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**(2015) 05 RAJ CK 0183**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 4121/99**

Noor Khan

APPELLANT

Vs

Board of Revenue, Rajasthan and Others

RESPONDENT

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**Date of Decision :** 29-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Rajasthan Tenancy Act, 1955 — Section 15, 88

**Citation :** (2015) 05 RAJ CK 0183

**Hon'ble Judges :** Sangeet Lodha, J

**Bench :** Single Bench

**Advocate :** D.R. Bhandari, for the Appellant; O.P. Boob, Government Counsel, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Sangeet Lodha, J.—This writ petition is directed against order dated 24.8.93, passed by the Board of Revenue Rajasthan, whereby an appeal preferred by the petitioner against the judgment and decree dated 28.11.88 passed by the Revenue Appellate Authority (RAA), Jodhpur, affirming the judgment and decree dated 19.8.85 passed by the Sub Divisional Officer (SDO), Jaisalmer, dismissing the suit preferred by the petitioner under Section 88 of Rajasthan Tenancy Act, 1955 (for short "the Act"), stands dismissed.

2. The petitioner-plaintiff filed a suit for declaration of his khatedari rights in respect of the land ad measuring 29 1/2 bighas and 3 biswas comprising khasra No. 945 and 18 1/4 bighas comprising khasra No. 946 in village-Delasar, alleged to be in his cultivatory possession since time immemorial. It was averred that when summary settlement of Jaisalmer had taken place, there were famine conditions in the village and therefore, the petitioner had to leave the place as a result of which the land was recorded in the revenue record as Government land and the petitioner could not acquire the benefit of khatedari rights thereon. The petitioner averred that the land in question was cultivated by him from time to

time, which is entered in khasra girdawari of khasra No. 945, 946 and 947.

3. The suit was contested by the State by filing a written statement thereto. On the basis of pleadings of the parties, the trial court framed the issues and the parties led their evidence.

4. After due consideration of the evidence on record, the trial court arrived at the finding that the old possession of the petitioner over the land in question is not proved. The court found that the petitioner was shown to be trespasser over the land in question in khasra girdawari of Samvat 2034 to 2037 and thereafter, in Samvat 2040 and 2041. Suffice it to say that prior to Samvat 2036, the petitioner was not found to be in possession of the land in question. Accordingly, the suit preferred by the petitioner was dismissed by the trial court vide judgment and decree dated 19.8.85.

5. Aggrieved by the judgment and decree dated 19.8.85 passed by the trial court, the petitioner preferred an appeal before the RAA-II, Jodhpur, which stood dismissed vide judgment and decree dated 28.11.88. Aggrieved thereby, a second appeal preferred stands dismissed by the Board of Revenue by the order impugned. Hence, this petition.

6. Learned counsel appearing for the petitioner contended that the averments made by the petitioner regarding his old cultivatory possession were not specifically denied by the respondent-defendant and therefore, the averments made in the plaint has to be deemed to be admitted. In support of the contention, learned counsel has relied upon a Bench decision of this court in the matter of Sachhiddanand Sharma Vs. Jaipur Development Authority, (1992) 2 WLC 542 : (1992) 2 WLN 415 and a decision of the Hon"ble Supreme Court in the matter of Smt. Naseem Bano Vs. State of U.P. and others, AIR 1993 SC 2592 : (1993) 4 JT 553 : (1994) 1 LLJ 84 : (1993) 3 SCALE 431 : (1993) 4 SCC 46 Supp : (1993) 3 SLJ 89 . Learned counsel submitted that the petitioner was in cultivatory possession of the land at the time of commencement of the Act and therefore, he has acquired khatedari rights over the land in question by virtue of provisions of Section 15 of the Act. Learned counsel submitted that the finding arrived at by the trial court, affirmed by the appellate court ignoring the oral evidence on record, is not sustainable in the eyes of law. In support of the contention, learned counsel has relied upon a Bench decision of this court in the matter of "Hari Ram and Anr. vs. State of Rajasthan and Ors.", 1996 DNJ (Raj), 397. Learned counsel submitted that a person cultivating the land for so many years cannot be dispossessed and the presumption of title deserves to be drawn in his favour on the basis of long possession. In support of the contention, learned counsel has relied upon the decision of this court in the matter of "Abdul Latif and Ors. vs. Nagar Vikas Pranyas, Udaipur", AIR 2006 SC, 215 and a decision of the Hon"ble Supreme Court in the matter of Brij Lal Vs. Board of Revenue and Others, AIR 1994 SC 1128 : (1993) 3 JT 639 : (1993) 2 SCALE 155 : (1993) 2 SCC 544 .

7. On the other hand, the Government Counsel appearing for the respondents submitted that this writ petition against the order impugned dated 24.8.93 filed by the petitioner before this court on 6.10.99, badly suffers from vice of delay and laches and therefore, deserves to be dismissed. Learned counsel submitted that the petitioner has wrongly referred the order impugned in the petition as dated "24.8.98" instead of "24.8.93". Learned counsel submitted that even in the petition filed, the petitioner has furnished the explanation regarding the delay for the period from February, 1999 to 10th September, 1999 but there is no explanation whatsoever set out in the petition explaining the delay for the period 24.8.93 to February, 1999. Learned counsel submitted that the Board of Revenue has committed no error in affirming the concurrent findings arrived at by the trial court and the first appellate court in terms that the petitioner was never in cultivatory possession of the land prior to Samvat 2036. Learned counsel submitted that the petitioner having failed to establish his case as set out in the plaint, the trial court has committed no error in dismissing the suit. Learned counsel submitted that the contention of the petitioner that the averments made in the petition regarding old cultivatory possession of the petitioner were not specifically denied, is absolutely incorrect inasmuch as, in the written statement filed, it is specifically mentioned therein that the averments made in this regard by the plaintiff are baseless and the plaintiff should prove his case. Learned counsel submitted that the petitioner having failed to prove his possession over the land in question as pleaded, the suit preferred has rightly been dismissed by the trial court. Learned counsel submitted that there was absolutely no evidence on record showing that the petitioner was in cultivatory possession of the land at the time of commencement of the Act. Learned counsel submitted that even the possession at the time of commencement of the Act does not make a person entitled to khatedari rights unless any of the alternative conditions mentioned therein for accrual of khatedari rights is satisfied. Learned counsel submitted that the petitioner is not found to be in possession of the land prior to Samvat 2036 and therefore, the question of petitioner acquiring the khatedari rights over the land in question by operation of law does not arise. Learned counsel submitted that the concurrent findings arrived at by the courts below after due consideration of the evidence on record, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226/227 of the Constitution of India.

8. Replying the arguments advanced by the Government Counsel regarding delay in filing the petition, learned counsel for the petitioner fairly conceded that there is no explanation available regarding the delay in filing the writ petition for the period prior to February, 1999 to August, 1999. Learned counsel submitted that the petitioner belongs to rural area and on account of illness, ignorance and illiteracy could not approach this court in time. Learned counsel submitted that taking into consideration these aspects of the matter, the delay in filing the petition deserves to be ignored. In support of the contention, learned counsel has relied upon a decision of the Hon'ble Supreme Court in the matter of Ram

Sumiran and Others Vs. D.D.C. and Others, (1985) 2 ACC 583 : (1985) ACJ 569 : AIR 1985 SC 606 : (1985) 1 SCC 431 : (1985) 17 UJ 551 .

9. I have considered the rival submissions and perused the material on record.

10. Indisputably, assailing the legality of order dated 24.8.93 passed by the Board of Revenue, the present writ petition has been filed by the petitioner after a lapse of 6 years. It is pertinent to note that in the petition filed, the order impugned dated 24.8.93 has been referred to as dated "24.8.98" and the petitioner has furnished the explanation of delay for the period February, 1999 to 31.8.1999 and therefore, it goes without saying that the petitioner was well aware that inordinate delay in filing the petition is required to be explained satisfactorily. However, no explanation whatsoever is set out in the petition for inordinate delay of six years in filing the petition. In the considered opinion of this court, if aggrieved by the order impugned, the petitioner was required to approach this court with utmost expedition and thus, the present writ petition which badly suffers from vice of delay and laches, deserves to be dismissed on this count alone. However, taking into consideration the fact that writ petition already stands admitted and is pending consideration for all these years, in the interest of justice, this court considers it appropriate to examine the case set out by the petitioner on merits.

11. Indisputably, as per the averments made in the plaint, the petitioner claimed to be in cultivatory possession of the land in question for generations and had taken the stand that at the time of summary settlement in Jaisalmer on account of the famine, the petitioner had left the village and therefore, the land could not be recorded in his name and it was entered as Government land.

12. It is pertinent to note that in support of the case set out, the petitioner had produced the documentary evidence site inspection report (Ex. 1), which only shows that the petitioner was in unauthorised occupation of the land in question in Samvat 2036. That apart, the khasra girdawari of the land in question of Samvat 2034 to 2037 exhibited in evidence shows that the petitioner was in unauthorised occupation of the said land in Samvat 2036 and 2037. There was absolutely no evidence produced on record showing that the petitioner was even in cultivatory possession of the land prior to Samvat 2036. There was absolutely no evidence brought on record suggesting that the petitioner was in possession of the land in question at the time of commencement of the Act. Thus, in the considered opinion of this court, the concurrent findings arrived at by the trial court and first appellate court, after due consideration of the evidence on record, in its entirety and objectivity, affirmed by the Board of Revenue, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

13. Coming to the contention of the petitioner that the averments made by the petitioner regarding his cultivatory possession over the land in question since

time immemorial was not controverted by the respondents, does not appear to be correct. The assertions made in the pleadings of the parties are to be read as a whole and not in isolation. It is to be noticed that the averments made in para No. 1 of the plaint, were replied by the respondent-defendant in terms that the plaintiff must prove his case. Further, regarding the land comprising khasra No. 946, it was specifically pleaded on behalf of the respondent-defendant that the land comprising khasra No. 946 is recorded as khatedari land of Patia S/o. Dharia. Suffice it to say that a perusal of the written statement, in no manner leads to an inference that continuous old possession of the plaintiff, as pleaded is not disputed by the respondent-defendant. Moreover, the petitioner was under an obligation to prove his case for declaration of his khatedari rights by producing cogent evidence on record and thus, in absence of any evidence on record establishing the continuous old possession of the petitioner over the land in question so as to make him entitled for declaration of khatedari rights in his favour, the findings arrived at by the courts below, cannot be faulted with.

14. The contention of the petitioner that he has acquired khatedari rights by virtue of provisions of Section 15 of the Act, to say the least, is absolutely devoid of any merit. A perusal of Section 15 reveals that it confers khatedari rights on the person who is in possession of the land as tenant otherwise than a sub-tenant or a tenant of Khudkasht or who is after the commencement of the Act has been admitted as tenant otherwise than a sub-tenant or a tenant of Khudkasht or an allottee of the land under and in accordance with the Rules made under Section 101 of the Rajasthan Land Revenue Act, 1951 or who acquires the khatedari rights in the land in accordance with the provisions of Act or the Land Reforms and Resumption of Jagirs Act or any of law for the time being in force. Admittedly, the petitioner was not holding the land as tenant and he has not been admitted as tenant or allotted the land under relevant Rules and thus, no khatedari rights are accrued in favour of the petitioner, who was found to be in unauthorised occupation of the land for sometime. Thus, viewed from any angle, the concurrent findings arrived at by the trial court and appellate court in this regard, affirmed by the Board of Revenue, in conformity with the provisions of the Act, does not suffer from any infirmity, illegality or jurisdictional error.

15. In view of the conclusion arrived at as aforesaid, the decisions cited by the learned counsel for the petitioner does not help the petitioner in any manner and therefore, the same are not required to be dealt with in detail.

16. In the result, the petition fails, it is hereby dismissed. No order as to costs.