
(2000) 08 RAJ CK 0037

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2434 of 2000

Kalu Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 11-08-2000

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 16(4)
Rajasthan Tenancy Act, 1955 — Section 30

Citation : (2001) 1 RLW 612 : (2000) 4 WLC 612 : (2001) 3 WLN 73

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : B.L. Purohit, for the Appellant;

Judgement

Balia, J.—Heard learned counsel for the petitioners.

(2). The petitioners challenge the non-acceptance of option given by petitioner Bhanwar Singh for surrendering the land to the extent declared surplus which has not been accepted by the respondent because Bhanwar Singh opted to surrender that land in respect of which transfer made by him had not been recognised for the purposes of computing the land held by him under the Ceiling Act.

(3). It was contended by the learned counsel for the petitioners that the lands "which have been transferred but such transfers have not been recognised for the ceiling purposes in computing the lands held by Bhanwar Singh, the same cannot be considered to be an encumbered land within the meaning of Sec. 30-E of the Rajasthan Tenancy Act and, therefore, the respondents are bound to accept the opinion given by him for surrendering such land.

(4). The contention is not well founded. The question of recognising the lands as part of the holdings of Bhanwar Singh because of the deeming provisions for not considering the transfers made before a certain date for the purpose cannot be equated with the exercise of option by the holder contrary" to his own act of

creating rights in others to their detriment. The act of transfer being holder's own act, it cannot be permitted to jeopardise the rights through his own acts by permitting him to make an option of surrendering such lands over which he has no control, and retained his own lands. It cannot be doubted that in respect of such transfers, the transferees do not lose all rights in respect of the transfer made in their favour vis a vis the vendors to claim compensation or rights against the transferor sans the computation of such lands in the lands held by petitioner. The fiction to include the holding in the hands of transferor is for the limited purpose. The only reasonable interpretation is that once holding is determined in the hands of the holder, and he, is found to be in possession of excess land than ceiling limit, the first reach be to lands in his possession. Sec. 30-E(2) of the Tenancy Act reads as under:-

"30E (2) Every person, who, on such date, is in possession of land in excess of the ceiling area applicable to him or who thereafter comes into possession of any land by acquisition under clause (b) of sub-sec. (1), shall, within six months of such date or within three months of such acquisition as the case may be make a report of such possession or acquisition to, and shall have surrender such excess land to the State Government and place it at the disposal of, the Tehsildar within the local limits of whose jurisdiction such land is situate:

Provided that if any person holding or acquiring land in excess of the ceiling area applicable to him holds land in more than one Tehsil he shall have the option to choose which of the lands held by him in different Tehsils should be surrendered so as to leave with him the land upto the ceiling area applicable to him;

Provided further that the option afforded by the foregoing provisions shall be subject to the limitation that, where the person surrendering excess land under this sub-sec holds land, of which some are encumbered and some are not encumbered, the un- encumbered lands, shall so far as may be, be the surrendered in preference to encumbered lands".

(5). The emphasis is for surrendering the land excess of ceiling area of a person who on such date is in possession of excess land. Thus possession here in ordinary sense will refer to lands in his control and not out of his control. That is in consonance with object of denuding a person of the land in his possession, which he holds in excess of ceiling area determined under Sec. 30-C. Keeping in view this scheme where any interest in the land which by voluntary act has been made to outstanding the holder must be considered to be an encumbered land to become part of surrender after the unencumbered land. What was implicit under the provisions of Tenancy Act has been enacted u/S. 16(4) of the Act of 1973. It has been made specific u/S. 16(4) of the new Act that where any transfer of land is not recognised or taken into consideration, for determining the ceiling area applicable to the transferor under sub Section (1) of Sec. 6, surrender of surplus land vesting in the State Govt. would be made by the transferor first out of the land remaining with him after such transfers and only thereafter if necessary the acquisition will reach the transferred lands. That is the principle founded on

wholesome consideration of justice and equity in favour of the ignorant and innocent transferees.

(6). This Court considering this provision has expressed the opinion in Banwari Lal Nagpal vs. State of Rajasthan & Ors. (1) that such obligation envisages under Sec. 16(4) can be enforced by the Authorised Officer against the transferor and he can call upon the transferor to surrender the surplus land first out of the land remaining with him and thereafter opt for surrendering the land or part thereof transferred by him. I, therefore, find no ground to interfere in the order under challenge.

(7). Learned counsel for the petitioner has relied on a decision of this Court in Sawai Singh & Anr. vs. State of Raj. & Ors. (2). The was a case where the land which was opted for surrender by the person concerned was not a land transferred by the petitioner but was land in possession of the trespasser with whom there was no privity of contract between the petitioner nor for the said trespass the petitioner was responsible. The land continued to be of the holder and he was entitled for its immediate possession. Therefore, the principle which is applicable in connection with the lands transferred by him has not been held applicable in the cases of trespass if the same has been surrendered by the petitioner. Obviously, a land in possession of the trespasser cannot be said to be encumbered. In the sense that no interest of the holder is outstanding and he has the right to immediate possession.

(8). The petition is dismissed.