(2015) 07 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 6061 and 6060 of 1994

Sooraj Bai APPELLANT

Vs

State and Others RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468
Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 11, 11(1), 12, 12 (3), 12(2)

Citation : (2015) 07 RAJ CK 0073

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : G.K. Garg, Senior Advocate and Anita Aggrawal, for the Appellant; Rajendra Prasad, A.A.G, Ashish Sharma, Dharmendra Pareek, Addl. Government Counsel and Govind Choudhary, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J—These writ petitions have been filed by Suraj Bai challenging the judgment dated 16.8.1994 passed by the Board of Revenue with the further prayer that the judgment dated 18.11.1990 passed by SDO, Kota be restored. Alternatively, it has been prayed that the order passed by the ceiling authorities may be quashed to the extent they have not considered case of the petitioner and respondents be directed to re-open and decide case of the petitioner with regard to her share in the total holdings and it be declared that petitioner is entitled to have share in the land of deceased Mathura Lal and is entitled to retain 30 standard acres as per law.

2. According to the facts of the case, petitioner is daughter of late Mathura Lal. She was married to Krishna Gopal. Her father Mathura Lal died on 11.1.1962. She claimed share in the properties left by him as per the provisions of Hindu Succession Act, 1956. Mathura Lal had one son Bajrang, besides the petitioner. Bajrang has also died on 13.3.1963 and is now represented by his L.Rs.-

respondent Nos. 5 to 7. According to the petitioner, she is entitled to receive share in the properties left by her father as per Rule 17(4) of the Rajasthan Tenancy (Fixation of Ceiling of Land) (Government) Rules, 1963 (for short-`the Old Ceiling Law). These Rules were framed under Chapter III-B of the Rajasthan Tenancy Act. The notified date fixed under the said Chapter is 1st April, 1966. The ceiling proceedings were initiated against late Mathura Lal, father of the petitioner. Provisions of old ceiling laws were repealed by enactment namely; the Rajasthan (Imposition of Ceiling on Agricultural Holdings) Act, 1973 (for short-`the New Ceiling Law''). According to petitioner, her father had gifted her land measuring 14 bighas covered by khasra No. 221 situated at Village Jalimpura. The said land was mutated after he got decree vide judgment dated 13.6.1975 passed by the Assistant Collector and Magistrate First Class, Kota. However, the ceiling case was decided against her father in 1975 and now under new ceiling law, she was not given opportunity of hearing. Her father had already died when notice for filing return under Section 11(1) of the New Ceiling Act had been issued in his name. His son Bajrang Lal also died in 1963 at the time of initiation of the proceedings against Mathura Lal. Legal representatives of Bajrang Lal appeared in the ceiling proceedings initiated against Mathur Lal without bringing the said fact to the notice of the learned Authorised Officer. The petitioner was entitled to notice of the Authorised Officer. The legal representatives of Bajrang Lal, the son of deceased Mathura Lal in the return filed before the competent authority gave the name of his widow Sooraj Bai and two sons Om Prakash and Mohan Lal. The Tehsildar enquired into the matter and submitted his report dated 26.11.1975. The draft statement was issued under Section 12 of the New Ceiling Law against Mathura Lal for appearance before the Authorised Officer on 9th October, 1975. Another draft was issued in the name of Mathura Lal as well as in the name of aforementioned legal representative of Shri Mathura Lal i.e. Sooraj Bai, Om Prakash and Mohan Lal for appearance on 22.3.1976. It may be noted that name of Bajrang Lal''s wife is Sooraj Bai, which is also the name of petitioner, who happens to be sister of Bajrang Lal and daughter of Mathura Lal. Grievance of the petitioner is that her name was not included by Bajrang Lal in the return that was filed and, therefore, was omitted in the draft statement. The aforesaid legal representatives, however on 22.3.1976 replied to the draft statement stating that 14 bighas land of khasra No. 221 of Village Jalimpura was also gifted by deceased Mathura Lal to petitioner-Sooraj Bai during his life time.

3. Shri G.K. Garg, learned senior counsel for the petitioner has argued that the Authorised Officer, thus came to know from this that daughter of Mathura lal was also alive and that she was also being one of the legal representative, was a necessary party. He was therefore duty bound to collect all the informations with regard to persons interested in the matter of ceiling case against Mathura Lal as per the provisions of Section 12(2) of the New Ceiling Act. Section 11 is in regard to collection of information by the ceiling authorities and detailed Rules have been framed thereunder are also relevant which provided for appointment of the Committees and holding of such enquiries as are found relevant and necessary

including collecting report from the concerned Tehsildar. The learned Authorised Officer confined himself to the return submitted by the legal representatives of Mathura Lal i.e. Bajrang Lal and gave its judgment on 19.4.1976 and noted that Mathura Lal had held total holdings measuring 86.60 acres and the assessee are entitled to hold 30.00 standard acres. The rest of 53 acres was directed to be acquired being surplus land. The legal representatives filed appeal before the Additional Collector, who vide order dated 4.8.1976 partly accepted the appeal directing the Authorised Officer for accepting the options of the land given by the assessee irrespective of the fact that they had already been transferred in the names of third party and that they are encumbered lands. The Authorised Officer then passed the order dated 14.10.1976 and issued revised final statement for the purpose of acquiring the lands, which have been given in option. In the meanwhile, the transferees Shri Dhanna Lal and Shri Onkar Lal filed appeals before the learned Board of Revenue against the judgment dated 4.8.1976. The Board of Revenue vide judgment dated 8.5.1978 accepted the appeal of the transferees relating to lands of khasra No. 125 measuring 19 bighas and 15 biswas situated in Village Kishorepura. It was held that encumbered land could not be given in option. The assessee also filed appeal against the order of Additional Collector dated 4.8.1976 before the Board of Revenue on the ground that ceiling determination was not correct and that separate units of Om Prakash and Mohan Lal were not taken into consideration. The Board of Revenue set aside the order passed by the Assistant Collector vide judgment dated 20.7.1981 and remanded the case with a direction that the age of these two persons, namely; Om Prakash and Mohan Lal may be ascertained and thereafter appropriate orders may be passed.

4. After remand the Authorised Officer vide its order dated 25.1.1982 decided the matter and held that Om Prakash was major and was entitled to receive one separate unit and directed the total land measuring 60.64 standard acres as a ceiling area of the assessee and the rest land measuring 23.26 standard acres is to be acquired as surplus. The assessee then preferred appeal against this order, which came to be dismissed by Additional Collector vide order dated 17.7.1982. The assessee then further filed appeal before the Board of Revenue, which by its order dated 23.3.1987 set aside the order of dismissal on the ground of default and directed that the appeal be heard afresh on merits. After remand of the matter, the matter is still pending before the Appellate Authority and the final determination has not been made. Even two transferees namely; Uda Ram and Manna Lal challenged the ceiling proceedings in the court appeal, which was ultimately vide judgment dated 2.4.1990 allowed the appeal of transferees and directed that since their lands are encumbered lands, that encumbered land cannot be acquired in first instance.

5. Petitioner moved an application dated 17.10.1990 for the first time before SDO. She learnt that the ceiling case of Mathura Lal is being decided at the back of the petitioner, who was necessary party. She was advised to move an application before the SDO for seeking her rights as are available to her under

the provisions of the New Ceiling Law. In the said application, it was clearly mentioned that petitioner is entitled to 1/2 share in the properties left by her father as per the provisions of Hindu Succession Act, 1956. The SDO vide order dated 8.11.1990 allowed the application and held that Sooraj Bai W/o Bajrang Lal and Om Prakash were entitled to one half each according to which they could retain land measuring 150 bighas 17 biswas, whereas they had only 147 bigha and 8 biswas. In so far as Sooraj Bai W/o of Krishna Gopal is concerned, she was having 61 bigha and 12 biswa and therefore was not affected by ceiling law and the ceiling proceedings against her were ordered to be dropped. This order was subjected to challenge by the allottees of the land, which was earlier declared surplus. Three such appeals were filed respectively by Uda Lal, Manna Lal and Chaturbhuj. The appellate authority by common judgment dated 10.8.1992 dismissed the appeals, whereas according to settled proposition of law, the transferees have no right to file appeal. The Board of Revenue in second appeal vide judgment dated 16.8.1994 allowed the appeals filed by Uda Lal and Manna Lal and dismissed the appeal filed by Chaturbhuj and others on the ground of limitation. Hence these two writ petitions against the judgment dated 16.8.1994 passed in the second appeals of Uda Lal and Manna Lal.

6. Shri G.K. Garg, learned senior counsel for the petitioner submits that under the provisions of Section 23 of the New Ceiling Law, the appeal could be preferred by the State Government or any person aggrieved by any decision or order of the Authorised Officer under Sub-section (3) of Section 12 or sub-section (3) of Section 19 or Section 21. According to Section 12(3), the Authorised Officer should decide the objections by an order in writing filed by a person who is interested in the land. In the instant case, the assessment proceedings were still pending before the appellate authority against the order dated 25.1.1982. The petitioner was not a party in those proceedings. She was having the right to move application before the Authorised Officer for adjudication u/s. 12(3) of the Act. It is contended that the allottees of the land could not be said to be aggrieved party. The appeal u/s. 23 as such was not maintainable.

7. Learned senior counsel for petitioner submits that the Board of Revenue has erred in law in observing that the order of SDO was without jurisdiction and same can be challenged by the allottees. This observation is in contravention of number of decisions given by the Board of Revenue. Reference is made to the decision of larger bench of Board of Revenue in Yashwant Singh v. State-1990 RRD 355 wherein it was held that in ceiling case assessee is entitled to restitution both against the State as well as allottees and allottee would not be a necessary party in case of restitution and cannot raise any objection. It is contended that the Board of Revenue has wrongly observed that any person could challenge the illegality committed by an officer in implementing the laws. The Board of Revenue has erred in law in holding that because of the long possession of the allottees, they are aggrieved parties. However, when the ceiling proceedings are dropped, the question of long possession does not arise.

8. Learned senior counsel for the petitioner has argued that petitioner was having a right of hearing before the ceiling case of Mathura Lal is decided, which the authorities failed to do so. Petitioner was also having a right to file objection u/s. 12 (3) of the New Ceiling Act, notwithstanding the fact whether the matter had already been decided by the SDO or the same was pending in appeal. The provisions of Section 23-A have been discussed by the authorities mentioned therein that it could be involved only within six months, but in the instant case, as observed by the learned Board of Revenue, it was barred by time and there was no ground for review. The learned Board of Revenue has not considered that the petitioner was no given any notice and as such the question of limitation of moving an application within six months did not arise. She was having a right before the proceedings are finally determined to move the court for correcting the mistakes committed by the Court either under Section 12(3) or under Section 23(a) of the Act for review of the judgment.

9. Learned senior counsel for the petitioner has argued that the learned Board of Revenue has wrongly observed that after the death of Shri Mathura Lal, his property devolved on Bajrang Lal and thereafter after so many years on death of Bajrang Lal to his legal heirs. However, Mathura Lal expired in the year 1962 and Bajrang Lal expired in the year 1963. Therefore, petitioner is the legal heir of Mathura Lal and having a right to inherit the land as per the provisions of law, whereas she was never brought on record. It is contended that learned Board of Revenue has wrongly relied on the affidavit of Om Prakash, who was a stranger to the matter who had stated that petitioner has expired long back and application was forged one. It is contended that the learned Board of Revenue is having bias with the SDO because in half of the order, it has made many remarks against him. It is contended that the learned Board of Revenue has committed mistake apparent on the face of record when it entertained the second appeal without meeting with the point of limitation on account of which the appeals were dismissed by the learned appellate authority.

10. Shri G.K. Garg, learned senior counsel for the petitioner submits that the reference of order of remand and confining the jurisdiction of the Court to which the case was remanded in terms of the order of remand is per se illegal in so far as the present petitioner is concerned. She was not bound by the order of remand as she was not party in those proceedings out of which the order of remand arose. The approach of the learned Board of Revenue is therefore per se illegal. It is therefore prayed that the writ petition be allowed and the impugned order be set aside.

11. This point of limitation in any case need not be gone into as according to the findings recorded by the Board of Revenue, the order dated 8.11.1990 passed in favour of petitioner is found on concealment and fraud played on the Court. Before going into the question whether the appeal would be maintained before the Board of Revenue by allottees, the Board of Revenue has given detailed reasons and also relied on number of judgments including the judgment of

Supreme Court in S.P. Gupta v. Union of India-AIR 1992 SC 149 on the question of locus standi and held that the allottees had a vital interest in the land allotted to them and that they could challenge the judgment of SDO and Additional Collector (Authorised Officer) in appeal before the Board. The Board in the judgment has noted that the Revenue Board in its earlier judgment dated 2.4.1990 has remanded the matter to the Authorised Officer (Ceiling) Kota only for the purpose of deciding the question of encumbrance/un-encumbrance of the land before taking possession of the land as per the judgment dated 25.1.1982. Although SDO decided that issue but while deciding this issue he proceeded further to decide an application of one Suraj Bai presented on 25.9.1990 and eventually ended up by setting aside the earlier judgment of Authorised Officer vide judgment dated 25.1.1982 by which the land measuring 23.26 standard acres was declared surplus were set aside. The Board in the impugned order has held that the SDO has no power to do so as he at this stage was confined to the scope of remand and that it was not a recall petition.

12. The application was presented by the petitioner Sooraj Devi on 25.9.1990 where she claimed to be daughter of Mathura Lal and co-sharer of land of her father along with deceased brother Bajrang Lal. She raised the question that she was not given share of the land after the death of her father and claimed half share. The SDO neither issued a notice to the State government as was clear from the order sheet of the case file from 25.9.1990 to 8.11.1990, nor made the enquiry whether Sooraj Bai, was really the sister of Bajrang Lal and daughter of Mathura Lal. He also did not enquire whether the property was ancestral or not. The Board noted that if Sooraj Bai had any claim she should have filed a declaratory suit to determine her rights vis-?-vis other legal representatives. In fact, the Board took note of a affidavit filed by one Om Prakash dated 28.7.1992 before Additional Collector (Ceiling), Kota, stating that Sooraj Bai in whose name application has been made was dead long back and application was forged. The Additional Collector did not take note of this fact and make any enquiry. It was therefore observed that whole episode is highly suspicious and order of the SDO was thus set aside.

13. This Court finds that the Board of Revenue had given weighty reasons in support of its conclusions and does not find any infirmity and this is also because the Board of Revenue in para 12 of the judgment has observed that the appropriate disciplinary action be initiated against the SDO concerned who passed the order dated 8.11.1990 and forwarded the copy of the order to the Department of Personnel. In para 13, it has directed an enquiry to be made whether the original Sooraj Bai, daughter of Mathura Lal was alive when the application dated 25.9.1990 was filed and if not who filed the application alongwith affidavit in her name.

14. This Court by order dated 7.7.2015 directed the respondents to make enquiry as per the direction contained in the order of the Board of Revenue dated 16.8.1994 whether Sooraj Bai is alive or not and if not who has filed the affidavit

before the prescribed authority impersonating herself as Sooraj Bai. The aforesaid direction was made by the Board of Revenue in view of the allegation that Sooraj Bai had, in fact, died and her husband Krishna Gopal has contacted second marriage with Kasturi Bai and it is this Kasturi Bai who filed the application impersonating herself as Sooraj Bai.

15. The additional affidavit of SDO, Digod, Kota has been filed with which an enquiry report, said to have been conducted by the SDO has been placed on record. Perusal of the report indicates that it is based on strange conclusions. No enquiry worth the name has been made. The effort made by the SDO was nothing but a mere eye wash. His conclusion is based on surmises and conjectures. He has stated that it appears that after the death of original Sooraj Bai, who was daughter of Mathura Lal and the present wife of Krishna Gopal, must have been taken in adoption by Mathura Lal and who must have named her also as Sooraj Bai and thereafter must have contacted her marriage with his own son in law Krishna Gopal. The SDO had given the finding that no document indicates the name of Kasturi Bai.

16. Shri Govind Gupta, learned counsel for respondent No. 8/1-Hira Lal has placed for perusal of the Court report of Tehsildar, Land Conversion Incharge cum Reserve Tehsildar, Kota dated 26.4.1993. This report appears to have been submitted by him after making enquiry in compliance of the order of the Collector, Kota dated 22.1.1993 presumably based on the direction given in the judgment of the Board of Revenue dated 16.8.1994. It is surprising that this report has neither been placed on record of this writ petition by State-respondents, nor has been taken note of by the SDO in the new enquiry. This report was an eye opener and it indicates that Mathura Lal and his son Bajrang Lal as well as daughter Sooraj Bai both died. It also indicates that Sooraj Bai died about one and half years after her marriage. The report refers to the statement of various persons certifying this fact. In the report, the voters list of Maukapada in Kota Parliamentary Constituency of 1975, 1980, 1984 and 1990 have been referred to in which name of Kasturi Bai has been indicated as wife of Krishna Gopal. Also reference is made to a criminal complaint filed under Section 420, 467, 468 and 120B IPC in the Court of Additional Munsif Cum Judicial Magistrate No. 1, North filed against her and her husband. Reference is made to the affidavit of several persons, who alleged that Sooraj Bai died long ago and that Krishna Gopal contacted second marriage with Kasturi Bai, who is resident of Bundi. The death certificate of Sooraj Bai issued by Gram Panchayat Sultanpur, Tehsil Digod has also been referred. The proximate year of death has been indicated to be 1960. The aforesaid report is taken on record.

17. Having regard to the facts aforesaid, this Court does not appreciate the lackadaisical and superficial manner in which the enquiry has been conducted by the SDO, Digod, to hush up the matter, without looking into the aforesaid documents and for not producing such important documents and also not apprising the Court about the fact that enquiry, as directed by the Board of

Revenue, has already taken place, the District Collector, Kota is directed to forward the matters to the Government in its Department of Personnel for taking appropriate disciplinary action for such serious lapse as the Government may deem fit against the said SDO, Digod and other officers, who were responsible for not bringing this important development on the records of the case.

18. The writ petitions are dismissed with aforesaid directions.