(1971) 11 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil First Appeal No. 8 of 1968

State of Rajasthan APPELLANT

Vs

Prithvi Singh and Others RESPONDENT

Date of Decision : 24-11-1971

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 46

Citation : (1972) RLW 235 : (1971) WLN 696

Hon'ble Judges : Kan Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kan Singh, J.—The State of Rajasthan who was the defendant has brought the appeal against the judgment and decree of the learned District Judge, Pali dated 25-9-67 decreeing the plaintiff-resplendent No. 7 of 1965 suit against the State in a sum of Rs. 12,250.70 parse with costs.

2. The claim of the plaintiff-respondent No 1 was based on the final determination of his compensation in respect of the resumption of his jagir. The plaintiff averred that jagir was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, (hereinafter to be referred as the "Act") with effect from 1-8-54. The final award regarding the compensation payable to the ex-Jagirdar was given by the Jagir Commissioner on 10-6-63 vide Ex. 1. The total amount payable as compensation was fixed at Rs. 201310.50 parse and it was payable at Rs. 2 50 percent per annum from the date of resumption till it was paid. The plaintiff further averred that out of this amount Rs. 22,850/- were paid to him as the amount of second and third installments of interim compensation On 26-1-58 Besides this the plaintiff admitted to have received Rs. 44.88 parse in cash after the institution of the suit. The remaining amount was payable to the plaintiff in 30 equal six monthly installments, for it bonds were to be given. The plaintiff proceeded to Say that though the bonds came to be handed over to him for the entire period and they were delivered on 14-2-64 for

the amount of Rs. 1, 62,600/- the amount of interest mentioned for the installments that had fallen due till the date of the delivery of bonds was less than what was required to be paid in terms of the final order Ex. 1 passed by the Jagir Commissioner and in accordance with the provisions of Section 26 read with Section 38A of the Act. The claim is thus in respect of the difference in the interest on the installments that had already become payable when the bonds were delivered. Likewise, bonds for the amount of Rs. 10,000/-were paid to the plaintiff on 19-8-64 and in respect of the installments that had fallen due till that the plaintiff on 19-8-64 and in respect of the plaintiff had put further the similar claim regarding the difference in the interest that was payable in terms of the final order of the Jagir Commissioner as also in accordance with Section 26 read with Section 38 of the Act. This amount of the difference in the interest that was payable came to Rs. 12,250.70 parse.

3. The State admitted that the compassion payable to the plaintiff was determined by the Jagir Commissioner in a sum of Rs. 2,01,810.50 parse & that against this Rs. 29,161/- were put in cash & for the reminder bond were delivered to the plaintiff It denied the plaintiff was entitled to recover any difference in the interest on installments as claimed by him. It was further pleaded that a civil court had no jurisdiction in the muter by virtue of Section 46 of the Act and, lastly, it was urged that the suit was barred by time.

4. The learned District Judge held that Section 46 of the Act did not debar the civil court from taking cognizance of the suit of the present nature. He observed that the amount of compensation had been settled by the Jagir Commissioner and the rate of interest was also settled by the statute and there was therefore nothing which was required, to be decided any more under the Act, nor was anything required to be dealt with by any officer under the Act, as there was no officer named in the Act for enforcing the payment of the compensation money. The only issue between the parties according to learned Judge was whether the plaintiff was entitled to get a certain sum of money at a certain rate of interest and, if so for what period and regarding this a civil court was not precluded from trying the question. As regards the question of limitation, the learned Judge observed that the amount of the compensation covered by the bonds was payable in installments and interest could be raised only when installments would fall due, and the plaintiff would be entitled to recover the amount only after he received the bonds and when the installments would have fallen due. The suit, according to the learned Judge, was thus within time. Lastly, the learned Judge held that bonds did not include the interest that would be payable till the delivery of bonds on the installments that had fallen due till the date of delivery of such bonds In the result, he awarded a decree for Ra. 12,250 70 parse in favour of the plaintiff and against the State.

5. Three contentions have again been raised here in assailing the judgment and decree of the learned District Judge : (1) that the civil court had no jurisdiction to entertain and decide the suit; (2) the suit was barred by time; and (3) that

the plaintiff was not entitled to recover any interest beyond what was already mentioned in the bonds that were issued and delivered to plaintiff I may deal with the above contentions in the order they were advanced.

6. To start with I may read Section 46 of the Act.

Section 46. Bar of jurisdiction - (1) Save as otherwise provided in this Act no Civil or Revenue Court shall have jurisdiction in respect of any matter which is requires to be settled, decided or dealt with by any officer or authority under this Act.

(2) No order made by any such officer or authority, under this Act shall be called in question in any Court.

Sub-section (1) bars the jurisdiction of any civil or revenue court in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under this Act. Sub-section (2) protects orders made by any such officer or authority under this Act arid they cannot be called in question in any court. The question that falls for determination is whether this is a suit in respect of any matter which is required to be settled, decided or dealt with any officer or authority under this Act or for that matter any order made by any such officer or authority is being questioned before the civil court Having considered the various provisions, I find myself in agreement with the learned District Judge is holding that this is not a type suit whose cognizance can be said to be barred by Section 46 of the Act.

7. I may read here Section 26 of the Act:

Section 26. Liability to pay compensation. - (1) Subject to the provisions of this Act, the Government shall billable to pay to every Jagirdar whose Jagir lands are resumed u/s 21, such compensation as shall be determined in accordance with the principles laid down in the second schedule.

(2) Compensation payable under this section shall be due as from the date of resumption and shall carry simple interest at rate of 21% per annum from that date upto date of payment:

Provided that no interest shall be payable on any amount of compensation which remains unpaid for any default of the Jagirdar, his agent or the representative in interest.

It lays down the Government''s liability to pay compensation to a Jagirdar whose Jagir lands have been resumed under the Act. Such competition has to be determined in accordance with the principles laid down in the second schedule and further Section 26 is a subject to other provisions of the Act. The compensation payable under this section shall be due as from the date of resumption shall carry simple interest at the of 24 percent per annum from that date upto the date of payment. This is subject to the proviso that no interest shall be payable on any amount of compensation which remains unpaid on account of any fault of the Jagirdar or his agent or representative in interest. No one had pleaded that proviso. This section, therefore, casts the liability to pay the compensation on the State Government and once the compensation has been determined in accordance with the provisions of the Act, the State Government is expected to discharge that liability. The Jagir Commissioner is the authority who determines the compensation u/s 32 of the Act.

8. Section 35 of the Act lays down how the compensation is to payable. J may read this section:

Section 35. Payment of compensation. - (1) After the amount of compensation payable to the Jagirdar u/s 26 is finally determined under Sub-section (2) of Section 32 and the amounts specified in Clause (b), (....) and (e) of that section as finally determined are deducted there from the balance shall be divided into fifteen equal annual instalments or at the option of the jagirdar into thirty equal half yearly instalments.

(2) The amounts finally determined under each of the clauses (b), (c), (....) and (e) of Sub-section (1) of Section 32 shall be deducted and paid to each of the persons entitled thereto from every installment referred to in sub-section (1)and the remaining amount of the installment shall be payable by the Government to the Jagirdar.

(3) Where compensation under this Act is payable to-

(a) a minor or person suffering from a legal disability who is under the superintendence of the Court of Wards, the compensation money shall be paid to the court of Wards;

(b) a minor or a person suffering from a legal disability who is not under the superintendence of the Court of Wards, the compensation money shall be paid to the person found by the Collector upon inquiry in the prescribed manner to be the natural guardian of such minor or disabled person according to his personal law;

Provided that in cases in which the question of such guardianship is in dispute, the Collector shall apply to the District Judge having jurisdiction to determine such question and to appoint a guardian of the minor or disabled person for the purposes of this section.

(4) The payment of compensation money under this Act to a Jagirdar and to (....) co-sharers and to parsons entitled to a maintenance allowance, if any, shall be a full discharge of the Government from the liability to pay compensation in lieu of the resumption of his jagir lands by the Government but shall not prejudice the rights to which any other person may be entitled by process of law enforce against the person to whom any amount has been so paid,

Sub-section (4) clearly lays down that the payment of compensation money under this Act to a Jagirdar and to cosharers and to persons entitled to maintenance allowance, if any, shall be full discharge of the Government from the liability to pay compensation in lieu of the resumption of his Jagir lands by the Government, but shall not prejudice the rights to which any other person may be entitled by due process of law enforce against the persons to whom any amount has been so paid. It is the payment of compensation to Jagirdar as determined by the Jagir commissioner and in the manner laid down by the Act that results in discharge of the liability of the Government. There are rules framed under the Act entitled. "The Rajasthan and Reforms and Resumption of Jagirs (Compensation and Rehabilitation Bond) Rules, 1956, hereinafter to be referred as the "Bond Rules". Rule 3 of the Bond Rules lays down that-

Subject to the other provisions of these and the Rajasthan Land Reforms and Resumption of Jagirs Rules, the compensation and X rehabilitation grant including the additional rehabilitation grant finally determined as payable to a jagirdar of a co-sharer under the Act, will, be paid in cash or in negotiable bonds or part in cash or part in bonds as the Jagir Commissioner, or the Collector of the district, as the case may be, may in each case decide on the application of the Jagirdar concerned The bonds for compensation and rehabilitation grant payable under Clause (3) of the Third Schedule to the Act. shall be called the "Rajasthan Jagir Resumption Compensation and Rehabilitation Bonds", and the bonds for the additional rehabilitation grant payable u/s 38-E of the Act shall be called the "Rajasthan Jagir Resumption Additional Rehabilitation Bonds.

9. Rule 4 of the Bond Rules lays down the denominations of the bonds. They will be issued in the denomination of Rs. 50, 100, 200, 500, 1.000, 6,000, 10,000 and 25,000. The bonds shall bear simple interest at the rate of 21/2 percent per annum on the principal that has not become payable calculated from the date of resumption. No interest shall be payable oh, any amount of principal beyond the date on which its payment fell due even though the sum is not realised by the holder of the bond.

10. What is to be noticed in this rule is that the bonds shall bear interest for the principal amount that has not become payable and that has to be calculated from the date of resumption. In other words, for whatever amount has become payable the bonds need not show any interest. The intention here seems to be that whatever part of compensation has become payable on or before a particular date has to be paid with interest at the statutory rate of 2.5% per annum vide (Section 26 of the Act) from the date of resumption till payment delivery of the bonds. Rule 5 is about the installments and it lays down that the amount of the bonds would be paid in 15 equal annual installments or 30 equal half-yearly installments at the option of Jagirdar along with the interest then accrued due on the bond. This rule also contemplates that at the time of the payment of the installments the interest that has accrued so far has to be paid.

11. Now, the persual of the Act and these Rules show that Jagir Commissioner is the authority who determines the compensation. It u he who again decides as to how much amount out of the compensation determined by him is to be paid in

cash and how much by bonds, but the Act or the Rules do not in so many words make the Jagir Commissioner or any other officer responsible for the payment of the compensation. For that the statute has created the liability on the Government themselves. Consequently regarding the actual discharge of the Government''s liability if any steps are taken by the Jagir Commissioner or the Collector or by any other officer of the Government for that matter, the officers will be taken to hive acted only as executive hands of the Stat; Government and cannot be taken to be discharging any function under the Act or the Ruhs. In certain matters like determination of compensation the Jagir Commissioner acts quasi judicially as a Tribunil holding the scales even between the Government as a party on one hand and the ex-Tagirdar, on the other, but regarding the actual discharge of the Government''s liability to pay compensation only it is determined none of these officers can be said to act otherwise than as the limb of the executive Government. Where the matter lies within the sphere of the discharge of the Government''s liability to pay the compensation as determined by the Jagir Commissioner, Section 46 of the Act can hardly be taken to operate and create a bar against the filing of a suit in a civil court when the Government are alleged to have failed to discharge their legal obligation arising under the Act.

12. Now the perusal of the order Ex. 1 further confirms me in this. That order shows that the Jagir Commissioner has determined the net amount y payable to the plaintiff ex-Jagir at Rs. 2,01,802 50 parse, It is also mentioned in the order that "the net amount payable will carry simple interest at 21/2 p.c. pet annum from the date of resumption to the date of payment." This order dearly shows that the Jagir Commissioner/Bad nothing more to do in the matter. The Act or the Rules do not provide ''any machinery for'' the enforcement of the order of the Jagir Commissioner Ex. 1 in the event of the Government not complying with the order of the Jagir Commissioner. The remedy in a civil court would, therefore, be available to a party. The learned District Judge has, therefore, correctly decided this question in favour of the plaintiff.

13. This is no force whatsoever in the plea that the suit was barred by Under Order Ex. 1 bears the date 16.7.63. The suit was filed by the plaintiff on 16-6-55. The claim is for the interest that remained unpaid on the installments that had already fallen due when the bonds were delivered to the plaintiff. Before the passing of the order Ex. 1 by the Jagir Commissioner the plaintiff was not in a position to file a suit for principal or interest as nothing was determined till that date. Therefore, the plaintiff could file the suit within three year''s of the delivery of the bonds to him, as before the bond come to him he would not be in position to claim interest in respect of any" installment that had fallen due till that date. There is no dispute that the Bonds were delivered to the plaintiff in 1964. Thus, the suit would be clearly within time.

14. To appreciate the last question about the difference in interest I may refer to a copy of the bonds brought Or record, Ex. 4 may be referred to Till 31-1-64, 19 installments had fallen don''t. The relevant extract from Ex. 4 is as follows:

Principal Amount Rs. 25, 000 Half-yearly installment of Principal at Rs. 833.33 during the first twenty-nine half years and Rs. 833.43 on the thirtieth half year.

-- S. No. Half year ending Principal Interest Balance of Principal Rs. np. Rs. np. Rs. np. 1 2 3 4 5

-- 1 31 Jan. 1955 833.33 312.50 24,166 67 2 31 Jul. 1955 833.33 302.08 23,333 34 3 31 Jan. 1956 833.33 291.67 22,500 01 4 31 Jul. 1956 833.33 281.25 21,666 68 5 31 Jan. 1957 833.33 270.83 20,833 35 6 31 Jul. 1957 833.33 260.42 20,000 02 7 31 Jan. 1958 833.33 250.00 19.166 69 8 31 Jul. 1958 833.33 239.65 18,333 36 9 31 Jan. 1959 833.33 229.17 17,500 03 10 31 Jul. 1959 833.33 218.75 16,666 70 11 31 Jan. 1960 833.33 208.33 15,833 57 12 31 Jul. 1960 833.33 197.92 15,000 04 13 31 Jan. 1961 833.33 187.50 14,166 71 14 31 Jul. 1961 833.33 177.08 13,333 38 15 31 Jan. 1962 833.33 166.67 12,500 05 16 31 Jul. 1962 833.33 156.25 11,666 72 17 31 Jan. 1963 833.33 145.83 10,833 39 18 31 Jul. 1963 833.33 135.42 10.000 06 19 31 Jan. 1964 833.33 125.00 09,166 75

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15. Now, according to plain language of Section 26 or even in terms of the decision of Jagir Commissioner Ex. 1, interest was payable from the date of resumption namely, 1-8-54 till the payment Here, it will be till the delivery of the bonds. As I have already noticed, for the unpaid amount the interest has to be shown in the bonds and for the installments that have already fallen due, the interest has to be paid at the time of payment or the delivery of the bonds. Now, all the installments which had fallen due in Ex. 4 should have carried an equal amount of interest namely, Rs, 312 50 parse, but this is not so. The column regarding the balance of principal shows that the principal has been reduced progressively even though the installment had not been paid. Now these bonds have been printed by the Reserve Bank and it is understandable that which they would be breaking the amount of the face of the bond in installments they would be showing the balance of principal after each installment on the assumption that the installment would be regularly paid as and when they would be falling due. They were perhaps not mindful of the contingency as to what would happen in the event of the installments being not paid as and when they would be falling due. Since thousands of cases of ex-Jagirdars had to be dealt with and millions of rupees were to be paid this standard form of bonds Was introduced and the bonds of various denominations were issued. Nevertheless it cannot effect the liability of the State Government arising from Section 26 read with Section 38 of the Act, Also that cannot effect the liability that Was determined by the Jagir Commissioner vide the order Ex, 1 As I have already noticed by this Order the Jagir Commissioner has directed that the amount of compensation shall carry interest at the rate of 25 percent per annum from the date of resumption of Jagir till payment. The controversy boils down to this the plaintiff claims interest at Rs. 312. 50 paisa for each of the 19 installments the defendant State, on the other

hand, stick to its guns and reiterates that whatever is mentioned in the bond as interest that alone payable it is the end of the matter of the plaintiff consequently claim any thing over & above that I am unable to assent to this. The liability has been created by the statute & has to be discharged in terms of the statute. The interest mentioned in the bond in respect of the installment that had already fallen due at the time of the delivery of the bonds is not decisive or conclusive. For the installment that would be falling due after the delivery of the bond there would be no difficulty as it would be for the ex-Jagirdar or his representative in interest to claim the installment with interest as and when they would be falling due. The learned Additional Government Advocate was asked to sit with earned Counsel for the respondent and check up if there was any error in arriving at the amount of difference in the interest as claimed by the plaintiff and what is mentioned in the bonds. The learned Additional Government Advocate has one day at his disposal for this and he has not been able to challenge the correctness of the amount determined by the learned District Judge. I have also examined the position and do not find any error in the determination of the amount.

16. The result is that the appeal is without force and accordingly it hereby is dismissed with costs.

