(1980) 01 RAJ CK 0001

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1225 of 1979

Jai Narain — APPELLANT

Vs

The Board of Revenue and Others — RESPONDENT

Date of Decision : 07-01-1980

Acts Referred:
Rajasthan Land Revenue Act, 1956 — Section 123, 124, 125, 131, 132

Citation : AIR 1981 Raj 11 : (1980) WLN 160

Hon'ble Judges : M.L. Shrimal, J;D.P. Gupta, J

Bench : Division Bench

Advocate : S.N. Pareek, for the Appellant;

Judgement

Dwarka Prasad, J.—In this writ petition, the petitioner has challenged the order of the Board of Revenue for Rajasthan at Ajmer dated October 6, 1978, setting aside the allotment of a piece of land from Khasra No. 47 in village Bhadal, Tehsil Phulera, District Jaipur, made earlier in favour of the petitioner.

2. The circumstances, which have given rise to this writ petition, may he briefly stated: It is undisputed that the land comprised in Khasra No. 47 in village Bhadal was recorded as "Gair Mumkin Talai", in the revenue records even at the time when the Rajasthan Tenancy Act, 1955 came into force and also when the Rajasthan Land Revenue Act, 1956 came into force. At some stage subsequently, the Sub-Divisional Officer, Sambhar Lake, is said to have converted the land in dispute from "Gair Mum-kin" to "Barani" and, thereafter, the Tehsil Advisory Committee allotted a piece of land, out of the aforesaid Khasra No. 47, to the petitioner. The allotment made in favour of the petitioner was challenged by means of a revision petition before the State Government, which was transferred to the Collector, Jaipur for disposal. The Collector, by his order dated July 9, 1976, held that the allotment made in favour of the petitioner was invalid and void as the Sub-Divisional Officer had no jurisdiction to convert "Gair Mumkin Talai" into cultivable ''Barani'' land. The Collector, therefore, held that the land could not have been validly allotted to the petitioner and the allotment was

consequently cancelled. The order passed by the Collector was upheld by the Revenue Appellate Authority vide its order dated November 30, 1976.

3. The Board of Revenue also came to the same conclusion and relying upon a decision of the larger bench of the Board of Revenue in Durga Prasad v. Panna Lal 1977 RRD 673, held that the Sub-Divisional Officer, Sambhar Lake, acted entirely without jurisdiction in converting the land from "Gair Mum-kin Talai" to ''Barani'' and as such the entire proceedings relating to allotment of land were ab initio void. The Board of Revenue held that the land in dispute, comprised in Khasra No. 47, still continued to be ''Gair Mumkin Talai'' and was not available for allotment and that the allotment of a portion thereof in favour of the petitioner was, therefore, invalid and void. The Board also found certain irregularities and illegalities in the method of allotment employed by the Land Allotment Advisory Committee at the time of making allotment of the land in dispute in favour of the petitioner.

4. Learned counsel for the petitioner argued before us that the revision petition filed before the State Government could not have been transferred by it to the Collector for disposal and that the revision petition u/s 83 of the Rajasthan Land Revenue Act, should have been heard by the State Government itself or at best it could have been transferred to the Board of Revenue. It is not necessary to decide this question in this case, as the Board of Revenue has also decided the matter on merits and has held that the initial allotment of the land in question in favour of the petitioner was void and invalid. If the initial allotment of the land, made in favour of the petitioner, was invalid and void, then the petitioner has no right, title or interest left in the land in dispute and the question as to whether the revision petition regarding the cancellation of such allotment should be heard by the State Government or by the Board of Revenue or the Collector is of not much consequence.

5. As the land was ''Gair Mumkin Talai'' and the Sub-Divisional Officer, Sambhar Lake, had no jurisdiction to convert the same into cultivable ''Barani'' land, the Board of Revenue is right in holding that the - land was not open for allotment to the petitioner or to any other person. Sub-rule (4) of Rule 4 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957 provides that land recorded as ''Gair Mumkin'' in the current settlement was not available for allotment for agricultural purposes, under the said Rules. The petitioner claims that the allotment of land has been made by the Tehsildar in consultation with the Land Allotment Advisory Committee under Rule 13 of the aforesaid Rules. As we have already pointed out above, in the current settlement the land was entered in the record of rights as ''Gair Mumkin'' and as such if the Sub-Divisional Officer could not convert the same into ''Barani'', the land in dispute could not have been allotted to the petitioner or to any other person.

6. Learned counsel for the petitioner relied upon the provisions of Sections 131, 132 and 136 of the Rajasthan Land Revenue Act for making the submission that the Sub-Divisional Officer was empowered to convert the land, entered in the

current settlement, as ''Gair Mumkin Talai'' into ''Barani''. We have examined the provisions referred to by the learn-rd counsel. Section 131 (if the Land Revenue Act authorises the Land Records Officer, after the survey and record operations are over, to maintain the map and the field-book and he is also authorised to annually or at such longer intervals, as may be prescribed, to record the changes in the boundaries of each village or portion of a village, estate or field and to correct any errors, which are shown to have been made in the map or field-book, in accordance with the rules made for the purpose by 1 he State Government. This section envisages merely the recording of changes and making correction of errors, which may have crept in the map or field-book, but it does not given any authority to convert non-cultivable ''Gair Mumkin'' land into cultivable ''Barani'' or ''Chahi'' land after the survey and record operations are over. Section 132 merely authorises the Land Records Officer to maintain record of rights and to prepare a set or an amended set thereof, which are called annual registers. It also authorises the Land Records Officer to record in the annual registers all changes that may take place and all transactions that may affect the rights or interests recorded in the annual registers. Thus, the changes affecting the rights and interest of land-holders may be recorded by the Land Records Officer in the annual registers, by virtue of the power given to him u/s 132. So far as the provisions of Section 136 are concerned, they provide for the decision of disputes relating to correction of entries in accordance with the provisions of Sections 123, 124 and 125. u/s 123, the Land Records Officer has been empowered to decide the disputes relating to the class or tenure of any tenant. It is not the case of the petitioner that there was any dispute relating to the class or tenure of any tenant which the Sub-Divisional Officer was called upon to decide. As we have already observed above, it is an admitted fact that the land in question belonged to the State Government and was recorded in the current registers as ''Gair Mumkin Talai''. Sections 124 and 125 are admittedly not applicable to the matter in dispute. As such we are of the view that the Board of Revenue was right in holding that the Sub-Divisional Officer was not empowered to convert the land recorded in the record of rights as ''Gair Mumkin Talai'' into ''Barani'', either u/s 131 or 132 or 136 read with Section 123. The Board has relied upon the decision of its larger bench in Durga Prasad''s case 1977 RRD 673, wherein it was held that the Sub-Divisional Officer, on whom the powers of the Land Records Officer after the close of the survey and record operations, was conferred, was not empowered to convert any ''Gair Mumkin'' land into cultivable land. We find ourselves in agreement with the view expressed by the larger bench of the Board of Revenue in Durga Prasad''s case in this respect.

7. Then, the learned counsel for the petitioner relied upon some of the circulars issued by the State Government including the one issued on March 12, 1965. All these circulars have reference to the provisions of Sections 131, 132 and 136 of the Land Revenue Act and purport to confer the powers of the Land Records Officer under the aforesaid Sections on the Sub-Divisional Officer, in eluding that of changing the classification of land from ''Gair Mumkin'' to cultivable, for

purposes of allotment. As we have already observed above, the provisions of Sections 131, 132 and 136 of the Land Revenue Act do not authorise the Land Records Officer, after the close of the survey and record operations, to convert any "Gair Mumkin" land into cultivable ''Barani'' land. As such the circulars issued by the State Government from time to time in this respect are of no consequence in this matter. In the circular referred to by the learned counsel, it has been merely assumed that such power vests'' under Sections 131, 132 and 136 of the Land Revenue Act. But as we have pointed out above, the three sections referred to earlier, do not confer any such power of conversion of ''Gair Mumkin'' land unto cultivable ''Barani'' land upon the Land Records Officer or the Sub-Divisional Officer. The same view was also taken by the larger bench of the Board of Revenue in Durga Prasad''s case 1977 RRD 673, Thus, the net result is that the Sub-Divisional Officer was not empowered to change the classification of the land from ''Gair Mumkin Talai'' to ''Barani'' and, therefore, the land in dispute was not open for allotment as the classification thereof as ''Gair Mum-kin Talai'' was valid. In these circumstances, the order of allotment passed by the Sub-Divisional Officer was without jurisdiction. As the land comprised in Khasra No. 47, was not available for allotment, the Board of Revenue was perfectly right in holding that the allotment in favour of the petitioner of a portion of land out of Khasra No. 47 was void. The petitioner, consequently, has no right and interest in the land in dispute and the finding of the Board of Revenue in this respect does not call for any interference by this Court.

8. We may, however, observe that in case the State Government at anv time considers it proper to convert the ''Gair Mumkin Talai'' land, comprised in Khasra No. 47 of village Bhadal, into cultivable land and intends to allot portions thereof for purposes of cultivation, then the claim of the petitioner for allotment of land in dispute should also be taken into consideration, specially in view of the fact that the land was earlier allotted to him and he has spent toil and labour over the same. Learned counsel for the petitioner submits that the petitioner desires to move the competent authority under the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970. If any such application is moved, we have no doubt that the same "shall be disposed of by the competent authority in accordance with law and in the light of the observations made by us above.

