
(1978) 02 RAJ CK 0019

In the Rajasthan High Court

Case No : Civil Special Appeal No"s. 47 and 49 of 1977

Nand Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-02-1978

Acts Referred:

Constitution of India, 1950 — Article 226, 39

Citation : (1978) RLW 198 : (1978) 11 WLN 272

Hon'ble Judges : M.L. Shrimal, J;M.L. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

M.L. Shrimal, J.—These two special appeals Nos. 47 and 49 of 1977, preferred by Nand Lal and Ganesh Lal u/s 18 of the Rajasthan High Court Ordinance 1949 are directed against the order, delivered in Civil wont petitions Nos. 1507 of 1976 and 1508 of 1976 on October 26, 1977; rejecting the writ petitions challenging the validity of the order of the Revenue Appellate Authority, dated August 27, 1976, hiding that the transfers of the surplus land, transfer of "which Was made after December 31, 1969, had had no right of hearing and consequently the appeals filed by them were not maintainable,

2. The facts giving rise to these special appeals are that the Sub-Divisional Officer, Kota, (vide his order, dated July 12, 1976) refused to recognize the transfer of land made in favour of the appellants as the sale-deeds were executed after December 31, 19 9, and the Sub-Divisional Officer further hold that Bakhtawar Singh was liable to surrender 339 76 standard acres of land, being surplus land He was given an option to select for his-self and his sons land within the ceiling which he wanted to retain. It was urged that the Khatedar-tenant while exercising the option given to him included in the list of he acids (rendered, Khasra No. 39, measuring 29 Bighas and 1 Bitwa, situated in village Chatinda, as also Khasra No. 38, measuring 13 Bighas & 1 Bhswa of land, situated in village Bhojpura, alleged to have been transferred to petitioners

Nandlal and Ganeshlal respectively. The petitioners raised an objection before the Sub Divisional Officer, but without any success. The appeal filed before the Revenue Appellate Authority also resulted in fiasco.

3. Aggrieved of the impugned orders, the petitioners instead of filing revision petitions before the Bard of Revenue, straightaway approached this Court, seeking redress under Article 226 of the Constitution. But both the writ petitions Nos. 1507 & 1508 of 1976 were dismissed by the learned Single Judge.

4. As both these appeals emerge out of the same order and as common questions of law and facts are involved, they are being disposed of by this common judgment.

5. The contention of learned Counsel, appearing on behalf of the petitioners, is that statutory authority, namely, the Revenue Appellate Authority, has acted in contravention of law in not interfering with or in not reversing the order of the Sub-Divisional Officer, accepting the encumbered land. Learned Counsel further urged that the requirement of the second proviso to Sub-section (2) of Section 30 of the Rajasthan Tenancy Act, 1955, is that where the person, surrendering excess lands, holds lands of which some are encumbered and some are not encumbered, he unencumbered lands shall so far as may be, be surrendered in preference to encumbered lands. It has also been submitted that at no stage of the proceeding any notice had been issued to the petitioners. Nonissuance of the notices to the transferee petitioners violates the principles of natural justice. Placing reliance on *Harnek Singh and Another Vs. The State of Punjab and Others*, learned Counsel argued that the petitioners were entitled to adequate opportunity to safeguard their interest under the proceeding, which culminated in adversely affecting their right to property.

6. The arguments advanced before the learned Single Judge were reiterated before us. All these points, reiterated before us, have been exhaustively dealt with by the learned Single Judge. The learned Single Judge has rightly observed that the decision in *Harnek Singh and Another Vs. The State of Punjab and Others*, dealt with the interpretation of Section 32-FF of the Pepsu Tenancy and Agricultural Land Act, 1955, and that there is no corresponding provision contained in Chapter III-B of the Rajasthan Tenancy Act, 1955. It is a decision passed on the special facts of that case and is of no avail to the appellants. A perusal of Section 30 of the Rajasthan Tenancy Act, 1955 reveals that the transfer made upto Dec. 31, 1969 in favour of agriculturists, donee incised in Rajasthan or in favour of Khatedar or sons or brokers, intending to take the procession of agriculturists and capable of cultivating lands personally and who had attained the age of majority on or before the said date, could be recognized. The Sub divisional Officer has rightly refused to recognize the transfers made in favour of the petitioners vide his order, dated July 12, 1976. The appellants have no grievance against the above order. Their grievance relates to the manner of exercise of option by the Khatedar tenant and its acceptance by the Sub-divisional Officer and non-interference in the said order by the Revenue Appellate

Authority

7. Now the questions, which need to be determined, are (i) what is the effect of not availing of the alternative remedy available to the petitioners; and (ii) whether the petitioners had any high of notice against accepting the option exercised by the Khatedar-tenant, Major Bikhtawar Singh

8 In Smt. Dal Kanwar Bai v. Ram Singh and State of Rajasthan^{1976 RRD 136}, a Single Bench of the Board of Revenue had set aside a senile order of the Sub-divisional Officer, accepting the surrender of land which was encumbered and as such the petitioners cannot be said to be correct in their submission that no useful purpose would have been served by filing a revision petition. The Rajasthan Tenancy Act i3 a se of contained Gote It provides for a complete machinery and recourse must by had to that machinery for redress and not to a petition under Article 226 of the situation It is not the begot of Article 226 of the constitution to convert this Court into an appellate of revision it Court. Whenever a litigant feels that revision it Court will not give him appropriate relief, there should be sorter thing more in a case to wan ant the entertainment of a petition under Article 226 of the Constitution, something going to the root of the jurisdiction of the Revenue Authorities, something to show that it would be case of palpable injustice to ask the transferee to adopt a remedy provided by the Act The effect of 42nd amendment. of the Constitution is that the High Court previously had the freedom to issue a high prerogative writ notwithstanding the existence of an alternative remedy, but it is now precluded from doing so because Article 226(3) of the Constitution provides that" no petition for redress of any injury referred in Sub-clause (b) or subclasses (c) of clause (1) she ail been retained if any other remedy for such redress is provided for by or under any other law for the time being in force." Reference in this connection may be made to Jai Hanuman Trading Co. Pvt. Ltd. Vs. The Commissioner of Income Tax, Patiala and Another,

9. As regards the petitioners" right to be heard, suffice it to say, that the transfers of the lands made by a Khatedar-tenant after December 31, 1969, cannot be recognized and they are rendered ineffective against the State Government. For the purpose of determining surplus land of the Khatedars, such transfers are required to be ignored. Chapter III-B of the Rajasthan Tenancy Act, 1955. and the Rajasthan Tenancy (Fixation of Ceiling on Land)(Government; Rules, 1963 made there under do not provide for the issuance of a notice to the transferees u/s 30.E(2) of the Rajasthan Tenancy Act 1955, a duty has been cast on the person holding land in excess of the ceiling area to make a report of such possession and surrender such excess land to the State Government and place it at the disposal of the Tehsildar within the local limits of whose jurisdiction such land is situated. Under Sub-section (4) of Section 30-E of the Rajasthan tenancy Act, 1955, the person (i.e.. the Khatedar) retaining the possession of the land after April 1, 1966, is excess of the ceiling area applicable to him, is deemed to be a trespasser liable to adjustment from such excess la id and to pay papacy in

accordance with Clause (a) of Sub-section (1) of Section 18 of the Rajasthan Tenancy Act, 1955. The petitioners are purchasers pending proceedings. They were bound by the result of the pending ceiling proceedings, between Khatedar Bakhtawar Singh and State Government, at the time of alleged sale by the Khatedar in favour of the purchasers. Where a transfer is not recognized, the land covered by such transfer has to be treated as land of the Khatedar, whose land is being acquired. Thus, it is manifest that the legislature by necessary implication excludes the right of trial for purchasers to be heard. The transferee is entitled to be reimbursed and the transferor is bound to restore to them the average obtained by him, they can also come to be reimbursed not under Rule 22 of the Rules of 1963, but of the compensation awarded by the State Government to the transferor in respect of such land u/s (3)-G of the Act. Thus, under the scheme of Chapter III-B of the Rajasthan Tenancy Act, 1955 the Legislature, by necessary implication, excludes the application of the principles of natural justice. The law is altered in favour of the transferees. In sum, they have no right of being heard.

10. In the Union of India (UOI) Vs. Col. J.N. Sinha and Another, the question regarding the principles of natural justice came up for consideration while dealing with the fundamental rule No. 56. Their Lordships, repelling similar contention, raised by the respondent in that case, observed as under:

It is true that if a statutory provision can be read consistently with the principles of natural justice, the Court should do so because it must be presumed that the legislatures & the statutory authorities intend to act in accordance with the principles of natural justice. But, if on the other hand, a statutory provision of itself expressly or by necessary implication excludes the application of any or all the rules of principles of natural justice then the Court cannot ignore the mandate of the legislature or the statutory authority and read into the concerned provision the principles of natural justice. Whether the exercise of a power conferred should be made in accordance with any of the principles of natural justice or not depends upon, the express words of the provision conferring the power, the nature of the power conferred, the purpose for which it is conferred and the effect of the exercise of that power.

11. A series of legislation has been gradually adopted and provided for land reforms and for acquisition of right, title and interest in land from the land holders and intermediaries. The motive behind the present Act is to ensure equitable distribution of agricultural land for securing the object that the ownership and control of material resources of the community are so distributed, as best to subserve the common good, as enshrined in Article 39 of the Constitution of India. The State acquires land under this Act under the ceiling provisions not for making propitious for fair distribution of land amongst land agriculturists and other persons but with a view to remove the disparity in the holdings of agricultural land and to increase agricultural production. That is why the Legislature, in order to acquire the surplus land, did not make any

provision under Chapter III B of the Rajasthan Tenancy Act or the Rules made three under regarding giving an of portent of being heard to the transferees, of the land whose transfers have not been recognized under the law of the land for ceiling purposes The principles of natural justice cannot be stretched to defeat the very purpose and object of the Act itself.

12. We find no infirmity in the orders of the learned Single Judge.

13. The two special appeals, being bereft of mercies are hereby dismissed in limine.