
(2008) 04 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 7136 of 2004

Rajasthan Housing Board

APPELLANT

Vs

The Revenue Board

RESPONDENT

Date of Decision : 09-04-2008

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 9

Citation : (2008) 3 WLN 568

Hon'ble Judges : Narendra Kumar Jain, J

Bench : Single Bench

Judgement

Narendra Kumar Jain, J.—Heard learned Counsel for the parties.

2. Petitioner Rajasthan Housing Board has preferred this writ petition on 07.10.2004 with the prayer to quash the impugned orders dt. 01.06.1984, 22.12.1997 and 04.06.2004.

3. Vide order dt. 01.06.1984 the Assistant Collector and Executive Magistrate, (First), Jaipur, decreed the suit of the respondents No. 3 to 10 for declaration and correction of entry in respect of land bearing Khasra No. 209 measuring 16 bigha and 5 biswa and Khasra No. 210 measuring 19 bigha and 9 biswa, total land 35 bigha and 14 biswa situated at village Sukhalpura, Tehsil Sanganer, District Jaipur, and declared that plaintiff-respondents were recorded tenant and in possession of the disputed land, and due to mistake committed during settlement proceedings, the land was wrongly shown as pasture land ("charagah land") and consequently directed that the entry of pasture land in respect of above land shown in revenue record is illegal and ineffective against the plaintiffs and the same requires correction and may accordingly be corrected and the land be recorded in the name of plaintiffs.

4. Vide order dt. 22.12.1997 the Revenue Board rejected the reference application dt. 16.08.1993 filed at the instance of Collector u/s 232 of the Rajasthan Tenancy Act for quashing the judgment and decree dt. 01.06.1984

passed by the Assistant Collector and Executive Magistrate, (First), Jaipur.

5. Vide order dt. 04.06.2004 the Revenue Board allowed the reference application u/s 9 of the Rajasthan Land Revenue Act read with Section 151 of the CPC of the respondents No. 3 to 10 and directed the Tehsildar, Sanganer, to enter the names of applicants in pursuance of the impugned decree dt. 01.06.1984 passed by the Assistant Collector in respect of the above land.

6. The learned Counsel for the petitioner Rajasthan Housing Board contended that the State Government issued a Notification under Sections 4 and 17 of the Rajasthan Land Acquisition Act, 1953, in respect of the disputed land and, in pursuance of the Notification u/s 17 of the Act, the possession of the land was taken by the Housing Board and the disputed land was shown as pasture land, therefore, no compensation was payable to the plaintiff-respondents. It is further contended that the petitioner Rajasthan Housing Board was not a party to the aforesaid proceedings, therefore, the impugned orders are not binding on the petitioner and the respondents Nos. 3 to 10 cannot be held to be entitled for any compensation in respect of the disputed land.

7. The learned Counsel for the contesting respondents contended that vide Notification dt. 09.02.1982 issued by the State Government a total 807.06 bigha land situated at village Sukhalpura, Tehsil Sanganer was acquired by the State Government. The land of the respondents bearing Khasra Nos. 209 and 210 was also included in the said Notification and the same was taken in possession and no compensation thereof was paid to them. It is contended that the lands bearing Khasra Nos. 207, 208, 209 and 210 were wrongly shown as pasture land in revenue record due to negligence of the Settlement Department and when the recorded tenants of the lands came to know about it, a Suit No. 386/1983 was filed in respect of the lands bearing Khasra Nos. 207 and 208, and another Suit No. 379/1983 was filed in respect of lands bearing Khasra Nos. 209 and 210 in the competent Court having jurisdiction i.e. the Assistant Collector and Executive Magistrate, (First), Jaipur, for declaration of khatedari rights and correction in the revenue record under the provisions of Rajasthan Tenancy Act. The defendants filed their written statement. Both the parties recorded their evidence. The trial Court vide judgment and decree dt. 01.06.1984 decreed both the suits. The decree was appealable before Revenue Appellate Authority and thereafter second appeal was also maintainable before Revenue Board but no appeal was preferred by the defendants i.e. the State Government or the Gram Panchayat, Sukhalpura before the appellate authority or the Revenue Board. Subsequently, the Collector, Jaipur, directed to file a reference in the Revenue Board for quashing the impugned judgment and decree dt. 01.06.1984. In both the cases the Revenue Board rejected the reference application. In respect of the lands bearing Khasra Nos. 207 and 208 the reference was rejected vide judgment dt. 24.06.1995, which was challenged by the Rajasthan Housing Board in S.B. Civil Writ Petition No. 3895/1998, wherein a prayer was made to quash the judgment and decree dt. 01.06.1984 passed by the A.C.M., (First), Jaipur, as well as the judgment of

the Revenue Board dt. 24.06.1995. The learned Single Judge, vide its judgment dt. 16.09.1998 dismissed the writ petition in limine. Thereafter the petitioner Rajasthan Housing Board preferred Special Appeal before the Division Bench, which was also dismissed vide judgment dt. 22.07.1998. Thereafter a SLP was also preferred by the petitioner before the Hon"ble Supreme Court which was also dismissed vide judgment dt. 17.12.1999. Thereafter the petitioner Rajasthan Housing Board paid the compensation to the khatedar tenants of Khasra Nos. 207 and 208 by issuing "patta" of 15% developed residential land in Mansarovar, Jaipur and khatedar-tenants have constructed their houses on the said land allotted by Housing Board as compensation. He, therefore, contended that the Rajasthan Housing Board has already undertaken the exercise of challenging the finding of fact in respect of the present matter in connected case up-to the Hon"ble Supreme Court and the case of the present petitioners, which relates to their lands bearing Khasra Nos. 209 and 210, is similar, identical and involves same question of fact and law both, and instead of making the payment of compensation to the respondents by allotting 15% developed residential land as done in connected case, the petitioner Housing Board, only to harass them, has preferred the present writ petition before this Court, which is not only liable to be dismissed but a heavy costs is also liable to be imposed against them for depriving the original claimants from their legitimate compensation for their land acquired by the State Government in accordance with the provisions of Land Acquisition Act. The copy of judgment of the Single Bench, Division Bench and Hon"ble the Supreme Court in Special Leave Petition, dt. 16.09.1998, 22.07.1998 and 17.12.1999, respectively, as referred above, have been placed on the record with the reply to the writ petition.

8. I have considered the submissions of learned Counsel for both the parties and examined the impugned judgments as well as the pleadings and document annexed with the writ petition and reply thereto and from the same it is clear that vide Notification dt. 09.02.1982 the Urban Development and Housing Department of the State Government, vide Notification dt. 09.02.1982, while exercising powers under Sub-section (4) of Section 17 of the Land Acquisition Act, acquired 807.06 bigha land situated in village Sukhalpura and took possession of the same, wherein the lands bearing Khasra Nos. 207,208, 209 and 210 were also included. The lands belonging to Khasra Nos. 207, 208, 209 and 210 were wrongly shown as pasture land in the Notification. Two suits were filed by the khatedar tenants of the above land. The suit in respect of lands bearing Khasra Nos. 207 and 208 was registered as Suit No. 386/1983, and another suit in respect of Khasra Nos. 209 and 210 was registered as Suit No. 379/1983. Both the suits were decreed vide judgment and decree dt. 01.06.1984. In both the cases the first appeal and second appeal before Revenue Appellate Authority and Revenue Board were not preferred but reference was filed before the Revenue Board for quashing/setting-aside the judgment dt. 01.06.1984 at the instance of Collector. The Revenue Board dismissed the reference in both the cases.

9. The Housing Board filed writ petition before the Single Bench in another case relating to lands of Khasra Nos. 207 and, 208; on dismissal thereof the matter was taken to the Division Bench and then in SLP before the Hon"ble Supreme Court, and all were dismissed and thereafter the Rajasthan Housing Board paid compensation i.e. 15% of the developed residential land in Mansarovar to khatedar tenants, but, so far as the present khatedar tenants i.e. the respondents No. 3 to 10 in respect of lands bearing Khasra Nos. 209 and 210, whose case is similar and identical, the Rajasthan Housing Board, instead of paying them compensation in the light of the judgments of the Single Bench, Division Bench and of Hon"ble the Supreme Court as given in the case of similarly situated khatedar tenants, as referred above, has again challenged the same proceedings by way of present writ petition.

10. The action of Rajasthan Housing Board, in these circumstances, prima facie, appears to be arbitrary and discriminatory and violative of Article 14 of the Constitution of India. The petitioner, being a statutory body and public undertaking should have respected the judgments passed by the Single Bench, Division Bench and Hon"ble the Supreme Court, as given in connected case i.e. the case of nearby situated lands, which were also acquired by the same Notification but, instead of making compliance of the judgment and decree passed by the competent Court way back in the year 1984, is depriving the legitimate claimants i.e. the respondents Nos. 3 to 10 by not paying, compensation to them in respect of their lands and further that the Rajasthan Housing Board has already constructed the houses on their lands and has got not only the cost of their lands and construction raised thereon, but has also collected huge amount out of it. It was a duty of the Rajasthan Housing Board to pay compensation to the respondents as paid by them in identical matters relating to lands bearing Khasra Nos. 207 and 208, instead of wasting public money by way of this unwarranted litigation. The judgment and decree passed by the Assistant Collector and Executive Magistrate, (First), Jaipur, dt. 01.06.1984 shows that the respondents placed documentary evidence on the record to prove that the disputed land was recorded in their name in Samvat 1996 (corresponding year 1941). The defendant Gram Panchayat admitted that the disputed lands were being cultivated by the plaintiffrespondents and the said lands were wrongly recorded as pasture lands in the revenue record during settlement proceedings. The A.C.M. declared the respondents as recorded tenant of the disputed lands. The State Government through Tehsildar as well as Gram Panchayat, both, were impleaded as defendants in the suit. The Tehsildar is the land-holder as per the provisions of the Rajasthan Tenancy Act and it was he alone who was necessary party in the matter of correction of entry in the revenue record. The State Government, was responsible to pay compensation, therefore, necessary parties had already been impleaded in the suit. The A.C.M. decreed the suit way back in the year 1984. The said judgment and decree was appealable before the Revenue. Appellate Authority and thereafter second appeal could have been preferred before the Revenue Board, but neither an appeal nor

second appeal was preferred in the matter and the judgment dt. 01.06.1984 attained finality.

11. It appears that in the year 1989 one application was filed by the Jaipur Development Authority before the Collector to make a reference to set aside the order dt. 01.06.1984. The Collector vide its order dt. 01.12.1992 passed an order to make a reference in the matter, which was filed on 16.08.1993. The said reference was rejected by the Revenue Board vide judgment dt. 22.12.1997. The Revenue Board also examined the matter in detail and held that the trend of filing reference, where the impugned judgment is appealable, cannot be encouraged. A liberty was given to the State Government to file an appeal but no appeal is stated to have been filed challenging the order dt. 01.06.1984. In these circumstances the Revenue Board dismissed the reference. Thereafter it was a duty of the Tehsildar Sanganer to make necessary corrections in the revenue record and it was also a duty of the Rajasthan Housing Board to make payment of compensation.

12. Being aggrieved with the non-action on the part of the Tehsildar, the respondents filed an application for reference u/s 9 of the Rajasthan Land Revenue Act for issuing direction to Tehsildar to comply with the order dt. 01.06.1984 and the said reference was allowed vide order dt. 04.06.2004.

13. So far as the sole contention urged on behalf of the petitioner Rajasthan Housing Board that the Rajasthan Housing Board was not a party to the suit or reference is concerned, the same argument was advanced by the Rajasthan Housing Board in identical writ petition being S.B. Civil Writ Petition No. 3895/1998, which was relating to lands bearing Khasra Nos. 207 and 208, and this Court dealt with the said submission of the Rajasthan Housing Board. This Court held that the liability of awarding compensation lies on the State Government and whether it is to be paid by the State Government or the petitioner Housing Board, is an internal matter in between the State Government and the Rajasthan Housing Board, both, so far as the claim of respondents No. 3 to 10 is concerned, they succeeded before the Revenue Board that the lands in question were not a pasture land and now it is not to be gone into by this Court at the instance of the Rajasthan Housing Board on the plea that it was not made a party before the Revenue Board, when the competent and proper party was the State Government, which already represented its cases.

14. The order of the Single Bench in S.B. Civil Writ Petition No. 3895/1998 has been affirmed by the Division Bench as well as by Hon"ble the Supreme Court also while rejecting SLP filed by Rajasthan Housing Board. The order dt. 16.09.1998 passed by the Single Bench in S.B. Civil Writ Petition No. 3895/1998 reads as under:

The Rajasthan" Housing Board has moved this Court challenging the order of the Jaipur Development Authority on the ground that the respondents are not entitled for the amount of compensation as the land is a "Charagah Land" which

had been allotted to the Rajasthan Housing Board. The contention of the petitioner is clearly without any merit as the question of the nature and character of the land whether it was a "Charagah Land" had already been decided upto the Board of Revenue against the State Government way back in the year 1995, by order dt. 24.06.1995. Mr. Rastogi, however, submits that the Rajasthan Housing Board was not a party to the said case and, therefore, the judgment is not binding on the petitioner. It is difficult to appreciate this contention as the question was decided against the State Government on this point. The respondents, therefore, cannot be said to be claiming unnecessarily for grant of compensation. It is no doubt true that the liability of awarding of compensation lies on the State Government and whether it is the petitioner or the State Government which has to pay the compensation to the petitioner is an internal matter between the Rajasthan Housing Board and the State Government; but in so far as the claim of the respondents is concerned, they having succeeded before the Revenue Board that the land in question was not a "Charagah Land" can not now be gone into by this Court at the instance of Rajasthan Housing Board on the plea that it was not made a party before the Revenue Board when the competent party and the proper party was the State Government which already represented its case. The Rajasthan Housing Board is only claiming as the beneficiary from the State Government and the State Government having lost its case, the writ petition can not be entertained. The writ petition has, therefore, no merit and it is hereby rejected.

15. The judgment dt. 22.07.1999 of the Division Bench in D.B. Civil Special Appeal No. 1087/98 affirming the above judgment of the Single Bench, is also reproduced as under:

Heard learned Counsel for appellant. The Rajasthan Housing Board the appellant before us in this appeal, is aggrieved by the order dt. 16.09.1998 passed by learned Single Judge in S.B. Civil Writ Petition No. 3895/98. At the out set we may state that the approach of Housing Board in this case is very unusual. Certain property was acquired by the State Government for the benefit of Housing Board. On acquisition having taken place of the property by the Government, the Housing Board constructed the houses and allotted to various persons. The acquisition was made in the year 1983, as informed by the Counsel for appellant Housing Board. We specifically asked a question to Counsel for appellant as to whether the houses were allotted free of cost and even the price of land was not received Learned Counsel for the appellant submitted that the allotment was made on collecting the price for the house and land as well. With this backdrop, we may state that learned Single Judge has rightly dismissed the writ petition filed by Rajasthan Housing Board challenging the nature of land. Learned Counsel for appellant submitted that they were not liable to make payment of compensation having regard to the nature of the land. Learned Single Judge has noticed this point and held that the question of nature of the land has already been decided by the competent authorities that is Asstt. Collector as well as the Board of Revenue, to which the State Government was a

party. Learned Single Judge has also held that it is not open to Rajasthan Housing Board to challenge the nature of land when the State Government itself acquired the land for the benefit of Rajasthan Housing Board and the State Government has lost the case on the question of nature of land. Learned Counsel for appellant has also submitted that the Housing Board was not a party to the proceeding before Board of Revenue. Learned Single Judge has noticed this fact and held that the competent and proper party was the State Government, which had represented the case. We do not find any good or valid reason to say that learned Single Judge has passed a wrong order. There appears only typographical error in the order that the order of Jaipur Development Authority was questioned, but as a matter of fact the orders of Asstt. Collector and Board of Revenue were questioned. When the Housing Board has collected the price of the land as well as houses, it is not open for Housing Board to contend that they need not to pay any compensation on the ground, looking to the nature of the land. We see no merit to admit the appeal. Hence, it is rejected.

16. The order dt. 17.12.1999 passed by the Hon"ble Supreme Court in the Petition for Special Leave to Appeal (Civil) No. 18395/1999 is also reproduced as under-

UPON hearing Counsel the Court made the following

ORDER

Special Leave Petition is dismissed.

17. In view of the above, I am of the view that the present case is fully covered by the aforesaid judgments passed by the Single Bench, Division Bench and the Hon"ble Supreme Court, as quoted above, and there is no merit in this writ petition and the same is accordingly dismissed.

18. Looking to all the facts and circumstances of the present case, as discussed above, it is clear that the khatedar-tenants/respondents have already been deprived of their legitimate right to receive compensation by Rajasthan Housing Board since long and in spite of the fact that Housing Board has already allotted 15% developed residential land in Mansarovar Jaipur as compensation to the similarly situated persons i.e. khatedar-tenants in connected/identical Writ Petition No. 3895/98 as referred above, so, in the interest of justice, I think it fit and proper in the facts and circumstances of the present case to direct the Rajasthan Housing Board to adopt same policy in the present case also and keep the respondents at par and pay compensation to the respondents by allotting 15% developed residential land of their total land in Mansarovar Jaipur. The matter is pending since 1983-84 and it has already been delayed, therefore, I further direct the Rajasthan Housing Board to do the needful in the matter immediately but not later than three months.

Cost is made easy.