
(2008) 05 RAJ CK 0096
In the Rajasthan High Court

State of Raj. and Another

APPELLANT

Vs

Jabbar Singh and Another, Gaje Singh and Another, Man
Singh and Another and Bhagwan Singh and Another

RESPONDENT

Date of Decision : 08-05-2008

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(2)

Citation : (2008) 05 RAJ CK 0096

Hon'ble Judges : N.P. Gupta, J;Kishan Swaroop Chaudhari, J

Bench : Division Bench

Judgement

Kishan Swaroop Chaudhari, J.—All these appeals arise out of the common order dated 10.07.1979 passed by learned Single Judge of this Court in S.B. Civil Writ Petition Nos. 2685/87, 2801/87, 2848/87, 1861/89 and 4159/89, by which the learned Single Judge, following the decision in the case of Pari Devi v. State of Rajasthan 1984 RLW 75 allowed all the five petitions and quashed the impugned orders of reopening ceiling proceedings.

2. Brief facts, giving rise to these present four appeals, are that in D.B. Civil Special Appeal No. 907/97, SDO Sojat dropped proceedings under old ceiling law by order dated 30.10.1975 and the Deputy Secretary (Revenue) by order dated 07.07.1978 ordered for reopening the case; in D.B. Civil Special Appeal No. 908/97, SDO Pali, vide its order dated 20.06.1972, dropped the proceedings initiated under old ceiling law and proceedings were dropped under new ceiling law vide order dated 23.08.1975 but the Deputy Secretary, Revenue (Ceiling) vide order dated 6.11.1978 reopened the ceiling proceedings; in D.B. Civil Special Appeal No. 915/97, SDO Sojat, vide order dated 28.10.1975 dropped the proceedings initiated under old ceiling law but vide order dated 20.11.1975 ordered to acquire some surplus land under new ceiling law and the Deputy Secretary, Revenue vide order dated 01.04.1981 directed to open the proceedings; and in D.B. Civil Special Appeal No. 8/98, SDO Bali, vide order dated 30.10.1975 acquired some land under old ceiling law but that order was

set aside by RAA, Jodhpur vide order dated 05.04.1976. Thereafter, SDO Bali again initiated proceedings under new ceiling law and vide order dated 29.09.1975 dropped proceedings but Deputy Secretary, Revenue (Ceiling) vide order dated 20.02.1981 directed to reopen ceiling proceedings.

3. Learned Counsel for the State argued that learned Single Judge followed the decision in *Pari Devi's* case and quashed the impugned orders of reopening ceiling proceedings whereas the judgment rendered in *Pari Devi's* case holds no good law in the light of Division Bench decisions rendered in the cases of *Rajeshwar Singh v. SDO, Amber* 1981 RLW 561; *Ram Gopal v. State of Rajasthan* 1989 (1) RLW 670 and submitted that in light of these judgments the State Government has power to reopen ceiling proceedings and determine ceiling area. Learned Counsel for the respondents submitted that D.B. Special Appeal No. 230/84 filed against the judgment in *Pari Devi's* case has been rejected and the SLP preferred against the Division Bench judgment has also been dismissed by Hon'ble Supreme Court. Learned Counsel further submitted that Hon'ble Supreme Court has held that reopening of old proceedings by invoking provisions of Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 is not permissible and to support his submission, referred to a decision in the case of *State of Rajasthan and Anr. v. Smt. Amarjeet Kaur and Ors.* reported in 2003(1) DNJ 17.

4. At this juncture, it is appropriate to make reference to the provisions of Sub-sections (1) & (2) of Section 15 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short, hereinafter referred to as "the Act of 1973"), which read as under:

15. Power to reopen cases-(1) Notwithstanding anything contained in this Act, if the State Government, after calling for the record or otherwise is satisfied that any final order passed in any matter arising under this Act is in contravention of the provision of this Act and such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to reopen such decided matter and to decide it afresh in accordance with the provisions of this Act:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in forgoing proviso shall be issued after the expiry of five years from the date of the final order sought to be reopened or after the expiry of the 30th day of June, 1979, whichever is later:

(2) Without prejudice to any other remedy that may be available under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final orders passed in any matter arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial

to the State Government or that on account of the discovery of new and important matter of evidence which has since come to its notice, such order is required to be re-opened, it may direct any officer subordinate to it to re-open, such decided matter and to decide it afresh in accordance with such repealed provisions:

Provided that no such direction shall be issued unless a notice to show cause against the proposed action has been served upon the person concerned:

Provided further that no notice referred to in the foregoing proviso shall be issued after the expiry of seven years from the date of the final order sought to be reopened or after the expiry of 30th day of June, 1979, whichever is later.

Provided that no final order passed by the Board in the matter referred to in Sub-section (1) or in Sub-section (2) shall be directed 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 fact of the record.

5. A bare reading of the aforesaid extracted provisions show that Sub-section (1) and (2) of Section 15 have been made to meet two different situations. Sub-Section (1) of Section 15 will be attracted in case the State Government after calling for the record or otherwise is satisfied that any final order passed in any matter arising under the new ceiling law is in contravention of the provisions of that Act and is prejudicial to the State Government or on account of the discovery of new and important matter or evidence which has come to its notice, is required to be re-opened. Sub-Section (2) of Section 15 is applicable, if the State Government is satisfied that final orders passed in any matter arising under the old ceiling law is in contravention of that law and is prejudicial to the State Government, then it may direct any officer subordinate to it to re-open such decided case and to decide it afresh in accordance with the old ceiling law.

6. In Rajeshwar Singh's case (supra), it was held by the Division Bench of this Court that State Government can reopen case u/s 15 (2) not only on the ground that a new and important matter of evidence has come to its notice but also on the ground that some mistake or error apparent on the face of record has appeared. The words, "without prejudice to any other ready", appearing in Section 15 (2) gives overriding powers to the State Government to re-open any case, which falls within the four corners of the restrictions mentioned therein, even if an appeal could have been filed against an order. Despite the aforesaid Division Bench judgment, it was held in Pari Devi's case that it was not open to the Government to proceed again under the old ceiling law and thereby quashed proceedings u/s 15 (2) being without jurisdiction. It appears that D.B. Judgment in Rajeshwar Singh's case was not brought to the notice of the learned Single Judge. In the present matters, learned Single Judge following the said judgment, passed the order impugned, which cannot be sustained in light of the earlier Division Bench judgment of this Court. The case of Pari Devi has again been considered by Division Bench in Ram Gopal's case (supra) and it was held that if

within the prescribed period the State Government comes to the conclusion that the case decided under the Rajasthan Tenancy Act, 1955 (hereinafter, "the Act of 1955") is in contravention of the provisions of that Act or any new evidence is discovered, then it can reopen the determination of the ceiling area under the Act of 1973.

7. Thus, we are of the opinion that despite the fact that ceiling area has been determined under the old ceiling law as well as new ceiling law, the State Govt. can order to reopen cases under Sub-section (2) of Section 15 of the new ceiling law, subject to period of limitation and other conditions as contained therein.

8. Learned Counsel for the respondents submitted that D.B. Special Appeal filed against the order passed in Pari Devi's case has been dismissed and SLP has also been dismissed in limine by Hon''ble Supreme Court. A perusal of judgment dated 12.02.1985, passed in D.B. Civil Special Appeal No. 230/84 - State v. Pari Devi reveals that appeal was filed after limitation and application u/s 5 of the Limitation Act was rejected, consequently the Special Appeal was dismissed as time barred. This judgment clearly reveals that legality of the order passed in Pari Devi's case by learned Single Judge was not considered by the Division Bench. Learned Counsel for the respondent has not submitted copy of the order passed by Hon''ble Supreme Court in the SLP filed against the order passed in D.B. Civil Special Appeal No. 230/84 but merely on his stating that the SLP was dismissed in limine, it cannot be presumed that Hon''ble Supreme Court has upheld the law laid down in Pari Devi's case. Learned Counsel for the respondents also relied on the decision in Amarjeet's case (supra) but that case is not applicable to the present appeals as in that case while the matter was pending before Assistant Collector Sahbad after remand, the Deputy Secretary to the Government of Rajasthan, in exercise of powers conferred under Sub-section (2) of Section 15 of the Act of 1973, reopened the order passed by SDO, Baran under the Act of 1955 on 14.01.1971 and directed the Addl. Collector, Kota to inquire into the matter and determine the ceiling area of the respondents. That order was challenged and this Court quashed the orders of Deputy Secretary, Addl. Collector and Board of Revenue regarding reopening of the proceedings u/s 15(2) of the Act of 1973 but further observed that the proceedings would continue before the Assistant Collector, Shahbad pertaining to the order of remand and that he would be free to decide the ceiling area in accordance with the observations made in the order. Hon''ble Apex Court, while dismissing contempt petition observed that no useful purpose would be served by reopening the old proceedings particularly in view of the fact that determination of the area under the Act of 1973, even if found to be more, is of no consequence and would not accrue any benefits to the respondents. This clearly shows that as the matter was already pending after remand before Assistant Collector, Shahbad, reopening order passed under the Act of 1955 was quashed, while in the aforesaid matters proceedings under old and new law had already come to an end and after that reopening of proceedings u/s 15(2) of the new ceiling law was ordered and such orders are in accordance with law. The learned Single Judge has erred in

quashing the orders passed by the State Government.

9. Consequently, these appeals filed by the State are allowed and order of learned Single Judge dated 10.07.1997 is set aside to the extent it relates to the writ petition Nos. 2685/87, 2801/87, 2848/87, 1861/89 against which the present appeals have been filed.