
(2011) 04 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 816, 682, 714, 715 of 2002

Jawat Raj and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 175, 183B, 232, 42, 42(b)

Citation : (2011) 8 RCR(Civil) 910 : (2011) 3 RLW 2147

Hon'ble Judges : Arun Kumar Mishra, C.J.;Vineet Kothari, J

Bench : Division Bench

Advocate : L.R. Mehta with Ms. Kavita Karnawat, for the Appellant; Sandeep Bhandawat for State and S.G. Ojha and L.R. Choudhary for Scheduled Tribe persons, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Mishra, C.J.—These intra-Court appeals are out of the common order dated 26.8.2002 passed by the Single Bench in S.B.C.W.P. Nos. 2552/2001 and 3570/2001. The Special Appeal (Writs) No. 816/2002 and S.A.W. No. 682/2002 have been filed by the appellants-petitioners assailing the order passed by the Single Bench, whereas the Special Appeal (Writs) Nos. 714/2002 and 715/2002 has been preferred by the Scheduled Tribe respondents, whose land has been ordered to be vested in the State. The facts in short giving rise to these appeals are that the land was recorded in the name of Scheduled Tribe persons (Bheels) in the Revenue papers, then one Pratap Singh filed a suit No. 796/1973 before the Revenue Court u/s 88 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as the Act of 1955). The same was decreed vide judgment dated 30.12.1978 passed by the Assistant Collector. On 22.6.1983, the said property was sold in the year 1996, notice u/s 232 of the Act of 1955 was served on the ground that the decree was obtained in violation of provisions of Section 42 of the Tenancy Act, 1955 as to why the reference be note made to the Board of Revenue. Both the parties were heard and reference was made to the Board of

Revenue vide order dated 13.2.1996 passed by the Additional Collector, Jalore. Pursuant to the reference made to the Board of Revenue, the Board of Revenue has passed an order dated 24.11.1999 allowing the reference and setting aside the mutation in favour of appellants-petitioners holding that the decree was per se illegal and void. It could not have been passed against the interest of Bheels belonging to Scheduled Tribe. The proceedings were also initiated u/s 183B of the Rajasthan Tenancy Act, 1955 for taking possession. The order of restoration of possession was passed with respect of Survey No. 522. As against the said order passed u/s 183B by the Tehsildar on 8.5.2001, appeal was filed u/s 75 of the Rajasthan Land Revenue Act, 1956. The appeal was dismissed vide order 9.7.2001. The petitioners preferred the aforesaid two writ petitions before the Single Bench of this Court. Both stood dismissed by the common order, which has been impugned in the intra-Court appeals by the parties.

2. The case of the petitioners was that they purchased land in 1983, conversion of land user was allowed in the year 1991 and pursuant thereto, patta was issued after permitting conversion of land for residential purpose.

3. It was further submitted by the petitioners in the writ petition that the land was in cultivator possession of Ghamandi Ram. In the settlement, mistake was committed and it had been shown in the name of respondents No. 4 and 5, Raimal Bheel and Hajari Bheel the land was earlier sold to Pratap Singh and a sale-deed was executed by Pratap Singh in favour of petitioners. The land was converted from agriculture to residential one and pattas were issued on 16.4.1991. The construction was raised after obtaining sanction from the Municipal Board, Sanchole. Thereafter the Tehsildar has referred the matter to the Additional Collector, who in turn vide his order dated 13.2.1996 referred the matter to the Board of Revenue. It is also submitted by the petitioners that there are two khasra No. 521 and 522 and almost similar position arose in both the khasra. The transfer was made in favour of Pratap Singh before promulgation of the Act of 1955, thus, it could not be said that the transfer was made in violation of Section 42 of the Act of 1955. The reference could not have been made after lapse of reasonable time and that too after conversion of land.

4. The State Government in its reply contended that the land was recorded in the khatedari rights of 14 persons Gena Bheel and Ors. belonging to Scheduled Tribe. The decree was passed in violation of Section 42(b) of the Rajasthan Tenancy Act, 1955. Thus, the pattas issued on 16.4.1991 were also void. No right accrued to the petitioners. The patta was issued in respect of Khasra No. 521. No right accrued to the petitioners or their predecessor Pratap Singh on the basis of decree and so called sale in his favour. The mutation was rightly set aside. The order passed by the Board of Revenue was in accordance with law. No case for interference was made out.

5. In return filed by the respondents No. 4, 5 and 8, it was contended that the decree was obtained fraudulently. Nothing prevented the Board of Revenue from passing the appropriate order. The order was passed in accordance with law. The

decree dated 30.12.1978 was void ab initio and was in violation of provisions of Section 42 of the Act of 1955.

6. The Single Bench upheld the order passed by the Board of Revenue, at the same time, it has been ordered that as the transfer was made in violation of law, the land to vest in the State Government. Consequently, the appeals have been preferred by the petitioners as well as the respondents, members of Scheduled Tribe assailing the part of the order by which vesting of land has been ordered in the State Government.

7. Mr. L.R. Mehta, learned counsel appearing for the petitioners-appellants submitted that the provisions of Section 42 of the Tenancy Act, 1955 could not be said to be applicable in the instant case as the land was transferred in Samwat year 2008 and the Act came in force in Samwat year 2012. The decree was passed in favour of Pratap Singh on 30.12.1978. It could not have been reopened after he has sold the land on 22.6.1983 to the petitioners-appellants, particularly after conversion of land was allowed, pattas were issued and construction was raised, for setting aside the decree dated 30.12.1978 the proceedings could not have been initiated u/s 232 of the Act on 13.2.1996. The order passed by the Board of Revenue in the belated proceedings could not be said to be sustainable in the instant case. The learned counsel for the petitioner also relied upon the decision of Division Bench of this Court in Karan Singh vs. State of Rajasthan, 1978 RRD 507 to contend that the decree is not covered within the purview of Section 232, it was not open to the Board of Revenue to pass the order in the proceedings u/s 232 and to declare decree a nullity.

8. Mr. Sandeep Bhandawat, learned Government counsel appearing on behalf of the State has supported the decision rendered by the Board of Revenue and the Single Bench and has contended that the provisions of Section 42 is squarely applicable. The revenue entries pursuant to settlement were in favour of Scheduled Tribe persons. There was no basis for passing the decree on 30.12.1978. It was obtained fraudulently. He has referred to the facts mentioned in the reference order dated 13.2.1996 passed by the Additional Collector, Jalore. He has submitted that so called document of sale of Samvat 2008 was not registered document nor any revenue entries reflecting possession of Pratap Singh were placed on record. Thus, the decree was baseless, which was obtained within 9 days of filing of the suit, which was presented on 22.12.1978. On the next day i.e. 30.12.1978, the decree was passed. The Government was also not impleaded as party, as the land belonged to Bheels, it was necessary to implead the State Government as party. Thus, the decree was collusively obtained without any basis. No right could accrue on the basis of purchase made in the year 1983 and conversion of land in 1991. The proceedings were rightly initiated u/s 232 of the Act. The order passed by the Board of Revenue is in accordance with law. In view of amendment made in Section 232 of the Act, the decrees are also covered and the decree has rightly been annulled by the Board of Revenue. There is no ground to make interference.

9. Mr. S.G. Ojha and Mr. L.R. Choudhary, learned counsel appearing on behalf of Scheduled Tribe persons assailing the part of the order with respect to vesting of the land with the State Government have submitted that under the provisions of Section 175 of the Rajasthan Tenancy Act, 1955, the land could not have been vested in the State. The possession was ordered to be restored in the proceedings u/s 183B of the Act of 1955, which order has not been assailed by the State Government. Consequently, there was no reason to direct vesting of the land in the State. The State has also not challenged the order passed by the Board of Revenue. Thus, the Single Bench has exceeded its jurisdiction while directing the land to vest in the State, which was not subject matter in issue in the writ petition.

10. The main question for consideration is whether the decree passed on 30.12.1978 in favour of Pratap Singh could be said to be illegal and void. After examining the material on record, we are of the considered opinion that there was absolutely no basis for the decree to be passed in favour of Pratap Singh. The revenue entries were in favour of persons of Scheduled Tribe. The land was recorded in the name of as many as 14 persons who are Bheels belonging to down trodden class. The decree was obtained within 9 days of the filing of the suit u/s 88 of the Rajasthan Tenancy Act, 1955. The suit was filed on 22.12.1978 and the next date was fixed as 29.12.1978. Most of the persons were proceeded ex parte. Two persons submitted written statement admitting the claim. On the same day, statements of Pratap Singh and his witnesses were recorded and the case was not posted for evidence of other parties and out rightly the decree was passed on the next day on 30.12.1978. In the revenue papers the names of 4 Scheduled Tribe persons were entered. The sale was not by a registered document, it was not acted upon for 30 years, as such, document was rightly doubted by the Board of Revenue, which could not have been made basis in absence of any corresponding entry in revenue papers showing either title or possession of Pratap Singh. Thus, it was a clear case of fraud played and the decree was obtained against the persons of Scheduled Tribes who were not supposed to know law. The method and manner in which decree was passed leaves no room for doubt that it was obtained surreptitiously without any basis and by playing fraud. There was no legal or factual basis for passing such a decree. The State Government was also not impleaded as party. Consequently, as vendor had no title on the basis of sale-deed executed in the year 1983, no right could have been conferred on the appellants on the basis of purchase from Pratap Singh, neither any right could have accrued on the basis of conversion of land nor due to allotment of patta on conversion of land. There was no derivative title available to the petitioners as Pratap Singh had no right, title or interest on the basis of void decree. Pratap Singh could not have purchased the property as member of Scheduled Tribe in view of prohibition of Section 42 of the Act. No decree could have been passed in his favour. He was not in possession as there was not even a single entry reflecting the possession of Pratap Singh. Thus, on the basis of material available on record, no right could have been conferred or

accrued in favour of the petitioner by getting the land converted. In our considered opinion, the reference proceedings were rightly initiated u/s 232 by making reference and the reference order itself makes the fact clear coupled with the findings recorded by the Board of Revenue. Thus, there is not an iota of doubt that the decree dated 30.12.1978 was rightly adjudged to be illegal and void. On the basis of such decree, no right accrued to Pratap Singh to alienate the property, no title was passed to the purchaser to get the land converted. The said land is inalienable in view of mandate of Section 42 of the Act of 1995. Thus, the transaction of sale of 1983 was illegal and void.

11. Coming to the submissions raised by the learned counsel Mr. L.R. Mehta that the decree was not covered u/s 232 of the act when the decree was passed in 1978. It is pertinent to note that the power had been exercised after amendment of Act in 1981 in Section 232. The decree could have been set aside under the amended provisions which came into force in the year 1981. Thus, the Board of Revenue was having jurisdiction as on the date when the decree was set aside, the Board of Revenue had the requisite jurisdiction u/s 232 of the Act. The case of sale in Samvat 2008 by Pratap Singh that too by unregistered document has rightly been discarded, as there was no corresponding entry in the revenue papers. The document was extremely doubtful and was rightly discarded.

12. Coming to the appeals preferred by the persons of Scheduled Tribes, we find that the direction issued by the Single Bench that the land shall vest in the State Government was wholly uncalled for. Firstly, the order for restoration of possession was passed and the State Government has restored the possession vide Annex. R/1 filed with return in favour of members of Scheduled Tribe. The State Government has not preferred any proceedings against the order of restoration of possession and the order passed by the Board of Revenue. There was no order passed by the Revenue Courts with respect to vesting of land in question in the State government. In the considered opinion of this Court, when the decree was obtained fraudulently against the members of Scheduled Tribes, it would be highly unjust and illegal to prevent them from the fruits of the order passed by the Board of Revenue. The intendment of the order was to restore the land of which they were illegally deprived of. The protection of Section 42 of the Act would be rendered nugatory in case the land is ordered to be vested in the State. Thus, we have no hesitation in setting aside the direction issued by the Single Judge that the land shall vest in the State Government. The Single Bench has also observed that as there was illegal transfer of land, we find that there was no transfer of land made by Bheel belonging to Scheduled Tribe, rather they were deprived of the land which they were holding in fraudulent manner and decree was obtained without any basis. In view of aforesaid, we have no hesitation in dismissing the appeals preferred by the petitioners-appellants and allowing the appeals preferred by the members of Scheduled Tribes. Accordingly, the Appeals No. 816/2002 and 682/2002 are dismissed and the appeals bearing No. 714/2002 and 715/2002 are allowed. The order passed by the Board of Revenue is upheld. The order passed by the Single Bench to the extent of vesting

of land with the State is set aside. No order as to costs.