(1996) 05 RAJ CK 0048

In the Rajasthan High Court

Case No : Civil Writ Petition No. 181 of 1986

Dhanna Lal and Others APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 06-05-1996

Acts Referred:
Constitution of India, 1950 — Article 226, 227

Citation : (1996) 3 RLW 152 : (1996) 2 WLN 106

Hon'ble Judges : Y.R. Meena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Y.R. Meena, J.—By this writ petition under Articles 226 & 227 of the Constitution of India, the petitioners have prayed that the order of Board of Revenue be quashed.

2. The petitioners are khatedar tenant of agricultural land khasra No. 272/2/2 measuring 28 bighas 6 biswas, situated in village Itawa Tehsil Amer. On 6.2.79. the Tehsildar Amer moved an application before the Additional Collector, Jaipur with an averment that on the settlement Register of the village Itawa for the year Svt. 2011 to 2033 Prabhat s/o Balu Meena is recorded as khatedar of the land khasra No. 272/2/2 measuring 28 bighas 6 biswas. In the year 1961, the khatedari of the land has been transferred in the name of Dhanna, Nanu and Prabhat sons of Harla, vide mutation No. 105 dated 25.11.1961.

3. Since the original khatedar of the land was a member of scheduled tribe, the subsequent transfer of khatedar in the name of Dhanna, Nanu and Prabhat Ahir hit by Section 42 of the Rajasthan Tenancy Act, 1955 [hereinafter to be referred as ''Act, 1955''] and therefore, the mutation No. 105 dated 25.11.61 be quashed. The Additional Collector, Jaipur issued notice to petitioners.

4. The petitioners appeared before the Additional Collector, Jaipur contended that the petitioners were cultivators of the land and the land was in their possession

since the time immemorial and the name of Prabhat Meena was wrongly entered in revenue record. That was correct and the mutation No. 105 dated 25.11.61 was sanctioned in favour of the petitioners. After hearing the petitioners, the Additional Collector referred the matter to Board of Revenue vide order dt. 29.4.83. (Ann. 9) u/s 82 of Rajasthan Land Revenue Act, 1956 [hereinafter to be referred as ''Act, 1956'']

5. On receipt of the reference from the Additional Collector, Jaipur, the Board of Revenue passed the impugned order dated 20.11.85 (Ann. 10}. The Board of Revenue has taken the view that transfer of the land was contrary to the provisions of Section 41 and 42 of the Tenancy Act, 1955, therefore, it is void. The BOR cancelled the mutation No. 105 dt. 25.11.61, which was sanctioned in favour of the petitioners. It was also directed that land be recorded in favour of Prabhat s/o Balu Meena. Being aggrieved by the impugned order dated 20.11.85, the petitioners have filed the present writ petition.

6. Mr. Bardar learned Counsel for petitioners submits that even if, the transfer of the land is contrary to the provisions of Section 42 of the Tenancy Act, 1955, the action for ejectment can be taken u/s 175 of Tenancy Act, 1955 and the limitation for ejectment in case of illegal transfer is 12 years. In this case, the land was transferred as back as in the year 1961; the application has been moved by the Tehsildar in the year 1979; then the reference has been made in the year 1983. That is after 18 years of the transfer of the land, the proceeding has been started. Therefore, no proceeding can be initiated u/s 175 of Tenancy Act, 1955 also.

7. In the case in hand the reference has been made u/s 82 of the Act, 1956 which provides that the Settlement Commissioner or the Director of Land Records [or a Collector] may call for and examine the record of any case decided or proceedings held by any revenue court or officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings. And, if he is of opinion that the proceedings taken or order passed by such subordinate court or officer should be varied cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board. On such reference, the Board shall pass such order as it thinks fit.

8. Mr. Bardar submits that though, no limitation has been provided u/s 82 of the Act, 1956. But, in such cases, the reference cannot be made by Collector/Addl. Collector to Board of Revenue after expiry of reasonable period, from the date of order. He placed reliance on the decision of Division Bench of this Court dated 19.10.1995, in case of Anandi Lal v. State of Rajasthan and Ors. (DB Civil Special Appeal No. 72/1987)

9. The facts stated above, are not in dispute that the mutation was sanctioned in favour of the petitioners in the year 1961. Earlier the land was recorded in the name of Prabhat s/o Balu Meena, who is a member of Scheduled Tribe. The

provisions of Clause (b) of Section 42 of the Tenancy Act, 1955 provides that any sale, gift or bequest is by a member of Scheduled Caste in favour a person who is not as member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour'' of a person who is not a member of the Scheduled Tribe shall be void. This provision was substituted by Section 3 of Rajasthan Act No. 12 of 1964 Published in Raj. Gazzette Part IV-A dated 1.5.64.

10. It is true that transfer of agricultural land by a member of Scheduled Tribe to non Scheduled Tribe shall be void. But if that transfer has not been challenged within reasonable time, can the powers be exercised u/s 82 of the Act, 1956, without any limitation of period ?

11. The identificate issue has been considered by Division Bench of this Court in case of Anandi Lal (supra). The issue before the Division Bench was that whether the Board of Revenue can exercise its powers u/s 82 of the Act, 1956 after a period of 25 years ?. The Division Bench has considered various judgments of their Lordships of Supreme Court of India to see, that in a case where no limitation is provided under the Act can the authority exercise its powers at any time without any limitation? The Division Bench of this Court considered the judgments of their Lordships of Supreme Court in case of The State of Gujarat Vs. Patil Raghav Natha and Others, ; Mansaram Vs. S.P. Pathak and Others, . Government of India Vs. Citedal Fine Pharmaceuticals, Madras and Others, , and has taken the view that revisional power cannot be exercised after a period of one year from the date of the order sought to be revised. Once a tenant/ khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay.

12. In the case in hand, admittedly, the land was transferred in the year 1961 and the mutation was sanctioned on 25.11.61. The petitioners were recorded khatedar/tenants of the land in question. First time, in the year 1979 the application was moved by the Tehsildar and then the reference has been made to the Board of Revenue by the Additional Collector on 29.4.83, after lapse of period of 18 years. Even, it was in the knowledge of Tehsildar in the year 1977 when he has given sanction, to the petitioners, for construction of pakka houses. Inspite of that, the Tehsildar kept quiet for two years till 1979. No justification has been given as to why the reference has been not made u/s 82 of the Act, 1956 within reasonable time after mutation No. 105 was sanctioned on 25.11.61. This unreasonable delay is fatal. Therefore, though the transfer was contrary to the provisions of Section 42 Of the Act, 1955, but the mutation, granted in favour of the petitioners, in the year 1961, cannot be cancelled, on delayed reference which was referred after 18 years from the date when the mutation was sanctioned.

13. In the result, the writ petition is allowed. The impugned order dated 20.11.85 (Ann. 10) is hereby quashed and set aside. The mutation No. 105 granted on 25.11.61 in favour of the petitioners is restored. No order as to costs.

