

(2016) 03 RAJ CK 0108
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5495/2002

Jagannath and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 9
Rajasthan Land Revenue Act, 1956 — Section 82
Rajasthan Tenancy Act, 1955 — Section 15, Section 183, Section 37, Section 39,
Section 42-B, Section 43, S

Citation : (2016) AIR(Raj) 89 : (2016) 3 WLC 732

Hon'ble Judges : Alok Sharma, J.

Bench : Single Bench

Advocate : Sanjay Mehrishi, for the Appellant; R.K. Goyal, Raghuendra Singh and Rinesh Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Alok Sharma, J.—1. Under challenge in this petition, purported to be one under Article 226 of the Constitution of India, is the judgment dated 22-3-2002 passed by the Board of Revenue Rajasthan Ajmer (hereinafter "the Board"), whereby the judgment and decree dated 26-7-1997 passed by Settlement Officer cum Revenue Appellate Authority Kota (RAA) has been set aside and that of the Assistant Collector Baran's judgment dated 17-9-1996 restored, whereby the suit filed by Ramnathi Bai, now deceased and represented through her legal heirs (hereinafter "the plaintiff") under Section 88, 89, 90 and 183 of the Rajasthan tenancy Act, 1955 (hereinafter "the Act of 1955") for declaration, permanent injunction and eviction of defendant Janki Lal was dismissed.

2. The facts of the case are that the plaintiff Ramnathi Bai filed a suit under Sections 88, 89, 90 and 183 of the Act of 1955 on 6-1-1990. It was averred that the suit land, particulars of which were set out in para No. 1 of the plaint, admeasuring 33 bigha 4 biswa in village Jagannathpura, Tehsil and District Baran

stood in the name of one Ganga Bai widow of Bheru. On Ganga Bai's death the khatedari in the suit land devolved on her daughter Narbada Bai w/o Narayan, under mutation No. 104 dated 4-4-1928 duly attested. It was stated that the plaintiff was the only daughter of Narbada Bai (the date of Narbada Bai's death is not on record). It was stated that Narbada Bai, subsequent to death of her husband Narayan, had entered into relationship with one Ganpat s/o Deva Dhakar, in order to look after the suit property and cultivate & manage the same on her behalf. It was stated that Narbada Bai, the erstwhile khatedar, made an application for mutation of the suit land in the name of Ganpat for the limited purpose of acting as her "parokar" (agent) qua the suit land. Consequent thereto mutation No. 720 dated 27-5-1950 in respect of suit land was opened in the name of Ganpat s/o Deva Dhakar. The said mutation was duly attested. It was stated that following Narbada Bai's death, as her natural born daughter and sole heir, the plaintiff Ramnathi Bai was entitled to khatedari rights in the suit land. It was submitted that however the defendant Janki Lal had on misrepresentation before the Assistant Collector Baran on 20-3-1980, following the death of Ganpat s/o Deva Dhakar, unauthorisedly claimed khatedari of the suit land as his successor and got his name mutated in respect thereof in the revenue records. It was stated that Ganpat was not entitled to khatedari rights over the suit land as they were never lawfully transferred to him by way of registered sale-deed or devolution by way of succession. Nor could Janki Lal claim succession of the suit land through him. It was prayed that defendant Janki Lal be evicted from the suit land and the plaintiff be declared as khatedar and put into possession thereof with further protection by way of injunction against interference with the use and enjoyment of the suit land.

3. On receipt of summons of suit, Janki Lal appeared but did not file written statement. Proceedings were taken ex-parte against him. The plaintiff produced herself in evidence purportedly proving from the Jamabandi of Svt. 1982-83 (1926-27) Ex. 2 that Narbada Bai was the erstwhile recorded khatedar of the suit land. Other documents Mutation No. 104 as Ex. 1, Mutation No. 720 dated 27-5-1950 in the name of Ganpat Ex. 3, Khasra Parishodhan Ex. 4, judgment dated 19-12-1983 passed by the Land Revenue Officer Ex. 5, Mutation of Svt.2031-34 Ex. 6, judgment dated 23-1-1982 passed by the Assistant Land Revenue Officer Ex. 7, Mutation of Svt. 2038-57 Ex. 8 and notice Ex. 9 (sic.8) were also exhibited. The plaintiff examined herself as Pw.1, Gyarsi Ram Pw.2, and Gordhan Lal as Pw.3. The Assistant Collector Baran however vide judgment dated 17-9-1996 dismissed the suit filed by the plaintiff, primarily on the ground that suit land had been entered in the khatedari of Ganpat vide mutation No. 720 on 27-5-1950 and following Ganpat's death, the defendant Janki Lal had succeeded and his name entered in the record of rights vide mutation No. 133 of 8-3-1983. The plaintiff Ramnathi Bai, being unrelated to Ganpat, was not entitled either to declaration of her khatedari rights to the suit land, or a decree of eviction against defendant Janki Lal-the successor of Ganpat.

4. Aggrieved of the judgment dated 17-9-1996 passed by the Assistant Collector

Baran, the plaintiff filed an appeal before the RAA, Kota, who vide judgment dated 26-7-1997 accepted the appeal and decreed the plaintiff's suit for declaration and ejectment of the defendant Janki Lal. It was held that Narbada Bai's purported transfer of khatedari rights to Ganpat, her live-in-partner and resultant mutation had no sanction of law and was non-est. As was the consequent purported succession to the suit land by Janki Lal claiming through Ganpat. It was held that as Narbada Bai's daughter the plaintiff's suit deserved to be decreed, she declared the khatedar of the suit land and the defendant Janki Lal liable to be evicted. This time around, the defendant Janki Lal, aggrieved of the judgment dated 26-7-1997 passed by the RAA Kota, filed a second appeal before the Board. Vide judgment dated 22-3-2002, the Board set aside the judgment dated 26-7-1997 passed by the RAA Kota and restored that of the judgment dated 17-9-1996 passed by the Assistant Collector Baran dismissing the plaintiff's suit. Hence this petition.

5. Counsel for the plaintiff has submitted that the judgment passed by the Board is vitiated for being founded upon Kota Circular No. 3, which was not applicable to Mutation No. 720 dated 27-5-1950 in favour of Ganpat. It has been submitted that the Rajasthan Adaptation of Central Laws Ordinance, 1950 was promulgated on 24-1-1950 (gazetted on 25-1-1950). Thereunder the Transfer of Property Act, 1882, the Indian Stamp Act, 1899 and the Indian Registration Act, 1908 became applicable in the State of Rajasthan. Consequently khatedari rights standing in the name of Narbada Bai on 27-5-1950 partaking the nature of immovable property could not have been transferred in the name of Ganpat, without a duly registered sale-deed. It has been submitted that even otherwise the mutation No. 720 dated 27-5-1950 in favour of Ganpat, purportedly with reference to Kota Circular No. 3, did not entail conferment of khatedari rights on Ganpat, inasmuch as it has been specially recorded at the relevant time that he was retained by the erstwhile khatedar Narbada Bai for the management of the suit land and was only authorised to act on her behalf with the Government and others concerned. Counsel submitted that no transfer of khatedari rights in the name of Ganpat was thus lawfully made nor was it intended. And no absolute transferable or heritable khatedari rights accrued in favour of Ganpat based on the mutation No. 720 dated 27-5-1950, it was submitted. In the alternative, counsel for the plaintiff submitted that even otherwise Section 37 of Kota Circular No. 3 should be read subject to Section 39 and 43 of the said circular. So read, it is evident that a khatedar, at the relevant time in Kota State was competent to transfer his property only through will, gift or mortgage for legal necessity and moreover no woman could transfer any property which devolved on her in inheritance without the consent of her in-laws. It has been submitted that mutation No. 720 dated 27-5-1950 in favour of Ganpat on the face of it did not indicate Narbada Bai's legal necessity, nor were her khatedari rights transferred by way of will, gift or mortgage. Hence no valid transfer of Narbada Bai's khatedari rights to Ganpat vide mutation No. 720 dated 27-5-1950 could be made out in the eyes of law. Resultantly the conferment of khatedari rights on Ganpat, on the alleged

application of Narbada Bai, without anything more, was null and void, from which neither any rights accrued to Ganpat nor could such rights devolve on his death in the year 1979 on Janki Lal. It was submitted that in the circumstances the Board's judgment dated 22-3-2002 is perverse and vitiated by a patent illegality. It was submitted that in the circumstances, khatedari rights in the suit land would remain with Narbada Bai till her death (date not disclosed), and thereafter would devolved on to the plaintiff, as her natural born daughter.

6. Per contra, Mr. R.K. Goyal appearing for the defendant Janki Lal submitted that the challenge in the suit for declaration and injunction before the Assistant Collector Baran in a suit laid on 6-1-1990 pertained to suit land, over which absolute khatedari rights were conferred on Ganpat on 27-5-1950. Ganpat became the recorded khatedar in cultivatory possession. It was submitted that no challenge to the khatedari or possession of Ganpat was, at any point of time, laid by Narbada Bai during her life time. Ganpat in the circumstances beginning 27-5-1950 continued in lawful possession of the suit land and paid rent in respect thereof to the landholders, entitled from time to time. It was submitted that even otherwise in terms of the policy of the Rajasthan Tenancy Act, 1955 (hereinafter "the Act of 1955"), the tiller of the land was/is to be conferred khatedari rights and Ganpat would have been so entitled to khatedari, in terms of his admitted possession, under Section 15 of the Act of 1955 even he were a sub-tenant at the relevant time when the Act of 1955 came into force. Being recorded as the actual khatedar could not be to his disadvantage. More so when the erstwhile khatedar in her life time admittedly had no objection. Mr. Goyal further submitted that following Ganpat's death in the year 1979 the suit land in his khatedari came to be mutated in favour of the defendant Janki Lal on 8-2-1983, and he became recorded khatedar with cultivatory possession. In this situation the suit for declaration, injunction and eviction filed only on 6-1-1990, after a gap of over 39 years, since the mutation 720 dated 27-5-1950 in favour of Ganpat, was inordinately belated, a misuse of legal processes and was rightly dismissed. Counsel submitted that in fact the plaintiff's suit to the extent it sought eviction of the defendant Janki Lal under Section 183 of the Act of 1955 was hit by limitation in view of Item 23 of Schedule-III appended to the Act of 1955, which provides a limitation of 12 years for a suit for eviction under Section 183 of the Act of 1955. It was submitted that the suit as laid was reticent as to the actual physical possession of the plaintiff. Even the alleged time of dispossession of the plaintiff was not set out/averred, which was necessary for computation of limitation for seeking relief of eviction of the defendant Janki Lal. It was submitted that the plaint was lacking in material particulars and replete with vague averments to obfuscate determination of, when the cause of action, if at all, for laying the suit for declaration, injunction etc. arose. It was submitted that a Full Bench of the Board in the case of Kesar Bai v. Ram Gopal [1984 RRD 821] has held that proceedings for eviction of even an alleged trespasser and for the alleged khatedar being put into possession of his khatedari land could be filed only within 12 years from the date the khatedar was dispossessed. And

limitation could not in any way whatsoever be computed without reference to a specific date of alleged dispossession. In para 19 of the aforesaid judgment, it was held:--

"On the basis of the above authorities, it can be said that the settled position of the law is that if one enters into possession of immovable property under the sale or transfer which is void ab initio and if the purchaser continues to be in possession for more than twelve years continuously, without interruption to the knowledge of the real owner, the purchaser perfects his title to the disputed immovable property by adverse possession. In Goma's case (supra) it has been held that the possession under the void sale deed is permissible and a view has been taken that the cause of action for the suit may arise from the date when the person in possession is called upon to surrender possession to the transferee. But we have already said earlier that we are unable to agree with this view. We have already referred to Schedule-III to the Act and to serial number 23 (Part-I-Suits) and 68C (Part-II-Applications) which provides a period of twelve years for the suit or the application, as the case may be, and time from which period begins to run is when the cause of action arises or accrued. We have already dealt in the earlier part of this judgment as to what is meant by "cause of action" and when it arises or accrues. At the cost of repetition we hold that it arises or accrues when the aggrieved party has the right to apply to a proper tribunal for relief. In case of sales or transfers void ab initio the alienee or the transferee is without any lawful title to the property demised from the date of the transfer itself and the transferor has a right to relief to dispossess him from the date of transfer itself. Therefore in such cases the possession of the transferee after the transfer becomes adverse from the date of transfer, inasmuch as the transferee acquires no right by the transfer in respect of the property. He is a mere trespasser. Time therefore starts to run against the transferee from the date of transfer and as already stated earlier under section 9 of the Limitation Act, 1963 where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it. Under Section 63(1)(iv) of the Act the interest of a tenant in his holding or part thereof, as the case may be, shall be extinguished when he is deprived of possession and his right to recover possession is barred by limitation. We have said earlier that the transferee under a sale which is void ab initio is a trespasser from the date of the sale and time for a suit for possession begins to run against the transferor (sic transferee) from the date of such transfer. It can therefore be said that the right of such transferor who has been deprived of such possession to recover possession becomes barred by limitation after the expiry of twelve years."

7. Counsel for the defendant submitted that in this view of the matter the plaintiff was not entitled to seek eviction of the defendant Janki Lal. Therefore the suit for eviction was not maintainable at the instance of the plaintiff in 1990, when she claimed through Narbada Bai, who admittedly put Ganpat into possession in 1950. Reference has been made to Section 63(1) of the Act of 1955 to set up extinguishment of the khatedari of Narbada Bai and

consequentially of the plaintiff claiming under her. Mr. Goyal finally submitted that even though no limitation to file a suit for declaration has been provided in the Act of 1955, yet the long delay in filing such a suit vitiates it and the claim for khatedari rights, in the context of extinguished khatedari rights under Section 63(1) of the Act of 1955 as also in equity.

8. Heard counsel for the parties and perused the material available on record of the petition.

9. It is an admitted fact that Ganpat's name was mutated vide mutation No. 720 dated 27-5-1950 qua the suit land for that of Narbada Bai on her own application. Ganpat was thereupon entered as the khatedar of the suit land in the revenue records in 1950. It is also an admitted fact that Ganpat then came into cultivatory possession of the suit land and paid rent therefore to the concerned landholders from time to time. It is also an admitted fact that on coming into force of the Act of 1955, Ganpat was the recorded khatedar of the suit land and accordingly so continued in the first settlement proceedings after the Act of 1955. It is also not in dispute that Narbada Bai, in her life time did not challenge the conferment of khatedari rights at her own instance on Ganpat either on count it being allegedly invalid in law or for the reason that it was vitiated by fraud or misrepresentation. It is also not in dispute that Ganpat continued as khatedar of the suit land for about 29 years till his death in the year 1979, whereupon the defendant Janki Lal, as his successor, came to be recorded as khatedar in revenue records vide mutation No. 133 dated 8-3-1983 and has since been in cultivatory possession.

10. The suit for declaration of khatedari rights and injunction at the instance of the plaintiff came to be filed only on 6-1-1990, after a period of over 39 years from the date of conferment of khatedari rights on Ganpat vide mutation No. 720 dated 27-5-1950. The suit was palpably belated, during which period both in terms of Section 39 of the Kota Circular and Section 63(1) of the Act of 1955, the khatedari rights of erstwhile khatedar and/or his successors stood extinguished. In the circumstances, I am of the considered view that the suit for declaration at the instance of the plaintiff claiming as the daughter of the erstwhile khatedar Narbada Bai was liable for a forthwith dismissal as not maintainable. Aside of the aforesaid, even with reference to Section 183 of the Act of 1955 read with entry 23 of Schedule-III of the Act of 1955 the relief of eviction of the defendant Janki Lal could not be claimed for reason of 12 years period having elapsed since the plaintiff's predecessor in interest herself consciously giving away possession of khatedari land to Ganpat. This inevitable conclusion flows from the well enunciated judgment of the Full Bench of the Board in the case of Kesar Bai (*supra*).

11. In a catena of cases, albeit in a context of revising powers, the Apex Court has held that where there is no limitation provided for exercise of powers under an Act, the revising power thereunder should be exercised within a reasonable time and not otherwise after an inordinate delay. Inordinate delay in the exercise

of such power by itself vitiates it. In the case of *State of H.P. v. Rajkumar Brijender Singh* [, (2004)10 SCC 585] the Apex Court held that where there is no limitation provided under a statute for invoking revisional jurisdiction, it does not entail that issues amenable to such power would remain open for infinity. In the aforesaid case it was held that exercise of revising power suo motu after lapse of 15 years, suffered from inordinate delay which by itself nullified the order passed by the Revising Authority. In the case of *State of Punjab v. Bhatinda District Cooperative Milk Producers Union Ltd.* [, (2007)11 SCC 363] the Apex Court reiterated that when no period of limitation has been prescribed, the statutory authority must exercise its jurisdiction within a reasonable period, which being a question of fact would depend on the circumstances of the case under consideration. In the case of *Joint Collector Ranga Reddy District v. D. Narsing Rao* [, (2015)3 SCC 695] the Apex Court again affirmed that where no limitation was prescribed under the statute, power under the statute could be exercised only within a reasonable period even if fraud be alleged. And the reasonableness of period would be determinable having regard to lapse of time between the discovery of the alleged fraud or irregularity in exercise of power and action taken thereon. In the aforesaid case revisional power was sought to be exercised after five decades whereupon it was held that it could not be allowed so to be exercised belatedly, as it would otherwise lead to anomalous situations leading to uncertainty and seriously affect settled rights. The Apex Court then proceeded to hold that delayed invoking of revisional power after long lapse of time even in the absence of any period of limitation was arbitrary and opposed to the concept of rule of law. It was even held that delayed exercise of power (in that case revising power) would even tantamount to a fraud upon the statute under which the power was purported to be exercised. Para 25 of the opinion is reproduced hereunder:--

"25. The legal position is fairly well settled by a long line of decisions of this court which have laid down that even when there is no period of limitation prescribed for the exercise of any power, revisional or otherwise, (underlining mine) such power must be exercised within a reasonable period. This is so even in cases where allegations of fraud have necessitated the exercise of any corrective power. We may briefly refer to some of the decisions only to bring home the point that the absence of a stipulated period of limitation makes little or no difference insofar as the exercise of the power is concerned which ought to be permissible only when the power is invoked within a reasonable period."

12. The Division Bench of this court in *Anandi Lal v. State of Rajasthan* [, 1996 DNJ (Raj.) 100] held that to permit exercise of revisional powers under sections 82 of the Rajasthan Land Revenue Act, 1956 (for short "1956 Act") after unreasonable delay would amount to putting the imprimatur of the courts on the unreasonable and arbitrary exercise of powers. And in *State of Rajasthan v. Teja* [2005(2) WLC (Raj.) 53] it was held in para 10 thus:--

"While it is true that the subject transfer is in violation of Section 42-B of the Act

of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy/khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered (sic) public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the pre-requisites. Learned Single Judge has rightly set aside the order of the Board of Revenue."

13. Even though the judgments referred to above related to impermissibility of exercising revising power on an application made or suo motu after an inordinate/unconscionable delay, yet the principle enunciated and the underlying fundamental reasons would attract with equal rigor to filing of a suit for declaration. I am of the considered view that laying of a suit for declaration, as in the instant case, after about 40 years since the mutation No. 720 dated 27-5-1950, without any good reason preferred therefore, was by itself sufficient for its outright dismissal. During the period the defendant and prior to him, his predecessor in interest had tilled and developed the suit land with the sweat of their brow and obviously had made substantial investments thereon. Inordinate/unexplained delay in exercising of revisional power entailing disruption of settled rights and leading to uncertainty in law having been held to be anathema by the Apex Court, that effect would attract with equal vigour to suits for declaration based on purported rights when filed several decades after the cause of action, as in the present case where a suit for declaration of khatedari rights was filed in the year 1990 impugning the mutation entry No. 720 dated 27-5-1950 without as much as any good explanation therefore. The suit for declaration and correction of entries filed by the plaintiff was thus even otherwise liable to be dismissed-more so with extinguishment of rights under Section 63(1) of the Act of 1955.

14. For the aforesaid reasons, I am of the considered view that neither anything perverse nor any illegal can be attributed to the judgment dated 22-3-2002 passed by the Board setting aside the judgment 26-7-1997 passed by the Revenue Appellate Authority Kota and that of restoring the judgment dated 17-9-1996 passed by the Assistant Collector Baran.

15. The writ petition is without force. Dismissed.