
(2015) 03 RAJ CK 0101
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3557/1997

L.Rs. of Bhera Ram

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 19-03-2015

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 45, 46, 5(3)
Transfer of Property Act, 1882 — Section 6(h)(3)

Citation : (2015) 03 RAJ CK 0101

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : A.K. Singh, for the Appellant; O.P. Boob, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This writ petition is directed against the judgment dated 17.10.1985 passed by Additional Collector (Ceiling), Nagaur ("Addl. Collector") and judgment dated 03.07.1997 passed by the Board of Revenue, Rajasthan, Ajmer ("the Board"), whereby while the Addl. Collector on reopening of ceiling proceedings, found the petitioner to be in possession of 18.16 standard acre land in excess of the ceiling area and the Board while upholding the finding of the Addl. Collector came to the conclusion that the petitioner was holding 8.16 standard acre land in excess of ceiling area.

2. The facts in brief may be noticed thus - under the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955 ("the Act") proceedings were initiated against Bhera Ram; statement was filed by him and proceedings were dropped by order dated 30.09.1972; whereafter, the proceedings were reopened under the provisions of Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1971 ("Act of 1971") by the order of the State Government dated 07.06.1980. After the proceedings were held before the Addl. Collector, the Addl. Collector by its order dated 17.10.1985 came to the

conclusion that the assessee failed to produce evidence to show that the purchasers were major and were apparently related to the assessee and in view thereof, the Addl. Collector did not recognize the transfer dated 27.09.1965 of land admeasuring 364 Bigha 3 Biswa, which is equal to 30.16 standard acre and after adding the same to the existing land of Bhera Ram, found him in possession of 18.16 standard acre land in excess of the ceiling area.

3. Feeling aggrieved, the petitioner filed an appeal before the Board, the Board after hearing the parties came to the conclusion that the requirement of maturity under Section 30-DD of the Act means majority and as from the material available on record, it was found that out of three purchasers only Chatra Ram was major, and Kana Ram and Uda Ram were both minor, the transfer only to the extent of 10 standard acre could be recognized and, consequently, found the petitioner in possession of 8.16 standard acre land in excess of the ceiling area and partly allowed the appeal.

4. It is submitted by learned counsel for the petitioner that the authorities below committed error in applying the provisions of Section 30-DD of the Act; the provision of maturity as indicated in Section 30-DD(i) of the Act does not apply to a case of agriculturist and the same applies only in case of transfer in favour of son or brother of the assessee and, therefore, both the authorities fell in error in deciding the issue against the petitioner merely based on its interpretation regarding maturity being equal to majority and coming to the conclusion that Kana Ram and Uda Ram were minor. It is further submitted that the proceedings before the Addl. Collector pursuant to the reopening were also not held in accordance with the requirements of law and the burden could not have been cast on the petitioners to prove the exception under Section 30-DD of the Act and, therefore, also order passed by both the authorities cannot be sustained.

5. Learned counsel for the respondents-State vehemently opposed the statement made by learned counsel for the petitioner. It was submitted that the burden under the provisions of Section 30-DD of the Act specifically lay on the petitioners only, if they wanted to get the transfer recognized and as the petitioners failed to lead evidence in support of its contention, and bring their case within the parameters of Section 30-DD of the Act, the petitioners are not entitled for any relief and the orders passed by the Addl. Collector and the Board cannot be faulted on any ground and, therefore, the writ petition deserves to be dismissed.

6. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

7. From the material available on record, it is apparent that the assessee Bhera Ram, transferred 364 Bigha 3 Biswa land vide sale deed dated 27.09.1965 in favour of Chatra Ram, Kana Ram and Uda Ram. The sale deed indicates the transferor Bhera Ram as by Caste - Suthar and the transferees as by Caste - Jat. The reopening was ordered by the State Government observing that the transfer

dated 27.09.1965 was not examined in terms of Section 30D and Section 30-DD of the Act.

8. While Section 30D of the Act provides for non-recognition of certain transfer for fixing ceiling area under Section 30-C, Section 30-DD of the Act provides for recognition of certain transfers. The provisions of Section 30-DD of the Act, which are relevant in the present case reads as under:--

"30-DD. Certain transfers to be recognized. - Notwithstanding anything to the contrary contained in Section 30-D, for the purpose of determining the ceiling area in relation to a person under section 30-C -

"(i) Every transfer of land not exceeding thirty standard acres made by a person upto the thirty first day of December, 1969 in favour of an agriculturist domiciled in Rajasthan or in favour of his son or brother intending and capable of cultivating land personally and take to the profession of agriculture and who had attained the age of maturity on or before the said date; and

(ii) every transfer to the extent as aforesaid made by a person before the first day of June, 1970 of land comprised in groves or farms of the nature referred to in clauses (a), (b), (d) and (e) of sub-section (1) of section 30-J as it stood prior to the commencement of the Rajasthan Tenancy (Second Amendment) Act, 1970 and acquired before the first day of May, 1959 in favour of his son or brother fulfilling the conditions mentioned in clause (i) and who attains the age of majority on or before the first of the afore mentioned dates, shall also be recognised.

Explanation I. - The expression "agriculturist" in this section shall mean a person who earns his livelihood wholly or mainly from agriculture and cultivates land by his own labour or by the labour of any member of his family or alongwith such labour as aforesaid with the help of hired labour or servant on wages payable in cash or in kind and shall include an agricultural labourer and a village artisan.

Explanation II. - The expression "domiciled in Rajasthan" in this section shall mean a person who permanently resides in Rajasthan since before the commencement of this Act."

9. The plain reading of the provisions of Sub-section 1 of Section 30-DD of the Act provides that every transfer of land not exceeding 30 standard acres made by a person upto 31.12.1969 in favour of - (i) an agriculturist, domiciled in Rajasthan, and (ii) in favour of son or brother intending and capable of cultivating land personally and to take the profession of agriculture and who had attend the age of maturity on or before the said date shall be recognized for the purpose of determining the ceiling area in relation to a person under Section 30-C of the Act.

10. The Explanation-I of Section 30-DD of the Act provides that the expression "agriculturist" in the Section shall mean a person, who earns his livelihood wholly and mainly from agriculture and cultivates land by his own labour and by the

labour of any member of his family or alongwith such labour as aforesaid with the help of hired labour or servant on wages payable in cash or in kind and shall include an agricultural labourer and a village artisan.

11. The explanation expands the definition of agriculturist as contained in Section 5(3) of the Act, which reads as under:--

"(3) "Agriculturist" shall mean a person who by himself or by servants or tenants earns his livelihood wholly or principally by agriculture." 12. In view of the fact that by explanation, the definition of agriculturist has been thoroughly expanded, it necessarily means that the transfer upto 31.12.1969 made in favour of an agriculturist is to be recognized if the transferee falls within the parameters of the definition of agriculturist.

13. A bare look at the orders passed by the Addl. Collector and the Board reveals that both have gone on to decide the issue based on the maturity of the transferees.

14. A bare look at the provisions of Section 30-DD of the Act as noticed hereinbefore reveals that the attainment of age of maturity before the date of transfer essentially pertains to a transfer made by the assessee in favour of his son or brother and the same apparently is not applicable to transfer made in favour of agriculturist domiciled in Rajasthan, who is neither son nor brother of the transferor. In view of the fact that it is neither the case of the respondents-State nor the same emerges from the record that the transferees are either son or brother of the transferor, it is apparent that both the Addl. Collector and the Board have misdirected themselves on deciding the aspect regarding maturity of the transferees and basing their finding on such conclusion.

15. So far as the transfer in favour of a minor is concerned, under provisions of Section 6(h)(3) of the Transfer of Property Act, 1882, the only restriction is that no transfer can be made to a person legal disqualified to a transferee. However, a minor is not disqualified to be a transferee and he can be a purchaser of a property. He himself or his estate cannot be bound by a contract for the purchase of immovable property.

16. The fact that a minor can be an agriculturist and be a Khatedar, is further fortified from the provisions of Section 45 and 46 of the Act. While Section 45 provides for restrictions on letting and subletting by the Khatedar-tenant of his holding, provisions of Section 46 provides for exception to the restriction imposed by Section 45 of the Act regarding letting by a holder or a tenant, which includes a minor.

17. In view of the above so far as the aspect that even if Kana Ram and Uda Ram are taken as minors, neither the transfer in their favour is void/invalid nor it can be said that on account of their minority, they cannot be agriculturist.

18. From the perusal of the orders passed by both the authorities, it is apparent that none of them has dealt with this aspect and/or has come to a conclusion

that Kana Ram and Uda Ram are not agriculturist within the definition as given under the Explanation-I to Section 30-DD of the Act.

19. Even from the material, which is available on record, it is apparent that all the three brothers, belonged to an agriculturist family, their father also holds certain land and in absence of any material contrary to the said aspect on record, the only conclusion, which can be drawn is that the said transferees Chatra Ram, Kana Ram and Uda Ram were "agriculturist domiciled in Rajasthan" and, therefore, the transfer dated 27.09.1965 in their favour was liable to be recognized by the Addl. Collector under Section 30-DD of the Act. Even if 0.16 standard acre land, which has been transferred in excess to the limit provided under Section 30-DD of the Act is added back to the holding of the assessee, he would be holding 18.16 standard acre land, which is well within the limit of ceiling area.

20. In view of the above discussion, the writ petition is allowed. The judgment dated 17.10.1985 passed by Additional Collector (Ceiling), Nagaur and judgment dated 03.07.1997 passed by the Board of Revenue, Rajasthan, Ajmer are set aside and the proceedings initiated against the petitioners by notice dated 11.06.1979 (Annex. - R-1) under Section 15(2) of the Act of 1971 are ordered to be dropped.

21. No order as to costs.