(2015) 05 RAJ CK 0060

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 274 of 1998

Chhitar Lal and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 39
Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(2)
Rajasthan Tenancy Act, 1955 — Section 3

Citation : (2015) 05 RAJ CK 0060

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Sanjay Mehrishi, for the Appellant; Rajendra Prasad, A.A.G assisted by M.S. Shiromani Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant intra-court appeal has been preferred against order of the ld. Single Judge dt. 18.12.1997 confirming order of the Additional Collector, Baran in upholding the proceedings initiated against the appellant under the Rajasthan Imposition of Ceiling and Agricultural Holdings Act, 1973 (hereinafter referred to as "the New Ceiling Act") dt. 31.03.1981 read with order dt. 26.06.1982 and affirmed by the Board of Revenue vide order dt. 11.09.1985.

2. The brief facts of the case which have been extensively taken care of by the ld. Single Judge under order impugned and for our consideration are that the appellants hold in the joint khatedari 185 bighas and 7 biswas of land in village Seesawali, Tehsil Mangrol, District Kota. The proceedings u/Sec. 3 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as "the Old Ceiling Act") were initiated by the Sub Divisional Officer against the appellants Chhitar Lal and Ratan Lal but dropped vide order dt. 08.05.1972. The Dy. Secretary thereafter issued a show cause notice to the assessee as to why the case be not reopened u/Sec. 15(2) of the New Ceiling Act and after taking note of the written

objections filed by the assessee, it was ordered to reopen the ceiling proceedings and the Additional Collector, Baran was authorized to reopen the proceedings.

3. The Dy. Secretary in its order dt. 06.12.1978 observed that the Sub Divisional Officer has passed an illegal order and the law postulates to reopen the ceiling proceedings in exercise of power u/Sec. 15(2) of the New Ceiling Act and the primary reason which prevailed upon the authority was that it has to be ascertained whether the land was irrigated or otherwise and after the notice came to be issued to the assessee under the New Ceiling Act and after hearing both the parties, the Additional Collector, Baran has come to the conclusion that the appellants actually possess 185 bighas and 7 biswas of land equivalent to 100.53 standard acres of land in the village and after making certain deductions of 2.85 standard acres, it was ultimately held vide order dt. 31.03.1981 that the appellants were in possession of 181 bighas and 12 biswas of land and by converting the same, the possession was held to be of 97.98 standard acres and the appellants were allowed to retain the permissible area of 30 standard acres each and 8.70 standard acres of land was held to be surplus. It is further observed by the Additional Collector in its order dt. 31.03.1981 that village Seesawali is situated in Chambal Command Area and taking the intensity of irrigation as 79% each of the appellants was entitled to retain only 30 standard acres.

4. However, the claim of the assessee-appellants was that they have already surrendered 29 bighas 8 biswas of land under the New Ceiling Act and, therefore, on the application having been moved by them on 08.07.1981, the Additional Collector has made certain corrections in its order to the effect that land measuring 29.8 bighas has already been surrendered by the assessee-appellants under the New Ceiling Law and that land deserves to be adjusted under the proceedings initiated under the Old Ceiling Act and this clarification was made on the request made by the assessee vide order dt. 24.06.1982 substantially there remains no grievance of the appellants which could still be available for further adjudication.

5. It may be further noticed that nothing has been placed on record by the appellants to show that the area of subject land falls within the irrigation Command Area and against order of the competent authority, the present appellants preferred appeal before the ld. Board of Revenue and their grievance was that nothing has come on record to show that the land had fallen within the Chambal Command Area. However, the ld. Board of Revenue, after examining the material on record, has not accepted the plea which certainly holds no foundation and dismissed the appeal preferred by the appellants vide order dt. 11.09.1985 and that was subject matter of challenge by filing of writ petition before the ld. Single Judge of this court.

6. The submission made by the appellants, for consideration, before the ld. Single Judge were that the proceedings under the New Ceiling Act have already been initiated against the appellant Chhitar Lal which is pending before the

Additional Collector after it was remitted by the ld. Board of Revenue vide order dt. 03.06.1985 and it was further not open to the State to reopen the ceiling case of the appellant decided under the Old Ceiling Act and the respondents could not be held justified in initiating the proceedings under the Old as well as the New Ceiling Acts simultaneously and the main thrust of submission was that the ld. Board of Revenue has committed error in holding that the disputed land falls under the Chambal Command Area or the lands were irrigated from perennial sources of irrigation on 01.04.1966.

7. The ld. Single Judge while meeting out the submissions made, in its order dt. 18.12.1997 observed that the Additional Collector after deciding the case u/Sec. 15(2) of the Act had recorded a definite finding of fact, after going through the revenue record i.e. khasra girdawari, etc., that the assessee-appellants were in joint holding on 25.02.1958, the land measuring 185 bighas and 7 biswas equal to 100.53 standard acres of land, as per jamabandi for the samwat year 2014 to 2023 and from khasra girdawari it is also revealed that the land is irrigated. At the same time has also observed that certain land is to be excluded for being included under the road area etc. and ultimately after affording the opportunity of being heard and making due compliance of principles of natural justice, a finding came to be recorded by the Assessing Officer that the assessee-appellants were in possession of 97.98 standard acres of land and each of them was in possession of 48.99 standard acres and none of the appellant has more than five members in their family and after applying the formula of 79% intensity, which is available under the scheme of Rules, with regard to 48.49 standard acres of land in the hands of each of the assessee, the standard acres, as per conversion in law, comes to 38.70 standard acres and after deducting 30 standard acres, as permissible ceiling area, 8.70 standard acres of land has been declared to be surplus.

8. The ld. Board of Revenue ultimately vide its order dt. 11.09.1985 in relation to both the assessees has come to a definite finding that each of the assessee was likely to surrender 11.78 standard acres of land, as per the recalculation made vide order dt. 24.06.1982 and as a matter of fact, after recalculation, surplus area stood increased.

9. As regards submission made by the appellants that surplus area could not have been declared by treating it as Chambal Command Area (as irrigated), has no merit and both the authorities below arrived to a conclusion, which came to be confirmed by the ld. Single Judge, that it is a question of fact about intensity of the area in question and after the concurrent finding being recorded, it is not open for further scrutiny at least at the stage of intra-court appeal and in fact the controversy which was raised by the appellants came to be examined in the case of Mode Singh Vs. Board of Revenue [Civil Writ Petition No. 486/1992] decided on 27.05.1996 and the ld. Single Judge of this court, after noticing judgment of the Division Bench in Ram Pratap and Others Vs. State of Rajasthan reported in 1988 (2) RLR 520 and taking note of the Sec. 30-C of Chapter III-B of the

Tenancy Act, R. 19 of the Rajasthan (Fixation of Ceiling and Land Holding) Rules, 1963 and taking note of Sec. 3 of the Rajasthan Imposition of Ceiling and Agricultural Holdings Act, 1973 (New Ceiling Act) and R. 5 of the Rajasthan Imposition of Ceiling and Agricultural Holdings Rules, 1973 observed that u/R. 5 of the Rules, 1973, it is to be examined as to whether the land falls within the command area of a major irrigation project and the calculation is to be made under the Old Ceiling Act as well as the New Ceiling Act and which is in favour of the State, has to be taken into consideration for declaring any surplus land in excess of the ceiling land.

10. It can be further noticed that the gazette notification issued u/R. 19 of the Rules, the ceiling groups have been formed and classification of the land has been shown as ''Nahari Land'' falling within the Chambal Project and the gazette notification contains the names of villages where the land is situated and indisputably, it also contains the name of the village Seesawali which has been shown at Item No. 5 for the purpose of classification as 2nd of District Kota and taking note thereof, the very plea which has been consistently raised by the appellants before the revenue authorities and also before the ld. Single Judge that the land being not falling irrigated under the Chambal Command Area because of the notification issued under the appropriate Rules, is factually incorrect and not sustainable in law and the view which this court expressed in the judgment reported in Ram Pratap''s case (supra), in the given facts and circumstances, may not be of any assistance to him for the reason that the relevant gazette notification was not brought to notice of Division Bench while the order came to be passed by the Division Bench and this has been noticed in the scheme of Act and that came to be examined in the case of Mode Singh Vs. Board of Revenue decided on 27.05.1996 and as already observed that indisputably, there was a gazette notification u/R. 19 of the Rules issued by the competent authority wherein the name of the village of the subject land Seesawali has been shown at Item No. 5 for the purpose of classification as 2nd of District Kota and taking note thereof, no benefit can be derived by the assessees in regard to the facts about the land being not falling irrigated under Chambal Command Area because of the notification issued under appropriate Rules.

11. As regards, the question which was raised as to whether when the surplus land has been determined under the New Ceiling Act, could the Old Ceiling Act be made applicable. The contention deserves outright rejection and this proposition of law has been finally settled that what has been determined under the New Ceiling Act is certainly open for adjustment in the Old Ceiling Act and simultaneous proceedings can be initiated by the authorities under the Old Ceiling Act as well as under the New Ceiling Act whichever is beneficial to the State and this being the purport and object of the Ceiling Act. The object of the Ceiling Act has been considered by the Division Bench of this court in State of Rajasthan Vs. Prithvi Singh and Others, (1986) 1 WLN 200 and the relevant portion is reproduced ad infra:-

"29. It may be mentioned that the ceiling law on agricultural holdings is a socio-economic law. The main object of the Ceiling Act is not to acquire property to dispose it of at a profit but to acquire land from the persons in whose hands the land is concentrated, and for fair distribution of such land to landless agriculturists and other deserving persons with a view to remove disparity in the holding of agricultural lands. Thus, ceiling law is one of the additions in the series of legislations adopted for land reforms and acquisition of lands from the hands of persons with whom large chunk of lands is concentrated. The motive behind the Act is to advance socialism and ensure equitable distribution of agricultural land as laid down in Article 39 of the Constitution of India for securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good. Determination of ceiling are and surplus area is the main backbone of the entire ceiling law. Thus, it cannot be the intention of the legislature that those persons who were required to surrender more land under the old ceiling law, may get benefit of surrendering less land under the new ceiling law."

12. It can be further noticed that this objection was never raised by the appellants at any stage and they had participated in the proceedings initiated by the authority and after the final order came to be passed by the Additional Collector, Baran and confirmed by the ld. Board of Revenue, they have raised the plea in respect of initiation of the proceedings under the Old Ceiling Act and New Ceiling Act which is otherwise not sustainable in law and available for consideration.

13. The ld. Single Judge has considered in detail all the submissions made under the order impugned dt. 18.12.1997.

14. We have heard counsel for the appellants and do not find any error in the order impugned passed by the ld. Single Judge which may call for our interference in the intra-court appeal.

15. Consequently, the instant intra-court appeal is devoid of merit and accordingly dismissed.

