
(2009) 10 RAJ CK 0003
In the Rajasthan High Court
Case No : Civil Speical Appeal No. 923 of 2000

Net Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan Land Revenue Act, 1956 — Section 82, 83, 84, 85A, 9
Rajasthan Tenancy Act, 1955 — Section 19, 21, 221, 42, 9

Citation : (2009) 10 RAJ CK 0003

Hon'ble Judges : P.C. Tatia, J; Meena V. Gomber, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. This special appeal is against the order/judgment dated 21st July, 2000 passed by the learned Single Judge in SBCWP No. 2845/199 by which the learned Single Judge allowed the writ petition of the private respondents-writ petitioners on the ground that the controversy is covered by the decision given by this Court in SBCWP No. 3351/1995- Nand Lal v. State of Rajasthan and Ors. decided on 1st August, 1999, which happens to be reported in RLW 1999 (3) (Raj) 1893.

3. Brief facts of the case are that the agricultural land in question situated in the village falling in the jurisdiction of the Addl. Collector, Jalore bearing Khasra No. 936 measuring 16 bighas 14 biswas was initially recorded in the name of Seviya and Khetiya in the Khautoni Bandobasth from Samwat year 2009 to 2012. The said Seviya and Khetiya are the members of the Scheduled Caste and by virtue of Section 42 of the Rajasthan Tenancy Act, no land of member of Scheduled Caste could have been transferred or alienated in favour of the member other than the member of the Scheduled Caste. Be it as it may be, by virtue of mutation No. 83 dated 23rd May, 1961, the land was mutated in the name of Hazari Mal- the ancestor of the appellants. This mutation order was sought to be

challenged u/s 82 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the Act of 1956) through the Tehsildar, Jalore, upon which a case No. 330/92 was registered in the Court of Addl. Collector, Jalore. The Addl. Collector, Jalore vide order dated 8th April, 1994 refused to make reference to the Board of Revenue for setting aside the mutation No. 83 on the ground that though names of Seviya and Khetiya were recorded in the revenue record, but in Khasra Girdhawari of the relevant year 2012 to 2016, the name of father of the non-applicant No. 1 was already recorded. He also paid the land revenue which as proved by the rent receipts produced by non-applicant Mishri Mal S/o of Hazari Mal. The learned Addl. Collector was also of the view that after 30 years, there is no reason to make any reference for cancellation of the mutation order.

4. Not satisfied with the order dated 8th April, 1994 referred above, a petition was preferred before the Board of Revenue u/s 9 read with Section 21 of the Rajasthan Tenancy Act, 1955. This petition was allowed by the Board of Revenue vide order dated 13.8.1997 on the ground that originally recorded Khatedar-tenants Seviya and Khetiya were the members of the Scheduled Caste and the order passed by the Tehsildar u/s 19 could not have been passed by the Tehsildar as he had no jurisdiction to pass the order of mutation u/s 19 of the Rajasthan Tenancy Act. The Board of Revenue was of the view that delay cannot come in the way as it is social legislation to protect the rights and interest of the weaker section. The Board of Revenue vide order dated 13.8.1997 set aside the mutation order as well as the order passed by the Addl. Collector, Jalore dated 8th April, 1994.

Aggrieved against the said order of the Board of Revenue dated 13.8.1997, a review petition was preferred by the recorded Khatedar-tenants of the land in question who purchased the land by registered sale deed dated 16th April, 1994 much prior to initiation of proceedings for cancellation of mutation No. 83. The said review petition was allowed by the Board of Revenue vide order dated 4th March, 1999 and the order of the Board of Revenue dated 13.8.1997 was set aside.

Then the legal representatives of Seviya and Khetiya preferred the present writ petition No. 2845/1999 to challenge the order of the Board of Revenue dated 4th March, 1999 and learned Single Judge vide brief order dated 21st July, 2000 allowed the writ petition of the petitioners merely on the ground that the issue raised in the petition is covered in favour of the petitioners by the judgment of this Court delivered in the case Nand Lal (supra).

The recorded Khatedar-tenants, therefore, being aggrieved against the order/judgment of this Court dated 21st July, 2000 have preferred this special appeal.

Learned Counsel for the appellant vehemently submitted that the learned Single Judge proceeded on wrong assumption and wrongly held that the controversy involved in the present matter covered by the case of Nand Lal (supra). In Nand Lal's case the controversy was entirely different. In the present case, admittedly,

no opportunity of hearing was granted to the recorded Khatedar-tenants of the land in dispute before cancelling the mutation by which Khatedari tenancy has been recorded and names of Seviya and Khetiya have been removed. It is submitted that even if the order of mutation passed by the Tehsildar was illegal even then the fact situation is that ancestors of Mishrilal was already recorded as sub-tenant for the land in question and after 30 years from the date of passing of the mutation order, reference could not have been entertained by the Board of Revenue by exercising powers u/s 9 of Raj. Revenue Act and 221 of the Raj. Tenancy Act. If the order of the learned Single Judge will be maintained then it will perpetuate the illegality.

5. We considered the submissions of learned Counsel for the parties and perused the record.

6. By one judgment of Nand Lal's (supra) several writ petitions were decided as there was common question of law involved in all those matters. All those matters which were decided by the Nand Lal's case were in relation to some decrees obtained by the parties in relation to land belonging to the members of SC/ST which were sought to be challenged by reference on the ground of violation of Section 42 of the Rajasthan Tenancy Act. The Single Bench of this Court emphasized that in consonance with the public policy of preventing transfer of land from SC persons to non-SC persons as provided u/s 42(b) of the Rajasthan Tenancy Act, the State of Rajasthan being defendant in such suits should have been more conscious and if there is violation of Section 42(b) then this Court would not exercise either extra ordinary jurisdiction under Article 226 of the Constitution of India or its supervisory jurisdiction under Article 227 of the Constitution of India when substantial justice stands done in the matter obviously of setting aside all those transfer of land of SC to non-SC persons. A bare perusal of the said judgment will show that this judgment has nowhere dealt with the issue whether any order can be passed at the back of the Khatedar-tenant cancelling his mutation order resulting into cancelling of recording of his Khatedari rights in the revenue record. So far as law of protection of poor person or weaker section is concerned, there cannot be any sympathy for the persons who may take advantage of technicalities of law, but at the same time, it is settled law that there cannot be violation of principles of natural justice. In this case, admittedly, the Board of Revenue had passed the order dated 13.8.1997 at the back of the recorded Khatedar-tenants. At this juncture, it will be worthwhile to mention here that Board of Revenue while allowing the review petition has referred the Section 85A, which says that no order u/s 82 or u/s 83 or u/s 84 can be passed to the prejudice of any person unless such person had an opportunity of being heard. Even if there is no specific provision of law even then the principles of natural justice applies to all cases where the consequence of order is of civil nature and affecting the property or any right of the party.

7. In view of the above reasons, it appears that the learned Single Judge

proceeded on wrong assumption that the case is covered by the case of Nand Lal (supra).

8. At this juncture, it is relevant to mention here that the Board of Revenue in its impugned order also did not reach to the conclusion that the original Khatedar-tenants had no knowledge of the mutation order of the year 1961 and therefore, it will be absolutely unjust to set aside the order of mutation passed in the year 1961 after more than 30 years.

9. Consequently, this appeal is allowed. The order of the learned Single Judge dated 21st July, 2000 is set aside. The writ petition of the petitioners is dismissed. No order as to costs.