
(2000) 12 RAJ CK 0028
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4741 of 1999

Jeewan Ram and Others

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

Date of Decision : 07-12-2000

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15
Rajasthan Tenancy Act, 1955 — Section 14, 15, 5(43)

Citation : (2001) 2 RLW 1092 : (2001) 2 WLC 542 : (2001) 2 WLN 343

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Varun Goyal, for the Appellant; Hemant Choudhary, for the Respondent

Judgement

Balia, J.

(1). Heard learned counsel for the parties.

(2). The petitioners who are residents of village Gagdiyala were recorded as persons in possession of land in Samvat 2012 in the "lands summary". The common premises are that prior to 2012 before commencement of the Tenancy Act, no land records were kept in respect of the land in question by the erstwhile State; the petitioners had filed a suit for declaration before the Assistant Commissioner (Colonisation), Kolayat that they are the Chair Khatedari tenants, that suit was decreed on 9.7.1986. The learned Assistant Commissioner (Colonisation) relied on the entry in the land summary of Samvat 2012, the land revenue receipt, the copies of Girdawari of Samvat 2015 to 2028 as well as copy of the Dhalbanch for the same period and oral testimony of the witnesses of the villagers in support of their claim that they were in possession of the land since long time before the Tenancy Act since the time of their ancestors. The land revenue was fixed for 230 bighas of land. Since the land fell within the colony area and in terms of Sec. 15-A of the Rajasthan Tenancy Act no Khatedari could be declared, the petitioners were declared to be Ghair Khatedar tenants. It may

be noticed that the land was not recorded in Samvat 2012 as Rakba Raj. After 10 years of the aforesaid order, the Collector cum Dy. Colonisation Commissioner, Bikaner, made a reference to set aside the order passed by the Assistant Commissioner on 9.7.86 and the Board of Revenue by its order dated 7.8.98 has accepted that reference by holding that the petitioners have not been able to prove their continuous possession from 15.10.55 to 1983 which was necessary for acquiring right under Sec. 15-AAA but the petitioners have been able to prove their possession only from Samvat 2012 to 2018 and not thereafter and there being no provision of declaring the petitioners as Ghair Khatedars in the Rajasthan Tenancy Act, the order dated 9.7.66 was set aside.

(3). Learned counsel challenges the order of the Board of Revenue on the ground that the Board of Revenue has seriously erred in not taking notice of the fact that the petitioners' possession as on the date of the commencement of the Rajasthan Tenancy Act was proved from the land summary prepared at that time, the fact that the land revenue payable was determined further shows that the petitioners were recognised as tenants at the relevant time but ignoring these facts the Board of Revenue has simply set aside the order dated 9.7.86 solely on the ground that only those persons who are in possession continuously since 15.10.55 to 1983 are entitled to acquire Khatedari rights, ignoring the fact that the petitioners have never moved an application for declaring them as Khatedars under any provision. They had filed a suit for declaring their status only as "Ghair Khatedars" on the basis of their lawful possession on the date of the commencement of Rajasthan Tenancy Act on the land on which they were cultivating since the time of their ancestors and thereafter, the land revenue has also been assessed against them in respect of this very land from Samvat 2012 to 2018, they be declared as Ghair Khatedar tenants. The question whether the petitioners are entitled to status of khatedar tenant or not would become germane when the petitioners lay claim to such rights. The learned counsel for the petitioners further contends that notwithstanding that in the year 1986 when they had sought declaration for their status as Ghair Khatedars, they could not have acquired Khatedari rights in respect of the land. However, as a result of insertion of sub-sec. (2A) in Sec. 15-AAA w.e.f. 11.11.92, that impediment also was removed from the petitioners' right to claim status of Khatedar tenants to the extent the land does not exceed the maximum limit of the land which could be held by them under the provisions of the Rajasthan Imposition of Ceiling or Agricultural Holdings Act, 1973, the Board of Revenue has clearly ignored this provision also.

(4). Learned counsel for the respondents urged that since the petitioners have not been able to prove their continuous possession since Samvat 2012, the Board of Revenue was right in setting aside the order dated 9.7.86 by accepting the reference made by the Dy. Commissioner (Colonisation), Bikaner.

(5). Having considered the rival contentions, I am of the opinion that this petition merits acceptance.

(6). In respect of the statement made by the Board of Revenue that there is no provision under the Rajasthan Tenancy Act for declaring a person as Chair Khatedar tenant, the provisions of Sec. 14 needs attention.

(7). Sec. 14 of the Tenancy Act classifies the types of tenants which have been recognised under the Act. The Act recognises four types of tenants namely; Khatedari tenants, Maliks. tenants of Khudkasht and Ghair Khatedar tenants. Therefore, Ghair Khatedar is a statutory term used by the Legislature to express such class of tenants who do not fall in any other class of Khatedar tenants. Under Sec. 5(43) expression tenant has been defined to mean "the person by whom the rent is, or but for a contract, express or implied, would be, payable and would include number of persons but would not include a grantee at a favourable rate of rent or an ijaredar or thekadar or a trespasser." This Court has held in number of decisions that a Ghair Khatedar tenant cannot be considered to be a trespasser. His possession is juridical and he has to be dealt with a person in juridical possession.

(8). Sec. 17 of the Rajasthan Tenancy Act defines "Ghair Khatedar tenant" as every tenant of land in every part of the State other than a Khatedar tenant, a tenant of Khudkasht or sub-tenant shall be a Ghair Khatedar tenant. If that be statutorily recognised status of a person liable to pay rent in respect of the agricultural land in the State, it cannot be said that under no provision of Tenancy Act a person can be declared as a Ghair Khatedar tenant. The Ghair Khatedari status of the occupant of the land denotes that he is not a trespasser and is in lawful possession so that he may be protected against the summary procedure adopted for eviction of trespassers. The suit for declaration to that effect, in my opinion, was clearly maintainable, and therefore, the Board of Revenue has erred patently in holding that under no provision a declaration of Ghair Khatedari tenancy rights can be made. If that is so, the further discussion for the purpose of setting aside the order dated 7.8.98 that in view of the provisions of Sec. 15-AAA the petitioners cannot be conferred upon Khatedari rights is of no relevance. That question would have arisen only if the petitioners would have claimed Khatedari rights u/Sec. 15-AAA so as to hold an enquiry whether they fulfil the condition for acquiring khatedari rights under that provision. That matter was never subject matter of any proceedings. Therefore, the Board of Revenue was apparently in an error in diverting its attention to the question which was neither subject matter of the question decided by the Assistant Colonisation Commissioner in its order dated 9.7.86 nor the subject matter of reference. In this connection, it may be pertinent to notice that notwithstanding the provisions mentioned in substantive provisions of Sec. 15-AAA, sub-sec. (2A) was inserted with effect from 11.11.92 which recognises the rights of a tenant of a land without any adjective, to be entitled to all the rights and all the liabilities of a Khatedari under this Act with respect to the whole or such part of the land held as does not exceed the maximum area of land which he is entitled to hold in accordance with the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. This question also would

have required attention to the provisions of Sec. 15-AAA and Act of 1973. It appears that the Board has totally ignored the amended provisions of Sec. 15-AAA so as to negative the enquiry into the rights of the petitioners under the provisions of Sec. 15-AAA in a summary and casual manner.

(9). As a result, this petition succeeds, the impugned order of the Board of Revenue dated 7.8.98 made on a reference made by the Dy. Commissioner (Colonisation) is set aside. It will be open for the petitioner to lay his claim under Sec. 15-AAA (2A a) and it is for the authorities to decide the same without prejudice and uninfluenced by this order as and when such proceedings take place.

(10). No costs.