(2016) 12 RAJ CK 0066

In the Rajasthan High Court

Case No : Civil Writ No. 2290 of 1999

Padma Ram	APPELLANT
Vs	
Board of Revenue for Rajasthan, Ajmer.	RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Land Revenue Act, 1956 — Section 82
Rajasthan Tenancy Act, 1955 — Section 232

Citation : (2017) 2 WLN 134

Hon'ble Judges : Ms. Nirmaljit Kaur, J.

Bench : Single Bench

Advocate : Mr. Sudheer Sharma, Advocate, for the Petitioner; Mr. O.P. Boob, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ms. Nirmaljit Kaur, J.—The present writ petition has been filed for setting aside the order dated 19.2.1997 (Annex.2) passed by the Additional Collector, the order of Board of Revenue dated 15.1.1998 (Annex.3) as well as the order dated 27.7.1998 (Annex.4).

2. The petitioner was in possession of 60 bighas of land situated in Khasra No.499. However, the same was entered as Gair Mumkin Phard instead in the name of the petitioner. The petitioner filed suit for declaration for his khatedari rights and State was impleaded as party in the suit through Tehsildar. Tehsildar did not file any written statement. The suit was decreed in favour of the petitioner on 27.3.1985 by the Assistant Collector, Barmer. The Additional Collector referred the matter under Section 232 of the Rajasthan Tenancy Act for setting aside the judgment and decree dated 27.3.1985 passed in suit No. 34/81 by the Assistant Collector, Barmer vide his order dated 19.2.1997. The Board of Revenue accepted the reference vide their order dated 15.1.1998 and set aside the judgment and decree dated 27.3.1985. The review filed by the petitioner

before the Board of Revenue was also rejected vide order dated 27.7.1998.

3. From the above, it is apparent that the State did not file any appeal and instead invoked the jurisdiction under Section 232 of the Rajasthan Tenancy Act and referred the matter to the Board of Revenue after a gap of almost 11 years and 11 months. It is obvious that the provisions of Section 232 were invoked as no limitation is provided under Section 232 of the Rajasthan Tenancy Act, 1955 and nor Section 82 of the Rajasthan Land Revenue Act prescribes any period of exercising the power by the competent authority for calling and examining the record.

4. It is well settled that where the period is not prescribed in the Statute for exercising the power, the power must be exercised within a reasonable time. Whatever is the reasonable period depends upon the nature of the Statute, rights and liabilities except in the case of fraud where the period of discovery of fraud must be relevant.

5. A larger Bench of this Court was constituted to decide the important questions of law. One of the questions referred to the larger Bench in D.B. Civil Special Appeal No. 185/2001 (Tara & Ors. v. State of Rajasthan & Anr.) and number of other writ petitions was:-

"Whether any time limit can be fixed for reference u/s 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity). If so, to what extent?"

The said question was answered as under:-

"Answer :- No time limit has been fixed for reference under Section 82 of the Rajasthan Land Revenue Act, 1956 and under section 232 of the Rajasthan Tenancy Act, 1955 in respect of the land held by a Hindu Idol (deity), and thus a reference can be made within a reasonable time, which will depend upon the facts and circumstances of each case. Even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, after several decades claiming rights over the land."

6. In the present case, the suit was decreed in the presence of the State. No reason as to why the State did not file any appeal within the limitation period is forthcoming. Consequently, the State invoked the jurisdiction under Section 232 of the Rajasthan Tenancy Act and the matter was referred to the Additional Collector, Barmer by an order dated 19.2.1997 after a gap of more than 11 years. The said section was invoked only to cover up its own lapse and in order to circumvent the limitation period for filing the appeal. No premium can be given to the State to invoke the jurisdiction on account of its own negligence. There is no allegation of fraud in the present case. The decree was passed in a contested suit by the State. Thus, 11 years cannot be considered as a reasonable period in such circumstances.

7. The Apex Court in the case of State of Punjab v. Bhatinda District Coop. Milk

Producers Union Ltd. (2007) 11 SCC 363 while laying down the reasonable period held as under:

"It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.

8. Applying the test laid down by the larger Bench in the case of Tara & Ors. (supra) as well as the reasonable period held in the case of State of Punjab (supra), 11 years cannot be considered as a reasonable period in the present case.

9. Accordingly, the writ petition is allowed. The reference order dated 19.2.1997 (Annex.2) passed by the Additional Collector was being clearly time barred and the order dated 15.1.1998 (Annex.3) passed by the Board of Revenue as well as the order dated 27.7.1998 (Annex.4) upholding the order under reference passed by the Collector are set aside and the decree dated 27.3.1985 is restored. No order as to costs.

