(1987) 03 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Special Appeal No. 45 of 1978

Smt. Hawa Kanwar and Others — APPELLANT

Vs

State of Rajasthan and Another — RESPONDENT

Date of Decision : 02-03-1987

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 34(i), 46
Rajasthan Land Revenue Act, 1956 — Section 256

Citation : (1987) 2 WLN 52

Hon'ble Judges : S.K. Mal Lodha, J;Mohini Kapoor, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Narendra Mohan Kansliwal, J.—This special appeal is directed against the judgment of learned Single Judge dated April 11, 1978, dismissing the writ petition filed by the appellants.

2. Brief facts of the case are that the Collector, Jaipur, issued a notice to Rao Dhir Singh an ex-Jagirdar of Shahpura that an amount of Rs. 1,43,307.60 p. was due against him on account of tribute, Lagan Khalsa, District Board case and Matmi charges. By this notice dated July 6, 1970, Rao Dhir Singh was asked to deposit the afore-mentioned amount in the treasury and in case he had any objection then he could file the same with documents within 15 days. This notice was followed by reminders dated November 13, 1970, and April 2, 1971. Rao Dhir Singh filed a writ petition to quash and set aside the notice dated July 6, 1970 as well as the two reminders issued by the Collector dated November 13, 1970 and April 2, 1971 and to prohibit the respondents to take any other proceedings in consequence of the above notice and reminders.

3. The case of the petitioner was that he was Jagirdar of Thikana Shahpura, which was resumed by the Government on August 11, 1954. Any dues against the jagir could have been recovered from the amount of compensation awarded to the erstwhile Jagirdar in accordance with Section 46 read with Section 34(i)

and Section (c) of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (here in after referred to as the Jagir Act''). It was further alleged that on resumption of the petitioner''s Jagir on August 11, 1954 he was paid compensation amounting to Rs. 6,40,185.70 p. vide final award dated November 4, 1960 (Annexure A''). According to the petitioner, it was mandatory for the Collector to send a notice in Form No IX in case any dues were out-standing against the Jagir as provided under Rule 37(c) of the Rajasthan Land Reforms and Jagir Rules, 1954, (here in after referred to as ''the Jagir Rules'') A notice in form No. IX was issued to the petitioner on September 23, 1961, regarding payment of Matmi dues. Similarly, another notice was issued to the petitioner on February 21, 1963, regarding various dues mentioned in the notice outstanding against Thikana Shahpura. These notices received by the petitioner have been submitted and marked as Annexs. ''B'' and ''C respectively. According to the petitioner, he filed objections against the above notices. Thereafter, no certificate as required in Form No. X was issued against the petitioner as required by the mandatory provisions of the Jagir Act. According to the petitioner, it was mandatory for the Collector to issue(sic) certificate in Form No. X specifying the outstanding dues against the Jagir in question. The Collector sends the certificate to the Jagir Commissioner, who in turn is empowered to deduct the dues so specified from the amount of compensation payable to the Jagirdar in question. In the present case, no certificate was issued in Form No. X by the Collector and the petitioner has been paid compensation in lieu of resumption of his Jagir as back as on November 4, 1960. It has thus been submitted that the Collector, Jaipur, had no jurisdiction to issue any notice after a lapse of ten years of the payment of compensation.

4. It may be mentioned at this stage that Rao Dhir Singh, who had filed the writ petition, died before the decision of the writ petition and the present appellants were substituted in place of Rao Dhir Singh as his heirs and legal representatives.

5. Learned Single Judge held that no efforts were made to determine the amount before the payment of compensation as it was thought that it may take sometime while the Jagirdar was in need of quick payment. Learned Single Judge then held that in the present moment, he agreed with the contention of the learned Government Advocate that the dues can be determined by the Jagir Commissioner even now and this court should not decide this matter with a view whether recovery would or would not be feasible as the notices cannot be said to be without jurisdiction. Learned Single Judge thus dismissed the petition.

6. Mr. Purohit, learned Counsel for the appellants, submitted that claim for compensation on account of the resumption of the Thikana was finalised by the Jagir Commissioner u/s 32(2) of the Jagir Act and an award for compensation to the tune of Rs. 6,45,185.70 p. was passed in favour of late Rao Dhir Singh on November 4, 1960. On February 17, 1961, after deducting amount of Rs. 5,409.31 p. on account of dues of agricultural income tax, the balance amount of compensation was paid to Rao Dhir Singh (now deceased). It was further argued

that a Division Bench of this Court in State of Rajasthan v. Rao Raja Sardar Singh 1969 RLW 97 has already held that dues recoverable by the Government under the provisions of Section 22 of the Jagir Act could only be recovered from the compensation and rehabilitation grant payable to the Jagirdar and in no other manner. It has been submitted that the learned Single Judge was bound to follow the above Division Bench decision and in case he wanted to take any different view, the matter ought to have been referred to a larger bench. It was further argued that the learned Single Judge did not decide the main issue raised by the petitioner that the Jagir Commissioner was functus officio after giving the award and had no jurisdiction now to determine the dues, if any, payable by the Jagirdar. It was submitted that it was a great hardship on the legal representative to get the dues determined by the Jagir Commissioner when the recovery of such dues cannot be made under any provision of law. It was further argued that the learned Single Judge should not have left the matter undecided by observing that this court should not decide the matter with a view whether recovery would or would not be feasible as the notices cannot be said to be without jurisdiction.

7. On the other hand, learned Additional Government Advocate submitted that it was pre-mature on the part of the petitioner to have rushed to this Court, when only notice inviting objections has been issued and no order to the prejudice of the appellant has been passed. It has been further argued that the Jagirdar was in hurry to receive the compensation and if on that account the dues outstanding against him were not determined, the Jagir Commissioner was competent to determine such dues even now.

8. Section 32 of the Jagir Act provides for determination of compensation to a Jagirdar. The Jagir Commissioner is alone competent under the above provision to determine the amount of compensation. Section 46 of the Jagir Act clearly provides that save as otherwise provided in this Act no civil or revenue court shall have jurisdiction in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under this Act. u/s 48, the Government may. by notification in the Rajasthan Gazette, make Rules for the purpose of carrying out the provisions of this Act. The Rajasthan Land Reforms & Resumption of Jagir Rules, 1954 have been framed by the Government under the above power given u/s 48 of the Act. Rule 37-C provides for determination of dues and debts owed by the Jagirdar. Under the above Rule, it has been provided that for the purpose of determining the amount recoverable from the Jagirdar under Clause (c) of Sub-section (1) of Section 22 of the Act, a notice shall be issued to the Jagirdar in Form No. IX calling upon him to pay up the dues and debts within a period of one month from the date of receipt of notice to file objections, if any, within the said period. The notice shall be issued by the Collector concerned or in the case of departmental loans and dues by the Head of the Office of the department concerned, or in the case of loans advanced directly from the Government treasury, State Bank or Fund by a Secretary, Deputy Secretary or Assistant Secretary to the Government in Finance Department.

9. Sub-rule (2) of Rule 37-C provides that if the Jagirdar submits any objection in reply to the said notice, it shall be decided by the authority issuing the notice. The ejections shall be decided within two months of the date of its receipt by such authority.

10. Sub-rule(3) provides that on the decision of the objections, or if no objection is received, on the expiry of the period allowed therefore the authority concerned shall send to the Jagir Commissioner a certificate in Form No. X furnishing details of the dues and debts outstanding on the date of the certificate. Such certificate shall in no case enter the amount of dues or the rule of interest at a figure or a rate higher than that mentioned in the notice under Sub-rule (1). Where an objection has been filed by the Jagirdar within the time allowed for it, no decision shall be given unless the Jagirdar has been given a reasonable opportunity to show cause against it.

11. Then Sub-rule (4) of Rule 37-C provides that on receipt of the certificate in Form No X sent under Sub-rule (3), the Jagir Commissioner shall effect the deduction of the amount as entered in the certificate from the compensation including rehabilitation grant) as provided by Sub-section (1) of Section 34 and Section 38-C of the Jagir Act. He shall also send on intimation of such deduction to the authority issuing the certificate in Form No X That authority shall lake necessary steps for adjustment of the recovery so effected and further recovery of the balance, if any, that might remain outstanding against the Jagirdar.

12. It has been admitted by the Government in reply to the writ petition that no notice in Form No. IX was issued in the present case before determination of the final award. The final award in the present case was given on October 6, 1960 while the notice in Form No. IX was issued to the petitioner on September 23, 196 regarding payment of Matmi dues. Another notice, for recovery was issued to the petitioner on February 21, 1963. It has been further admitted in the reply that the petitioner filed objections to these notices on October 9, 1961 and March 19, 1963. Since the objections filed by the petitioner had not been finally decided, the question of issue of form No. 10 did not arise at all. The Government in its reply has placed reliance on the provisions of Section 256 of the Rajasthan Land Revenue Act or the Rajasthan Public Demands Recovery Act under which it can realise such dues. It has been further submitted in the reply that the Collector had every right to realise the dues either under the Rajasthan Land Revenue Act or under the Rajasthan Public Demands Recovery Act as it was a State demand and the petitioner was liable to pay it. It has been further submitted that the outstanding against the Jagirdar can be realised even after the finalisation of the award if it is found that outstanding dues were correct.

13. In Raja Sardar Singh''s case (supra), a Division Bench of this court has clearly held that the Rajasthan Land Revenue Act makes provision for recovery of certain dues of the State from all persons irrespective of the fact whether they are Jagirdars or non-Jagirdars. The provisions contained in Sections 32, 34, 35, 46 and 47 of the Rajasthan Land Reforms and Resumption of Jagirs Act on the

other hand, are special provisions relating to Jagirdars, whose Jagirs have been resumed under the Act and, therefore, they being the special provisions, shall prevail over the general provisions. An argument on behalf of the State was raised in the above case that the resumption of the Jagir does not extinguish the liability of the Jagirdar in respect of the Government dues outstanding against him whether as arrears of revenue or on account of loans advanced by the Government. The court observed that the question is whether the machinery provided u/s 32 alone has to be resorted to by the State in recovering its dues Section 31 of the Jagir Act enjoins the Jagirdar to show in his statement of claim as to what dues and debts are recoverable from him under Clause (e) of Sub-section (1) of Section 22. Section 22 clearly casts a duty on the Jagir Commissioner to determine the amount of compensation payable to the Jagirdar as well as the amount recoverable from the Jagirdar under Clause (e) of Sub-section (1) of Section 22. Learned Addl. Advocate General in the above case submitted that the Act provides only an additional remedy to the State for the recovery of the State dues and, therefore, cannot extinguish the remedies under other Acts including a remedy of a civil suit. The Court after discussing the above question in detail observed as under:

We are, therefore, of the opinion that the determination of State dues is matter which is required to be settled, decided or dealt with by the Jagir Commissioner within the meaning of Section 46 of the Act. In that situation a civil or revenue court shall have no jurisdiction in respect of such a matter unless it is otherwise provided by this Act itself. Now, no other contrary provision has been brought to our notice. Likewise, the effect of Section 47 is that the Act and the Rules and the orders made thereunder shall have effect not with standing anything contained there in being inconsistent with any existing Jagir law or any other law for the time being in force. Thus, the Jagir Commissioner being the authority, who was duty bound to determine the debts recoverable from the Jagir no other authority, in our view, will be entitled to determine such dues. Here we may advertise to a well known rule of construction "expression uniu sest exclusion alterious" which means that the express mention of a thing excludes things which are not mentioned.

It was further observed as under:

In these circumstances, we are clearly of the opinion that the State dues having been deliberately not deducted from the compensation payable to the Jagirdar, cannot be recovered by a process under the Rajasthan Land Revenue Act, 1956 as that would, in our view, amount to a clear circumvention of the provisions of Sections 46 and 47 of the Act.

14. Learned Government Advocate was unable to convince us for taking a different view from the view taken by the Division Bench of this Court in the above case.

15. Learned Single Judge took the view that in the present moment the dues

could be determined by the Jagir Commissioner even now and this Court should not decide the matter with a view whether recovery would or would not be feasible. In our view, the above approach of the learned Single Judge was not correct We agree with the view taken by the Division Bench in the above cited case of Rao Raja Sardar Singh (supra) that the provisions contained in the Rajasthan Land Reforms and Resumption of Jagirs Act are special provisions relating to Jagirdars and will prevail over the general provisions contained in the Rajasthan Land Revenue Act or the Public Demands Recovery Act. That being so, the debts, dues outstanding against Rao Dhir Singh could have been only determined in accordance with the procedure laid down under Rule 37-C of the Rules. According to the procedure provided under Rule 37-C, it was incumbent on the part of the Collector to serve a notice under Form No. IX and after giving an opportunity to the Jagirdar to file objections, if the Collector found any debts or dues outstanding against the Jagir, the same should have been reported to the Jagir Commissioner under Form No. X. The Jagir Commissioner on receipt of such certificate in Form No. X could have effected the deduction of the amount as entered in the certificate from the compensation to be awarded to the Jagirdar. The Government itself has admitted that no such procedure was adopted as the compensation award itself had been given on Nov. 4, 1960 and feeling the weakness of the admission have now relied on the provisions of the Rajasthan Land Revenue Act and the Public Demands Recovery Act. We are clearly of the opinion that no such demand can be made nor the dues can be recovered under the provisions of the Rajasthan Land Revenue Act or the Public Demands Recovery Act. It was futile on the part of the learned Single Judge to leave the parties to get the question decided at some subsequent stage whether the dues can be recovered or not. If the dues cannot be recovered, it would not serve any useful purpose in holding that the impugned notices issued by the Collector were not without jurisdiction and it was competent to determine the dues.

16. In the result, this appeal is allowed, the judgment of learned Single Judge dated April 11, 1978 is set aside and the notices dated July 6, 1970 issued by the Collector and subsequent reminders quashed. In the facts and circumstances of the case, the parties shall bear their own costs.

