

(2015) 09 RAJ CK 0027
In the Rajasthan High Court
Case No : Civil Writ Petition No. 880 of 2001

Charan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 82

Rajasthan Tenancy Act, 1955 — Section 15, 15(2), 15(3), 15(4), 15(4)(d)

Citation : (2015) 09 RAJ CK 0027

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : N.K. Maloo, Senior Advocate and Vishnu Bohra, for the Appellant;
Dharmendra Pareek, Addl. GC, Advocates for the Respondent

Judgement

Alok Sharma, J—The petitioners have challenged the orders dated 26-9-2000 and 10-11-1994 passed by the Board of Revenue Ajmer (hereinafter "the Board") dismissing their second appeal and review petition respectively.

2. The facts of the case are that on or about 19-8-1953, land measuring 100 bighas was apparently let out to one Ramesh Chand Anil under State Government's Grow More Food campaign. Pursuant to the lease, mutation based thereon was made on 3-8-1954. The Rajasthan Tenancy Act, 1955 (hereinafter "the 1955 Act") came into force effective 15-10-1955. The lessee Ramesh Chand Anil applied for khatedari rights under Section 15(2) of the 1955 Act, whereupon vide order dated 31-3-1959 passed by the jurisdictional SDO, khatedari rights were conferred on him. The petitioners' status as khatedar-tenant was reflected in mutation made afresh in record of rights on 29-4-1959.

3. It however appears that in the following settlement, the land in the khatedari of Ramesh Chand Anil came to be entered as Sivai chak (government) land. In the circumstances, Ramesh Chand Anil filed a suit for declaration and correction of entries before the court of the Sub Divisional Officer Kota. The said suit was decreed on 26-6-1964 and correction of entries was accordingly made in the

record of rights again reflecting the name of Ramesh Chand Anil as khatedar on 11-2-1965.

4. A reference under Section 82 of the Rajasthan Land Revenue Act, 1956 (hereinafter "the 1956 Act") by the Assistant Collector Kota came to be made on 18-8-1988, against khatedari rights conferred on Ramesh Chand Anil vide order dated 31-3-1959 and the judgment and decree dated 26-6-1964. It was however dismissed by the Board on 3-1-1989 on the ground that a reference under Section 82 of the 1956 Act was not maintainable. A further reference under Section 232 of the 1955 Act at the instance of the Additional Collector Kota followed on 20-3-1992.

5. It is relevant to note that following the date of conferment of khatedari rights on Ramesh Chand Anil vide SDO's order dated 31-3-1959, about 25 of the 100 bighas in his khatedari was auctioned by the State Government for recovery of arrears of land revenue on 30-12-1965. Further between 1965 and 1975 based on revenue entries pursuant to order dated 31-3-1959 the recorded khatedar Ramesh Chand Anil sold the remainder 75 bighas of his khatedari to various persons including the petitioners by way of registered sale-deeds. So did the auction purchaser at the auction of 30-12-1965 by the state government for recovery of land revenue arrears against Ramesh Chand Anil. The petitioners are thus bonafide purchasers of the land in issue both from the erstwhile khatedar Ramesh Chand Anil and the auction purchasers.

6. The reference made on 20-3-1992 under Section 232 of the 1955 Act, was accepted by the Board on 10-11-1994. The fundamental premise on which the Board accepted the reference was that the conferment of khatedari rights on Ramesh Chand Anil by SDO Kota on 31-3-1959 was in the cross-hairs of Section 15(2) of the 1955 Act. And so was the judgment and decree dated 26-6-1964. The Board did not take into consideration the delay of 33 years in making the reference qua conferment of khatedari rights on Ramesh Chand Anil and 28 years from the date of decree in his suit for declaration and correction of entries on 26-6-1964 by the SDO Kota. Nor did the board take into consideration the equity of the matter arising from the fact that bonafide purchasers had in the meantime purchased Ramesh Chand Anil's khatedari rights for valuable consideration through registered sale-deeds both directly from the erstwhile khatedar Ramesh Chand Anil as also the auction purchasers of 30-12-1965 in the auction of the State Government for recovery of land revenue arrears due from the erstwhile khatedar Ramesh Chand Anil--which in effect was a further recognition of Ramesh Chand Anil's khatedari.

7. The petitioners as bonafide purchasers were not party before the Board when it accepted the reference under Section 232 of their 1955 Act on 10-11-1994 made by the Additional Collector Kota on 20-3-1992. In the circumstances, a review petition under Section 224 of the 1955 Act was filed before the Board, which vide order dated 26-9-2000 came to be dismissed. Hence this petition.

8. Mr. Maloo, learned Senior Advocate appearing with Mr. Vishnu Bohra on behalf of the petitioners has submitted that the Board ought to have dismissed the reference made by the Additional Collector Kota on 20-3-1992 under Section 232 of the 1955 Act in respect of conferment of khatedari rights on the petitioners' predecessors in interest Ramesh Chand Anil by SDO Kota on 31-3-1959, at the threshold for reason of the inordinate delay of 33 years. Senior counsel submitted that even with reference the judgment and decree dated 26-6-1964 passed by the SDO Kota declaring the khatedari rights of Ramesh Chand Anil and directing correction of entries in revenue record accordingly, there was a delay of 28 years in making the reference. The said delay was wholly unexplained and resultantly unjust without anything more. It has been submitted that albeit there is no limitation provided for making a reference under section 232 of the 1955 Act, yet the Board cannot exercise its powers of making a reference after an inordinate delay, which in the instant case was further compounded for reason of khatedari rights in issue having been in the meantime transferred for valuable consideration to persons such as the petitioner, who had no notice or knowledge or even an inkling of any dispute with regard to the khatedari of the erstwhile khatedar Ramesh Chand Anil. Reference has been made to Ram Karan Vs. State of Rajasthan, (2014) AIRSCW 4181 : (2014) 8 JT 40 : (2014) 8 SCALE 233 : (2014) 8 SCC 282 , wherein even in respect of a prohibited and void transaction under Section 42(b) of the 1955 Act, the Hon'ble Apex Court held inter alia relying on State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., (2007) 217 ELT 325 : (2007) 12 JT 314 : (2007) 12 SCALE 135 : (2007) 11 SCC 363 : (2007) 11 SCR 14 : (2007) 10 VST 173 that the delay of 31 years in laying challenge to the transaction and invoking powers under Section 175 of the 1955 Act and Section 82 of the Land Revenue Act, 1956 was fatal. Specific reference has been made by Senior Counsel to paras 34, 35, 36 and 37 of the aforesaid judgment, which reads as under:--

"34. In the present case, no action was taken either by the vendor or by the State for more than 31 years. The sale deed was executed on 12-1-1962 and the land was mutated in the name of the appellants' predecessor-in-interest on 10-9-1963. It was after about 31 years, on 6-7-1993 the suit was filed by the Tehsildar, Viratnagar being Case No. 1681 of 1993. In the said suit for the first time an application was filed for appointment of Receiver. The said application was rejected by the Assistant Collector, Shahpura vide order dated 1-1-1994 holding that the vendee has been in possession and cultivating the suit land for 32 years.

35. In view of the position of law, as noticed above, it is not necessary to see whether the petition for cancellation of mutation was filed on time or not. The decision of this court in Nathu Ram V. State of Rajasthan [(2004) 13 SCC 585] relates to Section 42 of the Act and the transaction made in contravention with the provisions of the said Act. In the said case similar plea were taken by the parties, having noticed sub-section (4-A) of Section 175 and Section 214 of the Act, this court held that as the transaction was made much beyond the period of

12 years, the proceeding was beyond the period of limitation and, therefore, barred by limitation.

36. In *State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd.*, (2007) 217 ELT 325 : (2007) 12 JT 314 : (2007) 12 SCALE 135 : (2007) 11 SCC 363 : (2007) 11 SCR 14 : (2007) 10 VST 173 this Court held that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. However, what shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. In the present case, neither any objection was raised nor was any application filed by vendors for restoration of land in their favour. The suit was filed by the Tehsildar, Viratnagar after more than 31 years. No ground is shown to file such petition after long delay nor was it mentioned as to whether the vendors i.e. original landholders made any application for restoration of land in their favour.

37. In view of the matter, we hold that the suit being filed beyond the reasonable period was fit to be dismissed. The Additional Collector rightly dismissed the suit being barred by limitation."

9. Learned Senior counsel has submitted that prior to the purchase made between 1965 and 1975 the petitioners had no notice of the alleged illegality in the conferment of khatedari rights on Ramesh Chand Anil on 31-3-1959. More so, the State Government itself had recognised Ramesh Chand Anil as khatedar by initiating against him auction proceedings qua part of the very land on 30-12-1965 for recovery of land revenue dues against him. It has been submitted that in the circumstances the Board ought to have taken into consideration this aspect of the matter and dismissed the reference at the threshold. Senior counsel has further submitted that even otherwise from a wholistic reading of Sections 15(2), 15(3) and 15(4) of the 1955 Act there is no prohibition with regard to grant of khatedari rights to those whom land had been let out land by the government prior to the commencement of the 1955 Act under the Grow More Food Campaign. It was submitted that Section 15(2) of the 1955 Act indeed first provides that khatedari rights shall not accrue inter alia to any person to whom land had been let out before the commencement of the 1955 Act inter alia in furtherance of the Grow More Food Campaign, but only in the event that before commencement of the 1955 Act such a lessee had made a default in securing the objective of such campaign or breached any condition of the lease/letting out. It was submitted that if there was to be a complete prohibition against conferment of khatedari rights to those to whom land had been let out under the Grow More Food Campaign, as held by the Board in its impugned judgment, Section 15(3) of the 1955 Act would not have provided that any person referred to in sub-section (2) within three years from the date of commencement of the 1995 Act and on payment of requisite court-fee could apply to the Assistant Collector having jurisdiction praying for a declaration that he acquired khatedari rights under sub-section (1) in the land held by him. It

was then submitted that "any person" as referred to in section 15(3) includes a person to whom land had been let out before the commencement of the 1955 Act inter alia under the Grow More Food Campaign who was not in recorded breach of the conditions of the lease. Senior counsel has further pointed out that section 15(4)(d) of the 1955 Act provides that an application for conferment of khatedari rights inter alia could be filed on the ground that the person in issue at no point of time before the commencement of the 1955 Act had committed any default or breach of conditions of the letting out/lease conditions. In this regard attention of the court has been drawn to the SDO's order dated 31-3-1959 conferring khatedari on Ramesh Cahand Anil records that the terms and condition so the lease under the Grow More Food Campaign had been fulfilled by him. It has been submitted that the Board in its orders dated 10-11-1994 and 26-9-2000 has thus only partially considered the provisions of sub-sections 2 to the exclusion of Section 3 and 4 of section 15 of the 1955 Act, and hence misdirected itself and come to a wrong conclusion that there was an absolute prohibition on conferment of khatedari rights on those to whom land had been let out under the Grow More Food Campaign prior to commencement of the 1955 Act.

10. Mr. Dharmendra Pareek, learned Additional Government Counsel appearing for the State has submitted that section 232 of the 1955 Act does not provide for any limitation. The power to make a reference under Section 232 of the 1955 Act is an over arching power to ensure proper implementation of the provisions of the Act of 1955 and mere delay in resort thereto cannot be fatal. Counsel submitted that the Board has thus correctly allowed the reference made by the Additional Collector on 20-3-1992 on the plain language and intent of section 15(2) of the 1955 Act which prohibits the conferment of khatedari rights on those to whom land before the commencement of the 1955 Act had been inter alia let out under the Grow More Food Campaign.

11. Heard. Considered.

12. In my considered opinion, the writ petition deserves to be allowed solely on the ground of reference under section 232 of the 1955 Act having been made after a delay of 33 years from the date of conferment of khatedari rights on predecessor in interest of the petitioners i.e. Ramesh Chand Anil on 31-3-1959 and even in the alternative a delay of 28 years, if computed, from the date of decree dated 26-6-1964 passed in favour of the predecessor in interest of the petitioners, Ramesh Chand Anil by the jurisdictional SDO. In the case of State of Punjab v. Bhatinda District Coop. Milk Producers Union Ltd. (supra) it was held by the Hon"ble Supreme Court that "if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. However, what shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors." As held by the Hon"ble Supreme Court in the case of Ram Karan (supra) following the judgment in case of State of Punjab v. Bhatinda District Coop. Milk Producers

Union Ltd. (supra) unconscionable and inordinate delay would be sufficient to denude the State of its power to make reference and seek dispossession of a recorded khatedar despite foundational legal lacunae. It is apparent from the aforesaid case that the Hon"ble Supreme Court did not sustain a reference albeit one under Section 82 of the Land Revenue Act and proceedings for dispossession of a recorded khatedar after over 30 years even when khatedari and possession was challenged in respect of a prohibited and void transaction under Section 42(b) of the 1955 Act. In my considered opinion the inordinate delay of 33/28 years in the case at hand inequitable as it is, is further compounded by the fact that the petitioners in the meantime purchased the khatedari rights of the erstwhile khatedar Ramesh Chand Anil for valuable consideration after the state had itself had auctioned part of his erstwhile khatedari/holding for reason of land revenue treating him as the khatedar.

13. In the view taken, there is no occasion to address Mr. Maloo's contention that even otherwise there is no absolute prohibition under Section 15(2) when read wholistically with section 15(3) and 15(4) of the 1955 Act on the conferment of khatedari rights on those to whom land was let out before the commencement of the 1955 Act under the Grow More Food Campaign.

14. Consequently, I would allow the writ petition and set aside the impugned orders dated 26-9-2000 and 10-11-1994 passed by the Board. The reference dated 20-3-1992 made by the Additional Collector Kota is quashed and set aside.