

(2013) 04 RAJ CK 0051

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 192 of 2013 in Civil Writ Petition No. 14420 of 2012

Gaj Singh Alsisar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 296
Rajasthan Escheats Regulation Act, 1956 — Section 4, 4(d), 4(i)(a)(b), 6, 7

Citation : (2013) 3 WLN 222

Hon'ble Judges : Amitava Roy, C.J.; Meena V. Gomber, J

Bench : Division Bench

Advocate : R.K. Agarwal with Mr. Sandeep Pathak, for the Appellant;

Final Decision : Disposed Off

Judgement

Amitava Roy, C.J.—Heard Mr. R.K. Agarwal, learned Senior Advocate assisted by Mr. Sandeep Pathak, Advocate for the appellant. By the instant appeal, the impugned judgment and order dt. 23.11.2012 passed in S.B. Civil Writ Petition No. 14420/2012 filed by the appellant herein, has been challenged. Having regard to the issues raised, we consider it inessential to issue formal notice.

2. The facts, in brief, to be recorded for the purpose of decision of this appeal, are that the appellant claims himself to be an agnate of Late Raja Sardar Singh who had died issueless on 28.1.1987. The appellant has also claimed to be his only legal heir. While the matter rested at that, as the record discloses, an application was filed by one Dwarka Prasad Pareek before the Tehsildar, Jaipur contending therein that the property of the above-named deceased located in Jaipur, Delhi and Jhunjhunu district, had been rendered as escheat as he died issueless and that the same is being encroached upon appropriated illegally.

3. The Tehsildar, Jaipur on 27.2.1987 issued a public notice calling for claims, if any, in respect of the property mentioned therein by 4.8.1987 proclaiming that in absence of any claim so made, the property would vest in the State Government

in terms of the Rajasthan Escheats Regulation Act, 1956 (for short hereinafter referred to as "the Act") and possession thereof would be taken over. Thereafter, the Collector, Jhunjhunu by his letter dt. 22.7.1987 addressed to the Tehsildar, Khetri, instructed him to initiate appropriate action with regard to the same property under the Act. The latter authority was also required to make necessary enquiries with regard to the property along with these if any, located abroad and to inform the Collector's office about the details of the property involved and also the steps taken in connection therewith. Pursuant to these advisories, the Tehsildar, Khetri instructed the Patwari to make verification and submit a report. It transpires from the report of the Patwari dt. 3.8.1987 that he acted in terms of the instructions issued and had seized the moveable and immoveable properties as referred to therein and gave the same in custody of the persons, also named in the report. It appears that at or about the same time, an application for obtaining probate had been made in the High Court of Delhi and that the same was as Testamentary Case No. 26/1987. This proceeding was initiated by the Trust who claimed that the deceased had bequeathed his property to it for which the probate was being sought for. The testamentary case was however, dismissed on 3.7.2012. It was at that stage that the appellant approached this Court under Article 226 of the Constitution of India claiming himself to be a legal heir and successor of late Raja Sardar Singh of Khetri, and consequently, claiming his right over the property left behind by the deceased, as a successor.

4. The learned Single Judge by the impugned judgment and order declined to interfere, amongst others, on the ground that the proposed adjudication involved contentious questions of fact, and instead observed that the appropriate remedy for the appellant would be to approach the Tehsildar, and thereafter, if needed, to institute a civil suit.

5. Mr. Agarwal, while referring to the provisions of the Act has argued that having regard to the scheme thereof pertaining to the duties and functions of the Tehsildar and Collector, as per Sections 4 and 6 thereof, in the facts and circumstances of the case, the direction, contained in the impugned judgment and order, to the appellant to approach Tehsildar, and thereafter, to initiate civil proceedings is in contravention thereof. The learned counsel however fairly submitted that there is no demur to the observation made by the learned Single Judge that the writ petition, did involve, complex questions of fact,

6. We have examined the pleadings and have considered the submissions made.

7. Sections 4 and 6 of the Act which deserve immediate reference, are extracted herein-below.

4. Report by Tehsildar.-(1) Upon receipt of information as to the existence within his Tehsil of any property to which this Act applies, whether or not in the possession of any person, the Tehsildar shall-

(a) ascertain whether or not there is any person entitled to such property,

- (b) prepare an inventory thereof showing the prescribed particulars,
- (c) take over possession of it in the prescribed manner, and
- (d) make a report to the Collector:

Provided that if such property is in the present possession of any person, such possession shall not be disturbed.

(2) Any property of which possession is taken under sub -Section (1) and which is subject to speedy and natural decay or consists of live-stock or is otherwise of perishable nature may be forthwith sold by public auction by the Tehsildar and the fact of such sale together with the amount of the proceeds thereof shall be reported to the Collector.

6. Inquiry by Collector.-(1) Upon receipt of a report under Sec. 4, the Collector shall immediately-

(a) make such orders as he thinks proper respecting the possession, maintenance, management, safe custody and taking care of each item of every property specified in the report, and

(b) issue a proclamation specifying the prescribed particulars and calling upon all persons having any interest therein or right thereto to prefer their claims in respect thereof to the Collector within thirty days from the service thereof in accordance with sub-Section (2).

(2) The proclamation issued under clause (b), of sub-Section (1) be served,-

(i) by exhibiting a copy thereof at some conspicuous spot on or adjacent to the place where the last known owner of such property, if any, resided last or where the property was found and also, in the case of such property being immovable, on such property,

(ii) by having the contents thereof proclaimed at the aforesaid place by beat of drum,

(iii) by affixing a copy thereof on the notice board of the office of the Collector issuing it, and

(iv) by publishing a copy thereof in the {Official Gazette) and, where the last owner of such property, if any, was, at the time of his death, residing in some place outside the State also in some local daily newspaper having free circulation in the region.

(3) Any income accruing from any such property shall be kept in deposit till the final disposal of all claims in respect thereof.

(4) If any property to which this Act applies consists of several items lying within different districts, the Board shall decide as to the Collector of one of such districts who shall proceed under this Section in respect of the entire property.

(5) It shall be the duty of the Collector to obtain full information from the public records and by personal inquiries respecting any property to which this Act applies, being in all cases careful not to infringe any private rights or to occasion unnecessary trouble or vexation to individuals.

(6) Every claim preferred within the time specified in sub-Section (1) shall be enquired into in the prescribed manner and if the Collector is satisfied as a result of such inquiry that the claimant is entitled to any such property and has the right to receive and hold the same in any capacity whatsoever, such property, together with the income, if any accrued therefrom and kept in deposit under sub-Section (3) shall be delivered to him on payment of the expenses, if any incurred in the maintenance, management, safe custody and taking care thereof:

Provided that any claim preferred after the expiry of the time specified in sub-Section (1) may be accepted and enquired into if the Inspector is satisfied that the claimant had sufficient reasons for not preferring the claim within such time:

Provided also that if any such property has been sold under sub-Section (2) of Section 4 the claimant shall be entitled to get the sale proceeds thereof on payment of such expenses and the costs, if any, of the sale.

(7) The Collector may, if any inquiry under this Section involves a complicated question of law as to title or status which has not been previously adjudicated upon by a Civil Court of competent jurisdiction, and shall, if there are two or more claimants in respect of the same property, require any or all of the claimants to apply for a succession certificate in respect of such property or to institute a suit for a declaration of title thereto within such period not exceeding six months in the aggregate as the Collector may from time to time fix, and if such application or suit has been made or instituted, the Collector shall stay the proceedings before him and the disposal of the property shall be subject to the result thereof.

(8) The Collector may for reasons to be recorded in writing, make over any inquiry and claims under this Section to any Assistant Collector subordinate to him. Such officer shall after taking the necessary steps in accordance with this Section record his findings and submit the same to the Collector.

(9) If the Collector is satisfied after enquiry in accordance with this Section that -

(a) the property in question is not of the nature to which this Act applies, he shall order the proceedings to be closed and the property to be allowed to remain with the person in whose possession it might then be, or if possession thereof has been taken under Sec. 4, of Section 6, to be restored to the person from whom possession was so taken, or

(b) the last owner of the property in question died in the State and without leaving any known heir, that the claim preferred under sub-Section (6) is not prima facie maintainable, that there is no such person entitled to claim such property and that it is a bona fide case of property vesting in the State as ultima

heres under Article 296 of the Constitution of India, by escheats or as bona vacantia, for want of rightful owner, he shall apply to the Court for a vesting order in respect of the property and for the custody thereof in the meanwhile:

Provided that no application for restoration of such possession or for vesting order shall be made until the time prescribed for preferring an appeal under Sec. 7 has expired or until the appeal, if any, preferred has been disposed of.

8. It would appear from Section 4, as extracted hereinabove, that the jurisdictional Tehsildar upon receipt of information as to the existence within his Tehsil of any property to which this Act applies, whether or not in the possession of any person would - (a) ascertain whether or not there is any person entitled to such property, (b) prepare an inventory thereof showing the prescribed particulars, (c) take over possession of it in the prescribed manner, and (d) make a report to the Collector.

9. Section 6 mandates that upon receipt of a report from the Tehsildar as contemplated by Section 4 of the Act, the Collector would make such orders, as would think proper with regard to possession, maintenance, management, safe custody etc. of each item of every property specified in the report, and issue a proclamation specifying the prescribed particulars calling upon all persons having any interest therein or right thereto to prefer their claims in respect thereof to him within thirty days from the service thereof in accordance with sub-Section (2).

10. Suffice it to mention that Sections 4 and 6 of the Act outline the nature of the steps to be taken by the jurisdictional Tehsildar and the Collector to further the process envisaged therein.

11. In the case in hand, the documents on record establish that on an application received from one Dwarka Prasad Pareek contending therein that late Raja Sardar Singh of Khetri had died issueless and the property left behind by him was being encroached upon illegally, the Tehsildar, Jaipur had issued a notice on 27.2.1987 calling for public claims. This notice in the face of the letter dt. 22.7.1987 of the District Collector, in the backdrop of Sections 4 and 6 of the Act, in our view, however loses all significance.

12. On the other hand, a conjoint reading of the letters dt. 22.7.1987 and 3.8.1987, discloses that the Tehsildar, Khetri had, in fact, initiated an action as required by the jurisdictional Collector, in furtherance whereof, the Patwari concerned had made a spot survey of the property referred to in its report and had given the moveable and immoveable constituents thereof in custody of the persons named therein. This action of the Patwari has been in terms of the instructions issued by the Tehsildar, Khetri. There is nothing on record to indicate that any report has yet been made by the Tehsildar, Khetri to the Collector under Sec. 4(d) of the Act. In that view of the matter. Section 6, at present, cannot come into play.

13. Be that as it may, the scheme of Section 6 however, makes it more than apparent that determination as to the status of the property involved in the proceedings under the Act cannot be made by the Tehsildar, and that, his jurisdiction ends with the submission of the report after exhausting the steps, as comprehended in Section 4(i)(a)(b) and (c). To this extent, the submission of the learned counsel for the appellant that the direction in the impugned judgment and order referring him (appellant) to the Tehsildar is not consistent with the framework of Sections 4 and 6 of the Act, cannot be discarded.

14. In the above view of the matter, the impugned judgment and order is modified to the extent that the jurisdictional Tehsildar would, within two weeks from the date of receipt of the certified copy of this order, submit a report to the Collector as required u/s. 4(d) of the Act, whereafter, the concerned District Authority would, without any delay, take the necessary initiatives as is contemplated in Section 6 of the Act. As it has been urged before us that possession of the property has been taken over by the Tehsildar, Khetri through Patwari as far as back as in 1987, and that the intervening delay has been caused, in view of the pendency of probate proceedings, we consider it appropriate to fix a time limit for the Collector to complete the exercise, as contemplated in Section 6 of the Act.

15. We thus, order that the Collector, Jhunjhunu would complete the process as is contemplated in Section 6 of the Act within a period of three months from the date of receipt of the report from the Tehsildar, Khetri. The appeal is disposed of in the above terms. The impugned judgment and order is modified to the above extent.