**(2015) 05 RAJ CK 0149**

**In the Rajasthan High Court**

**Case No :** Civil Special Appeal No. 61 of 2003

State of Rajasthan and Others APPELLANT

Vs

Ghanchi Mahasabha RESPONDENT

**Date of Decision :** 15-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 39
Rajasthan Land Reforms and Acquisition of Land Owners Estates Act, 1963 — Section 10, 10(1) (a), 12, 14, 2(b)
Rajasthan Tenancy Act, 1955 — Section 16, 5, 5(18), 5(3), 5(37)

**Citation :** (2016) 1 WLN 9

**Hon'ble Judges :** Sunil Ambwani, C.J;Jaishree Thakur, J

**Bench :** Division Bench

**Advocate :** M.S. Singhvi, Senior Advocate, Rajesh Panwar, Addl. Advocate General, Hemant Dutt and Sajjan Singh, for the Appellant; L.R. Mehta, Ramit Mehta and Ashok Parihar, Advocates for the Respondent

**Final Decision :** Allowed

## Judgement

Sunil Ambwani, C.J—This intra court D.B. Civil Special Appeal arises out of the judgment of the learned Single Judge dated 10th August, 2001, by which he allowed the writ petition and while setting aside the order of the Collector dated 25.8.1987, a declaration was made that the transfer made in favour of Shri Ghanchi Mahasabha of the land forming part of the Sardar Samand Estate held by the erstwhile ruler of Marwar, declared by this court to be falling within the provisions of Section 10 of the Rajasthan Land Reforms and Acquisition of Land Owners Estate Act, 1963 (Act No. 11 of 1964), (for short, "the Act of 1964") beyond the pail of acquisition, is not affected by the provisions of Section 7-A(i) of the Act of 1964. Learned Single Judge, however, observed that this declaration shall not affect the provisions of the Ceiling law, as may be applicable to it.

2. Shri Ghanchi Mahasabha, which is a representative body of Ghanchi Samaj, traditionally engaged in rearing cattle, was registered as a Society under the provisions of the Societies Registration Act. It is alleged to have purchased the

land measuring 8772 bighas in Sardar Samand Estate in District Pali, known as `Soorwari'' covering the grass zone in between the Sardar Samand Estate from erstwhile Ruler of Marwar Shri Gaj Singh vide sale deed dated 31.8.1964, which was alleged to be in possession of Shri Ghanchi Mahasabha since 1958-59 and of which Shri Ghanchi Mahasabha was put in possession on the execution of the sale deed.

3. The Act of 1964 was enacted by the State Government to provide for acquisition of the estates of land owners and in consequence thereof to amend certain other Acts. It was amended by the Rajasthan Act No. 15 of 1975 for other measures of agrarian reform, removal of intermediaries, allotment of land to landless persons and development of agriculture substituting Chapter IV of the Act of 1964 with retrospective effect.

4. Section 7(1) falling under Chapter IV of the Act of 1964 provides that as soon as may be after the commencement of the Act of 1964, the Government may for the purpose of carrying out agrarian reform in accordance with the provisions of the Act of 1964, by notification in the Official Gazette, appoint a date for the acquisition of land owners'' estates in the State and for their vesting in the State Government. Sub-section (2) provides that the date appointed under this Section in relation to the acquisition of land owners'' estates in the State in the Act of 1964 will be referred-to as the date of vesting of such estates.

5. Section 7A of the Act of 1964 provides for non-recognition of certain transfers and agreements. No transfer of an estate under sub-section (i) liable to acquisition under the Act of 1964 or part thereof made by the landowner on or after the date of commencement of the Act of 1964 and before the date of vesting, whether by way of sale, mortgage, gift, exchange, lease, assignment, surrender, bequest, creation of trust or otherwise, shall be recognized for any purpose of the Act of 1964 and the estate or part so transferred shall be deemed to continue to vest in the landowner, to be acquired under Section 7 of the Act of 1964. Section 7A of the Act of 1964 is quoted below:

"7-A. Non-recognition of certain transfers and agreements.- Notwithstanding anything contained in any law of judgment, decree or order of a court to the contrary,-

(i) no transfer of an estate liable to acquisition under this Act or part thereof made by the landowner on or after the date of commencement of this Act and before the date of vesting, whether by way of sale, mortgage, gift, exchange, lease, assignment, surrender, bequest, creation of trust or otherwise, shall be recognised for any purpose of this Act and the estate or part so transferred shall be deemed to continue to vest in the landowner;

(ii) all transfers of an estate liable to acquisition under this Act or part thereof of the nature referred to in clause (i) made by the land owner on or after the date of vesting shall be null void; and

 

(iii) any agreement made by a landowner with any other person on or after the commencement of this Act for transfer of his estate liable to acquisition under this Act or part thereof or for relieving, whether in whole or in part, a tenant from liability for payment of rent of any land comprised in his estate shall be and is hereby declared to be null and void."

6. The Act of 1964 came into force on 6th April, 1964, whereas the landowners'' estates in the State were acquired by the State Government under Section 7 of the Act of 1964 on 1.9.1964.

7. The "estate" under Section 2(b) of the Act of 1964 was defined to mean land or right, title or interest in land held by a landowner. The "land" under Section 2(f) was defined to mean any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans and to include- (a) tanks, lakes, ponds, rivers and water channels held for purposes of irrigation; (b) surface of hills, (c) landing grounds or strips, and (d) shikargah but it does not include forts, palaces, buildings and building plots, specified in the inventory.

8. Section 6 falling in Chapter III of the Act of 1964 provides for khatedari rights of tenants in the landowners'' estates. It provides that every person who, at the commencement of the Act of 1964, is or so entered in the revenue records as a tenant or a tenant of Khudkasht, but not as a sub-tenant of any land forming part of an estate, unless he had become a Khatedari tenant thereof previously to such commencement by virtue of any law or otherwise, shall be deemed to be the Khatedar tenant of such land holding from the landowner of an estate. By the proviso to sub-section (1), the protection was not given to any person to whom the land is or has been let out temporarily in the Gang Canal, Bhakra, Chambal, Jawai or Rajasthan Canal Project Area or where the land belongs to any of the categories specified in Section 16 of the Rajasthan Tenancy Act, 1955 (for short, "the Act of 1955"). Sub-section (2) provides that in respect of land under the personal cultivation of the landowner and in which there are no tenants, the landowner shall, as from the date of vesting, be the Khatedar tenant thereof.

9. The S.B. Civil Writ Petition No. 875/1975 was filed by the Ex Ruler of Marwar State Shri Gaj Singh challenging the validity of the provisions of the Act of 1964 and the acquisition made thereunder. The Court by its order dated 27.2.1981 restrained the authorities from taking possession of the lands comprised in Sardar Samand Estate, of which the land in question was a part in exercise of their powers conferred by Section 9A of the Act of 1964.

10. Aggrieved with the action of the Tehsildar in interfering with the possession of Shri Ghanchi Mahasabha over the land in question, it filed the petition being SBCWP No. 345 of 1976, which was disposed-of by this court on 8.7.1985 by permitting the petitioners to file objections against the acquisition of the land within two months from the date of the order, and the District Collector was

 

directed to dispose-of such objections and until that time, protecting interest of Shri Ghanchi Mahasabha, status quo with regard to the land in question was ordered to be maintained. The objections were filed by the petitioner on 5.9.1985 before the District Collector, Jodhpur. In continuation thereof, further objections were filed on 11.3.1986.

11. Shri B.P. Arya, the District Collector, Jodhpur, by his order dated 25.8.1987, rejected all the objections and directed the proceedings under the Act of 1964 to continue for taking possession of the land. The objections were rejected on the finding recorded at page No. 4 of the order that the objectors had admitted in their objections dated 5.9.1985 that they were paying "Ijara" of the land and had produced its receipts. The "Ijara" is defined under sub-section (18) of Section 5 of the Act of 1955. Sub-section (43) of Section 5 of the Act of 1964 provides that "Ijaredar" or "Thekedar" will not be treated as tenants and, thus, on their own admission that the objectors were "Ijaredar", they cannot be treated to be tenants since 1958-59 prior to the sale of the land by the Ex Ruler on 31.8.1964. So far as the possession of the objectors on the land since 1958-59 upto 31.8.1964, the date of sale deed, is concerned, the sale deed does not refer-to or mention about the possession of the objectors at any time prior to the execution of the document. If the objectors were actually in possession of the land, the sale deed should have mentioned their possession. On the contrary, it is stated in the sale deed that the purchasers have been put in actual possession.

12. The State has also stated in its reply that the plea of possession since 1958-59 is an after thought, as in their affidavit, accompanying the writ petition, it was stated that the applicants purchased 8772 bighas of land from Ex Ruler Shri Gaj Singh for Rs. two lacs on 31.8.1964 and on the same date, they were given possession of the land. The objectors, therefore, cannot be accepted to be the tenants in occupation of the land since 1958-59, and did not acquire any khatedari rights in the land.

13. The second objection regarding the objectors having violated Sections 7A, 8 and 9A of the Amendment Act, 1975 was not found to be acceptable, as in the judgments cited by the State counsel in Mohan Lal Vs. State, (1985) WLN 251 ; State of Rajasthan and Others Vs. Smt. Gayatri Devi and Others, AIR 1980 Raj 193 and the judgment dated 16.4.1980 in Appeals No. 11 to 16 of 1970, the provisions of Sections 7A, 8 and 9A of the Amendment Act, 1975 were held to be valid. In these appeals, the erstwhile Ruler Shri Gaj Singh himself was a party and he had challenged these provisions of law as the erstwhile land owner. The objectors had filed S.B. Civil Writ Petition No. 345/1976, which was decided on 8.7.1995 with the directions to file objections within a period of two months, in accordance with which, objections were raised. Since Sections 7A, 8 and 9A were held to be valid by the High Court, the objection was not found to be acceptable.

14. Item No. 3 of the objections related to the allotment of the land on the ground that the land was of religious nature and was free from Ceiling laws. The objection was not found tenable, inasmuch as the objectors had claimed that

 

they purchased the land from the Ex Ruler Shri Gaj Singh in the year 1964 and on which date, Shri Ghanchi Mahasabha was not registered as a Society. The sale deed was executed for a sale consideration of Rs. two lacs. It did not show that it was executed for the religious purpose. Shri Ghanchi Mahasabha is a social organization and if it has any property, it could not be treated to be held for charitable and religious purposes. It was stated that Shri Ghanchi Mahasabha have 5000 units and is, thus, free from ceiling vide its application dated 24.3.1987 on the ground that the land is of religious nature. The Collector found that neither the land was held for religious purposes nor it had been stated as to how much agriculture land was held by Shri Ghanchi Mahasabha and in the circumstances, there was no reason to declare the land to be free from ceiling. The proceedings for allotment and regularization were entirely different proceedings, for which, it may be possible for the members of Shri Ghanchi Mahasaba to file an appropriate application but no objection could be entertained on this ground in the proceedings under the Act of 1964.

15. On the objections that the Ex Ruler Shri Gaj Singh should have been a party in the proceedings, the Collector found that these objections have been raised much after the period of two months, prescribed by the court and are not acceptable. The objectors had mentioned in their writ petition that they came into possession of the land for the first time in the year 1964, whereas in the objections dated 5.9.1985, they claimed to be in possession as "Ijaredar" from the landowner vide receipts of "Ijara" since 1958-59. On the application dated 24.3.1987 filed, additional arguments were heard and, in which, they have claimed the land to be "Khudkasht". All the three stands, taken by the objectors are contradictory to each other. If the land was held by them under "Ijara", they could not have become the Khudkasht landowners and if the land was Khudkasht land, it could not have been held on "Ijara". The issue whether the land in question was Khudkasht land of Ex Ruler, has already been decided and, which cannot be reappreciated and, thus, the submission that Shri Ghanchi Mahasabha was khatedar of the land, was entirely baseless. The rejection of the objections by the Collector on 25.8.1987 gave rise to the writ petition being SBCWP No. 2302/1981, which was decided by the learned Single Judge on August 10, 2001.

16. The proceedings of acquisition of the land under the Act of 1964 have, in this manner, remained pending for last 51 years, during which, the land is ostensibly in the possession of the Ex Ruler, who, in the writ petition filed by him, did not succeed to protect the lands.

17. Learned Single Judge held that there was no impediment in the Act of 1964 on the estate holders to transfer their rights in the estate. The insertion of Section 7A by amendment in the year 1975, however, provides for non-recognition of certain transfers and agreements after the date of commencement of the Act of 1964, and before the date of vesting i.e. between 6th April, 1964 to 1st September, 1964. The provision was introduced by the amendment in the year 1974 with retrospective effect. Learned Single Judge held that the

 

petitioners had acquired the rights of the owner from the erstwhile Ruler of Marwar through sale deed executed on 31st August, 1964 and such transfer was also recognized by the respondents in the form of issuing regular pass books as Khatedars for the lands situated in different villages forming part of the erstwhile Sardar Samand Estate.

18. Learned Single Judge held that it was not in dispute that there was no impediment, when the Act of 1964 was enacted originally in transferring the property after the commencement of the Act of 1964 and before the date of vesting i.e. 1st September, 1964. If any transfers were made, they remained unaffected. It is on this premise that in the first instance, the pass books showing the petitioners as Khatedars were issued in 1974. As a result of insertion of Section 7A in the Act of 1964, the transfers of estates liable to be acquired under the Act of 1964 made by the landowners between the date of commencement of the Act and before the appointed date of vesting, were deemed to continue to vest in the landowner and were not recognized. Section 7A of the Act of 1964 provides that the transfers of such estates only were inhibited, where prior to the date of acquisition and after the date of acquisition, the land was liable to be acquired under the provisions of the Act of 1964. The date on which the estate was to be acquired, would be the date on which the Act of 1964 commences and that was on the will of the State to notify the appointed date. The notification was to operate in respect of such estate or such part of the estate, which was liable to be acquired under the Act of 1964. The notification of the date of vesting could not, and did not extend the acquisition beyond what was on the date of commencement of the Act of 1964. Learned Single Judge observed that acquisition of the landowners'' rights in the land was a one time event, envisaged under the Act of 1964 and that in his opinion, it could only be the date of commencement of the Act of 1964 when it defines what is the "Estate", which is to be dealt with under the Act of 1964 and that alone was liable to be acquired subject to other provisions. In that context, the provision of Section 10 of the Act of 1964 becomes imperative to be read together. The properties mentioned in Section 10 describe the properties, which were to continue to belong to or to be held by such land owners subject to the terms and conditions, mentioned in the Covenant. The property, which corresponded to the properties, described in Section 10 of the Act of 1964, fell beyond the scope of the property, liable to be acquired under the Act of 1964. Learned Single Judge observed that it would be too much to read in the provisions of Section 7-A that the property, which was liable to be acquired, when the Act came into force and was transferred after the date of commencement, there being no impediment on transfer of the estate as a whole, would become property liable to be acquired, as a result of such transfer. The inhibition, imposed under Section 7-A of the Act of 1964, was not on the transfer of any estate of the land owner, during the period of commencement of the Act and the date of notification of appointed date, when actual acquisition of the estate took place. Learned Single Judge further observed that when the Act of 1964 came into force, there was no

general prohibition on transfers. Had vesting not been postponed, the landowner will continue to hold the property, which could not still be acquired under the provisions of the Act of 1964. The properties of such nature could not be estate or part of the estate, which was liable to be acquired. Accepting the principle contrary, will lead to a wholly curious and untenable conclusion. On such reasoning, learned Single Judge held that the transfer of such property being not prohibited, will not attract the provisions of Section 7-A of the Act of 1964.

19. Learned Single Judge thereafter observed that the entire Sardar Samand Estate was held by this court in the writ petition filed by the landowner that it was not liable to be acquired, as it fell under Clause (a)(i) of sub-section 1 of Section 10 of the Act of 1964 and had the transfer not taken place on 31.8.1964, the property in question would have been continued to be the property forming part of the estate of erstwhile Ruler of Marwar and, thus, on the date when the Act of 1964 commenced, the property in question was not liable to be acquired. That being so, the transfer of any property between the date of commencement of the Act of 1964 and before the acquisition took place, which was of the nature described in Section 10, the same could not be termed as an estate or a part of the estate, which was liable to be acquired. The Collector apparently erred in not distinguishing between the property forming part of the estate on one hand and the property forming part of the estate liable to be acquired on the other hand, which conveyed difference of status of properties for the purpose of Section 7-A under the provisions of the Act of 1964.

20. Learned Single Judge thereafter referred-to the definition of word `tenant'' under Section 5(43) of the Act of 1955 and found that an `ijaredar'' or a `thekedar'' or a trespasser is not included in the definition of the tenant and held that the petitioners in their objections had submitted proof by way of receipts of `ijara'' in which they were described as `ijaredars''. The nature of possession was not disclosed in the first instance but in continuation of the first objection, the petitioners claimed themselves to be in possession of the land since 1957-58 as tenant but the nature of possession was not described. If the `ijara'' was paid for use or produce of land and not as rent, the petitioner was to be treated as tenant, irrespective of the fact whether he paid rent as lessee of land or for securing right to collect other produce of land. If the payment however was not for having right to use or procure produce of land but for collecting the rent payable by users of land or by procurers of produce of land, he was called `thekedar'' or contractor, popularly termed as `ijaredar''.

21. Learned Single Judge held after consideration of the definition of term `rent'' under Section 5(3) of the Act of 1955, `sayar'' under Section 5(37) and `ijara'' under Section 5(18) that while `ijara'' or `theka'' is an amount payable as consideration for collection of rent, which is otherwise payable to the holder of the land by the tenant but he himself is not the person, who pays the rent to the holder of the land. He for consideration acquires rights for collection of the rent from the tenants. He does not get any right to use of land or benefits arising

 

from land. On the other hand, any charges payable in consideration of right to cultivate the land or right to gather any produce of the nature specified in sub-section (37) of Section 5 of the Act of 1964 from the unoccupied land including surface of forest or other forest produce or even for use of water for irrigation purposes, the charges paid as `Sayar'' brings a person in the capacity of a person by whom the rent is payable. The Collector, therefore, could not have reached to conclusion whether the petitioners were tenant or `ijaredar'' and that would have required the Collector to remit the case. However, in view of the fact that the property transferred to the petitioners, formed part of the Sardar Samand Estate, which was not liable to be acquired under Sec.10 of the Act of 1964, the transfer was not invalid and, thus, the enquiry was not required to be pursued.

22. On the question of regularization of possession by making allotment in favour of the petitioners under Rule 16 of the Rajasthan Land Reforms and Acquisition of Land Owners Estate Rules, 1964, which was amended on 5th May, 1978, it was found by learned Single Judge that sub rule (1) of Rule 16 postulates that the Government shall reserve such extent of land comprised in the estates acquired by or vesting in it under Section 7, as may be necessary for the purpose, directed towards the promotion of agriculture or the welfare of the agricultural population to be settled on such land. No such reservation was made about the lands in question. Sub rule (2) of Rule 16 provides that 50% of the land remaining after the reservation under sub rule (1), shall be allotted to landless persons, agriculturists and agricultural labourers belonging to the scheduled castes and scheduled tribes and the remaining land shall be allotted to other landless persons, agriculturists and agricultural labourers according to the order or priority specified in sub-rule(3). The amended sub-rule(2) and sub-rule(3) in 1978 give priority in allotment to those to whom the land was transferred prior to 26th September, 1970 but such transfers had been hit by the provisions of Section 7-A of the Act of 1964 prior to making allotments in sub-rule(2) and sub-rule(3). Learned Single Judge found that since the petitioners were transferees of the land in question prior to 1970, they will be governed by sub-rule(2) and sub-rule(3) of Rule 16 before any other person could be considered for allotment. In the circumstances, in the absence of any reservation in sub-rule(1), the entire land was available for allotment to the petitioners, who were already in possession of the same. The question whether they could have continued to hold the land in excess of the ceiling limit, is a question that would not affect the controversy, inasmuch as that would be subject matter of independent proceedings and adjudication and that itself was a good ground for allowing the petitioners to be in possession as holders in whose favour passbooks as Khatedars have been issued since 1974, until the question of allotment and the applicability of ceiling law is decided. But in view of the conclusion on the non-applicability of Section 7-A to the land in question, this question also did not call for consideration.

23. With these findings, the writ petition was allowed and the order of the

 

Collector was set aside.

24. Learned counsel for the appellant-State submits that the erstwhile State of Jodhpur agreed in the year 1949 to merge in the Union of India, being a part of United States of Rajasthan. A Covenant was entered into between the Union of India and the erstwhile Maharaja of Jodhpur, giving details of the private properties of the Maharaja. The immovable properties relevant in the controversy are shown in item No. 2 of the list of immovable properties, which reads as under:

"2. IN THE DISTRICTS.

(a) Sardarsamand Estate including the house, the farm, the livestock, the stud, garden, landing ground and the area at present included in the estate. Dholerao village and the tank and Jor near the village including the forest around the estate.

Note. The relations between His Highness and the tenants of the village Dholerao will be governed by the land revenue and tenancy laws of the State."

25. The note appended to the Covenant stated that the relations between His Highness and the tenants of the village Dholerao will be governed by the land revenue and tenancy laws of the State.

26. The enactment of the Act of 1964 provides for acquisition of the estates of the land owners. The ex Ruler of Jodhpur in order to save the lands, which were not in his personal cultivation and on which he could not have brought Khatedari rights, transferred large pieces of land in August, 1964 after commencement of the Act of 1964 on 6th April, 1964 and before the date of vesting on 1.9.1964.

27. The alleged sale deed, subject matter of this Special Appeal, was executed before the date of vesting on 31.8.1964. Section 7A was inserted in the Act of 1964 with retrospective effect from 6.4.1964 i.e. the date of the commencement of the Act of 1964 providing for non-recognition of certain transfers and agreements.

28. Section 10 of the Act of 1964 provides for private lands, buildings, wells, house-sites and enclosures to be held by such landowners or other person subject in the case of tanks, to the terms and conditions, if any, mentioned in the Covenant and for which, any question which arose regarding the nature of the properties under sub-section(1), was to be referred to the Compensation Commissioner. Section 10 of the Act of 1964 is quoted as below:

"10. Private lands, buildings, wells, house-sites and enclosures.-

(1) Notwithstanding anything contained in section 8-(a)

(i) all open enclosures in the possession of the landowner used for agricultural or domestic purposes,

(ii) all private buildings, places of worship, and wells situated in, and trees standing on, lands, included in such enclosures or house-sites, as are specified in clause (i) above, or land appertaining to such buildings or places of worship,

(iii) all groves, wherever situate, belonging to or held by the landowner or any other person,

(b) all private wells and buildings belonging to or held by the landowner or any other person, and

(c) all tanks in the personal occupation of the landowner or other person subject in the case of tanks, to the terms and conditions, if any, mentioned in the Covenant.

(2) If any question arises whether any property is of the nature referred to in sub-section (1), it shall be referred to the Compensation Commissioner, who may, after holding the prescribed enquiry, make such order thereon as he deems fit."

29. Section 14 of the Act of 1964 provides for Statement of claim by those whose estate stood acquired by Section 8 of the Act of 1964.

30. On 31.8.1964, the subject sale deed for 8772 bighas was executed by the ex Ruler of Jodhpur Shri Gaj Singh, who was minor at that time, represented by his natural guardian, Rajmata Smt. Krishna Kumariji through her power of attorney Thakur Jaikrit Singh. The sale deed was executed in favour of Shri Samast Nyati Ghanchiyan, Jodhpur in the name of 21 persons purporting to represent 5000 families covering land in five villages as follows:

31. The Patwari, Sardar Samand and Tehsildar, Sojat, purported to enter the land in question as a Government land on which a writ petition being SBCWP No. 345/1976 was filed by Shri Mangilal, which was disposed-of on 8.7.1985 with the direction to the Collector to decide objections and on which the Collector, Jodhpur, as discussed above, by order dated 25.8.1987 passed order rejecting the objections, which was successfully challenged in the writ petition, giving rise to this Special Appeal filed by the State.

32. It is submitted by Mr. M.S. Singhvi, Sr. Advocate, assisted by Mr. Hemant Dutt and Mr. Sajjan Singh, appearing for the intervenor that learned Single Judge in deciding the writ petition has completely misdirected himself and has failed to consider the provisions of the Act of 1964. Learned Single Judge recorded contradictory findings in setting aside the order of the Collector, Jodhpur. It is submitted that erstwhile Ruler Shri Gaj Singh of Jodhpur filed a writ petition being SBCWP No. 875/1975 against the State of Rajasthan, which was decided by the learned Single Judge by Hon''ble the Chief Justice Shri K.D. Sharma, as he then was, on 27.2.1981. The writ petition was filed challenging the notice dated 5.4.1975 issued by the Collector, Jodhpur calling upon him to hand over the possession of the estate under the Act of 1964. The notice contained in it the lands falling within the Jodhpur District. No challenge was made in the writ petition to the lands regarding Sardar Samand Estate. During the pendency of

 

the writ petition, a notice was issued by the Collector, Pali, regarding the Sardar Samand Estate, which was placed on record alongwith the rejoinder affidavit. The writ petition was allowed on 27.2.1981. Hon''ble the then Chief Justice, considered the challenge to the notice dated 5.4.1975 relating to the District of Jodhpur. The Court travelled beyond the pleadings and prayer in the writ petition and went on to decide the question regarding the Sardar Samand Estate on the arguments raised by the learned counsel appearing for the petitioner. Further, these findings with regard to Sardar Samand Estate, which were not subject matter of the writ petition, were recorded on the concession given by the then Additional Advocate General. The relevant portion in the opening part of page 6 of the judgment in which the concession is recorded, is as follows:

"Mr. J.P. Joshi, however, contended before me that Sardarsamand estate including the house, farm, live-stock, the stud, garden, landing ground and the area at present included in the estate, Dholerao village and the tank and Jor near the village including the forest around the Estate was regarded as the family property of the petitioner, which may be disposable by him...."

33. It is submitted by Mr. M.S. Singhvi, learned Sr. Advocate, that the judgment dated 27.2.1986 passed in SBCWP No. 875/1975 " Maharaja Shri Gaj Singh Vs. The State of Rajasthan and Others, (1981) WLN 73 , would have no bearing on the estate including the lands in Sardar Samand Estate, which was not part of the proceeding and was referred-to in the arguments on which concession was recorded and in any case, the judgment will have no bearing on the land in question, covered by the alleged sale deed dated 31.8.1964, as there was no reference about the land in question. He submits that the record of the SBCWP No. 875/1975 did not even refer-to, mention or even annex the sale deed in question dated 31.8.1964.

34. On the request of Mr. M.S. Singhvi, learned Sr. Advocate, we summoned the original record of the writ petition being SBCWP No. 875/1975, which is tagged with the SBCWP No. 345/1976 and from which, we find that in para 37, the prayers made in the writ petition were to issue a writ, order or direction to the respondents declaring Section 7-A(i) and (ii) as ultra vires of the Constitution and invalid and to quash the impugned notice dated 5th April, 1975 issued by the Collector, Jodhpur, which only related to hand over the possession of the land under Section 2(1)(iv) of the amending Act, 1975 situated in the District of Jodhpur within ten days to authorised officer Shri Pukhraj Salecha, Sub Divisional Officer, Jodhpur and to obtain receipt, and further to restrain the respondents from taking possession of any part of the petitioner''s lands in the purported exercise of the powers under Section 7A without giving an adequate notice to the petitioner to show cause against such action. The sale deeds annexed to the writ petition Annex.4 to 12 did not include the subject sale deed dated 31.8.1964 executed in favour of Samast Nyati Ghanchiyan, Jodhpur. It only referred to the land of Sardar Samand area 760.16 bighas shown to have been sold to Ghanchi Community of Jodhpur on 31.8.1964 at item No. 12 of the Statement showing

 

the Agricultural Land sold under registered Sale Deed in August, 1964 (Annex.3 to SBCWP No. 875/1975).

35. Article XII of the Covenant agreed between His Highness and the Government of India, Ministry of States, included the private properties of Group Captain His Highness Maharaja Shri Hanwant Singh Ji Sahib Bahadur, Maharaja of Jodhpur. The Covenant refers to Sardar Samand Estate in Schedule-I, Immovable Properties, as follows:

"2. IN THE DISTRICTS.

(a) Sardarsamand Estate including the house, the farm, the livestock, the stud, garden, landing ground and the area at present included in the estate. Dholerao village and the tank and Jor near the village including the forest around the estate.

Note. The relations between His Highness and the tenants of the village Dholerao will be governed by the land revenue and tenancy laws of the State."

36. It is submitted by Mr. M.S. Singhvi, learned Sr. Advocate, that the Covenant did not include the agricultural lands or the grass lands, which were sought to be sold by various sale deeds before the date of vesting under the Act of 1964. The judgment in SBCWP No. 875/1975 did not refer-to the land in question and, therefore, there was no question of the land being in personal cultivation of the erstwhile Ruler Shri Gaj Singh. It was also not shown to have been sold by erstwhile Ruler Shri Gaj Singh in the nine sale deeds, which were enclosed alongwith the writ petition, of the transfers, effected by the erstwhile Ruler Shri Gaj Singh between 6.4.1964 to 31.8.1964.

37. It is submitted that even if the land was in personal cultivation, the sale was in excess of the ceiling area falling under Section 30(C) of the Act of 1955. Section 30(E) prohibited acquisition of any rights beyond rights of ceiling area and, thus, the sale was null and void. The holding of the land being more than 30 acres, the sale was hit by Section 30(E). The sale of the land in question, though suspicious in nature, could not be made because of holding of Ex Ruler Shri Gaj Singh was for more than 30 acres. The proviso to Section 6(2) of the Act of 1964 made the accrual of Khatedari rights, subject to the provisions contained in Chapter III-B of the Act of 1955.

38. In Mohan Lal Vs. State, (1985) WLN 251 , by a short judgment, Hon''ble D.P. Gupta, Acting Chief Justice dismissed the writ petition challenging the validity of the provisions of Section 7A of the Act of 1964, as amended by Act No. 15 of 1975, which requires to be quoted as follows:

"1. In this writ petition the petitioner has challenged the validity of the provisions of Section 7-A of the Rajasthan Land Reforms (Acquisition of Land Owners'' Estate) Act, 1964 as introduced by the Amendment Act No. 15 of 1975. The validity of the provisions of Section 7-A has already been upheld by a Division Bench of this Court in State of Rajasthan and Ors. v. Smt. Gayatri Devi and Ors.

(1) Moreover, the Rajasthan Land Reforms (Acquisition of Land Owners'' Estate) Act (Act No. 11 of 1964) has been included in the Ninth Schedule to the Constitution and the validity of the provisions of the aforesaid Act including Section 7-A, there of which was introduced by amendment with retrospective effect, is no longer open to challenge. The petitioner came forward on the basis of a sale alleged to have been made by the former Ruler of Jodhpur in favour of the petitioner in the month of August, 1964 prior to the date of vesting, namely, September 1, 1964, However, Section 7-A of the Act, as introduced by Amending Act No. 15 of 1975 with retrospective effect, provides that no transfer of estate liable to acquisition under the Act or any part thereof made by the land owner on or after the date of commencement of the Act and before the date of vesting would be recognised for any purpose of that Act and the estate or part so transferred shall be deemed to continue to vest in the land owners. Thereafter Section 8 provides that such land shall stand vested in the State Government, on the ground that it would be deemed to have continued to vest in the land owner, on the date of vesting. The Act came into force on April 13, 1964 and the date of vesting notified was September 1, 1964. As such all transactions between April 13, 1964 and prior to September 1, 1964 shall be governed by Clause (1) of Section 7A of the Act and any transfer of such land shall not be recognised for the purpose of the Act and such land shall be deemed to continue to vest in the land owner inspite of the alleged transfer. Thus, the sale-deed executed by the former Ruler of Jodhpur in favour of the petitioner in the month of August, 1964 was of no value and the petitioner cannot get any benefit from the alleged sale nor any rights could be created in the petitioner in respect of the land in question on the basis of the sale-deed executed by the former Ruler of Jodhpur State in favour of the petitioner.

2. In this view of the matter the writ petition has no force and is dismissed. The parties are left to bear their own costs."

39. It is submitted that the Act of 1964 is included in the Ninth Schedule to the Constitution and that its validity, thus, could not have been challenged. The judgment in Mohan Lal (supra) delivered on 8.1.1985 covers the issue with regard to sale deeds executed between 6th April, 1964 and 1st September, 1964. These sale deeds were not saved, inasmuch any transfer of such land was not recognized for the purpose of the Act and such land shall be deemed to continue to vest in the landowner inspite of the alleged transfer and acquired under Section 8 of the Act of 1964. Since the lands were not saved by Section 10 of the Act of 1964, as it was admittedly not used for agricultural or domestic purpose by the Ex Ruler and did not fall in any of the categories of the land under Section 10(1) (a) to (c). The lands of Rajsamand Estate, except those which were in the Covenant, were thus acquired under Section 8 of the Act of 1964.

40. It is submitted that even otherwise, the sale deed dated 31.8.1964 is a highly doubtful document, executed as a `benami'' transactions to save the land from ceiling by the Ex Ruler. The execution of the sale deed does not evidence as

 

to how the sale consideration was settled and paid. The sale deed has been executed on Stamp papers on the first few pages, which are issued by the Jodhpur Government showing the photographs of Maharaja Hanwant Singh, whereas on 31.8.1964, it was stamp of the State of Rajasthan, which was material and which were also affixed on the document. The sale deed did not contain any recital that Shri Jaikrat Singh, holding power of attorney of the mother of Shri Gaj Singh, had obtained permission from the District Judge for effecting the sale on behalf of a minor.

41. Reliance has also been placed on a Division Bench judgment of this court in State of Rajasthan and Others Vs. Smt. Gayatri Devi and Others, AIR 1980 Raj 193 , in which the validity of the Act of 1964 and the amendment Act No. 15 of 1975, which has been given retrospective effect and its inclusion in the Ninth Schedule to the Constitution was upheld. The relevant paras 11 to 16 of the judgment are quoted below:

"11. Keeping in view the above settled position of law as well as the 44th amendment in the Constitution the learned counsel appearing on behalf of respondents in Appeals Nos. 10, 15 and 17 of 1970 and for the appellants in Appeals Nos. 48 of 1970 and 292 of 1971 have submitted that after the consideration of the changed position of law, the validity of this Act cannot be challenged on account of its inclusion in the Ninth Schedule. As regards the submission that in the changed circumstances of the case the consideration of the impugned judgment does not arise needs to be mentioned for being rejected.

12. We hold that on account of the Amendment Act No. 15 of 1975, which has been given retrospective effect and its inclusion in the Ninth Schedule, the validity of the original Act and the Amendment Act cannot be challenged and the appeals filed by the State Government must be accepted and the appeals filed by H.H. Brijraj Singh and H.H. Maharaja Col. Bhawani Singh must be dismissed without any costs.

13. Accordingly the judgment of the learned single Judge delivered in S.B. Civil Writ Petitions Nos. 1684 of 1964, 7 of 1965 and 1725 of 1964 is set aside. The Rajasthan Land Reforms and Acquisition of Land Owners'' Estates Act, 1963 (Act No. 11 of 1964) as amended Up to date is declared valid. The Rajasthan Land Reforms and Acquisition of Land Owners'' Estates (Amendment) Act, 1975 (Act No. 15 of 1975) shall be deemed to have come into force since April 13, 1964 and the estates of the landowners shall be deemed to have vested in the State Government from September 1, 1964.

14. Before parting with these cases, we would like to observe that poverty is the most crucial problem of the country. Chronic poverty exists in rural India, where no less than 50 percent of the population lives below the starvation level. The average per capita income there is not more than Rs. 300 per year. About 40 percent of those engaged in agriculture have no land of their own. 60 percent of the peasants own less than two acres or one hectare of land. It should not be

forgotten that agriculture contributes about 50 percent to the total national income. It provides 70 percent of the population with livelihood. As early as on May 16, 1951, Pandit Jawaharlal Nehru, the then Prime Minister of this country in a debate on First Amendment Bill to the Constitution observed:--

"...a survey of Asia today will lead any intelligent person to swear that the basic and the primary problem is the land problem today in Asia, as in India. And every day of delay adds to the difficulties and dangers apart from being injustice in itself."

15. It is lamentable that the State Government and its authorities have been for about 16 years sleeping over this Act, which was basically introduced for the purpose of agrarian reform. Even after the coming into force of the Amendment Act No. 15 of 1975, they have not seriously endeavoured to get the cases decided and have been resorting to adjournments for one reason or the other. This exhibits a tragic state of affair and pathetic lethargy on the part of the State Government in implementing the land or agrarian reform by this legislation. What a poor homage the State functionaries are paying to Article 39 of the Constitution of India in a welfare State, committed to provide land to landless tillers?

16. It should not be given go-by that some of these landowners in expectation of the implementation of this Act might have resorted to part with their land holdings and transferring them piecemeal to other individuals, as Benami transactions on a very (large) scale with the result that the State Government may or may not be able to secure any land for being distributed amongst the poverty stricken people of this country. It is expected of a welfare State that the authorities concerned will be vigilant to give full effect to the provisions of this Act in accordance with the wishes of the legislators."

42. It is submitted that the claim of the possession of erstwhile Maharaja and personal cultivation on the date when the Act of 1964 came into force, was falsified by the `ijara'' slips, submitted by the petitioner claiming to be the tenant of the land in question. Reliance was placed on a decision of the Hon''ble Supreme Court in the case of Hamza Haji Vs. State of Kerala and Another, AIR 2006 SC 3028 : (2006) 102 CLT 696 : (2006) 8 JT 215 : (2006) 8 SCALE 75 : (2006) 7 SCC 416 : (2006) 4 SCR 604 Supp : (2006) AIRSCW 4168 .

43. It is submitted that the sale deed was a fraud played upon the State to save the land, which is still being held `benami'', as it is difficult to believe that thousands of persons belonging to Ghanchi Community will take their cattle almost 80 kms. for grazing in areas of Sardar Samand in District Pali. There is no material to show their settlements in the Sardar Samand area in District Pali, where they allegedly migrate during the rainy season for about four months. A story appears to be set up to save the land from the operation of the Act of 1964.

44. It is submitted that the plea of nullity of the sale deed can be set up at any stage vide State of Orissa v. Brundaban Sharma, (1995) Suppl.3 SCC 249.

 

45. Learned counsel for the respondent Shri Ghanchi Mahasabha submits that the respondent-Society was formed to help poor persons, widows and the persons of backward community of Ghanchi, including protection of their cattle and promoting cattle breeding. It is a registered Society, which, at the relevant time, had 5,000 members and presently, there are 13,000 members. They have been using the land for grazing the cattle since before 1958-59 in Sardar Samand Estate, which is a private property of erstwhile Ruler of Jodhpur. The land is covered by large number of trees growing all around and grass Jods (Grass reserves) in between and `Nadis'', where the water gets collected for drinking by the cattle and human beings. The `Mukhiyas'' of the Ghanchi Community purchased the land by registered sale deed from the erstwhile Maharaja in 1964 for Rs. two lacs. The SBCWP No. 875/1975 challenging the threatened acquisition of the land of the erstwhile Ruler was allowed holding that the Collector was not entitled to recover possession of the Sardar Samand Estate from the erstwhile Ruler of Jodhpur. The Collector had illegally rejected the objections filed by the respondents vide order dated 25.8.1987. The objectors were in possession of the land in dispute since commencement of the Act of 1964 and were continuing in possession. The Collector not only ignored their possession, which was proved by the receipts of the land holder viz; former Ruler of erstwhile State of Jodhpur. The receipts clearly prove that they were in possession of the land in question, not only in pursuance to the sale deed dated 31.8.1964 but they were already in possession since 1958-59. The receipts coupled with the `girdawri'' produced by the objectors clearly prove long possession of the respondents. The non-mention of the prior possession in the sale deed has to be taken as a mode of writing the sale deed in a routine manner and could not have been taken to disprove their possession.

46. It is submitted by the respondents that the Collector failed to appreciate the objections. The case of the objectors related to the land (open enclosure) used for agricultural purposes and if the Collector was not satisfied with the claim of the respondents, he should have referred the objections to the Compensation Commissioner under sub-section (2) of Section 10 of the Act of 1964 vide Bhagwat Singh Vs. State of Rajasthan and Another, (1978) WLN 176 .

47. It is further urged that the respondents were entitled to submit that the provisions of Section 7A, 8, 9 and 9A of the Act of 1964 are invalid, as they impinge upon the basic structure of the Constitution. Ghanchi Mahasabha is a charitable institution, which was formed to protect not only to cattle but also poor members of the Ghanchi community and, thus, the amendment having effect of divesting their rights, was violative of Article 14 of the Constitution of India. It is further submitted that the State has already issued passbook to the representatives of the Ghanchi Community granting Khatedari rights to them. The provisions of Section 7-A of the Act of 1964 were not applicable to transfers in question and in any case, the respondents are entitled to the allotment of the land under Rule 16 of the Rules of 1964. The migration of the members of the Ghanchi Community of Jodhpur alongwith their cattle to the grazing grounds is

 

not uncommon and unusual in conformity with what their ancestors had been doing for the past in their surroundings, where they can obtain water and grass for their cattle.

48. Upon hearing learned counsel for the parties, we are of the view that the judgment of the learned Single Judge cannot be sustained. The Act of 1964 was enacted to provide for acquisition of the estates of the landowners and for other measures of agrarian reform, removal of intermediaries, allotment of land to landless persons, development of agriculture and in consequence thereof, to amend certain other Acts. The Act was placed in the Ninth Schedule of the Constitution and is, thus, immune from challenge on the ground of violation of fundamental rights, except the basic structure of the Constitution. The object of the Act of 1964 was acquisition of the estates of landowners for agrarian reforms. The acquisition of land under the Act of 1964 was to be made with effect from the date of vesting i.e. 1.9.1964 providing for the consequences of acquisition under Section 8 by which the right, title and interest of the landowner and of every other person claiming through him in his estate, was acquired by and vested in the Government free from all encumbrances and the landowner was to deliver records under Section 9 and also to deliver possession under Section 9A of the Act of 1964. The private lands, buildings, wells, house-sites and enclosures were saved under Section 10 of the Act of 1964 to be belonging to or held by such landowner or other person, subject to the terms and conditions, if any, mentioned in the Covenant.

49. The reference to Covenant has come in the Act of 1964 under Section 2(d) in the definition of `inventory'', which means the inventory of the private properties of the Ruler prepared in pursuance of Article XII of the Covenant and finally approved by the Government of India. The Covenant entered-into between the Government of India and the erstwhile Ruler of Jodhpur did not include the lands of the estate of Sardar Samand, which was subject matter of the sale deed dated 31.8.1964 nor they were so claimed or included in the proceedings of the SBCWP No. 875/1975, decided on 27.2.1981. The Ex Ruler had purportedly sold the land to Shri Ghanchi Mahasabha on 31.8.1964 claiming the land belonging to him, whereas this land, in view of Section 7A of the Act of 1964, which was introduced by amendment made in 1975 with retrospective effect, was not to be recognized for any purpose of the Act of 1964 and the estate or part so transferred shall be deemed to continue to vest in the landowner and was acquired under Section 8 of the Act of 1964.

50. Learned Single Judge fell into errors of law, firstly, in recognizing the Ghanchi Community as occupants of the land and thereafter recognizing the sale in their favour by the erstwhile Ruler on 31.8.1964, whereas the ex Ruler had lost the rights in his estate, which was not saved either by Covenant or by Section 10 of the Act of 1964. At best, he was entitled to compensation under Section 12 of the Act of 1964.

51. The Act of 1964 was placed in the Ninth Schedule of the Constitution and,

 

thus, its provisions could not have been challenged. This Court has upheld the validity of the Act of 1964 in Mohan Lal''s case (supra) and Smt. Gayatri Devi''s case (supra).

52. We are of the view that the Collector while deciding the objections in pursuance to the directions, issued by this court, did not commit any error of law in rejecting the objections both on the ground that the Ghanchi Community was not in possession of the land prior to the enforcement of the Act and that they had not acquired any rights by the sale deed dated 31.8.1964, inasmuch as the sale could not be recognised under Section 7-A of the Act of 1964. The lands were also not the part of the estate of the Sardar Samand of Ex Ruler of the State of Jodhpur. He did not claim these lands to be in his personal cultivation and that he could not have become Khatedar of the land, as these lands were neither included in the Covenant nor any evidence was produced that the Ex Ruler was the Khatedar of the land in question.

53. This brings us to the question of imposition of ceiling on the land holdings in the State of Rajasthan under which no one can hold more than 30 acres of agricultural land and that any transfer of land beyond 30 acres, was violative of Section 30E of the Act of 1955. As per proviso to Section 6(2) of the Act of 1955, the accrual of Khatedari rights were subject to the provisions, contained in Chapter III-B of the Act of 1955.

54. On a specific question, put to learned counsel for the respondent - Shri Ghanchi Mahasabha, who in his arguments many a times addressed himself to be the counsel for the Ex Ruler of State of Jodhpur, that the returns of the ceiling area are still pending with the competent authority. We are surprised to find that for the last more than half Century, the returns have not been processed by the competent authority. We, therefore, find it imperative to direct the Divisional Commissioner, Jodhpur, to look into the matter and finalize the proceedings of ceiling on agricultural landholdings in the State of Rajasthan in respect of Ex Ruler of State of Jodhpur and of all other persons, where the ceiling proceedings are pending to be finalized as expeditiously as possible.

55. For the aforesaid reasons, we are of the considered view that the judgment of the learned Single Judge suffers from gross errors of law and contradictory findings and, therefore, the same is liable to be set aside, and that the order of the Collector, Jodhpur is liable to be upheld.

56. The allotment of the land acquired by the State under Rule 16 of the Rules made under the Act of 1964 is a separate matter and can be looked-into by the Collector, Pali, if such applications are made in accordance with law. As observed by the Collector, Pali, in the impugned order and the learned Single Judge, the question of allotment of the land in accordance with law is to be considered and dealt with separately and that any right to such allotment should not come in the way of handing over the possession of the land to the State.

57. Before parting with the matter, we are reminded of the observations made by

 

the Division Bench of this court in Smt. Gayatri Devi''s case (supra) that all the `benami'' transactions, entered-into on a very large scale to save parting with the land holdings by transferring them piecemeal to other individuals, organizations and fictitious persons, has resulted into large land holdings in the hands of the same persons, defeating the laws for land reforms in the State of Rajasthan. It appears that the land laws in the State of Rajasthan have not been implemented with the object and purpose for which they were enacted and a large population of the State of Rajasthan surviving on agriculture is still exploited by the Ex Rulers and Jagirdars. The lack of enforcement of the provisions of the Tenancy Laws in Rajasthan has made the people suffer immensely. We are also saddened by the fact that taking the benefit of the procedure in courts of law, the land holders have defeated the implementation of the land reforms in the State of Rajasthan. The Executive of the Rajasthan must wake up to the call and implement the Laws relating to land reforms to allow the freedoms, guaranteed by the Constitution of India to the people of the State of Rajasthan. The Courts of law must be slow to interfere in such matters and allow the Executive to implement the laws.

58. The writ petition is allowed. The order of the learned Single Judge dated 10th August, 2001, is set aside. The Collector, Pali, will take over the possession of the land, covered by the subject sale deed dated 31.8.1964 without any further delay. The Divisional Commissioner, Jodhpur will look into the matter and get all the ceiling proceedings on agricultural holdings finalized, if they are still pending before the competent authority or the appellate authority, as expeditiously as possible.

 