(2006) 10 RAJ CK 0063

In the Rajasthan High Court

Miththu Singh APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 11-10-2006

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 82, 9

Citation : (2007) 2 RLW 995

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—Heard learned Counsel for the parties.

2. The learned in question, shown as ''Gair Mumkin Rasta'' was converted into the category ''Barani'' and allotted to the petitioner by the Allotment Committee on May 31,1971. The petitioner thereafter was recorded as Khatedar of the said land in revenue records, and started cultivating the same. The respondents No. 2 to 8 on August 6,1996 i.e. after 25 years and 6 months filed application for quashing the allotment. The Additional District Collector Bharatpur vide order dated May 16, 1997 allowed the application and made reference u/s 82 read with Section 9 of Rajasthan Land Revenue Act, 1956 (for short ''1956 Act'') to the Board of Revenue (for short ''Board''). The reference was allowed by the Board vide order dated September 8,1997 and quashed the allotment made in favour of petitioner on May 31, 1971. Against this order of the Board that the instant writ petition has been preferred by the petitioner.

3. The State of Rajasthan submitted reply to the writ petition with the averments that since the land was recorded as Gair Mumkin Rasta it could not have been available for the allotment. It was pleaded that the category of land could have been changed only by District Collector and Sub Divisional Officer has no jurisdiction to change the category of land.

4. Division Bench of this Court in Anandi Lal v. State of Rajasthan 1996 DNJ 100)

indicated that to permit exercise of revisional powers under sections 82 and 232 of the Rajasthan Land Revenue Act, 1956 (for short'' 1956 Act'') after unreasonable delay would amount putting imprimature of the courts on the unreasonable and arbitrary exercise of powers. In Mangi Lal and Others Vs. State of Rajasthan and Others, it was however observed that where order has been obtained by fraud, the power of reference can be exercised even after the unreasonable delay.

5. In State of Rajasthan v. Teja 2005 (2) WLC 53 indicated in para 10 thus:

While it is true that the subject transfer is in violation of Section 42-B of the Act of 1955 but that, in itself, is not sufficient. As the respondent has acquired tenancy khatedari rights and continued in possession of the land for number of years, his rights cannot be called in question after unreasonable delay in absence of a positive case of fraud on account of collusion between the public officer and the private party. The Collector before invoking the revisional power, has not recorded any reasons to the effect that illegality in transfer as a consequence of fraud between the public officer and the private party has suffered (sic) public loss. In our view, the Board of Revenue has committed error in accepting the reference made by the Collector without satisfying the prerequisites. Learned Single Judge has rightly set aside the order of the Board of Revenue.

6. It is contended by learned Counsel for respondents that the Sub Divisional Officer has no jurisdiction to convert the category and since obvious manipulation has been perpetrated, the Board has rightly setaside the allotment Reliance is placed on Jai Narain Vs. The Board of Revenue and Others, , State of Rajasthan Vs. The Board of Revenue and Others, and Raju Ram v. State of Rajasthan 2000 (1) RLR 326.

7. Having closely analysed the material on record. I do not find it a case where manipulation has been perpetrated in the record. It also appears that arguments in regard to manipulation and collusion was not advanced before the Board. The order of allotment does not appear to be obtained by fraud and thus act of exercising revisional power after unreasonable delay was unjust, arbitrary and unreasonable. Although Sections 82 and 232 of the Rajasthan Land Revenue Act, 1956 do not provide for the period of limitation, but concept of exercise of power in a reasonable manner inheres with it the concept of exercising the same within a reasonable time and if the power is not exercised within reasonable time, the invocation of the power after inordinate delay and the exercise of the same after unreasonable length of time would be illegal and void.

8. For these reasons, I allow the writ petition and set aside the impugned orders dated May, 16, 1997 of Additional Collector Bharatpur and September 8, 1997 of the Board. There shall be no order as to costs.

