
(2009) 02 RAJ CK 0152
In the Rajasthan High Court

Mukhtiar Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 12-02-2009

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 10, 13, 15

Citation : (2009) 2 WLN 279

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—The petitioner has challenged the order dt. 23.07.1984 passed by the Additional Collector and the orders dt. 02.05.1991 and 13.01.1992 passed by the Board of Revenue. By the first order, the Additional Collector had declared certain land which belonged to Shri Kishan Gopal, respondent No. 4, as surplus land under the Rajasthan Acquisition of Ceiling on Agricultural Holdings Act, 1973 ("the Act", in short). Through, the second and third orders, the Board of Revenue had upheld the order dt. 23.07.1984.

2. The brief facts of the case are that Kishan Gopal was owner of ninety-five bighas and sixteen biswas of land in Keshorai Pattan and in few other villages. After coming into force of the Act of 1973, the proceedings were commenced against Kishan Gopal. However, vide order dt. 14.04.1976, the authorized officer dropped the proceedings against Kishan Gopal, on the ground that he did not hold any land in excess of the ceiling limit as prescribed by the Act. After the dropping of the proceedings, vide registered sale deed dt. 28.06.1980, Kishan Gopal, sold the land measuring fourteen bighas of land situated in Khasra No. 1471 to the petitioner. Similarly, he sold another patch of fourteen bighas of land situated in the same Khasra i.e., Khasra No. 1471 to the petitioner. Therefore, the petitioner bought twenty-eight bighas of land in Khasra No. 1471. Pursuant to the said registered sale-deed, the name of the petitioner was entered into the revenue record. Further, vide sale-deed dt. 19.02.1981, Kishan Gopal transferred

the remaining land, measuring six bighas and two biswas situated in Khasra No. 1471 and also transferred three bighas of land situated in Khasra No. 1461 to the petitioner. But, subsequent to the sale of land by Kishan Gopal to the petitioner, vide order dt. 25.05.1985, the State Government directed that ceiling proceedings against Kishan Gopal should be reopened u/s 15(1) of the Act. Consequently, the Additional Collector reopened the proceedings against Kishan Gopal. However, it is pertinent to point out that during the entire proceedings, the Additional Collector did not issue any notice to the petitioner. Yet, vide order dt. 23.07.1984, the Additional Collector directed that the land measuring seventeen bighas and ten biswas from khasra No. 1471 should be acquired as the land exceeds to ceiling limit. Since, the petitioner had already bought the land measuring seventeen bighas and ten biswas of land in Khasra No. 1471, obviously, he was aggrieved by the order dt. 23.07.1984. Thus, he filed an appeal before the Board of Revenue. However, vide order dt. 02.05.1991, the Board rejected the appeal ostensibly on the ground that their case was covered by the decision of the Hon'ble Full Bench of this Court given in Kesa and Ors. v. State of Raj. 1987 (1) RLR 449. The petitioner subsequently filed a review petition. However, vide order dt. 13.01.1992 the review petition was rejected. Hence, this writ petition before this Court.

3. Ms. Anita Agarwal, the learned Counsel for the petitioner, has vehemently argued that Sections 10, 11, 12 and 13 of the Act prescribe the procedure which needs to be followed by the Additional Collector before reopening the case u/s 15 of the Act. However, in the present case, the said procedure has not been followed. Secondly, in the order dt. 23.07.1984, the Additional Collector has clearly noted that the part of land was sold by Kishan Gopal to the petitioner and entries have been made in the revenue record. However, despite this, no notice was ever issued to the petitioner and an adverse order has been passed by the Additional Collector without giving an opportunity of hearing to the petitioner. Thirdly, u/s 23(2A), any person aggrieved by the decision u/s 15 has a right to file an appeal before the Board. It is precisely under this provision that the appeal was filed by the petitioner before the Board. Yet, while ignoring the said provision, the Board has relied upon the case of Kesa and Ors. (supra). According to the learned Counsel, the case of Kesa and Ors. (supra) arose under Chapter III-B of the Rajasthan Tenancy Act, 1955 (the Old Ceiling law) and not under the Act of 1973. Therefore, the said decision is totally inapplicable to the appeal filed by the petitioner. Lastly the order dt. 13.01.1982 has been passed in a most mechanical manner. Hence, it is unsustainable.

4. Mr. Zakawat Ali, the learned Dy. Government Advocate, has contended that Mr. Kishan Gopal had not produced any documentary evidence to prove the fact that the land had been sold by him to the petitioner. In absence of such an evidence, the Additional Collector was justified in not issuing any notice to the petitioner. Thus, he has supported the impugned orders.

5. We have heard the learned Counsel for the parties, have perused the

impugned orders and have examined the documents available on record.

6. The reopening of a case u/s 15 of the Act is bound to open up the Pandora's box. For, between the dropping the proceeding and the reopening of the case, third party's rights might be created. It is, in this view of the matter, that the legislature in its wisdom had enacted Sections 10, 11, 12 and 13 of the Act. Section 10 imposes a liability on the persons holding the land in excess of ceiling area to furnish certain information to the authorized officer. However, Section 11 clearly states that in case such a person fails to furnish the return u/s 10 or furnishes incorrect and incomplete return under this provision, the authorized officer may, by a notice, require such person to furnish the return or the additional 6 particulars, as the case may be. Section 11(2) of the Act further states that in case the person still fails to furnish the required information, then the authorized officer may obtain the necessary information in such manner as he thinks fit either by himself or through any other agency. Thus, the responsibility has been imposed on the authorized person to collect the information with regard to the possible existence of excess land. Section 12 imposes a responsibility upon the authorized officer to draw a draft statement in respect of each person holding the land in excess of the ceiling area. Sub-section (2) of Section 12 of the Act further states that the draft statement shall be served on the person concerned and on all other persons, who in the opinion of the authorized officer, are interested in the land to which such draft statement relates. Similarly, Section 13 of the Act requires publication of the final statement. The authorized officer is legally bound to prepare final statement and cause a copy of the same to be served on the person concerned and shall also cause it to be published for information of the general public in such manner as may be prescribed.

7. However, in the present case, despite the fact that case was reopened against Kishan Gopal. There is not an iota of evidence to show that a draft statement was prepared and a copy of the said draft statement was either served upon Kishan Gopal or upon the petitioner. Moreover, there is not an iota of evidence to show that the final statement was publicized. Yet, the entire case was reopened against Kishan Gopal. It is, indeed, trite to state that once a procedure has been laid down by a statute, it has to be followed in toto. Any deviation from the procedure would vitiate the proceedings. However, in the present case, the procedure under Sections 10, 11, 12 and 13 have been ignored. Thus, the proceedings before the Additional Collector is unsustainable.

8. Interestingly, the Additional Collector has, observed in his impugned judgment that according to the revenue records the land in question was sold to certain person. Even after noticing this fact, the Additional Collector did not issue any notice to the petitioner. It is, indeed, trite to state that any action that adversely affects the rights of a person, such a person has to be given an opportunity of hearing. But, in the instant case, without giving an opportunity of hearing, the impugned order dt. 23.07.1984 was passed behind the back of the petitioner.

9. According to the petitioner, he came to know about the said impugned order on 04.06.1987 when the Patwari came to acquire the land. Therefore, the petitioner filed his appeal u/s 23(2A) of the Act.

Section 23 is as under:

23. Appeals.-(1) The State Government or any person aggrieved by any decision or order of the authorized officer under Sub-section (3) of Section 12 [or Sub-section (3) 11B] or under Sub-section (3) of Section 19 or u/s 21 may, within thirty days of the date of decision or order, appeal to the Collector of the concerned district against such decision or order.

(2) The State Government or any person aggrieved by the decision of the Collector in appeal under Sub-section (1) may, within sixty days from the date of appellate order, appeal to the Board against such decision.

(2A) The Statement Government or any person aggrieved by the decision u/s 15 of the officer referred to in that Section any, within sixty days from the date of decision, appeal to the Board against such decision and the provisions contained in Sub-sections (3) to (6) shall mutatis mutandis apply to such appeal.

(3) The Collector or the Board may admit an appeal presented after the expiry of the period mentioned in Sub-section (1) or Sub-section (2), as the case may be, on being satisfied that the party concerned was prevented by sufficient cause from presenting it within the said period.

(4) On receipt of an appeal under Sub-section (1) or Sub-section (2), the Collector or the Board after giving the parties opportunity of being heard, shall;

(a) decide the case finally;

(b) remand the case; or

(c) take additional evidence or require such evidence to be taken by the authorized officer for the purpose of deciding the case finally.

(5) The Collector or the Board may stay the execution of any decision or order pending decision of the appeal.

(6) The decision or the order of the authorized officer shall, subject to the decision of the Collector or the Board in appeal, be final and shall not be called in question by any civil or revenue Court.

10. Section 23(2A) clearly bestows the right of filing an appeal on a person who is aggrieved by a decision u/s 15 of the Act. Since, the petitioner was aggrieved by an order passed u/s 15, he was entitled to file appeal before the Board of Revenue. The order dt. 22.05.1991 clearly reveals that the position of law has been overlooked by the Board. In fact, the Board has based its entire reasoning, for rejecting the appeal, on the case of Kesa and Ors. (supra). The Board has ignored the fact that the case dealt with Chapter III B of the Rajasthan Tenancy Act, 1955 and not under the Act of 1973. While the Chapter III-B of the Tenancy

Act did not give the right of appeal to a transferee, Section 23(2A) clearly bestows such a right. Therefore, the reliance placed by the Board on the case of Kesa and Ors. (supra) is clearly misplaced. Hence, the Board was not justified in rejecting the petitioner's appeal. A bare perusal of the order dt. 13.01.1992, also reveals that the said order has been passed in a mechanical manner.

11. In the light of the facts and circumstances narrated above, this Court has no other option but to quash and set aside the order dt. 23.07.1984, 02.05.1991 and 13.01.1992 and to remand the case back to the Additional Collector, Bundi for deciding the case de novo, in accordance with law.

12. With these observations, this petition is, hereby, allowed. There shall be no order as to costs.