

(1962) 07 RAJ CK 0002

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 277, 278 and 345 of 1960, 402, 550, 551, 556, 557 to 560, 569 to 571, 594 to 597, 606, 608 to 612 and 619 of 1961 and 4, 10, 17, 24 to 27, 30 to 33, 36 to 41, 53, 76, 152, 153, 159, 162, 176 to 180, 201 to 203, 212, 213, 228, 23

Jassuram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-07-1962

Acts Referred:

Bikaner Tenancy Act — Section 7

Constitution of India, 1950 — Article 31, 31(2)

Rajasthan Tenancy Act, 1955 — Section 15, 15(3), 15A, 16, 180(1)

Citation : AIR 1963 Raj 72

Hon'ble Judges : D.M. Bhandari, J;B.P. Beri, J

Bench : Division Bench

Advocate : V.P. Tyagi, S.M. Mehta, Kishansingh, Mishrilal, Jethmal, R.N. Bishoni, M.S. Gehlot, Vishanlal, Ramnarain and R.S. Bhati, for the Appellant; G.C. Kasliwal, General and B.C. Chatterjee, Dy. Govt. Advocate, for the Respondent

Judgement

Bhandari, J.—These 85 writ petitions are disposed of by this judgment as they are similar on facts and common questions, of law arise for consideration in all of them.

2. All the petitioners claim to be tenants in Tehsil Nohar, which formed part of the former Bikaner State before the State of Rajasthan was formed. Until the repeal of the Bikaner State Tenancy Act (Act No. II of 1945 (hereinafter called the Bikaner Tenancy Act) by the Rajasthan Tenancy Act (Act No. 111 of 1955 (hereinafter, called the Act) which came into force on the 15th October 1955, the status of the petitioners as tenants was governed by the provisions, of the Bikaner Tenancy-Act. So far as the State lands (sic) were concerned, that Act recognised occupancy tenants, Khatedar tenants, tenants for fixed terms and the tenants who did not fall in these three classes. That law also recognised occupancy tenants in respect of private lands.

The common case of the petitioners is that they were tenants of the one kind or the other under the Bikaner Tenancy Act, and by virtue of the Section. 15 of the Act they became Khatedar tenants enjoying rights conferred under the Act and their Khatedari rights were taken away by the State u/s 15A, which was inserted by Section 3 of the Rajasthan Tenancy Amendment Act of 1958 in the Act. These sections so far relevant, stand as follows, after undergoing various amendments:

Section 15:-- "(1) Subject to the provisions of Section 15 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 sub-tenant or tenant of Khudkasht or who is after the commencement of this Act, admitted as a tenant otherwise than as a sub-tenant or a tenant of Khudkashi or an allottee of land under, and in accordance with rules made u/s 101 of the Rajasthan Land Revenue Act 1956 (Rajasthan Act 15 of 1956) or who acquires khatedari right in land in accordance with the provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, (Rajasthan Act VI of 1952) or of any other law for the time being in force shall be a khatedar tenant and shall, subject to the provisions 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 Khatedari 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 Jawan project area, or any other area notified in this behalf by the State Government.

(2)

(3)

(4)

(5)

"15-A (1) Notwithstanding anything contained in Section 13. or Sub-section (1) of Section 15 of this Act or in any other law for the time being in force, or in any lease, patta or other document, land in the Rajasthan canal ares, leased out on any terms whatsoever shall be deemed to have been let out temporarily within the meaning of the proviso to the said sub-section of the said section 15 of this Act and no Khatedari rights shall accrue or shall be deemed ever to have accrued in any such land leased out as aforesaid."

(2)"

It is not in controversy that Section 15A, as it stands now, is retrospective in operation and applies even to those persons who had acquired khatedari rights before this section was inserted.

3. In all these writ petitions, the petitioners have challenged the validity of section 15A of the Act on the ground that it offends Articles 31 and 19 of the Constitution of India, as the Khatedari rights, which had vested in the

petitioners, have been taken away by the State without payment of any compensation.

4. Prior to the enactment of the Act the tenancy rights enjoyed by the petitioners in the land in which they claimed to be in possession were of diverse nature. It will be proper to focus our attention to one individual case in order to see what rights the petitioner in that case enjoyed under the Bikaner Tenancy Act, and what further rights were conferred on him under the Act, and what rights he has been divested by Section 15A of the Act.

5. Let us take the writ petition No. 207 of 1960 Surja Ram v. The Director of Colonization and others.

6. The petitioner Surja Ram's case is that he had been cultivating five fields Khasra No. 142 measuring 22 Bighas 16 Biswas, Khasra No. 173 measuring 30 Bighas, Khasra No. 235 measuring 18 Bighas 6 Biswas, Khasra no. 232 measuring 42 Bighas 19 Biswas and Khasra No. 238 measuring 20 bighas in all 133 Bighas and 9 Biswas in village Thalarka, Tehsil Nohar since time immemorial and that they acquired khatedari rights in the said fields u/s 15 of the Act on the date of the commencement of the Act. These fields were entered in the name of the said petitioner in the record of rights. The State Government published in the Rajasthan Gazette from time to time notifications defining the area which was treated as colonization land within the definition of Section 2 (2) of the Rajasthan Colonization Act, 1954. One such notification dated 3rd September, 1957, was published in the Rajasthan Rajpatra dated September 19, 1957. This notification mentions the village Tjaiarka at No. 8 amongst other villages. After the issue of the notification the Colonization Authorities under the Rajasthan Colonization Act, 1954, started denying the Khatedari rights of the petitioner. On 27th November, 1958, a letter was sent from the office of the Colonization Department, Rajasthan Canal Project, Bikaner to the Tehsildar Revenue, Nohar for compliance wherein it was mentioned that the Khatedari rights of the tenants shall stand cancelled. On 5th August, 1959 another letter was issued from the office of the Colonization Department, Rajasthan Canal Scheme, Bikaner to the Tehsildar Revenue Nohar, District Ganganagar, stating therein that even in cases where khatedari rights were acquired by tenants u/s 15 of the Act, their rights stood cancelled.

7. The contention of Surja Ram petitioner is that by Section 15A of the Act the Khatedari rights, which vested in him, "had been taken away and thus he was deprived of his property under the law, which does not provide for any compensation as envisaged by Article 31(2) of the Constitution. The petitioner prayed that the orders of the various authorities of the Colonization, Rajasthan canal, Bikaner cancelling the Khatedari rights of the petitioner be quashed and set aside.

8. The respondents have contested the writ petition. On facts it is contended that Surja Ram was not a Khatedar tenant. The case of the respondents is that Surja

Ram was holding the land on annual lease prior to the formation of Rajasthan, and his rights were governed by the Bikaner Tenancy Act, and as provided by the Act he had no other right except of cultivating the land on annual lease. It is further urged that when Surja Ram failed to pay annual lease in Smt. 2012, he became a trespasser. He had to pay a penalty for carrying on the cultivation in the subsequent years. Thus he accepted that he was a trespasser. In support of this contention the entries of Dhal Bach register (a register in which various revenue demands against tenants are ncted of) Smt. 2012 were produced.

It is further contended that no Khatedari rights accrued to the petitioner u/s 15 of the Act, as ha was not a tenant but he was a trespasser. It is submitted that the petitioner was able to get himself entered as Khatedar tenant in revenue records as he concealed his true position. It is further stated that the petitioner has no cause of grievance, as he was not being dispossessed front the land. It is also contended that the petitioner Surja Ram has not made his other co-sharer Pema a party to the writ petition and he alone could not maintain the writ petition.

9. A rejoinder has been submitted On behalf of the petitioner, in which it is alleged that Pema a person whose name finds in the Revenue Records, is no other person than his brother, and he and the petitioner are the members of the joint family and the petitioner being an elder brother has the right to file the writ petition.

10. The first point that we have to decide in this writ petition is whether Surja Ram had acquired the Khatedari rights u/s 15 of the Act on the commencement of the Act. The provisions of section 15 clearly show that 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 of khudkasht, shall be entitled to all the rights conferred, and be subject to all the liabilities imposed on khatedar tenants by this Act. From the material documents on the record it is clear that the petitioner was in possession of the fields khasra Nos. 142, 235 and 237 at least from Smt. 2001. It may be mentioned that the village Khalarka formed part of the Jagir of one Rawat Tej Singhji of Thikana Rawatsar. The settlement of this village took place in Smt. 2001 and the petitioner and his brother Pema are entered as tenants In the record of rights with respective fields Khasra Nos. 142, 235, and 237. With respect to fields khasra Nos. 173 and 238, the land is shown to be In possession of the Thikana and there is no tenant mentioned in the record of rights. It appears that after the coming into force of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, the Jagir of Thikana Rawatsar was resumed on 23rd August, 1954. After that in the Register of Dhal Bach the petitioner is shown as Bandibasti tenant with respect to fields khasra Nos. 142, 235 and 237. We understand from the Officer, Incharge, who has filed a reply on behalf of the respondents that this means that he has been cultivating the land from the time when the settlement took place. For the other two fields khasra Nos. 173 and

238, the entry in Dhal Bach Register shows that the petitioner had taken under his cultivation new land without permission for which he was to pay land revenue and some penalty, which was, however nominal, being 3 pies In a rupee, to be recognised as tenant thereof, and the petitioner paid it.

11. The Act came into force on 15th October, 1955 and on that day the petitioner was obviously a tenant otherwise than as a sub-tenant or a tenant of khudkasht of field khasra Nos. 142, 235 and 237 and before that date he had also cultivated the land comprised in khasra Nos. 173 and 238, for which he was recognised as a tenant on payment of land revenue and penalty. So the petitioner and his brother were declared to have acquired khatedari rights u/s 15(3) of the Act and their names were entered as khatedar tenants in the Mutation Register.

This entry (Ex. P-2) was made on 8th July, 1957. Thus there is no room for doubt that the petitioner had acquired Khatedari rights with respect to the fields mentioned in their writ petition. The contention on behalf of the State that petitioner was merely a tenant from year to year and on the expiry of the year of tenancy in Smt. 2012 he was treated as a trespasser and he was allowed to cultivate the field on payment of the penalty cannot stand in view of these documents. It appears that the penalty has been realised not because the petitioner cultivated the land after being held trespasser but because he took some new land without permission. But even in respect of that and he was recognised as a tenant on the payment of land revenue and penalty. The realisation of the penalty for breaking the waste land appears to be based on section 7 of the Bikaner Tenancy Act, which runs as follows:

"Section 7. (1) "An occupancy tenant who breaks some waste State land without permission shall be liable to pay for the use of land or occupation of that land at the rate of rent payable for such other lands in addition to a penalty fixed under the rules framed from time to time.

Explanation; This sub-section shall apply both to khalsa and jagir areas.

(2) The occupier will be treated as tenant at will in such land and will be liable to ejectment from it, unless he obtains permission from the Revenue authorities for its cultivation as a temporary cultivator under the rules framed from time to time."

At the worst the petitioner may be taken to be a tenant-at-will for the aforesaid two fields before the Act came into force, but the record shows that subsequently the petitioner paid the land revenue and was recognised as a khatedar tenant of these fields also. Thus for all the fields the petitioner enjoyed the khatedarj rights as available to him under the provisions of the Act.

12. Now we have to examine whether Section 15-A of the Act, which takes away the khatedari rights of the petitioner and further provides that the land shall be deemed to be let out temporarily to the petitioner, offends the provisions of Article 31 of the Constitution of India,

13. To meet this contention the learned Advocate General has raised the following points:

(1) That the khatedari rights enjoyed by the petitioner are not a property within the meaning of Article 31 of the Constitution;

(2) That the Khatedari rights have been conferred on the petitioner by the legislature by enacting section 15 of the Act and the legislature was competent to take them away without payment of compensation;

(3) That under proviso to section 15, the State Government by notification could declare any area in which Khatedari rights could not accrue to a tenant and thus the khatedari rights of the petitioner were liable to be defeated by the notification issued by the State Government and if the legislature by enacting section 15A took away his khatedari rights it cannot be said that there was an infringement of the fundamental rights of the petitioner. In other words the contention is what the State Government could do by issuing a notification the Legislature has done by inserting section 15A of the Act.

(4) That there is no transfer of ownership or right of possession of any property to the State and as such it cannot be said that the State has compulsorily acquired the rights of the petitioner even if they constitute property and Article 31(2) of the Constitution could not be invoked in the instant case.

14. Let us proceed to examine the soundness of these contentions.

15. The first point that we have to determine is whether the khatedari rights of the petitioner is property within the meaning of Article 31 of the Constitution.

The rights of the khatedar tenants have been enumerated in the Act at various places. A Khatedar tenant has been given the right to remain in undisturbed possession of the land. He is not liable to be ejected except under the provisions in Chapter XI for ejectment. The interest of the tenant in his holding is heritable as laid down u/s 38 of the Act. u/s 41 the interest of a khateaar tenant is transferable, otherwise than by way of sub-lease, subject to the conditions specified in sections 42 and 43. A khatedar tenant has further the right to mortgage his rights. He has also the right to bequeath by will his interest in holding or part thereof as laid down u/s 39 of the Act. A khatedar tenant enjoyed the limited right of exchange as provided; u/s 49. u/s 66 of the Act he has been granted the right to make improvements in his holding. u/s 80 he has been given the right in the trees existing in his holding at the commencement of the Act. The khatedari interest is capable of attachment u/s 213 of the Act. Such an interest can be sold in decree for arrears of rent.

16. It does not require much argument to convince that this bundle of rights is a collection of all the essential attributes which constitute the concept of property. While interpreting Article 19 of the Constitution their Lordships of the Supreme Court in the The Commissioner, Hindu Religious Endowments, Madras Vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt., have held that the word

"property" should be given a liberal and wide connotation and should be extended to all well-recognized types of interest which have the insignia or characteristics of proprietary right.

The Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, and has argued that the property must be such as is capable of being acquired, held and disposed of. Even judged from the point of view of the three characteristics which have been enumerated as incidents of property, that is, it should be capable of being acquired held and disposed of, the petitioner's rights in the land are such that all the three elements are present. As we have already mentioned that the provisions of the Act make it clear that the petitioner had the right of disposing of his khatedari rights, though of course under certain restrictions, but these restrictions do not matter. Secondly he had also the right to hold the property, as long as he continues to pay the revenue to the State. Khatedari rights are capable of being acquired. These rights may be conferred by the State on the payment of consideration or without it. They may also be acquired otherwise.

Learned Advocate General has argued that it is the land itself which must be taken to be the property if any auxiliary (sic) rights are available to a person in that land and if he is not owner of the land it would not constitute any property. The property as contemplated under Article 31 includes the property in all its forms, and as observed by Sastri C. J. in the The State of West Bengal Vs. Subodh Gopal Bose and Others, it must be understood both in a corporeal sense as having reference to all those specific things that are susceptible of private appropriation and enjoyment as well as in its juridical or legal sense of a bundle of rights which the owner can exercise under the municipal law with respect to the user and enjoyment of those things to the exclusion of all others. There is no doubt in our mind that the Khatedari rights of the petitioner Surja Ram are property within the meaning of article 31 of the Constitution.

17. The second contention of the learned Advocate General is that even if the khatedari rights of the petitioner constitute property it was a right conferred by the Legislature by virtue of Section 15 of the Act and the legislature must be deemed competent to take it away. For the purpose of this writ petition it may be taken that the khatedari rights were conferred on the petitioner by virtue of Section 15 of the Act, but by this conferment of right the petitioner came to enjoy property rights in the land and the legislature cannot take them away except in accordance with law, which satisfies the requirements of Article 31(2) of the Constitution. It is not like revoking of a license. It is one thing to confer a right but it is another thing to take it away. The guarantee which is given under Article 31 protects a citizen when he is deprived of his property. The argument that the legislature which has conferred certain rights on a person is competent to take them away, is not available in a case where there is infringement of the provisions of Article 31. Thus, this argument cannot be sustained.

18. In his third contention the learned Advocate General has modified his second argument. His contention is that what the Legislature had granted by virtue of

section 15 of the Act was defeasible right, that right could be enjoyed till the time the Government issued a notification under proviso to Sub-section (1) to section 15 of the Act. On the State Government issuing a notification declaring the area in which the petitioner enjoyed the khatedari rights as an area where such rights were not available the petitioner will lose all his rights. If instead of State Government which enjoys the delegated powers of issuing the notification, the legislature itself made law that in the land in the Rajasthan Canal area Khatedari right should not be deemed to have been acquired and the land in that area should be deemed to have been let out Temporarily, the petitioner has got no right to complain.

This argument may appear attractive but has got no substance. Section 15 contemplates of the acquisition of khatedari rights in two ways. Firstly, a person who is a tenant of land otherwise than as a sub-tenant or a tenant of Khudkasht on the date of the commencement of the Act acquires khatedari rights on that date. Secondly after the commencement of the Act a person who is tenant otherwise than a sub-tenant or a tenant of the khudkasht may acquire khatedari rights of the land in accordance with the provision of the Act or the relevant laws referred to in section 15.

Now the proviso makes exception in case of persons to whom the land has been let out temporarily in Bhakra, Gang Canal, Chambal or Jawai project area, or any other area notified in this behalf by the State Government. The legislature expressly ruled out the conferment of the khatedari rights in respect of persons to whom land has been conferred temporarily in Gang Canal, Bakra, Chambal or Jawar project area and left it to the State Government to notify in future any other area in which such khatedari rights could not accrue. But the notification of the State Government can be operative only from the date it is issued and that too only in respect of a person to whom a land is let out temporarily in that area. He could not acquire khatedari rights in that area. It is not possible to hold that the State Government could issue a notification which would have retrospective effect. Take for example a case in which the State Government may consider it proper to issue a notification in respect of any area after ten years of the passing of the Act, meanwhile certain persons might have acquired khatedari rights in that area. Can it be argued that the State Government by issuing notification can take away the right of these persons, which have accrued to them. The main part of the section contemplates the acquisition of the khatedari rights by a tenant even after the commencement of the Act and such rights, may be acquired by paying valuable consideration to the, State. The notification of the State Government cannot take away such right. It can be effective only from the date it was issued. The legislature has delegated the power of issuing notification of the State Govt. It cannot be taken that the legislature had authorised the State Government which enjoyed merely delegated power, to issue a notification having retrospective effect. As a matter of principle it is difficult to consider that the State Government has been granted delegated powers of issuing notification with retrospective effect nullifying the rights of those persons who had acquired

rights before such notification is issued.

19. Again it is to be noted that for the application of this provision it is necessary that the person to whom the land has been let out must be holding it on lease temporarily. This only means that even at the time of issuing of the notification the tenant to whom this proviso is applicable must be holding the land temporarily and not otherwise. In the case of the petitioner Surja Ram it cannot be taken that after his Khatedari rights had been recognised by entering his name in the record of rights he continued to hold the land in his possession on temporary lease.

20. Lastly the argument of the learned Advocate General can also be met by simply pointing out that it is not the case in which any notification has been issued by the State.

21. Now we consider the fourth contention of the learned Advocate General. The argument of the learned Advocate General is that there may have been annihilation or curtailment of the petitioner's rights but these rights do not vest in the State and as such there is no transfer of ownership of the khatedari rights which the petitioner might be enjoying to the State. It is pertinent to ask that if the khatedari rights of the petitioner, which have been taken away from him, he being reduced to the status of a temporary tenant do not vest in the State, in whom do they vest. It is not a case in which the khatedari rights of the petitioner have been totally destroyed by destruction of the land. It is obvious that whatever has been taken away from the petitioner vests in the State and the State may confer them with or without consideration on any party. In fact under the provisions of the Rajasthan Colonisation Act, 1954, and rules made thereunder it is quite clear that the State Government intended to confer Khatedari rights and grant the land thus acquired in the Rajasthan Canal area to other persons.

22. Another branch of the same argument is that there is no transfer of the entire ownership as the petitioner is allowed to occupy the land temporarily as a tenant. The argument is that the possession of the land constituted the main incident of the right of the petitioner, which has not been taken away. This argument again is without force because the effect of the enactment is to take away the entire khatedari rights of the petitioner. Section 15-A speaks in no uncertain language that it shall be deemed that no khatedari right has been acquired to the petitioner and he shall be deemed to hold the land temporarily. As already pointed out the property in this case, which is owned by the petitioner is not the land itself but only certain rights in it. Those rights in entirety have been taken away by the State. The petitioner is being divested of them and they are going to vest in the State. In this view of the matter there is no room for the contention that there is no transfer of ownership with the State by the enactment of Section 15-A of the Act. The effect of Section 15-A is that of transfer of the entire rights of the property, which we have already pointed out constituted his property, to the State. In this view of the matter, it cannot be said that Article

31(2) of the Constitution is not attracted. It is clear that the Rajasthan Tenancy Act nowhere provides for the payment of compensation in such a case. Section 15-A does not at all speak of the payment of compensation. There is no other provision in the Act to this effect. Section 15-A, therefore, offends the guarantee given by the Constitution under Article 31(2) of the Constitution.

23. Of course this is not a case in which there is any application of Article 31(1) of the Constitution, as there is a statutory provision in the form of section 15-A depriving the petitioner of his property.

24. This disposes of all the contentions urged by the learned Advocate General.

25. We are quite conscious of the fact that the coming of the Rajasthan Canal is a boon to the people of Rajasthan. We are reluctant to interfere with any scheme of the development of the Western part of Rajasthan undertaken by the State consequent to the coming of the Rajasthan Canal in that part. Nevertheless any scheme of the colonization should keep in view that the persons who are already tenants, and enjoy some rights as such in exchange are given some land or cash compensation and are not entirely deprived of their property without payment of compensation. The legislation could have very well given a statutory guarantee by providing for giving land in exchange of the land by way of compensation as provided under Article 31(2) of the Constitution. In that case the petitioners or persons similarly situated would have no cause for complaint. It is quite possible that in the scheme of compensation they would get lesser area in exchange but this will not affect the vires of any legislation.

26. Writ Petition No. 207 of 1960, Surja Ram v. the State of Rajasthan and others is therefore allowed and Section 15-A of the Rajasthan Tenancy Act is declared ultra vires of the Constitution. It is further ordered that the respondents should not interfere with the khatedari rights "enjoyed by the petitioner in fields Khasra Nos. 142, 235, 237, 173 and 238 in village Thalarka, Tehsil Nohat. The State shall pay the petitioners costs.

27. Now we take up the other writ petitions for consideration. The learned Deputy Government Advocate assures us on behalf of the State of Rajasthan and the other authorities concerned that subject to the decision in appeal, if preferred to the Supreme Court, the cases or the other petitioners shall be examined afresh in the light of the decision of this Court in Surja Ram v. The State and others (Writ Petition No. 207 of 1960). It may also be mentioned that in some of the petitions, the petitioners' grievance is that after they have been declared to be temporary tenants u/s 15-A of the Act, the State of Rajasthan or the Colonization Officer has started charging Malkana, that is a fee for permitting the petitioners to carry on the cultivation temporarily. In view of our decision on the point that Section 15-A of the Act is ultra vires, the petitioners in other writ petitions continue to enjoy whatever rights they enjoyed in their respective lands before the enactment of Section 15-A of the Act. From such of the petitioners who had khatedari rights obviously no Malkana could be charged. The learned

Deputy Government Advocate further assures us that this aspect of the matter shall also be kept in view by the State of Rajasthan and the Colonization Authorities. In view of these assurances, the learned counsel for the petitioners do not want to press these writ petitions. These writ petitions are, therefore, dismissed. There will be no order as to costs.