

(2009) 12 RAJ CK 0001
In the Rajasthan High Court

Dariya Kunwar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(2)

Rajasthan Tenancy Act, 1955 — Section 30DD, 30DD(1)

Citation : (2010) 1 WLN 493

Hon'ble Judges : P.C. Tatia, J; Jagdish Bhalla, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

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

2. This appeal is against the judgment dated 30.4.2002 passed by the learned Single Judge in SB Civil Writ Petition No. 1063/1990 by which the petitioners/appellants' writ petition was dismissed.

3. It will be appropriate to give brief facts of the case. Under the provisions of Chapter-III of the Rajasthan Tenancy Act, 1955 (for short "the Act of 1955"), ceiling proceedings were initiated for the land of one Rawat Singh and by order dated 2.9.1975, it was ordered that Rawat Singh was holding 30.69 standard acres of land in excess to the ceiling limit. However, after coming into the force of the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973 (for short the Act of 1973) by exercising the power u/s 15(2) of the Act of 1973, the State Government by order dated 18.8.1980 decided to reopen the ceiling case of said Rawat Singh on the basis of the grounds mentioned in the said order dated 18.8.1980. Since said Rawat Singh already died, therefore, before passing order dated 18.8.1980, the notice was given to Rawat Singh's son Mangal Singh. After the order dated 18.8.1980, ceiling proceedings were again taken before the Collector, Jalore wherein notice was given to Rawat Singh's son Mangal Singh. After hearing Mangal Singh, the District Collector, Jalore vide order dated

16.10.1984 held that total 82.06 standard acres land is in excess to ceiling limit for agriculture land holdings in view of the provisions of the Act of 1973 which is required to be acquired by the State Government. However, if under the order passed by the Sub Divisional Officer under the old ceiling law dated 2.9.1975, the possession of the land measuring 30.69 standard acres have already been taken, then possession of remaining land measuring 51.37 standard acres be taken from the hands of the successors of the said Rawat Singh. The order of the Collector dated 16.10.1984 was challenged by preferring appeal before the Board of Revenue by the legal representatives of Mangal Singh as Mangal Singh also died. The said appeal was partly allowed and it has been held that land measuring 53.93 standard acres only is in excess to ceiling limit, therefore, this much of land be acquired and if possession of the land has been taken under the order dated 2.9.1975 i.e. under old Ceiling law, then that land may be deducted from the land so acquired under the reopened ceiling proceedings.

4. Against the orders dated 16.10.1984 and 5.7.1989 passed by the District Collector, Jalore and Board of Revenue, Ajmer respectively, the appellants preferred the present writ petition. After hearing the parties, the learned Single Judge in detail considered the scope under Article 227 of the Constitution of India and formulated two points wherein the petitioners/appellants' contention was that Rawat Singh's wife was not given notice before ordering reopening of the ceiling case of Rawat Singh u/s 15(2) of the Act of 1973 which vitiates the Government's order dated 18.8.1980 and the consequential order passed by the District Collector, Jalore assessing the land of Rawat Singh and second question was with respect to the recognition of the alleged transfers made vide various deeds by the assessee. The learned Single Judge was of the view that firstly the question of facts cannot be agitated under Article 227 of the Constitution of India nor the evidence can be reappraised for reaching to a conclusion different than the conclusion drawn by the authorities concerned. The learned Single Judge also observed that the finding of fact recorded by the authorities under the Ceiling Act about the alleged transfers has been arrived at on the basis of appreciation of facts which justifies the conclusion. The learned Single Judge also observed that there is no necessity of giving notice to the other legal representatives of Rawat Singh.

5. In the backdrop of the above facts, to challenge the judgment passed by the learned Singh Judge dated 30.4.2002, the appellants have preferred this special appeal.

6. Learned Counsel for the appellants vehemently submitted that the authorities committed grave error of law by rejecting several old transfers of lands merely on the ground that the transfer deeds are not registered. It is submitted that in Section 30DD of the Act of 1955 it is clearly mentioned that all transfers effected before 1.12.1969 are required to be recognised and here the words "Transfer of land" have been used is no sale of the land, yet the land has been transferred and the person has been put to possession of the land then that transaction

amounts to transfer of the land and that transfer is required to be recognised u/s 30DD(1) of the Act of 1955.

7. Learned Counsel for the appellants further vehemently submitted that the authorities original, as well as appellate both committed error of law in holding the transfers to be bogus whereas the lands were sold in the year 1959 before and that was before the cut out date of the year 1969 and the lands were sold by executing sale deeds on stamp papers. If the stamp papers were not of requisite amount, then the document could have been impounded only but the transfer could not have been rejected. It is submitted that such transfer deeds are admissible in evidence on payment of stamp duty and penalty. It is also submitted that even if the transfer deeds (sale deeds) have not been got registered, then those unregistered transfer deeds can be recognised under the ceiling Act.

8. Learned Counsel for the appellants further submitted that in case these transfers are not recognised, then the transferees will be ousted from the land. It is submitted that if the transferees will be ousted from the land in dispute then that will result into great injustice. If they will not be dispossessed, then possession of the land will be taken which is in the hands of the successors of deceased Rawat Singh. In support of this contention, learned Counsel for the appellants relied upon the judgment of the Hon"ble Supreme Court delivered in the case of Tej singh v. State of Rajasthan and Ors. reported in (1994) 4 SCC 475.

9. Learned Counsel for the respondent State submitted that the transferees are not entitled to any notice nor they can take part in the ceiling proceedings of their transferees in view of the Full Bench judgment of this Court in the case of Kesa and Ors. v. State of Raj. and Ors. reported in 1987 (1) RLR 449. It is also submitted that the learned Single Judge rightly considered the scope under Article 227 of the Constitution of India and refused to reappreciate the facts and the learned Single Judge even reached to the conclusion that the transfers set up by the assessee were not disclosed by the assessee himself when he submitted returns in old ceiling proceedings which clearly suggest that these transfer deeds were not in existence at the relevant point of time and have been created subsequently to defeat the provisions of ceiling law.

10. We considered the submission of learned Counsel for the parties, perused the record as well as the reasons given by the learned Single Judge and also considered the judgments referred above.

11. It is clear from the facts of the case that the old ceiling case was reopened u/s 15(2) of the Act, of 1973 by the State Government after giving notice to Mangal Singh, ancestor of the appellants. Before the State Government, no such objection was raised by Mangal Singh that any other legal heir of Rawat Singh is there and any notice is required to be given to said legal heirs. Be it as it may be, Mangal Singh was heard and thereafter, the State Government passed the

order date 18.8.1980. Therefore, Mangal Singh and his successors cannot raise any objection on behalf of any other person that notice was not given to the other heirs of deceased Rawat Singh. The grievance could have been raised by the other legal representatives if they were there before the order dated 18.8.1980 was passed by the State Government. Furthermore, the said objection was not taken by the appellants before the District Collector even after reopening of the ceiling case under the Act of 1973 and then the ceiling case was decided by the District Collector, Jalore vide order dated 16.10.1984. It will be worthwhile to mention here that Mangal Singh died thereafter which is apparent from the judgment of the Board of Revenue dated 5.7.1989 and in the writ petition itself, the appellants admitted that Rawat Singh expired in the year 1968 much before 1980 when the reopening order was passed by the State Government. In the writ petition, it has been stated that Rawat Singh had two widows and, therefore, there were three successors. It will be worthwhile to mention here that the appellants also did not chose to implead those two widows in the writ petition or before any of the authorities even as proforma respondents go as to plead their cause by impleading them as respondents. Furthermore, Mangal Singh is son of Rawat Singh and he was representing the estate of Rawat Singh and it was ceiling case of estate of Rawat Singh and if one of the legal representative is already on record, then he represents the entire estate of the deceased so as to bind the other legal representatives.

12. In view of the above reasons, we are of the considered opinion that the learned Single Judge has rightly held that even if no notice was given to any widow of deceased Rawat Singh then also, the orders under challenge cannot vitiate.

13. So far as the alleged transfers are concerned, it is clear that the sale deeds have not been rejected merely on the ground that they are not registered documents but they have been rejected on the ground of being suspicious in nature for which cogent reasons, there was no mention of any sale of land by Rawat Singh and he suffered an order of acquisition of land which he would not have suffered if he would have transferred the lands to others. Then the authorities concerned considered the nature of the documents itself which clearly suggest that huge lands were transferred by various deeds by showing petty amount of less than Rs. 100/- as sale consideration then the appellants submitted a copy of jamabandi in this appeal which clearly shows that even mutations were effected of the alleged transfers on one day i.e. 15.4.1970 and that is much after 1.12.1969, the cut out date fixed in Section 30DD. The appellants cannot take help from the judgment of Tej Singh (Supra) which was delivered in entirely different fact situation. Here in the present case, we found that the transfer of the land has not been proved by the appellants.

14. In view of the above, this additional fact further supports the reasons given by the authorities concerned who considered the nature of the documents and found that those documents are suspicious in nature and cannot be recognised

and these documents of transfer have been effected only to defeat the provisions of ceiling law.

15. In view of the above reasons, we do not find any merit in this special appeal and the same is hereby dismissed.