

(2015) 07 RAJ CK 0082

In the Rajasthan High Court

Case No : Civil Writ Petition No. 5048/2000 and Stay Application No. 5095 of 2000

Kasturi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 15(2), 9
Rajasthan Tenancy Act, 1955 — Section 221

Citation : (2015) 07 RAJ CK 0082

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : N.K. Maloo, Senior Counsel and Ajit Maloo, for the Appellant;
Dharmendra Pareek, Additional Government Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J—This writ petition has been filed by Smt. Kasturi challenging order dated 16.07.1981 passed by the Government of Rajasthan in its Revenue (Ceiling) Department for reopening ceiling decision dated 23.04.1975 under the old law, order dated 26.03.1992 of the Board of Revenue enlarging scope of reopening, order dated 26.03.1993 passed by Additional District Magistrate and orders dated 15.12.1995 and 22.12.1999 passed by the Board of Revenue dismissing the appeal of the petitioner.

2. Briefly stated, the facts of the case are that petitioner Smt. Kasturi is daughter of Shri Gopilal Meena. She belongs to Scheduled Tribe category. She was married to one Shri Ram Gopal Meena. It was a "nata" marriage. Out of this wedlock, she had one male issue Rajendra. According to petitioner, Ram Gopal divorced the petitioner on 25.12.1962 as per the customs of Meena community, and he contacted second marriage with Smt. Kanchan Bai, which is considered equivalent to marriage in their community. Shri Gopilal, father of petitioner, had

no other issue except petitioner, she being his sole daughter, inherited his all the lands which were entered in his name in revenue record prior to 01.04.1966, the prescribed date for the old ceiling law. Shri Ram Gopal has been living with second wife Smt. Kanchan Bai and out of that wedlock he had one son Ramswaroop. Since 25.12.1962, petitioner has no relation with Shri Ram Gopal. Petitioner was assessed for the land, which she received from her father Shri Gopilal, under the old ceiling law. The Sub Divisional officer, Kota, vide order dated 23.04.1975, held that the petitioner was having total 50.61 standard acres of land and out of which the petitioner is entitled to retain only 30 standard acre and thus declared 20.61 standard acres of land to be surplus in her hand. Petitioner then was assessed under the new ceiling law, and held that petitioner should have been calculated to have possessed 73.44 standard acres instead of 50.61 standard acres, and consequently 43.44 standard acres should have been acquired as surplus instead of 20.61 standard acres. The SDO held that petitioner was having 20.61 standard acres surplus land. She was also assessed under the new ceiling law of 1973. She was having 1.90 ordinary acres as surplus land. The land declared to be surplus under old ceiling law being more was acquired and taken in possession by the Government.

3. The Government, vide order dated 16.07.1981 reopened the order passed under the old ceiling law. In the order, the ground of reopening was specifically mentioned that the calculation/conversion of ordinary acres into standard acres has not been done keeping in view the fact of land being command/un-command. It was stated that the land held by petitioner should have been calculated as 73.44 standard acres instead of 50.61 standard acres, and consequently 43.44 standard acres should have been acquired as surplus instead of 20.61 standard acres, which has been acquired, when the matter reached to Additional District Magistrate, he held that calculation of the standard acres has to be done as per the entry in the revenue records obtaining on 01.04.1966. He by order dated 12.11.1990, also held that petitioner submitted documentary proof/certificate to the effect that the land was not receiving irrigation facility and held that the calculation of standard acres was proper in order dated 23.04.1975 and was correct. The State Government filed appeal against order dated 12.11.1990 before the Board of Revenue. The Board of Revenue, vide judgment dated 26.03.1992, allowed the appeal and remanded the matter back to the Additional District Magistrate, to decide it afresh. The Additional District Magistrate again decided the matter by order dated 26.06.1993 holding that the land of the petitioner should have been clubbed with the land of her husband Shri Ram Gopal and thus further held that the entire land held by petitioner should be declared surplus and acquired. Petitioner filed appeal before the Board of Revenue against order dated 26.06.1993, which has been dismissed by order dated 15.12.1995. The Board held that since the land of Shri Ram Gopal, being sought to be clubbed with the land of the petitioner, the land in the account of Shri Ram Gopal should be acquired first before taking land of the petitioner. Petitioner filed review petition before the Board of Revenue, which was dismissed

vide order dated 22.12.1999. The papers were received in the office of the Additional District Magistrate on 17.04.2000 and the Additional District Magistrate made endorsement on the relevant file that the land of the petitioner should be taken possession, it was then the petitioner enquired by filing an application before the Additional Collector on 19.08.2000 and requested that in compliance of the judgment of the Board of Revenue, the land of Shri Ram Gopal should be first taken before acquiring the land of the petitioner, when it was not done, the petitioner approached this Court.

4. Shri N.K. Maloo, learned senior counsel appearing on behalf of the petitioner, has argued that the issue as to surplus or otherwise of the land of the petitioner had attained finality by order of the Board of Revenue dated 26.03.1992, which had remanded the matter to the Additional District Magistrate only for the purpose of correct computation/calculation of the surplus land. It was specifically directed that conversion of ordinary acres into standard acres should have been done considering whether the land was command land or un-command land. The Board of Revenue had exceeded its jurisdiction in enlarging the scope of the case when the matter came to it for second time, which was not the scope of reopening nor of remand, it was argued that the argument was made by the State Counsel before the additional District Magistrate as taken note of him by his order dated 26.03.1993 that the land of Shri Ram Gopal that her ex-husband Shri Ram Gopal and also certain land in his khatedari was affected by ceiling proceedings. Therefore, the land of the petitioner should be clubbed with the land of ex-husband Shri Ram Gopal as both of them come within the purview of ceiling and would be part of one family. Learned senior counsel submitted that even the Additional District Magistrate was misled by this submission. He wrongly held that neither Ram Gopal was required to be summoned nor is required to be produced in evidence by him, and yet assumed that option as to surrender of unencumbered land must have already been given to her husband Ram Gopal. All these assumptions were wholly untrue and unfounded. The Board of Revenue was also misled by this and wrongly held that reports were obtained from concerned authorities about the land not only of the petitioner but also of her husband Ram Gopal. Petitioner filed review petition inviting attention of the Board that neither the Additional District Magistrate nor the Board would suo motu make out a new case that the land of petitioner should have been clubbed with land of her ex-husband Shri Ram Gopal. Neither this was the ground for reopening nor petitioner or even Ram Gopal was served with notice of this. The file was not before the court and no definite information was with the court whether at all Ram Gopal was proceeded against in ceiling proceedings. Learned Additional District Magistrate as also the Board of Revenue exceeded their jurisdiction because reopening order dated 16.07.1981 was confined to examine only the aspect of correct computation of standard acres of land on the premise whether the land was command land being irrigated or un-irrigated. This issue was concluded before the Additional District Magistrate vide order dated 12.11.1990 because even the State Counsel gave consent that earlier

computation of the land of petitioner being only 50 standard acres, was correctly made and 20 acres was correctly acquired, when there was no mistake in computation, no further order could be passed.

5. Shri N.K. Maloo, learned senior counsel for petitioner, further submitted that this order was the consent order where-against no appeal could be filed before the Board of Revenue. Even the Board of Revenue had entertained the matter and again remanded the matter to the Additional District Magistrate, it was argued that as per the customs and rites of Meena community, marriage of petitioner with Ram Gopal was dissolved, when petitioner went in "nata", her ex-husband Ram Gopal also contacted marriage for second time. This fact is proved from evidence, which the petitioner has submitted in the writ petition. Petitioner has submitted ration card showing her separate family from her son Rajendra and members of his family. Petitioner also submitted order of dissolution of marriage as per rites and customs of Meena community dated 25.12.1962 giving detailed reasons and conclusion of Panchayat. He has also submitted certificate of Panchayat of Meena Sabha dated 25.12.1962. Moreover, petitioner has submitted voter list of showing name of Ram Gopal as resident of Gram Panchayat Ayani and his wife Kanchan, son Ramswaroop and Kailash. In another voter list, name of Ram Gopal showing members of his family also produced on record. Copy of mutation of land of Ram Gopal and his wife Kanchan and son Ramswaroop has also been submitted. All these documents are collectively placed on record at Annexure-10.

6. Shri Dharmendra Pareek, learned Additional Government Counsel for respondents, opposed the writ petition and submitted that the Board of Revenue has perfectly justified in directing that the land of the petitioner should be clubbed with the land of her husband Ram Gopal Meena. No decree of divorce obtained from the court has been produced. Even Ram Gopal has taken another woman as his wife in "nata" and that itself would not dissolve the marriage of the petitioner with him. Illegality in the order in ceiling proceedings passed earlier could be rectified. Even if the matter was reopened for re-computation of the standard acres and if it was discovered that the assessment of the land of the petitioner should have been made by including the land of her husband, who was also subjected to ceiling proceedings, that illegality can be corrected even now. The Board had supervisory jurisdiction under Section 9 of the Rajasthan Land Revenue Act and Section 221 of the Rajasthan Tenancy Act and therefore it was fully competent to do so. The appeal was filed before the Board of Revenue against the decision of the Additional District Magistrate dated 12.11.1990. The Board of Revenue therefore by order dated 26.03.1992 remanded the matter to the Additional District Magistrate, to decide the same afresh on 26.03.1993. No such plea was set up by the petitioner before the Additional District Magistrate that the land was irrigated and un-irrigated and this ground cannot be for the first time raised before this court. The question of fact with regard to dissolution of marriage or "nata" or otherwise also cannot be agitated before this court for the first time. The writ petition be therefore dismissed.

7. I have given my anxious consideration to rival submissions and perused the material on record.

8. Having heard learned counsel for the parties, I have perused the impugned orders and other orders placed on record passed by various authorities. The order of remand passed by the Board of Revenue has indeed been passed on the basis of fact whether on the premise that the disputed land is situated in chambal command area and that the prescribed authority has overlooked this fact while making computation of standard acres and thus there was mistake in computation of standard acre which would come to 73.44 acres and not 50.61 acres and that if the land sought to be acquired would be much more than what has been acquired, when the matter was remanded, the Additional District Magistrate by order dated 12.11.1990 has on the basis of judgment of the Board of Revenue held that computation of standard acre has to be made on the basis of status of land entered in the revenue records on the appointed date i.e. 01.04.1966, and on that date the land was not recorded as irrigated land, therefore, computation was correctly made earlier. The Government Counsel also gave his consent for such a decision on law and facts. Even then, the State Government filed appeal before the Board of Revenue. Argument put forth before the Board of Revenue that while the land in dispute was being claimed by the petitioner as daughter of Shri Gopi Lal, but she should be taken as part of family of her husband Ram Gopal, against whom also ceiling proceedings were initiated by the Government, it was on that count that the matter was again remanded to the Additional District Magistrate for ceiling. Similar argument was reiterated on behalf of the Government before the Additional District Magistrate that the land of the petitioner ought to be clubbed with those of her husband Ram Gopal and they be both treated as one unit and members of their family, not being more than five, they would be entitled to retain 30 standard acres as per Section 30(C) of old ceiling law and remaining land was liable to be acquired.

9. Perusal of judgment passed by the Additional District Magistrate indicates that no definite proof or record with regard to ceiling proceedings originally drawn against Ram Gopal or another order of reopening such ceiling proceedings under Section 15(2) of the new ceiling law, was produced on record or otherwise brought to his notice. No notice whatsoever was issued or served on Ram Gopal to elicit his response on these aspects. Learned Additional District Magistrate has on the basis of arguments of the counsel appearing on behalf of the parties has given a vague finding that on the appointed date i.e. 01.04.1966 Ram Gopal should be having six members including Kasturi wife of his family and that petitioner Kasturi Bai must have been accepted as one of his family members and that the petitioner should have disclosed about the correct position of ceiling proceeding against Ram Gopal and that the petitioner would have taken advantage of ceiling proceedings only on that basis. All the documents which the petitioner has produced before this court (Annexure-10), namely, ration card of the petitioner's family and that of Ram Gopal's family with his second wife and their issues and the voter list showing names Ram Gopal and his family

members, were placed before the Additional District Magistrate, even then he has held that this was concocted story by the petitioner to take undue advantage of ceiling proceedings. The Board of Revenue has also failed to consider and correctly analyze this. The ration card of Rajendra Prasad, son of petitioner, has shown the petitioner as one of the members of his family with his wife and two sons and two daughters. The certificate of Panchayat of Meena Samaj (Annexure-11) dated 25.12.1962 substantiated the fact of dissolution of their marriage as per customs and rites of their community. Sarpanch of Gram Panchayat has also given a certificate dated 27.12.1995 (Annexure-12) to prove so. These two documents independently may not prove the factum of divorce, but other documents substantiates that case, which are - the voter list for the year 1974 of ward No. 07 of Gram Panchayat Ayani, Panchayat Samiti Itawa, Tehsil Pipida, zila Parishad Kota, which was lastly published on 10.01.1978 (Annexure-13), and Panchayat voter List 1994 (Annexure-14). In the document Annexure-13, name of Ramgopal S/o. Motilal is shown at Serial No. 95, name of Kanchan w/o. Ram Gopal is shown at Serial No. 96, name of Ramswaroop S/o. Ram Gopal is shown at Serial No. 97 and name of Kailash w/o. Ramswaroop is shown at Serial No. 98. In document Annexure-14, name of Ramswaroop S/o. Ram Gopal is shown at serial No. 89, name of Kailash w/o. Ramswaroop is shown at Serial No. 90 and Kanchan w/o. Ram Gopal is shown at Serial No. 91. The corresponding document of mutation dated 16.05.1992 (Annexure-15) indicates that on death of Ram Gopal, his land was mutated in favour of his son Ramswaroop, daughters Dwarika Bai, Sarswati Bai and widow Kanchan Bai, while on one hand petitioner has produced all these documents to show that Ram Gopal was married for second time and taken Kanchan Bai in "nata" as per customs and rights of Meena community, on the other hand, the respondents have failed to prove whether any ceiling proceedings were initiated against Ram Gopal, or whether any land was taken as surplus or whether ceiling proceedings in his case was reopened, as was alleged by the respondents. Moreover, the ceiling proceedings were reopened by the State Government only for the purpose of correct computation of standard acres and not for any other reason. A concluded order cannot be in this manner allowed to be reopened without any firm foundation, on the basis of mere surmises and conjectures and on unsubstantiated facts.

10. In view of the above, the present writ petition deserves to succeed, it is accordingly allowed. The order dated 16.07.1981 of the State Government, order dated 26.03.1992 of the Board of Revenue, order dated 26.03.1993 of the additional District Magistrate and order dated 15.12.1995 and 22.12.1999 of the Board of Revenue are set aside.

11. This also disposes of stay application.