
(2002) 05 RAJ CK 0080
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2628 of 1990

Motilal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-05-2002

Acts Referred:

Transfer of Property Act, 1882 — Section 18

Citation : (2003) 1 WLN 197

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Arun Madan, J.—The fact concisely stated are that in ceiling\\\\\\infodata\\\\\\format\\\\\\Backlog_Work\\\\\\Manu_Insertion\\\\\\Rajasthan\\\\\\With_exe\\\\\\2002g proceedings initiated against Motilal (petitioner herein) in respect of his agricultural land situated in village Raithal, Tehsil Mangrol District Kota, (now in District Baran), 30 Bighas & 18 Biswas of his land was declared surplus vide order dt. 22.1.1979, thereby Motilal submitted option to surrender 30 Bighas & 18 Biswas of land out of Khasra No. 9 of his village Raithal, to which Mathuralal (respondent No. 5, herein) raised objection stating that he had purchased the land in dispute in the year 1958 and so it was an encumbered land. But, the Assistant Collector Baran, after having considered respondent No. 5's objections and heard the petitioner rejected the objections vide his order dt. 28.2.1981 (Ann.A), and directed the Tehsildar Mangrol to take possession of the land in dispute. Against order (Ann.A) rejecting objections, the respondent No. 5 preferred an appeal but it was dismissed by the Additional Collector (Ceiling) Kota vide order dt. 27.12.1982 (Ann.B), resulting in filing second appeal by the respondent No. 5 before the Revenue Board, which by its order dt. 25.8.1988 (Ann.C) accepted the second appeal while setting aside orders (Ann. A & B) of the Authorised Officer and the Appellate Authority (Ceiling) and accordingly the Asstt. Collector (Authorised Officer) was directed to acquire unencumbered land in lieu of the land in dispute

which stood transferred in favour of Mathuralal.

2. However, the petitioner preferred a review petition challenging order dt. 25.8.1988 (Ann.C) of the Revenue Board which allowed the review petition under order dt. 29.8.1989 (Ann.E) by quashing its earlier order dt. 25.8.1988 and thereby second appeal was directed to be reheard. Ultimately second appeal was reheard after affording opportunity of hearing to the petitioner but vide its judgment dt. 19.12.1989 (Ann.F), the Revenue Board allowed second appeal holding that Mathuralal ought to have been given opportunity of hearing in view of Section 12(3) and therefore, his appeal was maintainable and consequently, the position remained that orders of the Authorised Officer and the Ceiling Appellate Authority dt. 28.2.1981 & 27.12.1982 (Ann. A & B) stood quashed & set aside and resultantly the Revenue Board in its order dt. 19.12.1989 (Ann.F) directed the Authorised Officer to take proceedings in accordance with law for unencumbered land. Here again, review petition was preferred by the petitioner challenging second appellate order dt. 19.12.1989 (Ann.F) on the grounds that respondent No. 5's appeal was not maintainable as he had not assailed original assessment order of declaring surplus land. However, the Revenue Board by its order dt. 14.5.1990 (Ann. 4) dismissed petitioner's second review petition holding it as not maintainable. Therefore, the petitioner preferred this writ petition at hand assailing validity of second appellate order dt. 19.12.1989 (Ann.F) and order in review petition dt. 14.5.1990 (Ann.H).

3. This writ petition albeit was dismissed by this Court under its judgment dt. 5.7.1991, but the Apex Court remanded back under an order dt. 23.11.1992 in Civil Appeal No. 4946/1992 (arising out of SLP (Civil) No. 15256/1991 directing this Court to decide the question of validity of the transfer in favour of Mathuralal and thereafter decide the question if there was any surplus land with the appellant (Motilal) exceeding the ceiling limit. As per the Apex Court, this Court in earlier order dt. 5.7.1991, failed to determine the question whether the land transferred in favour of Mathuralal was valid transfer or not. Hence, fate of this writ petition in its second inning hinges on the crucial question as to whether transfer of the land in dispute made in favour of Mathuralal was valid or not.

4. After remand (supra) writ petition was allowed to be amended and according to which relief sought by the petitioner is to (i) quash & set aside order dt. 22.1.1979 (Ann.K) of the Asstt. Collector Baran to the extent it decided the question of validity of transfer in favour of the respondent No. 5; (b) declare 30 Bighas & 18 Biswas of land in dispute transferred by the petitioner in favour of the respondent No. 5 in the year 1958 as recognised u/s 30DD of Chapter IIIB of the Tenancy Act thereby to that extent the land is liable to be deducted from total holdings of the petitioner and thereafter the ceiling area be determined.

5. Admittedly, the land in dispute stood acquired from the petitioner as a result of declaring it as surplus land for ceiling purpose, under order dt. 22.1.1979 (Ann.K) and that being so, the petitioner has also sought direction to restore back its possession, with damages from 28.6.1990.

6. First of all, I must have a brief resume of the conclusions drawn by this Court in its earlier order dt. 5.7.1991 dismissing this petition. As found by this Court, though dispute between the parties was about validity of the transfer allegedly made in favour of the respondent No. 5 in the year 1958, but the fact remains that mutation of the land stood affected in favour of the respondent No. 5, who claimed himself as Khatedar of the land in dispute, inasmuch as nonetheless despite the fact of both the parties being serious over the controversy as to their rights over the suit land rather it cannot be ignored that the petitioner himself had referred to this transfer of land made in favour of the respondent No. 5 in the ceiling proceedings against him.

7. Concomitantly, this Court also held that no doubt, in view of Full Bench decision in *Kesha v. State of Rajasthan* RLW 1987 1, a transferee does not have a right of hearing, but the authorised officer ought not to have accepted option of the petitioner for surrender of encumbered land and while doing so, he had acted in clear violation of the provisions of Section 16(4) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (as interpreted in *Banwarilal Nagpal v. State of Rajasthan* RLW 1983 1 and therefore, this Court declined to restore an otherwise unlawful order i.e. order dt. 28.2.1981 of the Authorised Officer upheld by order dt. 27.12.1982 of the Ceiling Appellate Authority, because Section 16(4) of the Act, 1973 has an overriding effect on Section 18 and thereby the Authorised Officer must compel a person in whose case ceiling area is determined, to surrender unencumbered land in his possession and he cannot be permitted to surrender encumbered land while retaining unencumbered land, otherwise any other interpretation would defeat the object of the Act 1973 so also scheme of Section 21 with Rule 17 of the Rules 1973.

8. Before dwelling upon the fateful question remanded by the Apex Court, I must hasten to add at the out set that this writ petition arises out of objections raised by the Respondent No. 5 against the option filed by the petitioner to surrender the land in dispute (30 Bighas & 18 Biswas) which was declared as surplus under order dt. 22.1.1979 in ceiling proceedings. This petition does not pertain to revenue suit proceedings so as to decide rights of the parties under tenancy law. That being so, Shri G.K. Garg, learned Counsel for the petitioner has fairly & frankly admitted that the order dt. 22.1.1979 was not under challenge before this Court in this writ petition before remand by the Apex Court and it has been assailed in this amended writ petition to the extent that the Authorised Officer has decided the question of transfer of land to the respondent No. 5 under order dt. 22.1.1979 against the provisions of Section 30D & 30DD of Chapter IIIB of the Tenancy Act.

9. In this view of the matter, I must restrict to deal with & decide the fateful question as remanded by the Apex Court as to the validity of transfer/recognition of transfer of the land in dispute made in favour of Mathuralal by Motilal (petitioner), only in the light of ceiling law and not beyond it, because the impugned transfer of the land in dispute made since long ago in the year 1955

with its possession so also having already been mutated in favour of the transferee, has never been challenged by the transferor (Motilal petitioner) in any revenue suit except in his reply to the objection of transferee (Mathuralal) in this ceiling proceedings.

10. Above all, even the petitioner in this writ petition so also in his declaration or reply to notice issued upon initiation of ceiling proceedings before passing order dt. 22.1.1979 (Ann.K) has come with an admitted case that the land in dispute was sold by the petitioner to the respondent No. 5 in the year 1958 and such a transfer was a valid and bonafide even if it were without registration. Here I must refer the admission made by the petitioner in para 7-D of his amended writ petition as under:

In any case if the transfers are found in violation of the provisions of the law, which has been made, such a sale though not backed by a registered document, cannot be set at naught by the petitioner on account of the bar contained u/s 53-A of the Transfer of Property Act and further on account of adverse possession commenced. The transfer was made in 1958 by actually accepting money and transferring possession. Thus looked from any point of view the transfer is valid and should be recognised.

11. It is the case of the petitioner that as having already raised technical grounds in reply to the respondent No. 5's objection, the mutation made in favour of the respondent No. 5 for the transferred land in dispute, was null and void as it was based on the possession thereof and so the land could not be said to be encumbered and further that this impugned transfer having taken place in the year 1955 i.e. much before the Tenancy Act came into force, is recognisable u/s 30DD of Chapter IIIB of the Old Ceiling Law, and not u/s 30D.

12. Section 30D of Chapter IIIB of the Old Ceiling Law provides for certain transfers not to be recognised for fixing ceiling area u/s 30C. Section 30DD of Chapter IIIB of the Old Ceiling Law provides for certain transfers to be recognised. Hence, this Court has to adjudge the validity of the impugned transfer of the land in dispute only for the purpose of Chapter IIIB of the Old Ceiling Law and recognition of the transfer for determination of ceiling area, without adjudging the merit or demerits of the mutation made since long back in favour of the respondent No. 5 on the basis of the impugned transfer, because adjudication as to the validity of such transfer under the Ceiling Law, old or new, is very restricted to the extent of its recognition under Chapter IIIB of the Old Ceiling Law in view of the provisions of Section 30E, under which the assessing authority is bound to enquire into the fact as to whether the lands being acquired are encumbered or not, as he is to acquire encumbered land only.

13. It is trite law that transferred land is encumbered land though such transfer is not recognised by the ceiling law and thus the assessee must surrender unencumbered land. Further the transferor i.e. assessee must produce evidence to get the transfer recognised. The onus to prove transfer lays on the assessee

and not on others. However, in order that a transfer is to be recognised either u/s 30D or 30DD it should be valid and effected by a registered document only. In the instant case, once it is self admitted case of the petitioner, referred to in the quoted para of the amended petition, so also as is wrung out from the pleadings apparent on the documents annexed to this petition, the impugned transfer allegedly made orally, having not been effected by a registered instrument, after 25.2.1958 (appointed day) otherwise than by way of partition, but by way of sale or in favour of Mathuralal who was landless person shall be deemed to be a transfer calculated to defeat the provisions of Chapter IIIB of the Old Ceiling Law, which is covered by Section 30D and not Section 30DD. Thus viewed, I find no merit in any of the contentions raised by Mr. Garg to disturb or interfere with the order dt. 22.1.1979 of the Assistant Collector Baran (Ann.K) which has been assailed belatedly for the first time in the amended writ petition filed on 26.7.1993 nor it had been challenged earlier either before the Revenue Appellate Authority or in revision or review petitions or second appeal before the Board of Revenue, which cannot be allowed at this stage though by virtue of remand order of the Apex Court, I have also decided the validity of such transfer only to the extent of its validity and recognition under ceiling law.

14. I must reiterate that the transferor (assessee) has to establish under old or new ceiling law that a transfer made before 26.9.1970 and 1.1.1973 is bonafide and is not intended to defeat the provisions of the ceiling law, and that u/s 6 of the Act, 1973 (New Ceiling Law) only transfer made on or after 26.9.1970 has to be examined as to its bonafideness, because the new ceiling law does not authorise the officer to examine the validity of a transfer made prior to 26.9.1970. In the instant case, once the petitioner himself had referred to the impugned transfer of land made in favour of respondent No. 5, not only at the very outset in his declaration in ceiling proceedings but on the other hand, subsequently in his reply dt. 6.1.1981 to respondent No. 5's objection he went on assailing and disputing this very much transfer made in favour of Mathura Lal despite his own admission having knowledge of the factum of possession of this land in dispute since 1955, so also mutation having been made by Tehsildar Mangrol resulting into Khatedari rights acquired in favour of Mathuralal vide Intekal No. 72 dt. 22.4.1967. As is evident from reply dt. 6.1.1981 (Ann.L) of the petitioner to the objection filed by Mathuralal in the ceiling proceedings, the petitioner even went on saying that mutation No. 72 dt. 22.4.1967 itself is a null and void as it did not give any title or right to Mathuralal, and that apart Mathuralal did not produce sale deed in support of his assertion made in objection petition as to having purchased land in dispute for a consideration of Rs. 4,000/- and on the basis of his reply, the petitioner prayed that objection be dismissed. Even before this Court at the belated stage, on the basis of his reply (supra) to the respondent No. 5's objection, much stress has been laid that fact of transfer has been denied and that mutation was null & void because it was attested not on the basis of transfer but on the possession since 1955, which did not create any title or title in favour of the respondent No. 5. Be that as it may,

in the facts and circumstances of the case, it is crystal that the petitioner has been changing his stand at his whims with a view to take somersault in the revenue as well as ceiling proceeding as per relevant law so as to get the benefit. However, his conduct is established that at the very inception of ceiling proceedings he fortified the averments of affidavit of Mathuralal by filing his own affidavit supporting that Mathuralal has been in possession over the land in dispute since 1955 but later on after passing of the assessment order under ceiling law, he backed out of his case of transfer of land in dispute. All these established that the impugned transfer was not bonafide and that being so not worthy of recognition as is the case of the petitioner herein, either under Old or New Ceiling Law and the varying stand taken by the petitioner is sufficient to hold the impugned transfer as not bonafide and not recognisable because such a transfer was calculated to defeat the provisions of Chapter III-B of the Tenancy Act, 1955 (Old Ceiling Law) and in this view of the matter, such a transfer cannot be held as recognised under ceiling law. Hence, no relief can be granted for quashing the order dt. 22.1.1979 (Ann. 7) of the Assistant Collector Baran to the extent he divided the question of validity of transfer in favour of Mathuralal, nor land measuring 30 Bighas & 18 Biswas acquired in the year 1979 can be restored back to the petitioner with damages from 28.6.1990. The impugned transfer is held to be covered u/s 30D of the Old Ceiling Law. As a legal corollary to the impugned transfer of land in dispute being not recognisable u/s 30DD of Old Ceiling Law such a transferred land covered u/s 30D is not liable to be deducted from total holdings of the petitioner.

15. Before parting with, I am prone to endorse the view based, on settled ceiling law that Section 18 confers a right on the holder of a land to select any land within the ceiling limit which he wants to retain in his possession but the proviso to Section 18(1) of the Act, 1973 (New Ceiling Law) places some restrictions on the exercise of this right of the assessee. Further, this proviso has to be read alongwith Section 16(4), because Section 16(4) begins with non-obstante clause. Thus, upon concomitant reading to two provisions of Sections 16(4) & 18 of the New Ceiling Law, the scheme of the ceiling law makes it crystal that although transfer of the land is not recognised and such transferred land will be considered as land of the transferor and thereafter surplus land would be declared but with regard to surrender of surplus land, the transferor is required to first surrender the unencumbered land, meaning thereby surrender of surplus land shall be made by the assessee (transferor) out of the land remaining with him after such unrecognised transfer, and the balance of surplus land is recoverable from such a transferee only in case of unencumbered land being not available and in that eventuality, the transferee will be paid the price out of amount of acquisition as payable to the transferrer (assessee). In this view of the matter, the authorised officer is required necessarily to compel the assessee or person in whose case ceiling area is determined, to surrender unencumbered land which is in his possession because he cannot be permitted to surrender encumbered land while retaining unencumbered land and in case otherwise interpretation, it will defeat

the object of 1973 Act (New Ceiling Law) as well as the Scheme of Section 21 thereof so also Rule 1). In the instant case, the authorised officer had committed an error of law in permitting the petitioner to surrender encumbered land i.e. transferred land in dispute made and which admittedly was in possession of Mathuralal since 1955 and not in possession of the petitioner. That being so, the authorised officer ought not to have accepted option of the petitioner for surrender of encumbered land which has been in possession of Mathuralal, and in doing so, the authorised officer acted in violation of provisions of Section 16(4) of the New Ceiling Law (Act, 1973). Hence, I find no error or illegality in the orders of the Board of Revenue dt. 19.12.1989 (Ann.F) or dt. 14.5.1990 (Ann.H).

16. Though the land was acquired by the State of Rajasthan from Mathuralal (respondent No. 5) but it was restored back to him on his application u/s 144 CPC in the year 1990 and thereafter the land measuring 30 Bighas 18 Biswas was acquired from the petitioner by the State on 28.6.1990 in view of acquisition of land under ceiling law.

17. As a result of the above discussion this writ petition being devoid of merit is dismissed with no order as to costs.