
(2014) 12 RAJ CK 0067
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1720/1994

Prayagchand

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 10-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Rajasthan Tenancy Act, 1955 — Section 14, 17, 188, 5(43), 88

Citation : (2014) 12 RAJ CK 0067

Hon'ble Judges : Arun Bhansali, J

Bench : Single Bench

Advocate : S.D. Vyas, Advocate for the Appellant; G.R. Bhari, Advocate for the Respondent

Judgement

Arun Bhansali, J.—This writ petition under Article 226 and 227 of the Constitution of India has been filed by the petitioner questioning the validity of judgment of Board of Revenue dated 07.07.1993, judgment and decree dated 21.07.1984 passed by Revenue Appellate Authority ("RAA") and judgment and decree dated 15.11.1983 passed by Sub Divisional Officer, Nohar ("SDO"), whereby, the suit filed by respondent No. 5 - Kheta Ram under Section 88 and 188 of the Rajasthan Tenancy Act, 1955 ("the Act") was decreed and the first appeal and the second appeal filed by the petitioner have been dismissed.

2. Respondent No. 5 - Kheta Ram filed a suit in the year 1978 seeking declaration that he was Gair Khatedar of the land ad measuring 10 Bigha comprised in Khasra No. 15, present Khasra No. 350/44 situated at Rohi, village Sanghatiya, Tehsil Nohar and that the same was allotted to him and was in his possession and for revocation of Khatoni Jamabandi for Samvat years 2029 to 2038 to get his name recorded instead of the petitioner herein; the land was allotted to him for ten years on 21.07.1972 and he was in possession of the land from before allotment; he was complying with all the conditions of allotment and was Gair Khatedar of the said land; it was claimed that the settlement

department while preparing Khatoni Jamabandi for the Samvat years 2029 to 2038 has wrongly recorded 5 Bigha land alongwith Sivay Chak land and, therefore, he was entitled for declaration in his favour and get it corrected; it was alleged that taking advantage of the wrong entry, the defendant was seeking to dispossess the plaintiff and has threatened him in this regard and, therefore, he was entitled for injunction; ultimately relief was sought for declaration, correction and injunction.

3. The suit was resisted by the petitioner; it was denied that the plaintiff had any right in the land in dispute and, therefore, the plaintiff has no cause of action.

4. In the additional plea, it was indicated that the land was allotted to the petitioner since the year 1972 and since then he was in possession and the suit in absence of possession was not maintainable; it was also claimed that the plaintiff has raised objection in the past also and on 17.12.1976 a compromise was entered into between the parties and, as such, the same operates as estoppel.

5. The SDO by his judgment dated 15.11.1983 came to the conclusion that the plaintiff was in possession of the land from before allotment and was thereafter allotted the land, of which, he was Gair Khatedar, the plaintiff was in possession of the land in dispute and was entitled for injunction; the plea raised by the petitioner regarding allotment in his favour, the alleged compromise between the parties, was decided against the petitioner and, consequently, the suit was decreed.

6. The RAA after hearing the parties affirmed the findings recorded by the SDO and finally the Board of Revenue upheld the findings recorded by both the authorities below.

7. It was submitted by learned counsel for the petitioner that the suit for declaration as Gair Khatedar in the first instance was not maintainable as the provisions of Section 88 of the Act do not envisage such a declaration; it was further submitted that the suit in absence of the State was not maintainable and without seeking setting aside of allotment in favour of the petitioner, no relief could have been granted to the plaintiff and, therefore, all the three authorities below have committed grave error of law in decreeing the suit filed by the plaintiff and, therefore, the same deserves to be quashed and set aside.

8. Learned counsel for respondent No. 5 vehemently supported the judgments passed by three authorities below; it was submitted that all the authorities below have concurrently found in favour of the plaintiff and, therefore, the writ petition is not maintainable; it was submitted that none of the issues, sought to be raised by the petitioner, were raised before any of the authorities below and, as such, the petitioner cannot be permitted to raise these issues for the first time; without prejudice, it was submitted that the issues raised have no substance, inasmuch as, the suit for declaration is maintainable, State was not a necessary party as the plaintiff was already in possession of the suit property and as the allotment

made in favour of the petitioner was void ab initio, there was no requirement to seek setting aside of the same.

9. I have considered the rival submissions made by learned counsel for the parties.

10. The primary argument made by learned counsel for the petitioner regarding non-maintainability of the suit under Section 88 of the Act for declaration as Gair Khatedar is no more res integra. This Court in Jeewan Ram and Others Vs. State of Raj. and Others, while dealing with the above aspect observed and held as under:-

"6. In respect of the statement made by the Board of Revenue that there is no provision under the Rajasthan Tenancy Act for declaring a person as Ghair Khatedar tenant, the provisions of Sec. 14 needs attention.

7. Sec. 14 of the Tenancy Act classifies the types of tenants which have been recognised under the Act. The Act recognises four types of tenants namely; Khatedari tenants, Maliks, tenants of Khudkasht and Ghair Khatedar tenants. Therefore, Ghair Khatedar is a statutory term used by the legislature to express such class of tenants who do not fall in any other class of Khatedar tenants. Under Sec. 5(43) expression tenant has been defined to mean "the person by whom the rent is, or but for a contract, express or implied, would be, payable and would include number of persons but would not include a grantee at a favourable rate of rent or an ijaredar or thekadar or a trespasser." This Court has held in number of decision that a Ghair Khatedar tenant cannot be considered to be trespasser. His possession is judicial and he has to be dealt with as a person in juridical possession.

8. Sec. 17 of the Rajasthan Tenancy Act defines "Ghair Khatedar tenant" as every tenant of land in every part of the State other than a Khatedar tenant, a tenant of Khudkasht or sub-tenant shall be a Ghair Khatedar tenant. If that be statutorily recognised status of a person liable to pay rent in respect of the agricultural land in the State, it cannot be said that under no provision of Tenancy Act a person can be declared as a Ghair Khatedar tenant. The Ghair Khatedari Status of the occupant of the land denotes that he is not a trespasser and is in lawful possession so that he may be protected against the summary procedure adopted for eviction of trespassers. The suit for declaration to that effect, in my opinion, was clearly maintainable, and therefore, the Board of Revenue has erred patently in holding that under no provision a declaration of Ghair Khatedari tenancy rights can be made"

11. The judgment in the case of Jeevan Ram (supra) has been upheld by the Division Bench in The State of Rajasthan & Ors. v. Jeevan Ram & Ors. D.B. Civil Special Appeal (Writ) No. 197/2007 decided on 12.07.2007.

12. In view of the categorical pronouncement by this Court regarding maintainability of suit seeking declaration as Gair Khatedar, the submissions

made by learned counsel for the petitioner are rejected.

13. So far as the plea raised by learned counsel for the petitioner regarding non-impleadment of State is concerned, no such objection was raised before the three authorities below; besides the said aspect, though State was not a party before the three authorities below, the petitioner has impleaded the State as party in the present writ petition and the State has in its reply totally endorsed the stand of the plaintiff and further the State by way of additional pleas has indicated that the petitioner was not entitled for allotment of land because his profession was not that of agriculturist and he was not the resident of village where the land in dispute is situated and he never cultivated the land and was not in possession of the land. No rejoinder to the reply has been filed.

14. In view of the above, the plea raised by learned counsel for the petitioner regarding non-impleadment of the State loses significance, if any, and the same also cannot be entertained at this stage.

15. So far as the last ground raised by learned counsel for the petitioner regarding not seeking setting aside of allotment is concerned, the plea of the plaintiff was that the allotment made to the petitioner was void ab initio and as rightly submitted by learned counsel for the respondent No. 5, such an allotment order was not required to be got set aside by the plaintiff.

16. The Board of Revenue while upholding the concurrent judgments of two authorities below has, on the merits of the dispute, observed as under:-

17. The findings recorded by three authorities below on the merits also do not require any interference by this Court.

18. In view of the above discussion, there is no substance in the writ petition and the same is, therefore, dismissed. No order as to costs.