(1952) 12 RAJ CK 0007

In the Rajasthan High Court

Case No : CWrit Petition No. 161 of 1952

Jyoti Prasad APPELLANT

Vs

Government of Rajasthan and Others RESPONDENT

Date of Decision : 11-12-1952

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1953 Raj 151

Hon'ble Judges : J.S. Ranawat, J;D.S. Dave, J

Bench : Division Bench

Advocate : J.N. Mathur, for the Appellant; C.B. Bhargava, Dy. Govt. Advocate and P.C. Bhandari, for the Respondent

Final Decision : Dismissed

Judgement

Ranawat, J.—This is an application under Article 226 of the Constitution of India by one Jyoti Prasad against the Government of Rajasthan, Chiranjilal, Surajmal, Sardar & Jeetmal.

2. The brief facts of the case, which have been stated by the petitioner, are that the petitioner was held to be a Khatedar tenant by Nizamat Hindaun, on 16-5-1942, relating to plots Khasra Nos. 4 to 19, 22 to 28 and 45 in village Jatwara, Tehsil Hindaun, instead of a mortgagee, and the names of Loharia, Ganga-kishan, Bishna and Zorawar were ordered to be deleted as mortgagors from the Parcha Chakbadi by way of punishment for having illegally mortgaged the disputed land. Since then the petitioner continued in possession of those plots of land as a Khatedar tenant. In the revision settlement of Samvat 2000, Loharia, Chiranji, Bishna, and Zorawar filed objections against the petitioner that they were the Khatedar tenants relating to these plots of land, but the objections were rejected finally by the Jaipur Board of Revenue on the 17/10/1949, and the petitioner was held to be entitled to continue as Khatedar tenant on the basis of the previous decision of Nizamat Hindaun. Against the decision of the Jaipur Board of Revenue, Chiranjilal and others filed an application for revision to the

Revenue Minister of Rajasthan, which was subsequently transferred to the Special Board of Revenue, Rajasthan for disposal. The Special Board of Revenue on the 31-7-1950, reversed the judgment of the Jaipur Board of Revenue. The petitioner then approached the Government, but without success. His application was finally refused on 14-7-1952, by the Government. Hence he has moved this writ petition on the ground that u/s 8, Jaipur Land Revenue Act (36 of 1947), the Jaipur Board of Revenue was a final Court of appeal, and its decision could not be challenged in revision, that is, no revision lay against the judgment of the Jaipur Board of Revenue to the Government. The Special Board of Revenue, therefore, had no jurisdiction to hear and decide a revision application filed before the Revenue Minister of Rajasthan against the judgment of the Jaipur Board of Revenue. The petitioner prayed that a writ of certiorari or prohibition be issued against the Government not to carry out the illegal decision of the Special Board of Revenue dated 31/7/1950, and to quash the proceedings of the Rajasthan Board of Revenue.

3. No reply was filed by Chiranjilal and others, but a reply was filed by the Government that u/s 8 (ii), Jaipur Land Revenue Act, 1947, in matters relating to survey records and settlement, the Government could also exercise the power of revision in lieu of or in addition to the exercise of a similar power by the Board of Revenue, as such the revision petition was entertained by the Hon''ble Revenue Minister for Rajagthan, who could exercise the powers of the Government in such matters. It was further added that after the promulgation of the Rajasthan Appeals and Petitions (Discontinuance) Ordinance, 1949, the revision was sent to the Special Board of Revenue, which was constituted under the aforesaid Ordinance, arid was disposed of according to law on 31-7-1950. The Special Board of Revenue had the jurisdiction to hear and dispose of the revision under the provisions of the Rajasthan Appeals and Petitions (Discontinuance) Ordinance, 1949. The revision was decided as back as 31-7-1950, and the petition was presented two years after that decision, and it was now not open to the petitioner to come to the High Court after such a long time.

4. At the time of hearing, one more point was urged on behalf of the Government that another remedy was open to the petitioner by way of a suit in the Court of Assistant Collector, as provided by the Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, Schedule I, Group B, Item No. 13.

5. The order of the Jaipur Board of Revenue was made on an appeal against the decision of the Settlement Commissioner regarding an entry in the record of rights. There was a dispute between the parties relating to Khatedari rights in respect of the plots specified in the application of the petitioner, and the Settlement Officer gave a decision in favour of the petitioner, which was upheld by the Jaipur Board of Revenue. In the judgment of the Jaipur Board of Revenue it has been stated that the decision of the Settlement Commissioner was based on the fact of possession, and the parties were at liberty to seek redress in the appropriate Court, if they were not satisfied from the decision of that authority. It

is clear, therefore, that a regular suit was not barred, and the parties could seek their redress in a competent court, if they were not satisfied with the entries made by the Settlement authorities in connection with the settlement operations. Our attention is invited to Section 101 of the Jaipur Tenancy Act, which is as follows :

"(1) Any person claiming to be a tenant or a joint-tenant may sue for a declaration that he is a tenant, or for a declaration of his share in such joint tenancy. (2) In a suit under this section any person claiming to hold, whether as tenant or otherwise, shall be joined as a party."

We are, therefore, of the opinion that u/s 101, Jaipur Tenancy Act read with Schedule I, Group B, item 13, Rajasthan Revenue Courts (Procedure and Jurisdiction) Act, 1951, a party, who is not satisfied with the decision of the Settlement authorities, may file a regular suit for declaration of his rights in the tenancy. As another remedy is open to the petitioner by way of a regular suit, we are not inclined to grant him any relief in exercise of the powers under Article 226 of the Constitution of India. We would not like here to go into the question whether it is open to the Government to interfere in the appellate judgments of the Board of Revenue.

6. This application is, therefore, dismissed. Under the circumstances of the case there will be no order as to costs.