
(2011) 09 RAJ CK 0031

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4111 of 1996

Nena and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 16(4)

Citation : (2011) 09 RAJ CK 0031

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari, J.—This writ petition is directed against the common order dated 02.07.1996 as passed by the Board of Revenue for Rajasthan, Ajmer ("the Board") insofar relating to appeal No. 149/95/Ceiling/Pali.

2. By the impugned order dated 02.07.1996, the Board proceeded to decide two similar nature appeals together; and though the Board stated the result that the appeals were dismissed but in fact, they were allowed with quashing of the order dated 21.01.1991 as passed by the Collector, Pali.

3. By the said order dated 21.01.1991 the Collector had allowed the appeal filed by the present Petitioners against the order dated 29.03.1990 as passed by the Sub-Divisional Officer, Bali ("the SDO") in rejection of the objections against acquisition of the land held by the Petitioner in ceiling proceedings towards surplus land holding of the Respondent No. 6 (since deceased and represented by her legal representatives). The learned Collector disapproved the order so passed by the SDO and directed the Tehsildar that in the first place, unencumbered land of Respondent No. 6 ought be acquired. The Board, however, did not agree with the order so passed by the learned Collector and observed that ceiling proceedings against the Respondent No. 6 had already been finalised and the order of resumption dated 08.09.1989 had become final. The Board

observed that the transferee like the present Petitioners could, at the most, make a claim for receiving compensation that would be paid as a consequence of resumption process.

4. The learned Counsel for the Petitioner at the outset has pointed out that the impugned common order dated 02.07.1996 in relation to other appeal (No. 150/95/Ceiling/Pali) was separately challenged in another but similar nature writ petition, being CWP No. 251/1997; and the said writ petition has been allowed by this Court. The learned Counsel has placed for perusal a copy of the order dated 26.05.2009 as passed in said CWP No. 251/1997. The learned Counsel for the Respondents could not dispute the fact that similar writ petition arising out of the common order dated 02.07.1996 has been allowed by this Court. In the order dated 26.05.2009, this Court has disapproved the observations as made by the Board and has allowed the writ petition, inter alia with the following:

19. Keeping in view the position of law settled as above and the fact that the Respondent No. 6 was in possession of 69 1/2 big has of land at the time of initiation of the ceiling proceedings against him, in considered opinion of this Court, the State was under an obligation to enforce the obligation of the Respondent No. 6, the land holder to first surrender the surplus land out of the land in his possession in terms of provisions of Section 16(4) of the Act of 1973. Indisputably, while determining the ceiling area applicable to the Respondent No. 6 and so also while acquiring the land in possession of the Petitioners accepting the proposal of the Respondent No. 6 to surrender the Petitioners land in preference to the land in his possession, the Petitioners were not given any opportunity of hearing therefore, they were well within their right to raise objection in this regard before the authority concerned. The SDO had seriously erred in rejecting the objection raised on behalf of the Petitioners without due consideration and even ignoring the unequivocal provisions contained in Section 16(4) of the Act of 1973. In these circumstances, the District Collector was absolutely justified in entertaining and allowing the appeal against the order dated 29.3.90 passed by the SDO rejecting the Petitioners' objection and directing that first unencumbered land in possession of the Respondent No. 6 may be taken and thereafter if more land is required to be acquired then the land in possession of the transferees to the extent needed may be acquired.

20. It appears to be strange that while dismissing the appeal preferred by the Respondent No. 6, the Board of Revenue has quashed the order impugned dated 21.1.91 passed by the District Collector, Pali. However, a close scrutiny of the findings recorded by the Board of Revenue while passing the order as aforesaid it appears to be an inadvertent error that in operative portion of the order instead of the words "appeals are allowed", "appeals are dismissed" have been recorded. Be that as it may the finding recorded by the Board of Revenue that in view of the order dated 17.4.89 and the resumption of the land vide order dated 8.9.89 having become final, the decision of the Collector is of no consequence, is ex facie erroneous in view of the settled position of the law discussed above. The

Board of Revenue has seriously erred in holding that the land has been acquired according to the procedure laid down by law. As a matter of fact while passing the order impugned, the provisions as contained in Section 16(4) of the Act of 1973 have altogether been ignored by the learned Board of Revenue which has resulted in an erroneous finding being arrived at.

21. For the aforementioned reasons, in considered opinion of this Court, the order impugned passed by the Board of Revenue is not sustainable in eye of law and deserves to be set aside.

22. In the result, the writ petition succeeds, it is hereby allowed. The order impugned dated 2.7.96 passed by the Board of Revenue is quashed and order dated 21.1.91 passed by the District Collector, Pali is restored. The SDO, Bali is directed to recover the surplus land within a period of two months from the date of this order in accordance with order dated 21.1.91 passed by the District Collector, Pali, keeping in view the provisions of Section 16(4) of the Act of 1973. If the requirement of the surplus land is not satisfied by acquisition of the land in possession of the land holder at the time of initiation of the ceiling proceedings and remaining surplus land is required to be recovered from the transferees then, the appropriate order for acquisition of the land in possessions of the transferees shall be passed after giving an opportunity of hearing to the Petitioners and their likes. No order as to costs.

5. The position aforesaid directly and squarely applies to the present case too. Therefore, it does not appear necessary to discuss in detail the facts of the present case as this writ petition is required to be allowed in terms of the decision aforesaid. The discussion and adjudication therein, for all practical purposes, applies to the present case too.

6. Accordingly, this writ petition is allowed; the impugned order dated 02.07.1996 as passed by the Board is set aside; and the order dated 21.01.1991 as passed by the Collector, Pali is restored. The Sub-Divisional Officer, Pali shall take up the proceedings for recovery of surplus land within two months from the date of this order in accordance with the said order dated 21.01.1991 while keeping in view the provisions of Section 16 (4) of the Rajasthan Imposition of Ceiling on Agriculture Holdings Act, 1973. If the requirement of the surplus land is not satisfied with acquisition of the land in possession of the land holder at the time of initiation of the ceiling proceedings and remaining surplus land is to be resumed from the transferees, the appropriate orders in that regard shall be passed after giving an opportunity of hearing to the Petitioners and likes.

7. There shall be no order as to costs.