(1997) 02 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Writ Petition No. 179 of 1988

Ganpat Singh and Others APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 19-02-1997

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 23

Citation : (1997) 1 RLW 491 : (1997) 2 WLC 668 : (1997) 1 WLN 214

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.J. Shethna, J.—Learned Counsel for the petitioner Shri Sharma has restricted his challenge only to the order passed by the Revenue. Board, Annex. 5, dated 25.9.87. The Additional Collector by his order dated 28.3.84, Annex. 4, after making necessary enquiry and hearing the petitioners on notice, Annex. 3, came to the conclusion that the assessee was holding 343 bighas 9 biswas of land on 1.4.66, whereas, he was entitled to keep 35 standard acres i.e equivalent to 312 bighas and 10 biswas. Thus, 30 bighas 19 biswas land was declared as surplus land. Aggrieved by that order the State Govt. preferred an appeal No. 626/84 before the Board of Revenue u/s 23 of the Rajasthan Imposition of ceiling on Agricultural holding Act, 1973 (for short the Act). In appeal the decision was challenged on several grounds. But, the same was allowed only on one ground as the Revenue Board found that the number of family members were 5 on 1.4.1966 and not 6 as held by the Addl. Collector. Therefore, the appeal was partly allowed and the order passed by the Addl. Collector (Annex. 4) declaring 30.19 bighas surplus land was modified and it was held that 75.12 bighas land was in excess and declared to be surplus land and ordered to be acquired. The Revenue Board has mainly relied upon the statement of the assessee Ganpat Singh made on 30.9.83 stating that:

1-4-66 dks esjs ifjokj esa eS Loa; esjh ifRu] esjk yM+dk] xaxkflag] xaxkflag dh ifRu] ''kadj flag iksrk rFkk nks iksfr;kW Hkh

2. It was found that in the return submitted by the assessee on 21.1.1977 that he had not shown the name of Shanker Singh as his family member. Review petition was filed before the Revenue Board by the assessee Ganpat Singh on the ground that Shanker Singh is none else but Vijayendra Singh, therefore, the evidence of Ganpat Singh should have been read accordingly. However, the Board of Revenue was of the opinion that assessee had not stated the name of Vijayendra Singh, therefore rejected the review petition. Aggrieved by that order (Annex. 5 and 6) Ganpat Singh filed this petition before this Court at the age of 83 in the year 1988. Unfortunately, during the pendency of this writ petition he has expired, therefore, his legal representatives have come on record and they have prosecuted this petition.

3. Learned Counsel Shri Sharma for the petitioners submitted that the Revenue Board simply picked up one sentence from the statements of deceased Ganpat Singh and held that there were 5 members and no 6 in the family of Ganpat Singh as held by the Addl. Collector. He rightly submitted that being a grand father, in his late age, he was calling Vijayendra Singh by his nick name Shanker Singh. If, the Board of Revenue had given an opportunity to Ganpat Singh then this fact would have been explained. Mr. Sharma submitted that the Addl. Collector did not find anything wrong with this and rightly came to the conclusion that there were six members and not 5 in the family of Ganpat Singh. In fact the notice Annex. 3 issued by the State Govt. also shows that there Were six members in the family of Ganpat Singh. Mr. Sharma rightly submitted that under the circumstances the Revenue Board should not have gone beyond the notice and held that there were only five members in the family of Ganpat Singh and not six. He also submitted that if at all the Revenue Board had any confusion about the name then the best thing was to record additional evidence of Ganpat Singh, as to whether Shanker singh @ Vijayendra Singh was the Same person or not it should have ordered Addl. Collector to record such additional evidence as provided u/s 23(4)(c) of the Act. Lastly he submitted that in the form Annex. 1 Ganpat Singh had already shown his grand son Vijayendra Singh which was certified to be true by the Sub Divisional Officer. He therefore, submitted that if the Revenue Board had taken care to look at that form then it would not have come to the conclusion that there were five members and not six members in the family of Ganpat Singh. He rightly submitted that the Revenue Board without properly applying its mind to the evidence on record wrongly rejected the review petition.

4. From the record it is clear that Revenue Board committed grave error in disturbing the order passed by the Addl. Collector while allowing the appeal filed by the State Govt. and also committed error in rejecting review petition. Mr. Bhatnagar, learned Panel Lawyer appearing for the respondents, under the circumstances.was not in a position to defend the orders passed by the Board of Revenue.

5. In view of the above discussion, it must be held that Ganpat Singh had six members and not five members in his family as held by the Board of Revenue. Therefore, the impugned orders passed at Annex. 5, allowing the appeal of the State Govt. and rejecting the review petition of the petitioners at Annex. 6 passed by the Board of Revenue are set aside. The order passed by the Addl. Collector at Annex. 4 is restored and it is declared that Ganpat Singh had surplus land of 30.19 bighas and no 75.12 bighas. Hence, the Addl. Collector may now proceed to acquire excess land of 30.19 bighas of land under the law.

6. Accordingly, this petition is allowed with`no costs. The impugned orders at Annex. 5 and 6 are quashed and set aside.

