
(1989) 01 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 179 of 1973

Ram Karan Ojha

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 20-01-1989

Acts Referred:

Rajasthan Forest Act, 1953 — Section 11, 29(3)

Citation : (1989) 1 WLN 439

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. The Assistant Settlement Officer, Forest Department under his order dated 5th July, 1972 (Annexure-H) in exercise of the powers conferred on him u/s 11 of the Rajasthan Forest Act, 1959 (for short "the Act") excluded Khasra No. 815 and 816 measuring 14 Bighas and 36 Bighas 15 Biswas in all 50 Bighas and 15 Biswas, situated in village Dang, Tehsil Kishangarh, District Ajmer from the area of the protected forest on the ground that the petitioner was the Khatedar of the land in dispute. Feeling the aggrieved against the aforesaid order the Gram Panchayat Sandolia, Tehsil Kishangarh preferred an appeal to the Collector, Ajmer and learned Collector allowed the appeal under its order dated 24th January, 1974. The petitioner preferred a revision petition against the aforesaid order before the Board of Revenue, Ajmer and the learned Board of Revenue under its order dated 12th September, 1977 dismissed the revision petition.

2. The case of the petitioner is that he was recorded as Khatedar of the aforesaid agricultural land in dispute and in the Samvat year 2004 the said lands in dispute were made over to Forest Settlement Department of the former State of Kishangarh on management basis by the father of the petitioner Lukshmi Narain, he being old and unable to cultivate personally and proportionate proceedings in money were agreed to be paid to the petitioner's father Lakshmi Narain out of the total Theka amount of the State "Beed." After the merger of the erstwhile

State of Kishangarh into the State of Rajasthan, the State Government under Sub-section (3) of section 29 of the Act notified the area as protected forest area and the lands in dispute were also included therein. Objections were preferred by Lakshmi Narain claiming to be Khatedar tenant of the said lands and for release of the same from the forest area, to the Assistant Settlement Officer, who under his order dated July 5, 1972 as already stated, allowed the claim and released the above lands and excluded the area from the proposed protected forest area. But in an appeal that order was set-aside by the Collector, Ajmer which order was maintained by the Board of Revenue, Ajmer.

3. The contention of the learned counsel for the petitioner is that the petitioner is a Khatedar of the land in dispute. He contended that the view which has been taken by the learned Collector in appeal as well as by the Board of Revenue that the Assistant Settlement Commissioner had no jurisdiction to exclude the area from the proposed forest area is not in accordance with Law. The learned counsel for the petitioner contends that a look at the notification (Ex. R/1) dated 21st November, 1957 will show that the Forest Settlement Officer/Assistant Forest Settlement Officer had been appointed by the State Government to make an enquiry in accordance with the provisions of Sections 5, 6, 7, 9, 10, 11(1), 12 and 19 of the Act. In view of that a claim was preferred by Lakshmi Narain, the father of the petitioner on the ground that the land in dispute was recorded in his Khatedari and included in protected forest area.

4. We have considered the contentions in the light of the provisions of the law and also heard learned Dy. Government Advocate. It will appear from the order of the learned Collector made in an appeal filed by Gram Panchayat Sandolia that the land was in the name of Lakshmi Narain s/o Sheo Bux and Laxmi Narain had never appeared in the proceedings and the statement of Ram Karan only was recorded. The learned Collector further stated that although it has been stated in the order that the original pass book was seen by the court but no authentic record of the Tehsil has been placed on the file and an alleged copy of the pass book has been taken on record, but it was not certified as a true copy by any officer and, therefore, no reliance on the same can be placed. The learned Collector further stated that the order is supposed to have been made u/s 11 of the Rajasthan Forest Act but Section 11 is a part of the procedure prescribed for declaring any area as a Reserve Forest. He further observed that the aforesaid Section will only apply to the lands which are proposed to be declared as Reserve Forest and it does not apply to lands which are included in the Reserve Forest and have been notified by the Government as such. The opinion of the learned Collector is that the power to take out any area from the Reserve Forest vests clearly with the State Government and not with the Forest Settlement Officer. The learned Collector set-aside the order dt. 5th July, 1972 passed by the Assistant Forest Settlement Officer, with the above observations.

5. No doubt Section 11 appears in Chapter 11 of the Act which deals with Reserve Forest. But as already stated earlier, even in notification issued under

Sub-section (3) of Section 29 of the Act, the Settlement Officer/Assistant Forest Settlement Officer has been appointed to make an enquiry as the enquiry was to be conducted in accordance with Sections 6, 7, 8, 9, 10, 11(1) and 19 of the Act. A look at the Section 29, which appears in Chapter IV of the Act, will show that under its Sub-section (2), the forest land and waste lands comprised in any such notification shall be called a "Protected Forest". Under Sub-section (1) of Section 29 of the Act the State Government can by notification in the Official Gazette declare the provisions under Chapter IV applicable to any forest land or waste land which is not included in a reserved forest but which is the property of the State Government or over which the State Government has proprietary rights or to the whole or any part of the forest produce of which the State Govt. is entitled. But notwithstanding Sub-section (1) of Section 29 of the Act by virtue of Sub-section (3) of the same Section, no such notification shall be made unless the nature and extent of the rights of the State Government and of private persons in or over the forest land or waste land comprised therein have been inquired into and recorded at a survey or settlement or in such other manner as the State Government thinks sufficient. Even such record shall be presumed to be correct until the contrary is proved. But the Proviso to Sub-section (2) of Section 29 provides that if, in the case of any forest land or waste land, the State Government thinks that such inquiry and record are necessary but that they will occupy such length of time as in the meantime to endanger the rights of State Government, the State Government may, pending such inquiry and record, declare such land to be a protected forest, but so as not to abridge or affect any existing rights or individuals or communities. It will therefore, be clear that "protected forest" can only be declared by a notification after making an enquiry so as not to abridge or affect any rights of private persons. But till such an enquiry is made and in the case of any forest land or waste land, the State Government thinks that the enquiry may take long time and thereby the right of the State Government adversely affect, it may by notification declare such land to be a protected forest but it should be subject to the enquiry. It may be stated that it is a case where after notification under Sub-section (3) of Section 29 of the Act was issued and the procedure contained in the aforesaid Sections 6, 7, 8, 9, 10, 11(1) and 19 of the Act was made applicable, the Assistant Forest Settlement Officer decided that the land in dispute is in the Khatedari of Laxmi Narain, and thereafter ordered exclusion of the land in dispute from the Protected Forest. Such an order was made u/s 11 of the Act and could be made by the Assistant Forest Settlement Officer, it cannot therefore, be said that the order passed by the Assistant Settlement Officer was without jurisdiction. Thus, the learned Collector erred in holding that the order of the Assistant Settlement Officer is illegal and without jurisdiction.

6. It may be stated that though there was pass book and authentic record of the Tehsil had been placed on the file and an alleged copy of the pass book had been taken on record, but it is not certified as a true copy by any officer, therefore, the learned Collector could not place any reliance as has been aforesaid by the

learned Member of Board of Revenue. There was already a copy of the pass-book on the record. That apart the petitioner has furnished certified copies of Khasra Girdawari of Samvat year 2006 as well as subsequent Jamabandi. Annexure "A" is the certified copy of the Jama-bandi of Samvat year 2006. It appears from a perusal of Jamabandi of Samvat year 2006 that 15 Bighas & 14 Biswa land were shown in the khudkast of Laxmi Narain father of the petitioner who was described as muafidar. It appears from a perusal of Annexure "B" that consolidation proceedings took place and Khasra No. 815 & 816 were allotted in his Khatedari right though the area of each of them was maintained intact. Then there is again Annexure "C", Jamabandi of Samvat year 2002-2025. From its perusal it appears that Laxmi Narain was a Khatedari. Thus, there is sufficient material on record that the father of the petitioner. Laxmi Narain was recorded as Khatedar. Even the claim of the petitioner, son of Ram Karan (Laxmi Narain) could be entertained by the Assistant Forest Settlement Officer and in exercise of the powers conferred u/s 11 of the Act he could have excluded the land in dispute from the area of reserved/protected forest. In a similar case Ram Ratan v. State of Rajasthan RLW 1964 Raj. 46 the learned Member of the Board of Revenue, Ajmer held as under :

Long before the resumption of the Jagir this land with the consent of the petitioners was taken over under the management of the Forest Department who have been paying the proportionate share of the petitioner out of the Theka income of this Beed. It is clear that although the possession by way of management remained with the Forest Department, the proprietary or ownership right over the land in dispute remained with the present muafidars. This land could not be converted into a forest land even while the petitioner enjoyed his muafidari rights.

7. We agree with the above observations. Consequently, we allow this writ petition and set aside the order of the Collector dated 24th January, 1974 as well as order of the Board of Revenue, Ajmer dated September 12, 1987 (1977) and restore the order of the Assistant Forest Settlement Officer, Jaipur dated July 5, 1972. Cost made easy.