
(2016) 04 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10826 of 2009

Sayad Khatun

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

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

Citation : (2016) 2 DNJ 927

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Varun Goyal, Advocate, for the Appellant; A.R. Godara, Advocate, for the Respondent

Final Decision : Partly Allowed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against order dated 04.02.2009 passed by the Board of Revenue, Ajmer ("Board"), whereby, a reference under Section 232 of the Rajasthan Tenancy Act, 1955 read with Section 82 of the Rajasthan Land Revenue Act, 1956 has been accepted and the exchange accepted by the Colonization Commissioner, Chhatargarh ("Commissioner") by order dated 16.04.1987 has been quashed and set aside.

2. The land in question was allocated to one Ahmed Khan by order dated 16.04.1987 by the Commissioner; Ahmed Khan transferred the land by registered sale deed to Bachan Singh on 07.02.1990; a part of the land was transferred by Bachan Singh to the petitioner on 11.03.1993 and mutation was attested in petitioner's favour and it is claimed that petitioner is in possession of the land in question. The original allottee Ahmed Khan died on 02.08.1993; where after, the Additional Collector, Bikaner ("Collector") made a reference to the Board on 18.09.2001 regarding the order dated 16.04.1987 passed by the

Commissioner accepting the exchange in favour of Ahmed Khan.

3. It is submitted by learned counsel for the petitioner that Ahmed Khan had died on 02.08.1993, despite transfer of the land in petitioner's favour in the year 1993 itself and the mutation having been attested in her favour, in the reference proceedings, which were initiated in the year 2001, no notice was issued to the petitioner; deceased Ahmed Khan was impleaded as a party to the said reference, notices were sent by the Board to said Ahmed Khan, who was not served and based on drawing presumption of service on account of non-return of registered post Acknowledgment Due, ex parte order dated 04.02.2009 was passed by the Board setting aside the order dated 16.04.1987 while accepting the reference made by the Collector. Several submissions were also made by learned counsel for the petitioner on the merits of maintainability of the reference itself. It was prayed that the order dated 04.02.2009 deserves to be quashed and set aside.

4. Learned counsel for the respondent - State did not dispute that original allottee Ahmed Khan had died on 02.08.1993, however, it was submitted that in the circumstances of the case, the Board was justified in passing the order impugned.

5. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

6. Admittedly the part of land in question had already been transferred to the petitioner on 11.03.1993 and mutation in this regard had already been attested in her favour and the Collector made a reference on 18.09.2001, apparently without looking into the record and the reference was made against Ahmed Khan. After registration of the reference by the Board, repeated notices were sent to Ahmed Khan and the same were not served probably as Ahmed Khan had already died. Though thereafter notices were ordered to be sent by registered post Acknowledgment Due and on noticing that the AD/unserved notices having not been received back, the service was treated as complete and order impugned dated 04.02.2009 was passed.

7. In view of the fact that the order dated 04.02.2009 has been passed against a dead person and without impleading the petitioner, in whose favour the part of land in question stands transferred and mutation attested, the order passed by the Board cannot be sustained. Though submissions on merit of the order dated 04.02.2009 have been made by learned counsel for the petitioner, it would be in the interest of the parties that the matter is remanded back to the Board, wherein, the petitioner may appear and raise all her objections on merit or otherwise and it would be required of the Board to decide the reference after hearing the parties, without being influenced by order dated 04.02.2009 passed by it earlier.

8. In view of the above discussion, the writ petition is partly allowed, the order dated 04.02.2009 passed by the Board in Reference No. 7117/2001 - State v.

Ahmed Khan is set aside. The matter is remanded back to the Board. The parties shall appear before the Board on 30.05.2016, wherein, the petitioner would be impleaded as party to the remanded reference, reply would be filed by the petitioner and matter shall be heard and decided de novo.

9. No order as to costs.