(2015) 07 RAJ CK 0192

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4606 of 1999

Mangibai APPELLANT

Vs

The State of Rajasthan and Others RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Citation : (2015) 07 RAJ CK 0192

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Sanjay Mehrishi, for the Appellant; Dharmendra Pareek, Addl. G.C. and Mahipal Kharra on behalf of Sanjay Tyagi, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J—This writ petition has been filed by the petitioner, Mangibai assailing the orders dated 25.07.1989 and 02.02.1994 passed by Additional Collector(Ceiling), Kota; judgments passed by Board of Revenue for Rajasthan, Ajmer (for short ''the Board of Revenue) dated 10.04.1991, 16.03.1994 and 12.02.1996.

2. Facts of the case are that petitioner''s mother Smt. Kalyanibai W/o. Prabhulal Brahmin resident of Village Kotri Tehsil Sangod, District Kota held in her Khatedari 136 Bighas 1 Biswa of land in Village Kotri Tehsil Sangod, District Kota on 01.04.1966, i.e. appointed date, from which the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955 (for short ''the Old Ceiling Law'') were enforced. The petitioner''s mother Smt. Kalyanibai submitted her declaration under Rule 9 of the Rajasthan Tenancy(Fixation of Ceiling on Lands) Government Rules, 1963 (for short ''the Old Ceiling Rules'') in the office of Sub Divisional Officer, Ramganj Mandi. On receiving report of Tehsildar Sangod, the SDO, Ramganj Mandi served a notice under Rule 14 of the Old Ceiling Rules on Smt. Kalyanibai. SDO, Ramganj Mandi vide judgment dated 08.06.1971 recorded finding that Smt. Kalyanibai held in her Khatedari 136 Bighas and 1 Biswas of land which was equivalent to 36.20 standard acres of land. After allowing Smt. Kalyanibai to

retain 30 standard acres of land, 6.20 standard acres of land was declared surplus and it was directed that a notice be issued to Smt. Kalyanibai requiring her to submit her option as to which land did she desire to surrender. Thereafter, Smt. Kalyanibai filed review petition before SDO, Ramganj Mandi stating that a clerical mistake had been committed in calculating the standard acres of 136 Bigha and 1 Biswa of land which could be worked out as 34.59 standard acres and the same had been wrongly calculated as 36.20 standard acres. SDO, Ramganj Mandi vide judgment dated 13.08.1971 accepted the review petition and held that standard acres of 136 Bighas and 1 Biswa of land of Village Kotri were equivalent to 34.59 standard acres and after allowing Smt. Kalyanibai to retain 30 standard acres of land, 4.59 standard acres of land was declared surplus. But, since this constituted a fragment of holding, she was allowed to retain the same under Section 30-I(2) of the Old Ceiling Law. Thus, no land of Smt. Kalyanibai was ordered to be acquired.

3. Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short ''the New Ceiling Law'') came into force w.e.f. 01.01.1973. Section 15(2) of the New Ceiling Law authorises the State Government to reopen a case decided under the Old Ceiling Law if the State Government is satisfied that the ceiling area in relation to a person as fixed under the Old Ceiling Law has been determined in contravention of the provisions of the Old Ceiling Law. During the year 1979, the Collector, Kota submitted Ceiling case of Smt. Kalyanibai decided under the Old Ceiling Law by the Sub Divisional Officer, Ramganj Mandi vide judgment dated 13.08.1971 to the State Government for reopening the same under Section 15(2) of the New Ceiling Law. Deputy Secretary, Revenue Ceiling Department, Government of Rajasthan, Jaipur served a notice on Smt. Kalyanibai who submitted her reply. After hearing both the parties, Deputy Secretary vide judgment dated 29.11.1980 reopened the ceiling case of Smt. Kalyanibai and authorised Additional Collector, Baran to decide the same. Subsequently, the case was transferred to Additional Collector(Ceiling), Kota. On receiving the record of the case, the Additional Collector(Ceiling), Kota issued a notice to Smt. Kalyanibai. In the meantime, Smt. Kalyanibai expired as such the petitioner, who is daughter of Smt. Kalyanibai, was impleaded as her legal representative in that case and a notice was issued to the petitioner. Additional Collector (Ceiling), Kota held that after deducting the lands which had been sold by Smt. Kalyanibai through registered sale deed prior to appointed date, i.e., 01.04.1996, deceased Kalyanibai had held in her khatedari 136 Bigha and 1 Biswa of land equivalent to 36.81 standard acres of land in village Kotri and 5 Bighas and 6 Biswas of land equivalent to 1.50 standard acres in Village Laxmipura. It was further held that deceased Kalyanibai had in all held in Village Kotri and Laximipura 141.07 standard acres of land, which were equivalent to 38.31 standard acres. After allowing deceased Smt. Kalyanibai to retain 30 standard acres of land for a family of three members, 8.031 standard acres of land was declared as surplus by Additional Collector(Ceiling), Kota vide judgment dated 25.07.1989. It was further held that from the perusal of judgment dated 23.08.1978 passed by

Additional Collector, Kota in the case under the New Ceiling Law, 25 Bigha 14 Biswas of land of Smt. Kalyanibai had been declared as surplus which was modified by the Additional Collector, Kota on appeal and only 8 Bighas and 1 Biswa of land was declared surplus under the New Ceiling Law as such it was ordered that out of 8.031 standard acres of land which was declared surplus under the Old Ceiling Law 8 Bighas and 1 Biswa of land which had been acquired in proceedings under the New Ceiling Law be adjusted and the remaining land will be acquired from the petitioner. Being aggrieved, the petitioner filed appeal before the Board of Revenue which vide judgment dated 10.04.1991 accepted the appeal and modified the judgment of Additional Collector(Ceiling), Kota and deducted 4.89 standard acres of land out of the holdings of 8.31 standard acres and held that only 3.42 standard acres of land was surplus. However, the Board of Revenue remanded the case to Additional Collector (Ceiling) Kota to make an enquiry under Section 30-I (2) of the Old Ceiling Law as to whether the surplus land was a fragment and if so, whether the fragment could be utilised for the consolidation of a holding smaller in size than the ceiling area applicable to such holdings. It was further directed that if it is found that the fragment could not be so utilised the assessee will be allowed to retain it and if it was found that the fragment could be so utilised, the assessee will have to surrender it.

4. Pursuant to judgment of Board of Revenue, the petitioner filed her option before Additional Collector(Ceiling) Kota on 04.09.1991. Thereafter, the same was sent to Tehsildar Sangod for his report who submitted his report on 03.07.1993. The Additional Collector(Ceiling), Kota vide judgment dated 02.02.1994 declined to give the petitioner the benefit of retaining 10 Bigha and 1 Biswa of land as a fragment under Section 30-I(2) of the Old Ceiling Law. The petitioner again being aggrieved filed an appeal before the Board of Revenue which was dismissed vide judgment dated 16.03.1994. Thereafter, review petition was filed by the petitioner which was allowed by the Board of Revenue vide judgment dated 12.02.1996 directing that Board of Revenue''s judgment dated 10.04.1991 be complied with and only 3.42 standard acres of land be acquired from the petitioner. However, the Board of Revenue did not give any direction about allowing the petitioner to retain 3.42 standard acres of land as fragment while allowing the review petition. Hence, this writ petition has been filed by the petitioner.

5. Mr. Sanjay Mehrishi, learned counsel for the petitioner has argued that judgment of the Board of Revenue suffers from arithmetical errors as well as fragmental errors. The Board of Revenue in the review petition filed by the petitioner has not fully appreciated the matter. The Board of Revenue vide its earlier judgment dated 10.04.1991 held that out of 8.31 standard acres of land 4.89 standard acres have already been resumed thus only 3.42 standard acres of land remains to be resumed. It was further held that total surplus land was 18.12 bighas while fragment is up to 15 bighas only. Therefore, the balance land can be allotted to any other landless eligible person in accordance with law. In the review petition, Board of revenue narrated that the petitioner had already

earlier surrendered 8 Bighas and 1 Biswa land equivalent to 1.69 standard acres, therefore, 3.42 standard acres of land was to be acquired from the petitioner.

6. Learned counsel for the respondents have opposed the writ petition and submitted that the land which has been declared surplus is not fragment within meaning of Section 30-I(2) of the Old Ceiling Law. The Courts have categorically held that the land declared surplus can be used for allotting the same in favour of landless persons. The land can be exempted from acquisition, which by way of fragment if the same cannot be utilized for allotment to the landless persons. In the present case, the land which has been declared surplus can very well be utilized for allotment to landless persons. Learned counsels for the respondents have therefore submitted that this writ petition has no force and the same is liable to be dismissed.

7. Perusal of the earlier order dated 10.04.1991 passed by the Board of Revenue indicates that after deducting surrendered land of 4.89 standard acres, only 3.42 standard acres land was required to be resumed. Therefore, the matter was remanded back to Additional Collector(Ceiling), Kota to make an inquiry whether it was a fragment and if so whether the fragment can be utilised for the consolidation of a contiguous holding smaller in size than the ceiling area applicable to such holding. Board of Revenue has thus expressed prima facie view that 3.42 standard acres of land may be a fragment. In the judgment dated 16.03.1994, the Board of Revenue, however, has examined the matter with reference to total land of 8.31 standard acres sought to be resumed by the State Government. Total excess land was thus held to be more than 18.12 Bighas while fragment was held up to 15 Bighas only. It was thus held that this much of land can be allotted to any landless eligible person. In the review petition, the Board of Revenue has clarified this calculation by holding that surplus land to be acquired from the petitioner would come to 3.42 standard acres and not 18.12 Bighas. However, no finding has been recorded by the Board of Revenue as to whether this much of land would be fragment because Board of Revenue decided the main case on 16.03.1994 holding that the land in question is not fragment as the excess land is more than a fragment i.e., 18.12 Bighas while fragment is upto 15 Bighas only. Thus, the Board of Revenue is required to re-examine the matter to arrive at a conclusion whether land measuring 3.42 standard acres would be a fragment and it would be available for allotment to any other landless eligible person.

8. In view of above, writ petition is allowed. Orders dated 16.03.1994 (Annexure-5) and 12.02.1996 (Annexure-6) passed by the Board of Revenue are quashed and set aside. Matter is remanded back to Board of Revenue to decide it afresh after hearing the parties within a period of six months from the next date. Parties are directed to appear before the Board of Revenue on 10.08.2015.