

**(2016) 12 RAJ CK 0052**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 1145 of 1997**

Jor Singh

APPELLANT

Vs

State of Rajasthan

RESPONDENT

**Date of Decision :** 06-12-2016

**Acts Referred:**

Rajasthan Tenancy Act, 1955 — Section 232

**Citation :** (2017) 1 WLN 344

**Hon'ble Judges :** Ms. Nirmaljit Kaur, J.

**Bench :** Single Bench

**Advocate :** Mr. O.P. Boob, Advocate, for the Respondent; Mr. Arpit Bhoot, Advocate, for the Petitioner

**Final Decision :** Allowed

## Judgement

Ms. Nirmaljit Kaur, J. - The present writ petition has been preferred against the judgment dated 26.10.1996 passed by the Board of Revenue under Reference/TA/22/96, Pali whereby the reference made by the Additional Collector, Pali vide his order dated 18.2.1983 passed in reference under the provisions of Section 232 of the Rajasthan Tenancy Act, 1955 was accepted and the mutation of the disputed land entered in the name of the petitioner vide mutation entry No.31/1957 was cancelled.

2. The case of the petitioner is that his father late Shri Mool Singh and one Shri Badri, were recorded khatedar of the land ad measuring 48 bighas 12 biswas comprising khasra no.200 and 202 situated in village-Gendhari, Tehsil-Desuri, District Pali, even before resumption of Jagirs and coming into force of Rajasthan Tenancy Act,1955 w.e.f. 15.10.1955. The co-tenant Badri surrendered his share in the land in favour of the petitioner's father late Shri Mool Singh and thereafter, the land was mutated in his name vide mutation entry No.31 of 1957. It is alleged that the proceedings were initiated against the petitioner's father under section 175 of the Act of 1955 on the ground that transfer of the land made by Badri, a member of Scheduled Caste, in his favour is hit by Section 42

of the Act of 1955, however, the proceedings initiated being barred by limitation stood terminated in favour of the petitioner's father. Thereafter, on the report being submitted by the Deputy Collector (Revenue), Bali, the Additional Collector, Pali, vide order dated 18.2.83 passed in Reference Case No.450/81, referred the matter for cancellation of the mutation to the Board of Revenue under Section 232 of the Act of 1955. The reference has been accepted by the Board of Revenue holding that the land could not have been surrendered by Badri in favour of the petitioner's father and that apart, the transfer was made in violation of the provisions of Section 42 of the Act is invalid.

3. Learned counsel for the petitioner inter alia contended that Shri Badri surrendered his share in favour of late Shri Mool Singh in the year 1957. The name of late Shri Mool Singh ? father of the petitioner was entered in accordance with law vide mutation entry No.31 of 1957. The revenue authorities raised objection that mutation in favour of the petitioner's father was invalid being in violation of Section 42 of the Act of 1955 as late Shri Badri was a member of Scheduled Caste. The said objection was raised in 1983. However, the proceedings were terminated in favour of the petitioner's father on the basis of limitation and the proceedings under Section 175 of the Act of 1955 were dropped in 1983. At the same time, the respondent No.4 also initiated the proceedings by way of reference before respondent No.3. The respondent No.3 by order dated 18.2.1983 referred the matter to the respondent No.2 for cancellation of the mutation entered in the year 1957. The Board of Revenue vide order dated 26.10.1996 too accepted the reference and ordered for cancellation of mutation no.31 of 1957 in spite of the fact that the proceedings under Section 175 of the Act of 1955 had been dropped on account of limitation.

4. Learned counsel for the petitioner contended that the very proceedings are barred by limitation and were not maintainable after a delay of almost 15 years from the date of expiry of limitation period which in itself was 12 years. As per Section 214 of the Rajasthan Tenancy Act, the period of limitation as prescribed for initiating the proceedings under Section 175 is 12 years. Section 214 of the Rajasthan Tenancy Act reads as under:-

214. Limitation in cases under this Act -(1) The suits and applications specified in the Third Schedule shall be instituted and made within the time prescribed therein for them and every such suit instituted or application made after the expiry of the period of limitation so prescribed shall be dismissed.

Provided that any such suit or application, for which the period prescribed by the said Schedule is shorter than the period prescribed by the law in force before the commencement of this Act, may be instituted or made within six months next after the commencement of this Act or within the period of limitation prescribed by the aforesaid law, whichever period expires first:

Provided that any such suit or application, for which a period of limitation is prescribed by the said Schedule but for which no period is prescribed by the

aforesaid law may be instituted within the period prescribed by the said Schedule computed from the date of the commencement of this Act.

(2) If the payment of rent has been suspended under the order of a competent authority on account of an agricultural calamity, the period of suspension shall be excluded in the computation of the period of limitation prescribed for a suit for the recovery of such rent.

(3) Subject to the provisions contained in subsections (1) and (2) the provisions of the Indian Limitation Act, 1908 (Central Act IX of 1908) shall apply to suits, appeals, applications and proceedings under or in pursuance of this Act.

5. A period of 12 years is prescribed under Third Schedule in Item 66. This was amended w.e.f. 5.10.1981 and the period was prescribed as 30 years. However, the present transaction was of the period prior to 5.10.1981. Hence, the amendment is not applicable to the case in hand. The period of limitation is 12 years in the present case. The bar on the ground of limitation for invoking the provisions of reference under Section 232 has been settled by the Apex Court in the case of Ram Karan (Dead) through Legal Representative and Ors. v. State of Rajasthan & Ors. (2014) 8 SCC 282 Para 32 of the said judgment reads as under:-

"32. Counsel for the appellants referred to decision of this Court in Nathuram v. State of Rajasthan, (2004) 13 SCC 585 and in the said case this Court held:

"4. The contention urged by the appellant's counsel is that by virtue of Section 42 of the Rajasthan Tenancy Act, any transaction made in contravention has been declared to be void and, therefore, the period of limitation is not applicable and that the authority should have held that the [pic]appellants are entitled to get possession. It may be noticed that for taking an action under Section 175 of the Act, the procedure as prescribed under sub-section 4(A) of Section 175 has to be adopted. It is also to be noticed that under Section 214 of the Rajasthan Tenancy Act, period of limitation is prescribed for initiating action under Section 175. Under Section 214, it is stated that:

"214. (1) The suits and applications specified in the Third Schedule shall be instituted and made within the time prescribed therein for them and every such suit instituted or application made after the expiry of the period of limitation so prescribed shall be dismissed:" Under the Third Schedule, in clause 66, for an application for ejectment for illegal transfer or sub-letting, the period of twelve years is originally prescribed for filing such an application from the date of transfer or sub-lease. The provision relating to the period of limitation was later on amended with effect from 5-10-1981 and the period was prescribed as 30 years. So far as the present transaction is concerned, the period of limitation applicable is twelve years. The transfers being one on 2-4-1964 and another on 4-5-1964, the proper application should have been filed within twelve years, but it was filed before the Sub Divisional Officer only on 22-11-1976. In that view of the matter, the proceedings were initiated beyond the period of limitation.

Therefore, it was barred by limitation and the finding of the SDO is correct which has been rightly confirmed by the authorities right up to the High Court."

6. Similarly, the Full Bench of this Court while specifically answering the question whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (Deity), held in para 42 as under:-

"42. On the aforesaid discussion and in the light of the judgments of the Supreme Court referred to above, we decide the question no.(v) in the manner that even if no time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land."

7. In the present case, land was mutated in the name of the petitioner in 1957. Reference was made to the Collector in 1983. 12 years lapsed in 1969 and reference was filed after 15 years. The reference was clearly barred on account on limitation as held by the Apex Court in the case of Ram Karan (dead) (Supra) and the judgment rendered by the Full Bench of this Court in the case of Tara & Ors. (Supra).

8. Accordingly, the writ petition is allowed. The order dated 26.10.1996 passed by the Board of Revenue is set aside and the reference made by the respondent No.3 vide Annexure-1 dated 18.2.1993 is quashed being time barred. No order as to costs.