(1974) 01 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No. 265 of 1967

State of Rajasthan APPELLANT

Vs

Smt. Laharkunwar and Others RESPONDENT

Date of Decision : 10-01-1974

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1974 Raj 193 : (1974) RLW 85 : (1974) 7 WLN 91

Hon'ble Judges : B.P. Beri, C.J;D.P. Gupta, J

Bench : Division Bench

Advocate : S.K. Tiwari, for the Appellant; S.K. Mal Lodha and A.K. Bhandari, for the Respondent

Judgement

B.P. Beri, C.J.—This is a petition under Article 226 of the Constitution filed by the State of Rajasthan against ten respondents including the Board of Revenue, challenging the decision of the Board of Revenue dated April 23, 1965 in nine jagir appeals by its consolidated order.

2. The facts which, it is necessary to notice for the disposal of this petition, are briefly these --

In regard to Barmer jagir, nine persons who are in the line of Sumelsingh, had shares in the said jagir. The jagir was resumed under the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (hereinafter called "the Act") on September 12, 1956, and the claims for compensation by the respondents were filed in 1960. Amongst other items, the claimants made a demand for compensation for the income arising out of mineral products. The Deputy Collector, Jagir, Barmer, passed a common compensation award on March 13, 1964 and allowed compensation for mineral products. The State of Rajasthan preferred an appeal which was dismissed. A second appeal was taken before the Board of Revenue and the question raised before the Board was that Rule 37 (b) of the Rules framed under the Act was not complied with inasmuch as no Gazetted Officer of the Mining Department was called upon to inspect the area for checking the figures of the income claimed by jagirdars or to submit a report with respect to the income arising from mines and quarries. The learned Members of the Board of Revenue held that provisions of Rule 37 (b) were merely directory. It is this order of the Board of Revenue which is sought to be challenged by the present writ petition on the ground that the jagirdars had no mineral rights and, therefore, no compensation could be granted to these jagirdars in respect of income from mines and quarries. The writ petition in the instant case was presented on March 21, 1967. It has now come up for hearing before us after a lapse of about seven years. We are told that a reply has been filed by the respondents today. We unhesitatingly decline to take that into consideration for the reason that it has been filed near about seven years after the presentation of the writ petition. We cannot congratulate the respondents on their speed.

3. The question for our consideration, urged Dr. Tiwari, is that when the jagirdars had enjoyed no mineral rights whatsoever, the grant of compensation relating to income from mines and quarries, was wholly unjustified or unauthorised.

4. Mr. A.K. Bhandari submits that two of the respondents died during the pendency of the petition. He is unable to say, when. We cannot entertain such a vague plea. It is further submitted by Mr. Lodha and Mr. Bhandari that the judgment of the Board of Revenue under challenge is dated April 23, 1965 and the petition, having been presented on March 21, 1967, was belated and should be thrown out on this score alone.

5. We need not proceed to consider whether or not the petition can be disposed of on this score of delay, for we propose to decide this petition on other grounds.

6. According to the learned counsel for the respondents there were nine appeals before the Board of Revenue, although they were decided by a consolidated judgment. The learned counsel says that in view of the authority of Inder Singh and Another Vs. State of Rajasthan and Others, a single petition against the decision of nine appeals is not maintainable. On this score alone, this petition can fail and should fail. But there is, however, an additional ground which, according to us, goes to the root of the matter. The argument that the jagirdars had no mineral rights and, therefore, had no legitimate claim for compensation, was not at all raised before the Board of Revenue. When the point urged was not raised before the Tribunal, whose order is sought to be challenged, no writ of certiorari can be issued by this Court. Before a writ of certiorari could be issued in the present case, an error apparent on the face of the record must be shown to exist, as it is not the case of the petitioner that the Board of Revenue acted without jurisdiction or mala fide. Obviously, there cannot be an error on the face of the record because this point was neither raised nor considered by the Board of Revenue, and we do not have the benefit of examining the view of the Tribunal whose order is under attack. In this connection, reference may be made to Gopalkrishna Motor Transport Co. Ltd. Vijayawada v. Secretary Regional Transport Authority, Krishna District Vijayawada AIR 1957 AP 882 and Banwarilal

and Co. (P) Ltd. v. Commercial Tax Officer (1959) 10 SCT 68 (Cal).

7. No other point has been pressed before us.

8. In the result, this petition fails. No order as to costs.

