
(2013) 02 RAJ CK 0169
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4057 of 1994

Girraj Prasad

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-02-2013

Acts Referred:

Citation : (2013) 4 CDR 1846

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : R.K. Goyal, for the Appellant; Syed Zakawat Ali, Deputy Government Counsel for State, Shri Amit Jindal and Shri Shivlal Verma, for the Respondent

Judgement

Mohammad Rafiq, J.—This writ petition has been filed by petitioner Girraj Prasad against the order of the Revenue Appellate Authority dated 1.6.1994 (Annexure-10), which has rejected his appeal filed against the order of the Assistant Collector dated 28.4.1994 (Annexure-9). The facts as disclosed in this writ petition are that petitioner was Seaman I-Class in Indian Navy and he stood retired from service from Indian Naval ship Dwarka, which was stationed at Port Okha. A notice as per Rule 10 of the Old Ceiling Rules was issued to Mangilal, represented by non-petitioners No. 11 to 18 and Baijnath, represented by non-petitioners Nos. 5 to 10 for filing the declaration by the Sub-Divisional Officer, but they did not file any declaration u/s 9 of the old Ceiling Rules. As such the Assistant Collector, Bundi directed the Tehsildar, Keshoraipatan to prepare statements of their holdings and particulars of their family members and to submit the same in his Court. On receiving the said statement, the Assistant Collector, Bundi served notices under Rule 14 of the Old Ceiling Rules to both of them. However, no reply to the notices was submitted by Mangilal and Baijnath. As such, the Assistant Collector, Bundi proceeded to determine the ceiling area applicable to them. On scrutiny of their ceiling case, Assistant Collector, Bundi came to the conclusion that a suit for division of holding had been filed by deceased Baijnath against deceased Mangilal, which was decided on 2.6.1976

and it was held that the entire 149 bigha 11 biswa of land of village Kota Khurd of Tehsil Keshoraipatan was of the sole khatedari of Mangilal. Since Mangilal was entitled to retain only 35 Standard Acres of land for a family of 6 members but in all he held 70.3 Standard Acres of land in his khatedari, 35.6 Standard Acres of land was declared as surplus, vide judgement dated 5.7.1976. Aggrieved by the aforesaid judgement, deceased Mangilal filed an appeal before Revenue Appellate Authority, who vide his judgement dated 25.8.1976 dismissed the same. After the decision of the Assistant Collector dated 5.7.1976, the surplus land of the khatedari of deceased Mangilal was taken in possession by the State Government and the same was entered as Siwai Chak and the same was available for allotment under the Old Ceiling Rules.

2. The State Legislature enacted the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 which came into force w.e.f. 1.1.1973. During the year 1974, the petitioner submitted an application to the State Government through his Commanding Officer for allotting agricultural land to him for cultivation. The said application was sent by the State Government to Collector, Bundi who sent the same to Tehsildar, Keshoraipatan and the Allotment Committee, Tehsil Keshoraipatan, allotted 10 Bigha of land of khasra No. 78/1 of village Kota Khurd on 25.12.1976 on the condition of payment of Rs. 2,480/- by the petitioner under Rule 41 to 47 of the Old Ceiling Rules, situated in village Kota Khurd Tehsil Keshoraipatan at Dahikhera Camp, out of the acquired lands of deceased Mangilal, information of which was conveyed by Tehsildar Colonization Chambal Project, Kota to Commanding Officer vide letter 10.1.1977. After allotment, the petitioner was placed in possession of the same on 14.3.1977.

3. The deceased Baijnath had filed a suit on 26.8.1963 for division of holding against deceased Mangilal in the Court of Assistant Collector, Bundi claiming his half share in 149 bigha 11 biswa of land situated in village Kota Khurd of Tehsil Keshoraipatan, which was dismissed by the Assistant Collector, Bundi vide order dated 2.6.1976. Aggrieved thereby, the L.Rs. of deceased Baijnath i.e. non-petitioners Nos. 5 to 10 filed an appeal in the Court of Revenue Appellate Authority, Kota but the same was dismissed vide judgement dated 5.2.1979. Against the order dated 5.2.1979, the non-petitioners Nos. 5 to 10 filed an appeal before the Board of Revenue, who vide judgement dated 28.1.1987 accepted the same and it was declared that non-petitioners No. 5 to 10 were entitled to get half share with deceased Mangilal as co-tenant in the 149 bigha 11 biswa of land of village Kota Khurd Tehsil Keshoraipatan, District Bundi. Being aggrieved by the aforesaid judgement of the Board of Revenue, the non-petitioners No. 15 to 18 filed a review petition, which was dismissed vide judgement dated 22.3.1990. After the declaration of their rights in the suit for division of holding by the Board of Revenue vide judgements dated 28.1.1987 and 22.3.1990, non-petitioners No. 5 to 10 filed a revision petition before the Board of Revenue against the judgement of the Revenue Appellate Authority, Kota dated 25.8.1976, whereby he confirmed the order of Assistant Collector Bundi dated 5.7.1976 declaring 35.6 Standard Acres of land of village Kota

Khurd, Tehsil Keshoraipatan as surplus in the ceiling proceedings held against deceased Mangilal and the Board of Revenue for Rajasthan, Ajmer vide judgement dated 19.4.1990 accepted the revision petition and the case was remanded back to the SDO, Bundi for deciding the ceiling area afresh after hearing both the parties.

4. While allotting the above land in favour of the petitioner on 25.12.1976, the price of the land was allowed to be deposited in installments. The said installments were fully paid by the petitioner upto the year 1986 and therefore mutation No. 261 of village Kota Khurd Tehsil Keshoraipatan was attested by Tehsildar Keshoraipatan on 2.7.1986 conferring khatedari rights on the petitioner on the allotted land and the name of the petitioner was entered in the khasra girdavari of Samvat 2044 to 2047 as Khatedar tenant of land comprised in khasra No. 78/1 measuring 10 bighas of village Kota Khurd, Tehsil Keshoraipatan, District Bundi. In the subsequent jamabandi of Samvat year 2047-2050 the name of the petitioner also appeared as Khatedar-tenant. After the allotment of the above land in favour of petitioner, the petitioner claims to have invested an amount of Rs. 20,000 in making improvements in the same and in getting the said land levelled so as to bring the same in the level of the distributory of the canal known as Chahincha Minor which had earlier been dug in a part of 10 bighas of land of khasra No. 78/1 of village Kota Khurd but from which the land allotted to the petitioner was not being irrigated as the Chahincha Minor was flowing at a lower level and the petitioner's land was situated at a higher level.

5. On receiving the record of the case from the Board of Revenue, the Assistant Collector, Keshoraipatan issued notices to non-petitioners No. 11 to 18 and non-petitioners No. 5 to 10 and after hearing both the parties the learned Assistant Collector, Keshoraipatan vide judgement dated 28.4.1994, held that since non-petitioners No. 5 to 10, the legal representatives of Baijnath were entitled to half share in 149 bigha 11 biswa of land of village Kota Khurd, no land held by deceased Mangilal and Baijnath was surplus in the ceiling proceedings under the Old Ceiling Law and the ceiling proceedings held earlier against Mangilal were ordered to be dropped. While deciding the case on 28.4.1994, the learned Assistant Collector, Keshoraipatan, ordered that if any land had been acquired earlier the same should be restored. Being aggrieved by the judgement dated 28.4.1994 passed by Assistant Collector, Keshoraipatan, the petitioner filed an appeal before the Revenue Appellate Authority, Kota but the same was dismissed vide judgement dated 1.6.1994 on the ground that the petitioner allottee had no right to file the appeal as held by the Larger Bench of the Board of Revenue for Rajasthan in the case of Yashwant Singh vs. State of Rajasthan, reported in RRD 1990 page 355, the petitioner therefore filed this writ petition aggrieved by the judgements of the learned Board of Revenue dated 28.1.1987, 22.3.1990 and 19.4.1990, judgement of Assistant Collector dated 28.4.1994 and judgment of Revenue Appellate Authority dated 1.6.1994.

6. Shri R.K. Goyal, learned counsel for the petitioner has submitted that the appeal of the petitioner could not be dismissed on the ground of locus standi. The stand taken by the appropriate government that petitioner had no locus standi to challenge the order of the Assistant Collector dated 28.4.1994 was wholly illegal. Learned counsel in support of his arguments has relied on the judgement of this Court in Bhava & Ors. vs. State & Ors., 2006 (3) WLC (Raj.) 274. Learned counsel for the petitioner has also relied on the judgement of Supreme Court in Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, which has been relied on by coordinate bench of this Court in Bhava, supra and argued that since the petitioner would be directly affected by the judgement of the Assistant Collector dated 28.4.1994 because such order has been passed much subsequent to the allotment of the disputed land to him by the Colonization Department on 10.1.1977 and handing over of possession of the land to him on 14.3.1977. The order has thus been passed thirteen years after petitioner was put in possession of the land. He is therefore vitally and directly affected by the order now passed by the Assistant Collector.

7. Shri Amit Jindal, learned counsel for the respondent opposed the writ petition and submits that whether or not the land was surplus in the hands of the respondent was essentially a dispute between them and the Government and the petitioner would be a stranger to such a dispute. He is neither a necessary, nor a proper party to such a dispute. He would have therefore no locus standi to challenge the order passed by the Assistant Collector. Learned counsel in support of his arguments relied on the division bench judgement of this Court in Fatia vs. State & Ors., 2002 WLC (Raj.) UC 641 and argued that in that case the allotment made during the pendency of appeal in favour of Fatia was held to have conferred no right upon him if eventually the appeal of the person who was divested of the land was allowed. He also relied on the judgement passed by coordinate bench of this Court in S.B. Civil Writ Petition No. 139/1995, Dhanna Lal vs. State & Ors., decided on 21.9.2001.

8. Learned counsel further placed reliance on the judgement of Full Bench in Kesa Vs. State of Rajasthan, RLW 1987 page 1 and argued that the Full Bench has held that transferee has no right to be heard in matters wherein the land is declared surplus. He is entitled to be reimbursed and transferor is bound to restore to him the advantage obtained u/s 30C of the Rajasthan Tenancy Act, 1955.

9. On hearing learned counsel for the parties and perusing the material on record, I find that the division bench of this Court in Fatia, supra is somewhat similar facts where the allotment in favour of the appellant Fatia was subject to final decision of the appeal by virtue of doctrine of lis pendens. In that case, one Dulichand was allotted the land in the first instance in 1971 on temporary cultivation basis and ultimately the land was permanently allotted to him in 1975 as a landless person. On 31st July, 1982, the allotment made in favour of Dulichand was cancelled on the ground that he was not personally cultivating the

land without notice. Aggrieved thereby, he filed appeal before the Additional Commissioner (Colonization) challenging the aforesaid order. It was during pendency of the said appeal that the allotment was made to Fatia. It was held that subsequent allottee being successor in interest in State can have no grievance if allotment made to him pendente lite could not stand and Court rightly directed the State to allot him some other land by way of compensation.

10. The judgement of coordinate bench of this Court in Bhava, supra however is nearer on facts. In that case also the Revenue Appellate Authority restored back to the assessee the land, which was resumed from him on being declared surplus. In between the writ petitioners were allotted the said land and, therefore, they were directly affected by such order of the Revenue Appellate Authority. The appeal filed by the State Government against the judgement of the Revenue Appellate Authority was dismissed by the Board of Revenue which also later dismissed the review petition of the State. In between the land had already been allotted to the writ petitioners, who approached the High Court against the aforesaid orders passed by SDO, Revenue Appellate Authority and Board of Revenue. A preliminary objection was raised regarding their locus standi to challenge those orders. In those facts, it was held by this Court that impugned order had the effect of directly depriving the petitioners of their right to hold property which they are eligible to hold in execution of ceiling law. Such surplus land having been allotted to them, it was held that their locus have to be determined according to the extent of injuries caused to them. It was not possible to reach to the conclusion regarding locus standi to maintain a petition similarly on the ground that the transferor of land are not required to be heard without determining ceiling applicable to any person and determined a surplus land held by them. The judgement of Full Bench in Kesa, supra was distinguished.

11. The Supreme Court in Jasbhai Motibhai Desai, supra answering to question who is an "aggrieved person" and what are the qualifications requisite for such a status, has held in para 13 of the judgement as under:

xxx The expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him. English Courts have sometimes put a restricted and sometimes a wide construction on the expression "aggrieved person". However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction.

12. This issue on similar facts fell for consideration of the Supreme Court in Baban Paswan & Anr. vs. Pratima Devi & Ors., (2003) 10 SCC 239 in which case

too certain persons were put in possession of the land pursuant to allotment of such land being declared to be surplus. Thus the land held in excess in the hands of two brothers, who filed writ petition against the determination of the excess land and also against the distribution of the land to those affected persons. The writ petition was dismissed and the Letter Patent Appeal filed by the brothers was also withdrawn. It was thereafter that their sister filed writ petition before the High Court contending that she was not heard and she was vitally interested in the matter before determining of ceiling area applicable to their family. The allottees of the surplus land were not made party to the writ petition, which was eventually allowed by the High Court ordering certain areas claimed by their sister to be excluded from the ceiling limits of the aforesaid two brothers. When the allottees came to know of this, they filed Letter Patent Appeal, which however was dismissed by division bench holding that once the order to declare the land as surplus has been held invalid, no right accrued to them for which no notice was necessary and further that a person cannot acquire any right merely because parcha has been issued in his favour. Since the acquisition has been held to be invalid, they have no option but to move out. In those facts, it was held by the Supreme Court as under:

5. We are not inclined to take the view that the appellants are not entitled to be heard in the writ petition filed by the 1st respondent Pratima Devi merely because the determination of the ceiling area had taken place at a time when the appellants had no right in the land. The appellants have been put in possession of the land way back in 1985 by holding that it was a surplus area pertaining to the family. They being in the enjoyment of the land on the strength of the said allotment, they must have the right to substantiate that the allotment has been rightly made in their favour and the area was rightfully held to be surplus area.

6. In view of the said situation, we hold that the appellants should also have been made a party in the writ petition and they also should have been heard before any final order is passed in the writ petition. We, therefore, set aside the judgement passed by the High Court in CWJC No. 323 of 1999 and also the impugned judgement in the LPA. The case now will go back to the High Court for disposal of the writ petition afresh. We permit the appellants to make an application in the writ petition to get themselves impleaded as respondents and contest the claim made therein. If any such application is filed the same shall be allowed.

13. In view of discussion aforesaid, it must be held that the petitioner was vitally affected by the order passed by the Assistant Collector dated 28.4.1994. He would certainly have legitimate say in the matter and locus standi to challenge that order in appeal before Revenue Appellate Authority to demonstrate that such order was not legally passed or was bad in law. The Revenue Appellate Authority thus erred in law in dismissing his appeal as not maintainable. This writ petition therefore deserves to succeed and is accordingly allowed. The impugned order dated 1.6.1994 of the Revenue Appellate Authority is set-aside and the

matter is remanded back to the Revenue Appellate Authority with direction to decide the same within a period of six months from the date of production of certified copy of this order.