
(1997) 09 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 3266 and 3267 of 1992 and 5191 of 1993

Magaram and Others, etc.

APPELLANT

Vs

The B.O.R. and Others

RESPONDENT

Date of Decision : 18-09-1997

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 18
Rajasthan Tenancy Act, 1955 — Section 229

Citation : AIR 1998 Raj 90 : (1997) 3 RLW 1787 : (1998) 1 WLC 521

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Advocate : M.S. Singhvi, for the Appellant; M.L. Shrimali, S.R. Singhi and Prakash Tatia, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Jain, J.—All these writ petitions have been filed under Article 226 of the Constitution of India. Since all these three persons relate to the land which was either sold or gifted by Shri Chandi Dan to the petitioners and was subject-matter of ceiling proceedings, I propose to dispose of them together by this common order.

2. The brief facts relevant for the disposal of these petitions may be recalled as follows: Chandi Dan and Suraj Dan, residents of Allawas Tehsil Sojat possessed 512 bighas of land situated in village Allawas. Chandi Dan has three sons namely, Kailash Dan, Ishwar Dan and Onkar Singh. Suraj Dan had no issue. These two brothers were joint Khatedars of the above land. Suraj Dan sold and transferred 400 bighas of land to Amba Dan. It was resisted by Chandi Dan and his three sons. A suit was, therefore, filed by Chandi Dan and his three sons against Suraj Dan and Amba Dan in the Court of Assistant Collector, Sojat. However, the matter was ultimately compromised before the Board of Revenue on 7-9-1971. The Board of Revenue passed a compromise decree on 8-9-1971 in

terms of compromise and it was observed that the land in question fell into the share of Chandi Dan and his three sons. Thereafter, Chandi Dan transferred 3/4th share of 97 bighas of land to the petitioners of Writ Petitions 3266/92 and 3267/92 by three registered sale deeds dated 14-1-1974.

3. It may also be stated that in the year 1975 out of the land belonging to Shri Chandi Dan situated in Khasra No. 581, he gifted the land measuring 2 hectares and 22 acres to the petitioner Amba Dan (Writ Petn. No. 5193/93). After the above transfers by sale and gift, the land was mutated in the name of the petitioners in the jama-bandi. It appears that ceiling proceedings under the provisions of the Rajasthan Tenancy Act, 1955 (referred to hereinafter as "the Act of 1955") were initiated against Shri Amba Dan. However, on consideration of the reply of Shri Amba Dan, the proceedings were dropped by the Authorised Officer concerned vide order dated 28-1-1976. However, the State Government, exercising the powers conferred by Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (referred to hereinafter as "the Act of 1973") against Shri Amba Dan vide order dated 18/26-4-1980, Pursuant to the above order of the Government, the Additional Collector issued notice to Shri Amba Dan and eventually the Additional Collector passed an order on 20-7-1989 against Shri Amba Dan for acquisition of 377.18 bighas of land of Shri Amba Dan. Feeling aggrieved by the above order dated 20-7-1989, Shri Amba Dan filed an appeal before the Board of Revenue along with an application for condonation of delay in filing the appeal. The Board of Revenue condoned the delay in filing the appeal. The appeal came to be decided by the Board of Revenue on 5-5-1992. The appeal was partly allowed by the Board of Revenue and it accepted the contention of the appellant that his son Bhajron Singh was major at the relevant time. Hence in computing the land for the purpose of ceiling, Bhajron Singh was entitled to the exemption of land of one unit. The Board of Revenue, therefore, held that the appellant was entitled to retain 227 bighas of land. The remaining land 242 bighas 18 biswa was allowed to be acquired by the Government. Shri Amba Dan also submitted an option before the Board of Revenue in respect of the land which he intended to surrender which included the land in question which was sold and gifted to the petitioners. The Board of Revenue accepted the above option given by Shri Amba Dan and made an order accordingly. All along the above proceedings the petitioners were neither made any party nor any notice was issued to them. The petitioners of petitions 3266/92 and 3267/92 came to know about these facts immediately after the order was passed by the Board of Revenue when they were informed in the first week of June, 1992 that they were liable to be dispossessed from the above land in pursuance of the above judgment. The petitioner Mata Deen (Writ Petn. No. 51(sic)) came to know when he received a notice dated 24-9-1993 from the Tehsildar, Sojat whereby he was asked to pay a sum of Rs. 555/- as land revenue. The petitioner was surprised by the receipt of the above notice. He, therefore, made inquiries and it was revealed that an order purporting to be u/s 91, Land Revenue Act has been passed by the Tehsildar, Sojat directing eviction

of the petitioner from the land in question and a penalty of Rs. 555/- was also imposed. The petitioners of petitions 3266/92 and 3267/92 immediately filed a review petition on 15-6-1992 but the above petition was dismissed on 22-6-1992. Thereafter, the Patwari of the area came to the spot and took necessary steps to evict the petitioners from the above land.

4. The petitioners have, therefore, challenged the above proceedings on the ground that in the entire proceedings no notice whatsoever was given to any of the petitioners. The petitioners purchased the land from Shri Chandi Dan. The other petitioners got the land in gift as stated above. The land in question never came to the share of Shri Suraj Dan or his transferee Shri Amba Dan. Suraj Dan could not have disposed of 400 bighas of land which was in joint Khatedari of both the brothers, to Amba Dan. Since the land was given to the petitioners through Shri Chandi Dan, neither the land could be clubbed in the ceiling proceedings initiated against Shri Amba Dan nor Shri Amba Dan could surrender the land in question which was never sold to him. It was also challenged on the ground that Shri Amba Dan could not have given option for the land in question nor it was open for the Board of Revenue to have accepted the option of Shri Amba Dan. As per IIInd proviso to Sub-section (1) of Section 18, unencumbered land should have been surrendered by Shri Amba Dan. The order of the Additional Collector also suffers from the lacuna that no notice was given to Shri Amba Dan. The Additional Collector also committed a grave error in dismissing the review petition filed by the petitioners inasmuch as they had a right to challenge the above order because it adversely affected their rights, interest and title. The Board of Revenue was not competent to have accepted the option exercised by the non-petitioner under Rule 18(1). The Additional Collector further committed an error in not remitting the file to the Authorised Officer for making necessary inquiry and disposed of the matter at his level. He, therefore, exceeded his jurisdiction. The petitioners have, therefore, prayed for issuance of a writ, order or direction, for quashing the orders dated 20-7-1989, 5-5-1992 and 22-6-1992 as also the letter of the Government dated 18/26-4-1980. It was also prayed that the respondents may be directed to allow the petitioners to cultivate the land in question and not to interfere with the rights of the petitioners to cultivate the land in question.

5. Respondent No. 3 Amba Dan filed reply in all the above three writ petitions. Respondent No. 2 filed reply in Writ Petition No. 5193/93. Amba Dan in his reply has challenged the maintainability of the writ petitions on the ground that the petitioners have got no locus standi to file these writ petitions. The matter in respect of ceiling proceedings under the provisions of the above Act were initiated against him on the ground that the land held by him was in excess of ceiling area permissible under the Act. The matter went up to the Board of Revenue which came to be decided on 5-5-1992. The petitioners were not parties to the above ceiling proceedings including the appeal filed before the Board of Revenue. The petitioner, however, filed a review petition against the appellate order of the Board of Revenue which came to be dismissed by the Board of

Revenue vide its order dated 22-6-1992. The petition was dismissed on the ground that it was held that the petitioners had no locus standi to challenge the above proceedings. The petitioners are now challenging the final verdict in respect of the above proceedings by filing these writ petitions. It was also staged in the reply that the petitioners have challenged that the land in question vested in Chandi Dan and Amba Dan was not its Khatedar. According to the petitioners Chandi Dan being the Khatedar of the above land was competent and entitled to transfer the land to the petitioners either by gift or by sale. As per compromise accepted and recorded by the Board of Revenue, the land in question fell in the share of Chandi Dan or his son Ishwar Dan. The land was also muted in the name of the petitioners. Since the transferor of this land was Chandi Dan, it was erroneous on the part of the Authority acting under the above Act to club the land belonging to Chandi Dan with the land allegedly held by Amba Dan. It was also alleged in the reply that Amba Dan had every right to give option u/s 18 of the Act of 1973. The petitioners, being the transferees of the land at the instance of Chandi Dan, had no right to challenge the above option. The above transfer of land by Chandi Dan was in contravention of the provisions of the above Act as the same were made or effected after January 1, 1973. The respondent further submitted that there is no provision in the Act to issue notice to the transferee in respect of transfers which were effected after the appointed date. According to the revenue record, Shri Amba Dan was recorded a Khatedar-tenant in respect of 400 bighas of land. The respondent No. 2 was, therefore, justified in initiating the ceiling proceedings against Shri Amba Dan only. Since Chandi Dan was not in the picture, the petitioners who are mere transferees or successors-in-interest of Chandi Dan had no locus standi to challenge the above proceedings or the option. The review petition filed by the petitioners was not maintainable as per Section 229 of the Rajasthan Tenancy Act.

6. I have heard Shri M. S. Singhvi, learned counsel for the petitioners, Shri M. L. Shrimali, Shri S. R. Singhi and Shri Prakash Tatia learned counsel for the respondents.

7. Learned counsel for the respondents raised a preliminary objection regarding the maintainability of the writ petitions. It was submitted that the ceiling proceedings were initiated under the above Act against Shri Amba Dan who, as per the revenue record, was the recorded Khatedar in respect of the above land. The matter was finally adjudicated by the Board of Revenue on 5-5-1992. The appeal of Shri Amba Dan was partly allowed. The contention of Shri Amba Dan was accepted that his son Bhairon Singh was major at the relevant time. Hence the land equivalent to one unit was further excluded from the land taken under the ceiling net. The remaining land 242 bighas 18 biswas was allowed to be acquired by the Government. The petitioners filed a review petition before the Board of Revenue which was rightly rejected on 22-6-1992 as the petitioners had no locus standi to challenge the verdict of the Board of Revenue in respect of the ceiling matter. Also the petitioners were not parties to the proceedings and a review u/s 229 of the Rajasthan Tenancy Act can only be filed by one of the

parties to the proceedings. The petitioners were ingeniously tried to acquire locus standi or the right to challenge the above verdict of the Board of Revenue on the ground that the land was transferred to them by Chandi Dan and his brother Suraj Dan who were joint tenants in respect of the above land. The petitioners further alleged that the land in question could not have been made subject-matter of the ceiling proceedings qua Amba Dan. The verdict in respect of the ceiling has become final qua Amba Dan. According to the revenue record Chandi Dan was not the Khatedar-tenant of the land in question. The petitioners admittedly claimed to be transferors of the land in question from Chandi Dan. The above transfers were also effected after 1-1-1973. According to Section 6 of the Act of 1973, which starts with non obstante clause, says that every transfer of land whether by sale, gift, exchange, assignment, surrender etc. made on or after 26-9-1970 except a bona fide transfer made before 1-1-1973 shall be deemed to have been made in order to defeat the provisions of the Act and shall not be recognised or taken into consideration and determining the ceiling are applicable to a person. It was held by Full Bench Judgment of this Court in Kesa and Others Vs. State of Rajasthan and Others, that there is no provision in Chapter III-B or the Rules framed under the Act for issuing the notice to the transferors. The Act or the Rules framed thereunder, by necessary implication, even exclude the principle of natural justice in proceedings under Chapter III-B of the Act and as such the transferors cannot claim notice in ceiling proceedings under Chapter III-B of the Act. It may be stated that the relevant provisions of the Old Ceiling Law were incorporated in the above Act of 1973.

8. Learned counsel for the petitioners very vehemently contended that the rights of the petitioners in respect of the land transferred by the above documents were adversely affected and Amba Dan filed an application before the Board of Revenue containing his option u/s 18 of the Act of 1973. Since the petitioners are directly affected by the above order of eviction of the petitioners in pursuance of the acceptance of the option given by Amba Dan before the Board of Revenue, they have got a legal and constitutional right to challenge the above of Amba Dan. Learned counsel has made reference to K. Singh v. M.L. Mehta (1996) 1 Raj LW 141 . The petitioners on the strength of the above facts, had a right to file a review petition before the Board of Revenue and it was erroneous on the part of the Board of Revenue who have dismissed the application on the ground that the petitioners had no locus standi to challenge the order of the Board of Revenue. As stated above since the option given by Amba Dan directly affected the petitioners and may result in their eviction from the land in question, they had no option but to file review petition before the Board of Revenue. The review of the petitioners was, therefore, maintainable and required judicial adjudication of the points raised therein. Learned counsel has referred to the Division Bench Judgment in Badrilal Vs. State of Rajasthan and Others, In the above case, while considering the provisions of Section 18 and Section 16(4) of the Act of 1973, the Division Bench of this Court held that even though transfer of land is not recognised after the appointed date and by fiction of law, the transferred land

shall be considered to be the land of the transferor but such transferee has got a right as regards the option exercised by the transferor and they can ask the transferor first to surrender unencumbered land and when unencumbered land is not sufficient, the balance of surplus land has to be recovered from the transferee. On the authority of this case, the petitioners can contend that though the transfers in question may not be recognised u/s 6 of the Act of 1973, the petitioners can challenge the option filed by the respondent No. 3 Amba Dan by which he sought to surrender the encumbered land to the Ceiling Authority.

9. Learned counsel has also submitted that the review petition filed by the petitioners before the Board of Revenue was maintainable because the petitioners felt highly aggrieved when no notice in respect of the ceiling proceedings relating to the land in question was issued to any of the petitioners. When they came to know about this they filed the above review petition. Once it is held that the petitioners were entitled to a notice, under the above Act or the Rules made therein, the review petition would be maintainable. It was also contended by the learned counsel for the petitioners that the Board of Revenue had no authority to accept the option exercised by Arntta Dan u/s 18 of the Act of 1973. Since the rights of the petitioners were adversely affected by the order of the Board of Revenue, law confers right on the petitioners to challenge the same. It was also contended that the Board of Revenue, being an appellate Court, could not have exercised jurisdiction over the option given by the respondents. Learned counsel for the petitioners also assailed the order of the Board of Revenue on the ground that when it was held no proper notice was given to the land-holder, the matter ought to have been remanded to the proper authority. It was not done so.

10. I have considered the respective contentions. At the very outset I may state that in these writ petitions the petitioners have raised disputed question of facts and craved indulgence of the Court in adjudicating the same and giving appropriate relief to the petitioners. The petitioners, inter alia, alleged that the land in question was transferred by sale and gift by Shri Chandi Dan to the petitioners. Chandi Dan and Suraj Dan were the joint Khatedar-tenants in respect of the above land. Hence the Authorised Officer, applying the provisions of the Ceiling Law, ought not to have clubbed this land with the land belonging to Amba Dan. According to him, the land transferred by Shri Chandi Dan could not have been the subject-matter of the ceiling proceedings taken against Amba Dan. The respondent stoutly refuted the above contender by alleging that in the revenue record Amba Dan was the recorded Khatedar-tenant in respect of 400 bighas of land which also comprise the lands in question. The Authorised Officer or the Board of Revenue has, therefore, not committed any error in invoking the provisions of Ceiling Law against Amba Dan.

11. It is a settled law that while exercising plenary jurisdiction under Articles 226 and 227 of the Constitution of India. The Court would decline to enter upon the controversy based on facts and adjudicate the same. In the instant case the

dispute raised involves complicated question of facts and I am of definite opinion that I would be exceeding the jurisdiction if I touch the above controversy and make any endeavour to resolve the same. I, therefore, proceed on the premise that the ceiling proceedings taken against Amba Dan under the provisions of the Act of 1973 would be the basis for adjudicating the matter in these writ petitions. I am, therefore, disposed to hold that the ceiling proceedings in respect of the land in question were initiated against Amba Dan who _was the recorded tenant in the revenue record. The Authorised Officer, therefore, acted in accordance with law in determining the ceiling area of land. By the same analogy, the Board of Revenue was competent to decide the above appeal on merits.

12. Before proceeding further, I would like to refer to the Full Bench decision of this Court rendered in *Kesa and Others Vs. State of Rajasthan and Others*, The question for determination before the Full Bench was whether in proceedings taken under Chapter III-B or the Rules framed under the Act issue of notice is necessary to the transferees? Previously this High Court in *Nand Lal v. State of Rajasthan* 1978 Raj LW 198 : AIR 1979 NOC 78 held that notice to the transferee was not necessary. It was further held that the principle of natural justice is not attracted. However, a different view was taken in *Bhairaram v. State of Rajasthan*, 1979 WLN 224 . It was held that under Chapter notice to the transferee whose case fell u/s 30-DD was quired on principles of natural justice. In view these conflicting decisions, the matter was referred to the Full Bench. It was held in 1 *Kesa and Others Vs. State of Rajasthan and Others*, that there is no provision in Chapter III-B or the Rules framed thereunder, for issuance of notice to the transferee. The Act and the Rules framed thereunder, by necessary implication, exclude principles of natural justice and as such the transferee cannot claim notice in ceiling proceedings under Chapter III-B of the Act. It was further held that the principle of audi alteram partem is excluded by necessary implication. In view of the authoritative pronouncement in *Kesa's* case, the contention of the learned counsel for the petitioners stands disposed of. It may also be stated that the provisions contained in Chapter III-B of the Tenancy Act have been incorporated in the Act of 1973.

13. Learned counsel for the petitioners have claimed issuance of notice to the petitioners on ground of transfer of the gift. I have already stated that the petitioners are not transferees from the holder of land, namely, Amba Dan against whom the ceiling proceedings were taken inasmuch as they themselves have claimed that the transfers in favour of the petitioners were made by Chandi Dan. Their status, therefore, is of a third party.

14. Learned counsel forth petitioners placed strong reliance on the principles laid down on a case of this High Court, *Badrilal Vs. State of Rajasthan and Others*, While interpreting Sections 18 and 16(4) of the Act of 1973, it was held that Section 18 lays down that the person holding or acquiring land in excess of ceiling area applicable to him shall have the right to select any land within the ceiling limit which he wants to retain in his possession and such right shall be

exercised by specifying the land solely selected in the return required to be furnished under the Act. He will have a right to file an option so far as the excess land is concerned and he can choose which of the lands held by him should be surrendered. The transferor is required, first to surrender unencumbered land and it is only when unencumbered land is not sufficient or - is not available, then alone the balance of surplus land has to be recovered from the transferee who shall be paid the price of the land out of the amount of acquisition thereby to transferor. It was further held that though the transfer will not be recognised and the land in such a case of sale shall be considered the land of the transferor but effect will be given to provisions of Sections 16(4) and 18 of the Act of 1973. On the authority of this ruling, learned counsel for the petitioners has contended that though the transfers may not be recognised, the petitioners have got a say in the matter of option to be exercised by the transferor. The option given by Amba Dan ought not to have been given effect to by the Board of Revenue because the lands sold to the petitioners have got encumbrances on the land. The Revenue Authority ought to have asked the land-holder first to surrender his unencumbered land and when such land is not available then encumbered land can be surrendered and the holder of such encumbered land will be able to get compensation from the transferor. In my opinion, the argument, though apparently very attractive, is without substance. The word "encumbrance" has not been defined in the Act of 1973 or the Rules made under the Act. Etymologically "encumbrance" means a burden or charge upon property. In the Act, the word "encumbrance" has been used with special reference to the land of a holder and in view of the principles laid down in *Badrilal's* case, it may also referred to the land of a transferee though such transfers may not be recognised under the provisions of the Act of 1973. However, the word "encumbered" as used will not apply or relate to a land of a transferor who is not a holder of land to which the ceiling proceedings apply. In other words encumbrance of land of a transferee of a third party will not be relevant for the purpose of applying the principles as laid down in *Badrilal Vs. State of Rajasthan and Others*, I may refer to a single Bench decision of this High Court which is of all fours of this case. In civil writ petitions 4023 to 4026 and 3905 of 1988, *Rood Singh and others v. State of Rajasthan and others* (decided on March 11, 1997), the facts were that the petitioners were not the purchasers of the land from the holder-Jabbar Singh or his predecessor-in-title against whom the ceiling proceedings were started and the petitioners could not lay claim u/s 30-E regarding the lands in question. It was held that the encumbered land has reference to the land encumbered at the hands of holder or his predecessor-in-title. The third party interest must be created either by the holder or by his predecessor-in-title. In the instant case also the holder of land was Amba Dan. Admittedly, the petitioners are not transferees of the said Amba Dan. Chandi Dan is the transferor of the land which came to the petitioners. Thus no interest or title in regard to encumbrance on the land was created in favour of the petitioners by the transferor or holder of land under the ceiling net. The petitioners are holding land transferred to them by a third person. Hence they cannot claim any right on the basis of encumbrance

created by Chandi Dan as regards the option exercised by Shri Amba Dan.

15. I also do not find any substance in the argument of learned counsel for the petitioners that the Board of Revenue was not competent to accept the option submitted by Shri Amba Dan before it where the compromise was attested. The Board of Revenue, being an appellate authority in respect of the matters decided by the Authorised Officer, can exercise the powers which can be exercised by the lower authority.

16. Regarding review, it may be stated that since I have already held that the petitioners had no locus standi to challenge the option exercised by Shri Amba Dan and further that they were not entitled to any notice in respect of such proceedings, they had also no right to file a review petition before the Board of Revenue. The Board of Revenue has, therefore, committed no error in dismissing the review petition filed by the petitioners on the ground that the petitioners had no locus standi to file the same and secondly u/s 229 of the Rajasthan Tenancy Act, review can only be done either by the Board of its own motion or on the application of a party to a suit or proceedings. Obviously the provisions contained in Section 229 of the Tenancy Act have excluded third party from availing the remedy of review. u/s 229 only two authorities can avail the remedy of review. The Board of Revenue can suo motu exercise the power of review or it can be exercised by any of the parties to a suit or proceedings. Obviously the petitioners, being a third party, had no right to file the review petition.

17. Learned counsel for the petitioners lastly submitted that the petitioners may be allowed the right to apply for the allotment of surplus land under Rule 17 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules or any relevant land. The petitioners can exercise this right in accordance with law.

18. No other point survives for determination.

19. For the above reason, the petitions have got no merit and are hereby dismissed with costs.