, the total area to which deceased Lakha and the petitioner were entitled to hold 60 standard acres of land and, thus the order of the Board of Revenue and the orders passed by the Revenue Appellate Authority and the Sub-Divisional Officer are illegal;

[2] That Rule 19 of the Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963, which provides all lands in Chambal Command area in one group is unjust discriminatory and unreasonable. The ceiling area is in relation to the land situated, in command land in Chambal Project without any distinction whether any particular piece of land is irrigated or not;

[3] That in the year 1973 the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 was made applicable, which repealed the old ceiling law. Consequently, the proceedings should have been taken under the New Ceiling Act.

Shri Pareek, learned Addl. Government Advocate, submitted that there is no merit in the contentions raised by Shri Sharma in as much as objection No. 1, referred to above, was not taken before the Revenue Board by the petitioner. In the revision before the Board of Revenue no dispute was raised that the entire holding of the petitioner did not receive water every year or, it was only a part of the holding which was being irrigated in turn and therefore the Sub-Divisional Officer and the Revenue Appellate Authority should have treated only such land which had actually been irrigated as command land.

5. Regarding the third objection, Shri Pareek, learned Addl. Government

Advocate, submitted that the objection is untenable as the question raised has already been decided by a Full Bench of this Court in *Banshidhar and Others Vs. State*,

6. We have given our thoughtful consideration to the submissions made by the learned Counsel for the parties.

7. As regards the objection No. 1 raised by Shri Sharma it is evident from the record that this objection was not raised by the petitioner before the Board of Revenue for Rajasthan, Ajmer. Therefore, we cannot allow the petitioner to make submissions in this regard. As this "ground was not raised before the Board of Revenue it will be deemed that the petitioner has waived this objection.

8. As regards objection No. 2 raised by the petitioner, we are of the opinion that the view taken by the Board of Revenue and the revenue authorities is reasonable. We do not find any ground for declaring Rule 19 as ultra vires, the view taken by the revenue authorities in this regard is reasonable and we do not want to interfere with it.

9 As regards the third ground raised by the petitioner we are of the opinion that there is no merit in this contention as the question raised is clearly covered by the decision of a Full Bench of this Court, consisting of five Judges in *Banshidhar and Others Vs. State*, As per the judgment of the Full Bench it is clear that if the proceedings are pending and are not disposed of when the New Ceiling Law came into force, the proceedings are to be disposed of in accordance with the old ceiling law.

10. In the result, the writ petition is dismissed. In the circumstances of the case, the parties are left to bear their own costs.