
(1985) 08 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Petition No's. 29, 28 31, 34. 32 30 and 33 of 1979 and 871 of 1978

Shanker Lal and Others

APPELLANT

Vs

Authorised Officer and Others

RESPONDENT

Date of Decision : 19-08-1985

Acts Referred:

Hindu Succession Act, 1956 — Section 6

Citation : (1986) WLN 288

Hon'ble Judges : Milap Chand Jain, J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Milap Chand Jain, J.—These writ petitions are directed against the order of the Government dated October 13, 1978 passed by the Deputy Secretary to the Government of Rajasthan (Revenue Department), Jaipur u/s 15(1) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short "the Act"), where by, the petitioners' ceiling cases were reopened on the ground that the orders of the Authorised Officer, Hanumangarh dated April 15, 1976, the Additional Collector, Sri Ganganagar dated June 26, 1976 and of the Board of Revenue dated September 18, 1976 are not according to the provisions of the Act and are against the interest of the Government and there are mistakes apparent on the face of the record in the order of the Board of Revenue.

2. These writ petitions have come up on a reference made by the learned Single Judge as the question involved, are questions of great importance.

3. We may advert to some relevant facts. The agricultural land was original held by one Gheru Lal Maheshwari in village Meharwala and Jalalabad. Gheru Lal adopted Shri Bal Chand son of Shri Banshi Lal. After that adoption, he was blessed with a son Shri Jagannath. Seri Gheru Lal died in the year 1921. After his death, his entire agricultural land devolved in moiety on his two sons Shri Bal Chand and Shri Jagannath and were recorded in their names. Shri Bal Chand had

four sons. Shri Jagannath died issueless in 1921. But before his death, he adopted Deen Dayal, son of Shri Bal Chand as his son. Shri Bal Chand died on 6-2-1974. The agricultural land of village Maharwala came under the Rajasthan Canal Project Area in 7 NDR and the land of village Jalalabad fell in the Bhakra Canal Project Area in Chak Nos. 12, 13, 14, 15 and 16 SLW. The petitioners' case further is that in the year 1953, Shri Bal Chand and Shri Deen Dayal surrendered some agricultural lands from their joint Khata in favour of Shanker Lal, Lalit Mohan, Sharat Kumar and Purshottam Lal by a registered-deed dated 25-2-1953, Shri Shanker Lal, Purshottam Lal and Lalit Mohan are the sons of Shri Bal Chand and Sharat Kumar is the son of Shri Deen Dayal, who went in adoption to Shri Jagannath. The entire lands were recorded in the joint Khata of Bal Chand, Deen Dayal, Shanker Lal, Purshottam Lal, Lalit Mohan and Sharat Kumar. In the year 1962, the land situated in Jalalabad was divided in pursuance of the order No. 1580 dated 13-12-1962 in Case No. 7 of 1961 of the court of Sub-Divisional Officer, Hanumangarh and mutation was accordingly effected. By the subsequent suit No. 327 of 1965, the agricultural land situated in village Maharwala was also divided in pursuance of the decree passed by the Sub-Divisional Officer on 20-4-1966. That land was also mutated in their names in accordance with the decree. Shri Deen Dayal, Shanker Lal, Purshottam Lal and Lalit Mohan divided their holdings by family settlement each between himself and his wife and sons. They also pooled their holdings in the Sanyukt Krishi Sahkari Samiti Ltd. The wives and sons of these four persons vested their holdings some in Navyug Farmers, and Modern Cultivators partnership firms at Maharwala registered on 15-3-1970. Shri Bal Chand also transferred his land to one Sharda Trust on 10-3-1970. The Deputy Secretary Revenue (Ceiling) issued notices u/s 15 of the Act to the petitioners calling upon them to show cause as to why their entire ceiling cases be not reopened. After hearing the petitioners, the Deputy Secretary passed the impugned order for reopening the petitioners' ceiling cases. Dissatisfied with the order of the State Government, these writ petitions have been filed.

4. The main ground of attack is that the order of the State Government is without jurisdiction in as much as there were no grounds for re-opening of the ceiling cases. According to the petitioners, the order of the Board of Revenue was reopened by the State Government on the ground that the Board of Revenue has committed some mistake or errors apparent on the face of the record. Under the third proviso to Sub-Section (2) of Section 15 of the Act, the final order passed by the Board of Revenue in the matter referred to in subsection (1) or in Sub-Section (2) can be directed to be re-opened and decided afresh if the State Government is satisfied that such order is required to be re-opened on account of the discovery of new and important matter or evidence, which has since come to its notice or due to some mistake or error apparent on the face of the record. The petitioners' case is that there are no mistakes or errors apparent on the face of the record. As such, the State Government has no jurisdiction to re-open the ceiling cases of the petitioners.

5. The Deputy Secretary in para 6.4 of the order has stated that the following are the apparent mistakes in the order of the Board of Revenue:

(A) Recognition of the divisions of the holdings made through family settlements by Shri Deen Dayal, Shri Shankerlal, Shri Purshottamlal and Shri Lalit Mohan against the express provisions of the Rajasthan Tenancy Act, 1955;

(B) Acceptance of the legal possession of the holdings by the Navyug Farmers Partnership firm and the Modern Cultivators Partnership firm against the basic principle of transfers under the Transfer of Property Act, 1882;

(C) Non-application of the proviso to Clause (b) of Section 22 of the New Ceiling Act to the Sanyukt Krishi Sahkari Samiti Ltd. and incorrect apportionment of the shares of the members.

The Deputy Secretary then proceeded to examine the three aforesaid mistakes and held that in view of the aforesaid mistakes, the ceiling cases are required to be re-opened.

6. It is to be seen as to whether there were any apparent mistakes in the order of the Board of Revenue justifying the reopening of the ceiling cases. In all the above mentioned apparent mistakes, the basic premises on which the learned Deputy Secretary proceeded to consider the question, is that the divisions of holdings were not possible under the provision of the Rajasthan Tenancy Act by family settlements, so, the land continued to remain the land of those in whose names, it was originally recorded, the divisions of holdings by family settlements were invalid, being contrary to the provisions of the Tenancy Law. Primarily, the learned Deputy Secretary based his view on a larger Bench decision of the Board of Revenue in *State of Rajasthan v. Shivdan Singh* 1977 RRD 233. It is this basic premises, which pervades the consideration not only of the mistake No. (A) but also in consideration of the errors or mistakes No. (B) and (C). If the basic premises are found to be wrong, then, admittedly, the entire structure on which the impugned order is founded, will fall. The Deputy Secretary in para 65(B) observed that if any division of holding is against the express provisions of the Rajasthan Tenancy Act, 1955, which is relevant law for division of holdings, the date mentioned in Section 6 of the Ceiling Act does not provide any legal umbrella to such illegal division because an ab initio illegal act cannot be presumed legal by the pretext of date and time in some other provision or Act. The Deputy Secretary referred to the provision of Sections 53 and 40 of the Rajasthan Tenancy Act and relied on the following observations made in *Shivdan Singh*'s case (*supra*):

Obviously, the Rajasthan Tenancy Act, recognizes devolution of agricultural tenancies only by way of succession and, therefore, for such devolution Section 6 of the Hindu Succession Act would not be applicable. On the other hand, Section X of the Hindu Succession Act, which deals with succession to the property of a male Hindu, who dies intestate would be attracted;

Thus, when a male Hindu dies intestate his property or rights therein would devolve upon the heirs specified in Class I of the Schedule. A perusal of the Class I of the Schedule, so far as the present case is concerned, we would show that Shivdarsingh is alive, any tenancy rights in ancestral land could in the event of his father's death, devolve only on Shivdan Singh and not on his children. Further, the rights enjoyed by Shivdan Singh himself could not devolve during his life time on his children.

To sum up, we come to the conclusion that it is only on the death of a person that his tenancy rights can devolve by succession on his children, whether major or minor; there cannot be any devolution of tenancy right during the life time of such a person. It, therefore, follows that sons and daughters cannot claim partition of the holding of their father during the father's life time, any suit filed for the purpose would be incompetent and any decree passed in such a suit would be null and void.

7. He concluded that in view of this legal position, the wives and sons of Deen Dayal, Shri Shanker Lal, Shri Purshottamlal and Shri Lalit Mohan could not have legally got divided the holdings during their life time and the so-called family settlements for division of holdings during the life time of the holders, were illegal.

8. It may, at once, be stated here that the view based on Shivdan Singh's case (supra) is untenable. In the present case, the land is ancestral in the hands of grand-sons and they have acquired rights in the ancestral land since birth. In this connection, reference may be made to a Division Bench decision in Smt. Man Kanwar v. State of Rajasthan 1978 RRD 375. This Court observed that the decisions of the Board of Revenue in Shivdan Singh's case (supra) and in State of Rajasthan v. Moola and Ors. 1977 RRD 95 are clearly distinguished on the facts. It was further observed that "it is well-settled that where an agricultural holding belongs to the father, the tenancy rights devolve on the children whether major or minor only on the death of their father. But that principle can have no application in a case like the present where the holding was ancestral in the hands of the father." Admittedly, in the present case, the land was ancestral in the hands of Shri Balchand and Jagannath. So, the land would devolve on the sons of Balchand and Jagannath and they have a right by birth in the ancestral land left by Gherulal. The Board of Revenue in its subsequent decision, distinguished Shivdan Singh's case (supra) and followed the observations made by this Court in Smt. Man Kanwar's case (supra). The subsequent decisions of the Board of Revenue are; Devilal v. Smt. Fattu Bai 1981 RRD 512 and Smt. Ankori v. Brijlal 1982 RRD 493. The Deputy Secretary held that the division of holding was illegal for the reasons stated in para 6.5(E). If the sons acquired right by birth in that ancestral land, they can claim partition and when a partition is made between father and sons, then, the wife is also entitled to get the share equal to that of a son and to hold and enjoy that share separately even from her husband. Reference may be made to the principles of the Hindu Law by Mulla in

para 315 at page 403, it is stated that a wife cannot herself demand a partition, but if a partition does take place between her husband and his sons, she is entitled to receive a share equal to that of a son and to hold and enjoy that share separately even from her husband. Thus, there does not appear to be any error or mistake apparent on the face of the record, in the order of the Board of Revenue when the Board of Revenue has the settlements. Mistake No. (B) has been considered by the Deputy Secretary in para 6.6(A). This is almost the consequence of the consideration of mistake (A) as viewed by the Deputy Secretary. He has stated in the said para that:

As discussed above, it is legally settled that the said four divisions of holdings were illegal from the very beginning and hence, as mentioned in paras 2.2A, 2.2B, 2.2C and 2.2D (i) Smt. Savitri Devi w/o Shri Deen Dayal, (ii) Shri Bharat Kumar s/o Shri Deen Dayal, (iii) Smt. Sushila Devi w/o Shri Shanker Lal, (iv) Shri Madhusudan s/o Shri Shanker Lal, (V) Shri Anil Kumar s/o Shri Shanker Lal, (vi) Smt. Anandi Devi w/o Shri Purshottam Lal, (vii) Shri Pradeep Kumar s/o Shri Purshottam Lal, (viii) Smt. Krishna Devi w/o Shri Lalit Mohan, and (ix) Shri Mahesh s/o Shri Lalit Mohan did not get any holdings in the eyes of law. If they did not get anything, they had nothing to part with. Consequently, no holdings were legally received and possessed by the said two firms, which stepped in the foot steps of the said nine persons.

As already stated, the basic premises adopted by the learned Deputy Secretary is that the division of holding was illegal. If that view is wrong and it is wrong as considered above, then the view taken in consideration of mistake Mo. (B) is not correct. The family settlements were valid, so the holdings were divided according to law. The aforesaid nine persons, therefore, held the land validly & could transfer the same to the partnership firms the Navyug Farmers and the Modern Cultivators. The conclusion of the Deputy Secretary that the said two firms have legally no holdings and recognition of holdings with the said firms by the Board of Revenue is nothing but apparent mistake on the face of the record, is not correct and it is no ground for reopening the ceiling cases.

9. So far as the mistake (C) is concerned, it may be stated that same basic wrong premises has vitiated the consideration of this mistake as well. u/s 22(b) of the New Ceiling Act, the land held by a Co-operative Agricultural Society registered on or before 26th September, 1970 is exempted, provided the total land held by an individual member including his share in such Society does not exceed the ceiling area applicable to him. The learned Deputy Secretary considered" the matter as under in para 6.7.A, that--

In view of the said proviso, the exemption to a society is available only when an individual member of it does not have the total land exceeding the ceiling area applicable to him. As mentioned in para 2. 3.C, Shri Bal Chand, Shri Bharat Kumar, Shri Deen Dayal, Shri Purshottam Lal, Lalit Mohan and Shri Shanker Lal with others were the members of the said society. The claimed family divisions being illegal, did not divest the holdings from Shri Deen Dayal, Shri Shanker Lal,

Shri Purshottam Lal and Shri Lalit Mohan and hence their holdings exceeded the ceiling area applicable to them and, therefore, the clause (b) of Section 22 of the New Ceiling Act was not available to the said Society of the non-applicants. This positive escaped the notice of the Board of Revenue, which is a patent mistake in the judgment of the Board.

10. It would appear that the Deputy Secretary on the basis that the family divisions are illegal examined the question of holdings of an individual member and did not examine the question treating the family settlements as valid.

11. It may be mentioned that it is not the case of the State Government that after the recognition of the family settlements and transfers the land of each permissible unit will exceed the ceiling limit. That being so, there was no occasion for the State Government to reopen the ceiling cases of the petitioners. It appears that the State Government assumed the jurisdiction on the ground on which the cases of the petitioners have been reopened which was non-existent. Therefore, the State Government had no jurisdiction to re-open the petitioners' ceiling cases.

12. In the above view of the matter, these writ petition deserve to be allowed.

13. Accordingly, the writ petitions are allowed, the order of the State Government dated October 13, 1978 directing the reopening of the petitioners' ceiling cases is quashed and set aside. The parties shall bear their own costs.