(2008) 03 RAJ CK 0086

In the Rajasthan High Court

Classic Merchants Pvt. Ltd. APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 03-03-2008

Acts Referred:
Rajasthan Land Revenue Act, 1956 — Section 82

Citation : (2008) 03 RAJ CK 0086

Hon'ble Judges : Prakash Tatia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard Learned Counsel for the parties.

2. The petitioner has challenged the show cause notices issued by the Collector, Udaipur in reference application Nos. 2/2005 and 3/2005 (Annex.14 and 15) and sought order to restrain the respondents from questioning the nature of the land (abadi) in question in the proceedings initiated u/s 82 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the Act of 1956). The petitioner further prayed that by appropriate, writ, order or direction the communication dated 8.6.2005 (Annex.10), decision dated 18.6.2005 (Annex.13) and further communication dated 1.7.2005 (Annex.12) be declared illegal and be quashed and it may be further declared that the application dated 19.2.2003 of the petitioner for sub-division was deemed to be granted in terms of Rule 27(4) of the Rajasthan Urban Areas (Sub-Division, Re-constitution and Improvements of Plots) Rules, 1975 (hereinafter referred to as the Rules of 1975) with effect from 5.7.2004 or in the alternative, the respondent-trust may be directed to allow the said application with all consequential directions.

3. It will be worthwhile to narrate the facts in detail of the case in view of the fact that dispute with respect to nature of the land was subject matter in earlier round of litigations and according to the petitioner, decision about the nature of land in question being abadi land attained the finality and further in the

proceedings u/s 82, it cannot be examined nor the UIT can question it.

4. Undisputedly land falling in Khasras Nos. (Old Khasras Nos.) 6/1, 45/2, 46/1, 48/2, 119/1, 120/1, 122/1, 123/1, 140/1, 402/2, 403, 404/3, 406/2, 401/2, 423/1 and 424/1 measuring 400 bighas is situated in village Goverdhan Villas and Dewali, Tehsil Girwa, District Udaipur were in ownership of Late Maharaja Bhagwat Singh of Mewar. Subsequently, the above Khasras numbers were given new numbers in settlement and new Khasras nos are 75, 76, 116, 117, 118, 188 and 1076/69. Khasras Nos. 118 and 188 (new) only are relevant for the purpose of this writ petition. The land falling in Khasras Nos. 118 and 188 is 79.7100 hectares.

5. The land in question was subject matter of acquisition under Chapter IIIB of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act of 1955) as land was treated as agricultural land by the State''s revenue authorities. The competent authority after hearing to the parties under Chapter IIIB of the Act of 1955 vide order dated 11.2.1972, in ceiling case No. 1/70, treated the land in question as agricultural land and directed its acquisition under Chapter IIIB of the Act of 1955 as surplus land in the hands of assessee Late Maharaja Bhagwat Singh. An appeal was preferred by Late Maharana to challenge the order dated 11.2.1972 before the Revenue Appellate Authority, Udaipur being appeal No. 244/72. The Revenue Appellate Authority, Udaipur dismissed the appeal vide order dated 14.3.1975. Pursuant to the order of the competent authority dated 11.2.1972 as upheld by the Revenue Appellate Authority, Udaipur vide order dated 14.3.1975, the land in question was recorded as "Bilanam" on 13.3.1976. A second appeal was preferred by Late Maharaja Bhagwat Singh before the Board of Revenue being second appeal No. 587/76. The matter was referred to the larger bench vide order dated 4.7.1977 and the larger bench of the Board of Revenue, Ajmer vide order dated 28.4.1980 sent the matter back to the single bench for deciding the question whether the land in question is Abadi land or agricultural. The single bench dismissed the appeal on 8.10.1980 in default and also dismissed the restoration application vide order dated 12.2.1981, then Late Maharaja Bhagwat Singh challenged the dismissal of the appeal and rejection of the application for restoration by filing writ petition before this Court. The writ petition was allowed by this Court vide judgment dated 25.11.1989 and matter was remanded to the Board of Revenue to decide the appeal filed by Late Maharaja Bhagwat Singh. On 18.12.1995, the Board of Revenue, Ajmer allowed the appeal filed by Late Maharaja Bhagwat Singh and remanded the matter to the Sub-Divisional Officer for deciding the matter afresh. On 20.6.1999 Sub-Divisional Officer, Girwa held that land in question is Abadi land and, therefore, is not covered by the provisions of Chapter IIIB of the Act of 1955, which applies to the holding of agricultural land and not to abadi land. After excluding said land, the Sub-Divisional Officer, Girwa directed acquisition of remaining agriculture land measuring 2015 bigha and 10 biswa which was excess land in the hands of the assessee Late Maharaja Bhagwat Singh. The State aggrieved against the order dated 30.6.1999 preferred an appeal No. 144/1999 and legal

representatives of Late Maharaja Bhagwat Singh also preferred an appeal No. 102/1999 to save their lands for which Sub Divisional Officer, Girwa ordered acquisition. The State Government''s appeal No. 144/1999 was dismissed vide order dated 2.12.1999 and, therefore, the orders of Sub-Divisional Officer holding the land in question as Abadi land stands affirmed by the appellate authority. The appeal preferred by the legal representatives of Late Maharaja Bhagwat Singh was partly allowed, but this is not relevant for the purpose of deciding this writ petition. However, the State Government did not challenge the judgment of the appellate authority upholding the order of the SDO, Girwa dated 30.6.1999, wherein land in question was held to be Abadi, hence, the order attained finality.

6. It will be relevant to mention here that even the proceedings were taken in respect of land in question for assessing the land revenue under the provisions of the Rajasthan Land Reforms & Acquisition of Land Owners Estates Act, 1963 (hereinafter referred to as the Act of 1963) and said action of the State was challenged by Late Maharaja Bhagwat Singh by filing writ petition No. 1391/1976, which was partly allowed by single bench of this Court vide judgment dated 26th April, 1984 and State''s appeal against the said judgment dated 26th April, 1984 being DBSAW No. 328/1984 and the appeal preferred by the legal representatives of Late Maharaja Bhagwat Singh being DBSAW No. 329/1984 were decided by the Division Bench of this Court by common judgment and appeal filed by the State was dismissed and the appeal preferred by the legal representatives of Late Maharaja Bhagwat Singh was allowed vide judgment dated 1.8.1994.

7. Another proceedings with respect to the same land was taken before the Compensation Commissioner under the Act of 1963 wherein also, Compensation Commissioner, Udaipur vide judgment dated 16th May, 1995 held that land in question was not estate as defined in the Act of 1963. The State''s appeal against the judgment of the Compensation Commissioner dated 16th May, 1995 was dismissed by the Board of Revenue vide judgment dated 15.1.2003.

8. In the totality, according to the petitioner the land in question was declared as Abadi land by the competent authority and that decision attained finality, but during the pendency of this litigation, in pursuance of the order passed by the Sub-Divisional Officer dated 11.2.1972, which was upheld by the Revenue Appellate Authority, Udaipur vide order dated 14th March, 1975, the revenue entries were changed by recording the land as "Bilanam" on 13th March, 1976 and those entries have not been correct even after reversal of the orders dated 11.2.1972 and 14th March, 1975 and in view of the final finding recorded by the Sub-Divisional Officer, Girwa vide order dated 30th June, 1999 holding the land in question as Abadi land and even after dismissal of the appeal against the order of the SDO, Girwa dated 30th June, 1999 by order of the Revenue Appellate Authority dated 2nd Dec., 1999. The contention of the petitioner is that the title to the property is not dependent upon the entries made in the revenue

record. Neither the entries can create any right nor can extinguish title of any person in the property if he has lawful title. It is also submitted that transfer of property is not dependent upon the entries made in the revenue record or even any other record wherein the entries is not in consonance with the actual and real title of the title holder. The property rights cannot be affected by the acts and omissions of the Government officials maintaining the record only. In this case, when property in question, title and nature of which cannot be disputed even by the State, was transferred by late Maharana Bhagwat Singh to "Maharana Mewar Manav Dharm Trust" and subsequently, it was purchased by the petitioner by registered sale deed, then the respondent UIT, Udaipur denied the sub-division of the land in question by impugned order Annex.12 dated 1st July, 2005 on the ground that the land in question is not Abadi land. Not only that, the sub division of land in question was denied, but the Tehsildar, Girwa submitted a petition u/s 82 of the Act of 1956 on 17th June, 2005 before the Collector, Udaipur for making reference to the Board of Revenue for setting aside the mutation No. 462 dated 8.1.2003, mutation No. 378 dated 8.1.2003, mutation No. 469 dated 18.7.2003, mutation No. 471 dated 18.7.2003, mutation No. 491 dated 17.8.2004, mutation No. 492 dated 17.8.2004, mutation No. 498 dated 22.9.2004 and mutation No. 499 dated 22.9.2004.

9. According to the petitioner, the decision to make reference was taken in the meeting of Urban Improvement Trust held on 18.6.2005 under the Chairmanship of District Collector, Udaipur himself and reference application was submitted before the same Collector.

10. Reason for making a reference, as shown are, that the land in question has been recorded as Abadi land in place of "Bilanam Gair Kabil Kast" by the Tehsildar, Girwa without order of any competent authority and the sanction for transfer of land under the provisions of the Rajasthan Public Trust Act was given in the different name than in the name of the trust and, therefore, the said sanction for transfer is ab-initio-void. The Tehsildar, Girwa did not inquire about the title to the property before registering the sale deeds in favour of the petitioner by various sale deeds executed between 20th March, 2000 to 13th Dec., 2002 and allowed the sale deeds to be executed without there being title. Two mutations Nos. 378 and 462 were passed in one day by the Tehsildar, Girwa and that too, without inquiring about the title to the property and the legality of the sale deeds. The Tehsildar, Girwa also committed illegality in opening the mutation No. 462 for the reasons mentioned in para No. 7 of the application of the Tehsilar, which substantially is the same reason referred above.

11. The said reference application was entertained by the District Collector and notice (Annex.14) was issued to the petitioner, hence, notice initiating proceedings has been challenged by the petitioner and as stated above on the ground that the entire action is wholly without jurisdiction.

12. Learned Counsel for the petitioner submitted that the respondents in their reply specifically admitted that all the facts pleaded by the petitioner and they

could not have denied it because of the reason that petitioner''s entire case is based on the decisions given by the courts and competent authorities time to time holding the land to be abadi land. According to Learned Counsel for the petitioner the Hon''ble Supreme Court in the case of Guru Amarjit Singh Vs. Rattan Chand and others, that Jamabandi entires are not proof of title and they are only statement for revenue purpose and in the case of Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others, , the Hon''ble Apex Court held that though entries in mutation must be taken as correct unless contrary is established as held in Bekaru Singh Vs. State of U.P., , but at the same time, also held that mutation entries do not convey or extinguish any title and these entries are relevant only for collection of land revenue.

13. In case of Baleshwar Tewari (Dead) by LRs. and others Vs. Sheo Jatan Tiwary and others, the Hon''ble Supreme Court also held that creation of records may be camouflage to defeat just and legal title or claim of interest of party.

14. Learned Counsel for the petitioner relied upon the judgment of the Hon''ble Supreme Court delivered in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, wherein the Hon''ble Supreme Court held that alternative remedy would not operate as a bar in at least three contingencies: (i) where the writ petition seeks enforcement of an of the fundamental right; (ii) where there is violation of principles of natural justice; or (iii) where the order or the proceedings are wholly without jurisdiction or the vires of an Act is challenged. In Whirlpool Corporation''s case (supra), a show cause notice was issued by the Registrar, Trade Marks u/s 56(4) of the Trade and Merchandise Marks Act, 1958 and the same was challenged by a writ petitioner on the grounds that notice was wholly without jurisdiction and the writ petition was dismissed by the High Court then the Hon''ble Apex Court held that High Court erred in dismissing the writ petition.

15. Learned Counsel for the respondent-State tried to submit that the issue raised by the Tehsildar in his application dated 17th June, 2005 filed u/s 82 of the Act of 1956 requires to be considered by the revenue authorities under the relevant laws and i.e., the Act of 1956.

16. It is clear from the pleadings of the parties and further fact that neither the counsel for the State nor the counsel for the UIT, Udaipur could dispute the orders passed by the various authorities and the courts referred above and they rightly did not dispute the above orders. In this writ petition then in view of the fact that the land which was made subject matter under Chapter IIIB of the Act of 1955 treating that land to be agricultural land and in that proceedings because of the order passed by the SDO dated 11.2.1972 and appellate order dated 14.3.1975, the land in question was recorded as "Bilanam" if has been corrected by the Tehsildar of the concerned area on the request made by the affected party when those orders were reversed and specific finding of the SDO, Girwa dated 30.6.1999 that land in question is abadi land, as upheld by the order of the Revenue Appellate Authority dated 2.12.1999, then how that action of the

Tehsildar could have been condemned and can be challenged by the Tehsildar and can be made subject matter of reference u/s 82 of the Act of 1956? The decision of holding the land in question to be Abadi became final has not been disputed by the respondents. The only objection is that the correction in the revenue record regarding land to be Abadi land was effected without order of the competent authority. This argument is based on misinterpretation of law that an existing entry made in the revenue record can be changed only by order passed by the competent authority ignoring the fact that if any entry is made in pursuance of the order passed by any court and that order is reversed then the entry in the revenue record is required to be made in consonance with the order by which the earlier order in pursuance of which, changes were effected have been reversed.

17. Learned Counsel for the petitioner was further right in contending that all disputes cropped up immediately when the petitioner purchased the property in dispute by registered sale deed and before that the State never disputed about the nature of the land, which is clear from the fact that State did not challenge the order/judgment of the Revenue Appellate Authority dated 2.12.1999 affirming the finding of the SDO, Girwa holding the land in question as Abadi land. At this juncture, it will be relevant to mention here that Revenue Appellate Authority is not subordinate to the Collector and, therefore, no reference u/s 82 can be made by the District Collector against the judgment passed by the Revenue Appellate Authority and the Collector is competent to make reference with respect to the order passed by the officers subordinate to him only.

18. There is force in the submission of Learned Counsel for the petitioner that the petitioner pressed for sub-division of the urban land by moving application before the UIT, Udaipur then to obey the decision given by the UIT, Udaipur under the Chairmanship of the Distt. Collector, Udaipur himself, the application u/s 82 has been submitted by the Tehsildar, Girwa before the District Collector, Udaipur. Apart from above facts, if we look into the reasons given in the application submitted u/s 82 of the Act of 1956 then it appears that reference has been sought when it is not disputed that land was earlier belonging to Late Maharaja Bhagwat Singh and was subject matter in the agricultural land ceiling proceedings under Chapter IIIB of the Act of 1955 and land has already been declared to be Abadi land. The objection is with respect to the correction made by the Tehsildar which is in consonance with the order passed by the SDO and Revenue Appellate Authority holding the land to be Abadi. Not only this, even the objections have been raised with respect to the legality of the registered sale deeds and that too on the grounds that Tehsildar did not inquire into the title to the property when in the reference u/s 82 the legality and validity of the sale deed neither can be questioned nor sales can be declared illegal. In the reference application even it has been questioned how the two mutations were effected in one day. The one plea is that the property was sold by the trust before it acquire the title and i.e.,legally, which is factually absolutely wrong because the Tehsildar proceeded to assume that the title can be acquired only if the entires are made

in the revenue record and not by operation of law when the legal transfer deeds are executed. Otherwise also, the land in question is Abadi land then initiation of proceedings under the provisions of Land Revenue Act governing the agricultural lands is wholly without jurisdiction and, therefore, on the basis of above application, the District Collector, Udaipur could not have issued the notice Annex.14.

19. The UIT, Udaipur did not seriously dispute the pleas raised by the petitioner, but merely submitted that if land in question is agricultural land and if petitioner has no title to the property then the petitioner cannot claim sub-division of the property. So far as contention of the counsel for the UIT is concerned, there is no wrong in it as such but it has no application to the facts of the case and in view of the binding decision holding the land in question to be Abadi land wherein the respondent-State was party it is not open for the State to question the nature of land or vesting of title in the original title holder Late Maharaja Bhagwat Singh then on this ground also, the writ petition deserves to be allowed.

20. In view of the above discussions, the writ petition of the petitioner is allowed and it is held that initiation of proceedings by registering the case Nos. 2/2005 and 3/2005 u/s 82 of the Act of 1956 and issuance of notices by the District Collector, Udaipur are wholly without jurisdiction and, therefore, quashed and set aside. Order dated 8.6.2005 (Annex.10) is quashed and set aside. The respondent UIT, Udaipur may now proceed and decide the petitioner''s application for sub-division of the land in question and the same shall be decided within a period of two months from the date of receipt of copy of this order. However, this Court is not inclined to declare that land in question already stands sub-divided in view of Rule 27(4) of the Rules of 1975. No order as to cost.

