(2015) 03 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 778/2006

Mool Singh and Others — APPELLANT

Vs

B.O.R., Ajmer and Others — RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Hindu Adoptions and Maintenance Act, 1956 — Section 12
Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(2)
Rajasthan Tenancy Act, 1955 — Section 40

Citation : (2015) 03 RAJ CK 0050

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : J.L. Purohit, Senior Advocate assisted by Ajay Purohit, for the Appellant; O.P. Boob, Government Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioners aggrieved against the judgment dated 15.12.2005 passed by the Board of Revenue, Ajmer (''Board''), whereby the appeal filed by the petitioners against the judgment dated 23.1.2001 passed by the Additional Collector (Ceiling), Pali has been rejected.

2. The facts in brief may be noticed thus : proceedings were initiated in the name of Daulat Singh, Prithvi Singh, Sardar Kanwar W/o Late Shri Jalam Singh and Chandan Singh under Chapter III-B of the Rajasthan Tenancy Act, 1955 (Old Ceiling Law). The returns were filed and it was claimed that the holders were in possession of 432 Bigha land. The ceiling authority by its order dated 20.4.1971 came to the conclusion that their were four separate families and members of family were more than ten and as such, the land being held by them was not beyond the ceiling limit and consequently, dropped the proceedings.

3. Whereafter, it appears that under the provisions of Section 15(2) of Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (''the Act), proceedings

were reopened and by order dated 8.3.1982, the State Government referred the matter to the Additional Collector for re-examining the same. The fundamental reason for the reopening was indicated that the assessees Daulat Singh, Prithvi Singh and Late Shri Jalam Singh were shown to have gone in adoption to Sultan Singh, Gordhan Singh and Bakhtawar Singh respectively and on account of going in adoption, the rights of person in the original family ceases and enquiry in this regard has not been done.

4. The Additional Collector by his order dated 31.3.1987 came to the conclusion that with the adoption, under the Hindu Law the person becomes entitle to the properties of the family, in which he goes in adoption and all his rights in the natural family comes to an end and as the assessees were co-tenant and went in adoption and only Chandan Singh remained in the family of Samander Singh, his natural father, the entire land would be assessed in the hands of Chandan Singh and found him to be in possession of 42.40 standard acer excess land.

5. Feeling aggrieved, the assessees/their legal representatives filed appeal before the Board and the Board by its order dated 21.4.1990 remanded back the matter to the Additional Collector to determine as to whether the lands were received by Prithvi Singh, Jalam Singh and Daulat Singh before going in adoption or subsequent thereto and if the same has been received before going in adoption whether they were entitled to hold the same after going in adoption.

6. On remand, the Additional Collector (Ceiling) by order dated 23.1.2001 came to the conclusion that no light was thrown on the date of adoption and as the adoption had taken place, the entire land was required to be assessed in the hands of Chandan Singh and held that he was in possession of 43.27 standard acer land in excess of the ceiling limit.

7. On appeal, the Board of Revenue by its judgment dated 15.12.2005 dismissed the appeal with finding that the Additional Collector has not committed any legal or factual mistake.

8. It is submitted by learned counsel for the petitioners that the Board committed grave mistake in dismissing the appeal filed by the petitioners. It was submitted that the re-opening was done under the Act, wherein under proviso to Section 15(2) of the Act, the proceedings were ex-facie barred and therefore, the entire proceedings initiated by the Additional Collector being void, the Board should have accepted the appeal on the said ground alone.

9. Reliance in this regard was placed on Division Bench judgment of this Court in Dhanraj and Ors. v. State of Rajasthan : 1995 RRD 115 and Kishan Singh v. Rajasva Mandal, Ajmer: 2006 WLC (Raj.) UC 322.

10. It was also submitted that the determination of the authorities based on the fact of adoption of Dalpat Singh, Prithvi Singh and Jalam Singh is ex-facie contrary to proviso (b) to Section 12 of the Hindu Adoption and Maintenance Act, 1956 (''the Act of 1956''), which provides for effects of adoption including the

fact that any property which vested in the adopted child before adoption shall continue to vest in such person subject to the obligation, if any, attached to the ownership of such property. It was submitted that on 1.4.1966, the land in question was standing in the name of all the four persons i.e. Dalpat Singh, Chandan Singh, Prithvi Singh and Sardar Kanwar W/o Late Shri Jalam Singh and under the provisions of the Act, it is only 1.4.1966, which is the date relevant and on 1.4.1966, the property was shown as 1/4th each in the name of the said persons, the ceiling area has to be determined accordingly and by any reasoning, it cannot be said that the land would be treated to belong to Chandan Singh alone on account of the other three brothers going in adoption.

11. It was submitted that even otherwise under Rule 17(4) of the Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963 (''Rules of 1963''), while determining the ceiling area, all the land held by undivided family, society etc., the share of a member of the family for a individual person in the land held by an HUF shall be deemed to be the extent of land which in case such share is held on the appointed date would have been allotted to such a person had such land been partitioned and therefore, the land being held by four persons cannot be assessed in the name of Chandan Singh alone.

12. It is submitted that the Assistant Collector and the Board having committed grave error of law, the order passed by them deserves to be set-aside.

13. Learned counsel appearing for the respondent-State vehemently submitted that the order passed by the Board does not call for any interference.

14. It is submitted that the objection about limitation was not raised before any of the authorities and the objection cannot be taken into consideration in absence of factual aspect, inasmuch as, under proviso to Section 15(2), it is the date of notice, which is relevant, regarding which in absence of any objection the said date has not come on record and therefore, the issue cannot be raised now.

15. It was further submitted that once the matter was remanded back by the Board by its order dated 21.4.1990, it was for the petitioners to prove the fact as to whether the land vested in the assessees before adoption or after adoption, regarding which no material was produced and therefore, it cannot be said that the Additional Collector committed any mistake.

16. It was further submitted that the very fact that despite remand the petitioners have failed to lead any evidence regarding the fact as to whether the land vested before or after the adoption clearly shows that they have something to hide and therefore, the Additional Collector and the Board were justified in coming to the conclusion that the land would vest in Chandan Singh alone and he was in possession of land in excess to the ceiling area. It was prayed that the writ petition be dismissed.

17. I have considered the submissions made by learned counsel for the parties.

18. So far as the objection regarding limitation raised by learned counsel for the

petitioners based on judgments of this Court in the case of Dhanraj (supra) and Kishan Singh (supra) is concerned, it would be relevant to refer to the provisions of Section 15(2) alongwith its proviso, which reads as under:--

"15. Power to reopen cases - (1).. (2)- Without prejudice to any other remedy that may be available under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final orders passed in any matter arising under the provisions repealed by section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter of evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open such decided matter and to decide it afresh in accordance with such repealed provisions:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of seven years from the date of the final order sought to be re-opened or after the expiry of 30th day of June, 1979, whichever is later."

19. The second proviso to Section 15(2) provides that no notice shall be issued after expiry of seven years from the date of final order sought to be re-opened or after the expiry of 30th day of June, 1979, whichever is later.

20. The final order sought to be re-opened in the present case is dated 20.4.1971 and therefore, the limitation in the present case would expire on 30th day of June, 1979. A look at the order Annex. 2 passed by the State Government dated 8.3.1982 though does not indicate any date of notice, however, the file number indicated on the order Annex. 2 reads as under:--

21. The indication which can be obtained from the said file number is that the proceedings were initiated in the year 1979. As to when the re-opening proceedings were initiated in the year 1979, the burden essentially lay on the petitioners to show that the same was initiated beyond the cut off date as indicated in the second proviso to Section 15(2). In the entire proceedings from the order dated 31.3.1987 till the order was passed by the Board on 15.12.2005, objection with regard to the proceedings being barred by limitation has not been raised and for the first time in the writ petition by way of ground (e), the plea was raised inter-alia indicating that as the proceedings were reopened vide order dated 8.3.1982, therefore, the re-opening was barred by limitation. Even as per the ground raised in the writ petition, it is clear that the relevant date for the period of limitation is not the order of re-opening, but it is the notice under Section 15(2) of the Act.

22. In view of the above, in absence of any specific plea, date of notice,

averment made before all the authorities below, merely based on judgment in the case of Dhanraj (supra) and Kishan Singh (supra), it cannot be said that the proceedings was barred under second proviso to Section 15(2) of the Act.

23. Coming to the finding recorded by the Additional Collector holding the land in the name of Chandan Singh alone, it is apparent from the order Annex.-1 passed under the Old Ceiling Law and the Jamabandi for the period samwat 2016 to 2020 that the land in question stood in the name of four persons as co-tenants i.e. Prithvi Singh, Sardar Kanwar, Daulat Singh and Chandan Singh. Not only this, it appears that even the revenue record indicated all the four persons as holding 1/4th share each and they were indicated as adopted sons of their respective adopted father as noticed hereinbefore.

24. There is substance in the submissions of learned counsel for the petitioners that it is the status as it exist on 1.4.1966, which is important for the purpose of determining the ceiling area and reference in this regard has been made to the notification dated 11.2.1966 notifying the date under Section 30E of the Old Ceiling Law, which reads as under:--

"Government of Rajasthan Revenue (B) Department

NOTIFICATION

No. F.6(9) Rev. B/64 dated Jaipur, the 11th Feb. 66

In exercise of the powers conferred by subsection (1) of 30-E of the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), and in supers session of this department''s notification No. F. 6(9) Rev. B/64, dated the 5th March, 1965, [as published in part IV_C of the Rajasthan Gazette, Extraordinary, dated the 8th idem.] the State Government hereby notifies the first day of April One Thousand Nine Hundred and Sixty Six A.D., as the date for the purpose of the said section in respect of all areas other than the areas covered by the Rajasthan Canal Project. Every land-holder and tenant in such areas who was, on the 25th of February, 1958, or on the 9th of December, 1959, or on the 15th of December, 1963, or who is, on the 1st of April, 1966, in possession of land in excess of the ceiling area applicable to him, should, within six months from the 1st of April, 1966, furnish to the Sub-Divisional Officer of the Sub-Division in which his holding or any part thereof is situate, a declaration of his holding and particulars of his family in accordance with rule 9 of the Rajasthan Tenancy (Fixation of Ceiling on Land) (Government) Rules, 1963.

By Order of the Governor Sd/- S.D. Ujwal Additional Chief Secretary to Govt. (Revenue)"

25. Further the Division Bench of this Court in Smt. Durga Devi and Ors. v. Board of Revenue and Ors. : 1997 RRD 501 held that the rights of parties with respect to the ceiling area have to be determined with respect to the notified date (1.4.1966) and not with respect to the date of decision of the case and if any land has been acquired by the person or the family after 1.4.1966, the same

cannot be included for determining the ceiling area.

26. In view of the fact that on 1.4.1966 itself, the assesses Sardar Kanwar W/o Late Shri Jalam Singh, Chandan Singh and Prithvi Singh were recorded as khatedars from before 1.4.1966, which fact has also been noticed by the Board, in their capacity as adopted child of their respective adopted fathers, the determination was required to be made by the Additional Collector in their status as indicated in the revenue record only and not by going back in the time to determine as to whether the land vested in the respective khatedars before they went in adoption or after adoption.

27. The entire basis which has been taken by the Additional Collector and which has been upheld by the Board appears to be totally misdirected, inasmuch as, the authority was admittedly not examining the ceiling case of Samander Singh, the father of Jalam Singh, Daulat Singh, Chandan Singh and Prithvi Singh and once the case was being examined in the hands of the person, who was indicated as khatedar on the relevant date i.e. 1.4.1966, it is not open for the authorities to thereafter doubt the credential as to how those persons were indicated except of course, if the case is of some transfers, which were prohibited under law, which is not the case of any of the parties in the present case.

28. The matter can also be examined from another angle as submitted by learned counsel for the petitioners with reference to the provisions of Rule 17(4) of the Rules of 1963, which reads as under:--

"17. Lands held by undivided family, society etc.-

(1) For the purpose of determining the ceiling area, all the lands held individually, by any member of a family, or jointly by some or all of the members of a family, shall be deemed to be held by the family.

(2) In calculating the extent of land held by a family or by an individual person, the share of the member of the family or of the individual person in the land held by an Hindu undivided family, shall be taken into account.

(3) In calculating the extent of land held by a family or by an individual person, the share of the family or of the individual person in the land held by a firm, society or association of individuals (whether incorporated or not) or by a company shall be taken into account.

(4) The share of a member of a family or of an individual person in the land held by an Hindu undivided family or the share of a family or of an individual in the land held by a firm, society or association of individuals (whether in-corporated or not) or by a company shall be deemed to be the extent of land which in case such share is held on the appointed date would have been allotted to such a member, person or family had such land been partitioned or divided, as the case may be, on such date; or which, in case such share is acquired in any manner whatsoever after the appointed date, would be allotted to such member, person or family if a partition or division were to take place on the date of determination

of the ceiling area."

29. Even in an extreme case, if it is taken that the land in question continued to remain joint qua all the four brothers and in view of provisions of Rule 17(4), the share of the member of family has to be determined by taking the share as if the land has been partitioned or divided on the appointed date i.e. 1.4.1966 and then also the situation would remain the same, inasmuch as, it thereafter cannot be said that the assessees were in possession of excess land.

30. The assumption of the Additional Collector regarding the fact that as Daulat Singh, Jalam Singh and Prithvi Singh had gone in adoption and were indicated as adopted in the revenue record even on 1.4.1966, the land in question would be assessed in the hand of Chandan Singh as he remained the only son of Samandra Singh, the said assumption is also contrary to the provisions of proviso (b) to Section 12 of the Act of 1956. As the property which has already vested in the adopted child before the adoption continuous to vest in such person subject to the obligation, if any, attached to the ownership of such property.

31. It would also be relevant that it is not even the case of the State that the land in question initially belonged to Samander Singh, which allegation/ statement/aspect is also totally absent and while ordering the re-opening by order dated 8.3.1982, it has only been indicated that no enquiry in this regard has been held, which does not suffice for the purpose of coming to a conclusion contrary to the material available on record i.e. the jamabandi for the relevant period.

32. So far as the submission made by learned counsel for the respondent that once the matter was remanded back by the Board on 21.4.1990, it was incumbent on the petitioners to prove the fact as to whether when the adoption took place and in absence whereof, the presumption would be drawn against the petitioners, is concerned, the fact that the plea and the ground sought to be raised by the State for denying and/or re-opening the ceiling proceedings itself is fundamentally incorrect, even if, no evidence was led by the petitioners, same cannot militate against the petitioners.

33. Besides the above even while remanding the case, it was directed that the Additional Collector was to determine as to irrespective of the fact as to whether the land was received by the assessees before adoption or after adoption, whether they were entitled to hold the land, the said aspect has not at all been considered by the Additional Collector and therefore, the orders passed by the Additional Collector, upheld by the Board cannot be sustained.

34. In view of the above discussion, the finding recorded by the Additional Collector as upheld by the Board that the entire land was liable to be assessed in the hands of Chandan Singh and he was, therefore, in possession of land in excess of the ceiling limit cannot be sustained, the writ petition filed by the petitioners is allowed. The order dated 23.1.2001 passed by the Additional Collector (Ceiling), Pali and judgment dated 15.12.2005 passed by the Board of

Revenue, Ajmer are quashed and set-aside.

35. No order as to costs.

