
(2000) 02 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2722 of 1990 and 660 of 1989

Gauri Shankar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-02-2000

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 10, 9
Rajasthan Tenancy Act, 1955 — Section 19

Citation : (2000) 4 RLW 64 : (2000) 4 WLC 711 : (2000) 3 WLN 290

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.C. Verma, J.—Agricultural land comprising of Khasra Nos. 156, 157, 158, 163, 164, 165, 166 and Well No. 162 was maufi land of Thakur Shri Gopal through Pujari Shri Hari Vallabh Das. The Maufi land was resumed under the Land Reforms and Resumption of Jagir Act and the land had vested in the State. Under the Act, Mafidars were to set compensation of the resumed land as per the principles laid down in the Act and the Rules itself.

2. It is the case of the petitioners that they were the purchasers of the resumed land from Smt. Bhuri who according to the petitioners was tenant of the land. It is stated that deity - respondent No. 4 was land holder and disputed land was not in KhudKast of the land holder. Smt. Bhuri a recorded tenant of land holder is said to have sold her Khatedari tenant rights to the petitioners vide registered sale-deed in July, 1968. Mutation was also done in favour of the petitioner Gaurishankar on 28.2.1969 and thereafter, the petitioner was recorded as Khatedar tenant. They are in possession since 1968, it is so alleged, it is the contention of the petitioner that despite the fact that compensation had been taken by respondent No. 4 at the time of resumption of maufi, but still in the year 1984, an application was made before the Collector, Jaipur to the effect that the land in question was belonging to Bhog of Thakurji and that name of

petitioner had been wrongly recorded in the Revenue Record in the name of respondents and prayed for corrections of the record. Notice was issued to the petitioner u/s 82 of the Rajasthan Land Revenue Act which was replied to. It was stated in the reply that Bhuri was recorded as tenant in Samvat year 2008 onwards. The Additional Collector had held that Bhuri could not acquire Khatedari right u/s 19 of the Rajasthan Tenancy Act and, therefore, transfer of land made by her in favour of the petitioners was illegal and, therefore, had made a reference to the Board of Revenue for cancellation of the mutation on 2.11.1985 vide Annex. 6.

3. It is the contention of the petitioners that after resumption of maufi Land, the land stood resumed and Bhuri was recorded as tenant and she was in cultivatory possession of the land in Samvat year 2008. She had automatically acquired the status of Khatedar -tenant. It is the contention of the petitioners that the Additional Collector and the Board of Revenue had erroneously held that Smt. Bhuri was sub-tenant and therefore, could not acquire Khatedari rights u/s 19 of the Rajasthan Tenancy Act.

4. Reply has been filed by the respondents and the contentions as stated are denied. It is submitted that Bhuri was sub-tenant and was not Khatedar tenant and respondent No. 4 being perpetual minor was to be treated as Khud-Kast. However, it is not disputed and rather so is held by the authorities below that Bhuri was recorded to be in possession as cultivator.

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5. Mutations in the name of petitioners were made by Tehsildar Bharatpur vide mutation No. 380 dated 9.11.1960 u/s 9 of the Rajasthan Tenancy Act and on the said basis, names of petitioners were entered in the Revenue Record. Respondent No. 4 Idol Shri Satya Narainji moved an application on 30th Oct., 1978 after 18 years before the Collector, Bharatpur alleging that Pujari of the temple was in Khatedari of the aforesaid land and mutation had been wrongly entered in favour of the petitioners. The land comprises of Khasras No. 1718, 1832, 1837, 1838, 1717, 1835, 1836, 1839, 1940, 1843, 1871, 1872, 1841, 1842, 1826, 1927. 1844, 1845, 1846 and 1870. Notices were issued to the petitioners. The petitioners submitted that they were the real cultivators and in possession of the land in dispute and their names were duly recorded in the Revenue Record since 1960 and they were in actual possession of the land for many decades of years and mutation was rightly done. The Additional Collector accepted the application of respondent No. 4 and recommended the reference to the Board of Revenue for cancellation of mutation vide its order dated 31.12.1986, Annex. 3.

6. The Board of Revenue accepted the reference vide its order dated 15.12.1988 and mutation was cancelled after 28 years and the land was re-entered in Khatedari of the temple. The order of Board of Revenue has been attached as

Annex.4. The petitioners rely on record of Jambandi from Samvat years 2009 to 2012 and 2017 to 2020, Ex. 5 and 6. A prayer has been made to quash the impugned orders Annex. 3 and 4.

7. In the reply filed on behalf of the respondents, it is submitted that in the Jamabandi from samvat year 2009 to 2012, name of Gyarsi S/o Shankar is recorded in column No. 5 as sub-tenant and petitioners have been wrongly entered as Khatedars and that idol being perpetual minor, no rights could accrue to any sub-tenant.

8. It is not disputed that at the time of resumption of Jagir, the petitioners in both the cases were in occupation as cultivators. The question which arises for determination in the present case is whether in the circumstances any right accrues to such so called sub-tenant of the land of Maufi which stood resumed and had vested in the State and whether the land in question was to be treated as Khatedari land of the tenant or not? The counsel for the parties rely on number of judgments. In the case of Ramlal and Ors. v. Board of Revenue and Ors. reported in RRD 1991 (6), the Division Bench of this Court has held that the land if cultivated by tenants after resumption of Jagir, the land should be treated as Khatedari land of the tenant. The Division Bench has further held as under:

15. Thus, it is clear that either it must be cultivated with one's own labour or the labour of the family member or by servant on wages payable in cash or kind but not by way of share in crops. On the resumption of Jagir and Khudkast land remained with the Khatedar and other land vested in the State. u/s 9 of the Act of 1952, even tenant in a Jagir land who at the commencement of this Act is entered in the revenue records as a Khamdar, Pattadar or under any other description implying that the tenant has heritable and full transferable rights in the tenancy shall continue to have such rights and shall be called a Khatedar tenant in respect of such land.

9. Yet by another judgment of Division Bench of this Court reported in RRD 1993 319 - Prabhudas v. State of Rajasthan, it was held that deity is a perpetual minor and no tenancy right can be acquired against the minor. It was so held in the judgment reported in RRD 1993 266 Mohan Lal v. Board of Revenue.

10. The petitioners rely on a judgment in the case of Bal Kishan v. Board of Revenue and Ors. S.B. Civil Writ Petition No. 2930/87 decided on 20th Sep., 1999 wherein reliance had been placed on a judgment of Deepa Vs. State of Rajasthan and Others, In Deepa's case (supra) almost in similar circumstances, perpetual deity had moved an application for making a reference to the Board of Revenue for changing the entry in the Revenue Record in favour of the idol. The defence of the appellant Deepa was that he had become Khatedar tenant under the provisions of the Tenancy Act and, therefore, the record could not be changed. The reference was accepted, which was upheld right upto the High Court. It was one of the defence of the appellant Deepa that he had been recorded as cultivator in Samvat year 2012 and, therefore, the land could not be

recorded as Khudkast of Jagirdar which would make Sections 9 and 10 of the Jagir Act inoperative. The finding of the Court was that at the time of coming into force of the Tenancy Act, Deepa's father had been given land for cultivation. The contention of the appellant was accepted by the Supreme Court to the effect that the cultivator of Khudkast becomes Khatedar tenant on the required procedure being followed. In such a situation, by force of Section 9 of the Jagir Act his right, becomes heritable and fully transferable and so contrary view taken by the Authority was not correct.

11. In the present case also, it is not denied that the petitioners in both the cases had been cultivating the land. Provision's of Sections 9 and 10 of the Act provides as under:

Section 9 - Khatedari rights in Jagir Lands - Every tenant in the Jagir land who at the commencement of this Act is entered in the revenue records as the Khatedar, Pattedar, Khademdar or under any other description implying that the tenant has heritable and full transferable right in the tenancy shall continue to have such rights and shall be called a Khatedar tenant in respect of such land.

Section 10 - Khatedari right in Khudkasht land - As from the date of resumption of any jagir land, any Khudkasht land of a jagridrar shall be deemed to be held by the Jagridar as a Khatedar tenant and shall be assessed at the village rate.

Explanation - In this section, the expression "village rate" means the rate fixed for a particular class of soil in the current settlement and in an area which is not brought under settlement, the rate as fixed by the Collector after taking into consideration the prevailing rate for similar class of soil, in the adjoining village or villages.

12. In the year 1955, the Rajasthan Tenancy Act came into force w.e.f 15.10.1955 and by virtue of Section 15, the petitioners who had acquired the Khatedari rights in accordance with the provisions of Jagir Act are to be treated as Khatedar tenant. Section 15 of the Rajasthan Tenancy Act is reproduced as under:

Section 15-Khatedar tenants (1) Subject to the provisions of Section 16; and Clause (d) of Sub-section (1) of Section 180, every person who at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant or Khudkasht or who is, after the commencement of this Act, admitted as a tenant otherwise than a sub-tenant or tenant of Khudkasht or an allottee of land under and in accordance with provisions of this Act or of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari rights in accordance with provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (Rajasthan Act, VI of 1952), or of any other law for the time being in force shall be Khatedar tenant and shall subject to the provision of this Act, be entitled to all the rights conferred and be subject to all the liabilities imposed on Khatedar tenants by this Act:

Provided that no Khatedah rights shall accrue under this Section to any tenant to whom land is or has been let out temporarily in Gang Canal, Bhakra, Chambal or Jawai Project area or any other area notified in this behalf by the State Government.

(2) Notwithstanding anything contained in Sub-section (1), Khatedari rights shall not accrue thereunder to any person to whom land had been let out before the commencement of this Act by the State Government in furtherance of the "Grow More Food Campaign" or under some special order subject to some specified conditions or in pursuance of some statutory or non-statutory rules and who shall have, before such commencement, made a default in securing the objective of such campaign or breach of any such order, condition or rule.

(3) Any person referred to in Sub-section (2) may, within three years from the date of commencement of this Act and on payment of a Court fee of twenty five Naye Paise, apply to the Assistant Collector having jurisdiction praying for a declaration that he acquired Khatedari right under Sub-section (1) of the land held by him.

(4) Such application may be made on any of the following grounds, namely;

(a) that the land held by him was let out to him after the commencement of this Act;

(b) That it was not let out to him on any of the circumstances specified in Sub-section (2);

(c) that when the land was so let out to him he was not apprised of such circumstances;

(d) that he had, before such commencement, made no default or breach of the nature specified in Sub-section (2)

(5) The Assistant Collector shall, upon the presentation of an application under Sub-section (3), make inquiry in the prescribed manner and afford reasonable opportunity to the applicant of being heard and shall, if he does not reject the application, declare the applicant to have become Khatedar tenant of his holding in accordance with and subject to the provisions of the Sub-section (1).

13. In the present case from the Revenue Record, the deity was of course a Khatedar at the time of resumption of land under the Jagir Act, but was not cultivating the land itself or through its servants. Even though the petitioners are said to be subtenants, but as a matter of fact, they were tenants on the land for all purposes after the resumption. The petitioners are also in possession of the land for number of decades. The maufi land having been resumed by the State, by no stretch of imagination, it can revert back to the Maufidars, who was only entitled to the compensation of the resumption; In such situation the land in question could not have been entered into or reverted back to the Maufidars and the petitioners or their predecessors, who at the relevant time were recorded in

the column of Cultivators, did acquire the right from the relevant Jamabandi of the years 2008 to 2021 in regard to the land in question.

14. In Civil Writ Petition No. 2722/90, Bhuri who was in possession as a cultivator as per Jamabandi at the time of resumption of land was so entered as Khudkasht and being a tenant had sold the land to the present petitioners. The names of the purchasers were entered in the revenue record.

15. Since the muafi land is resumed under the Jagir Act, the person who is cultivator and is in possession of the land, automatically becomes the tenant of the land. The land vests in the state and being in cultivatory possession, he does acquire a right that of tenant and as such as per the law laid down by the Hon"ble Supreme Court in Deepa's case (supra) Smt. Bhuri was within her right to sell her tenancy rights.

16. Similar is the position in regard to the writ petition 660/89, in which petitioners had also been in possession since decades and have been shown in the column of cultivators. It cannot be said from the reading of the record that they were ever shown as sub-tenant. Therefore, even naming them to be sub-tenant shall not be warranted in the present case. They also became tenant as soon as the land stands resumed and vests in the State.

17. There is another argument raised by the counsel for the respondents that reference u/s 82 should not have been initiated or accepted after a lapse of so many years and to support this argument, the counsel for the petitioners relies on a Division Bench judgment of this Court in Anandi Lal's case reported in RRD 1996 170, wherein it was held by the Division Bench of this Court that exercise of power under reference after in ordinary delay is not permissible. There is a merit in the submissions made by the counsel for the petitioners.

18. For the reasons mentioned above, both the writ petitions are allowed and the impugned orders in both the writ petitions are quashed. No order as to costs.