(2014) 03 RAJ CK 0097

In the Rajasthan High Court

Case No : Civil Special Appeal No. 316/2014 in Civil Writ Petition No. 1440/1999

Bhikam Chand APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 21-03-2014

Acts Referred:
Constitution of India, 1950 — Article 226
Rajasthan Land Revenue Act, 1956 — Section 75, 82

Citation : (2014) 3 WLN 277

Hon'ble Judges : V.K. Mathur, J;Govind Mathur, J

Bench : Division Bench

Advocate : J.L. Purohit, Senior Advocate, assisted by Ajay Purohit, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Govind Mathur, J.—As per provisions of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 (hereinafter referred to as ''the Rules of 1957''), 50 bighas of agricultural land was allotted to Shri Rekhchand under an order Dt. 04.07.1961. The allotment was on Gair Khatedari basis and was for a period of five years only, however, the land came to be mutated in the name of one Shri Khiv Singh on 06.06.1967. After death of Shri Rekhchand, his wife Smt. Luni Devi purchased the land aforesaid from Shri Khiv Singh through a registered sale deed Dt. 19.09.1976. The Collector, Bikaner, under an order Dt. 13.06.1978 made a reference under Sec. 82 of the Land Revenue Act to the Board of Revenue, Rajasthan for cancelling mutation entered in favour of Shri Khiv Singh. The Board of Revenue answered the reference by an order Dt. 15.06.1979 and cancelled the mutation concerned and ordered to record the land in the name of State Government.

2. After cancellation of the mutation in favour of Shri Khiv Singh, Smt. Luni Devi submitted an application to the Tehsildar, Shri Kolayatji for recording herself as

khatedar of the land. The submission of Smt. Luni Devi was that the land was allotted to her husband Shri Rekhchand and he was having possession thereon till his death and after his death she was having possession over the land, but mutation was erroneously made in favour of Shri Khiv Singh, thus, after cancellation of mutation entry aforesaid, she should have been entered as tenant in the Revenue Records. It appears that the application aforesaid was not accepted by the Tehsildar, hence Smt. Luni Devi preferred an appeal under Sec. 75 of the Land Revenue Act before the Sub Divisional Officer (South), Bikaner. The appeal came to be accepted by the Sub Divisional Officer (South), Bikaner with a direction to enter Smt. Luni Devi as khatedar of the land in the Revenue Records.

3. A challenge was given by the State of Rajasthan through the Tehsildar, Shri Kolayatji to the order passed by the Sub Divisional Officer (South), Bikaner on 27.07.1984. The Additional Commissioner, Bikaner vide order Dt. 04.09.1990 accepted the appeal and set aside the order passed by the Sub Divisional Officer (South), Bikaner. The Additional Commissioner, Bikaner held that though the land was allotted to Shri Rekhchand, but ultimately that was mutated in the name of Shri Khiv Singh and Smt. Luni Devi purchased the land aforesaid from Shri Khiv Singh and that clearly indicates that she or her husband were not tenants of the land as a consequent to the allotment made in favour of Shri Rekhchand for a period of five years. Smt. Luni Devi being aggrieved by the order passed by the Additional Commissioner, preferred a revision petition before the Board of Revenue and that too came to be rejected on 03.07.1996. The Board of Revenue held that the fact of purchasing the land from Shri Khiv Singh in the year 1976 and further cancellation of the mutation made in favour of Shri Khiv Singh clearly indicates that whatever right accrued to Smt. Luni Devi was by purchase of land from Shri Khiv Singh and nothing more could have been transferred by Shri Khiv Singh than the right he was having. He lost his rights after acceptance of the reference by the Board of Revenue, as such, the sale made under the sale deed Dt. 19.09.1976 was not valid. The Board of Revenue concluded that in view of the order passed under Sec. 82 of the Land Revenue Act accepting the reference made by the Collector, Bikaner, the land concerned was rightly entered in the Revenue Records as of the State. It shall be relevant to note here that during pendency of the revision petition aforesaid, Smt. Luni Devi died and her legal representatives Shri Bhikam Chand and Prakash Chand were brought on record.

4. Shri Bhikam Chand and Prakash Chand approached this Court by way of filing a petition for writ under Art. 226 of the Constitution of India to question correctness of the order passed by the Board of Revenue. The petition for writ has been dismissed by learned Single Bench of this Court by order Dt. 21.11.2013, hence this appeal is before us.

5. It is submitted by learned counsel for the appellants that learned Single Judge failed to appreciate that as per Rule 14(1) of the Rules of 1957 and also in light of Government of Rajasthan order Dt. 31.07.1968 the land in question should

have been recorded in favour of Smt. Luni Devi in Revenue Records as she had possession thereon for a period of more than ten years as Gair Khatedar tenant. Reliance is placed upon a Notification of the Government of Rajasthan Dt. 31.07.1968 prescribing that a Gair Khatedar tenant, if is having possession on the land for a period of more than ten years, even without getting extended the term of Gair Khatedari Rights, then he should not be dispossessed from the land, but must be entered in Revenue Records as khatedar. It is further submitted by learned counsel that acceptance of reference by the Board of Revenue under the order Dt. 15.06.1979 is not a fact relevant in the present case in view of the fact that Smt. Luni Devi was not having possession over the land as a consequent to the sale deed Dt. 19.09.1976, but being widow of Shri Rekhchand who was having Gair Khatedari allotment in his favour.

6. We do not find any merit in the arguments advanced.

7. It is not in dispute that Smt. Luni Devi by a registered sale deed Dt. 19.09.1976 purchased Khatedari Rights relating to the land in question from Shri Khiv Singh. If she had possession over the land as a consequent to the allotment, then there was no need to purchase rights under the sale deed aforesaid. The purchase of the land under the sale deed aforesaid clearly indicates that whatever rights accrued to the petitioner that was only due to the sale deed. She could have not purchased anything better than the rights existing with Shri Khiv Singh and his rights with the land were declared illegal and, therefore, the purchaser could have not earned any better right. The land as such was rightly entered in the name of State Government and there was no reason for making mutation of the land in favour of Smt. Luni Devi or for declaring her as khatedar of the land. So far as the Government of Rajasthan Notification Dt. 31.07.1968 is concerned, that is of no avail in the case in hand as the land concerned was with Shri Khiv Singh since 06.06.1967. The appeal, thus, is bereft of merit, hence dismissed.

