
(2016) 02 RAJ CK 0134
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1499/2002

State of Rajasthan

APPELLANT

Vs

Uka and Others

RESPONDENT

Date of Decision : 12-02-2016

Acts Referred:

Constitution of India, 1950 — Article 31-B
Rajasthan Agriculture Credit Operations (Removal of Difficulties) Act, 1974 — Section 13, Section 14, Section 14(1), Section 14(2), Section 14(4)
Rajasthan Land Revenue Act, 1956 — Section 82<

Citation : (2016) 2 DNJ 532 : (2016) RRD 451 : (2016) 1 WLN 342

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : O.P. Boob, Govt. Counsel, for the Appellant; R.P. Singaria, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Arun Bhansali, J.—1. This writ petition has been filed by the petitioner-State aggrieved against the judgment dated 24.01.2002 passed by the Board of Revenue, Ajmer ("the Board"), whereby the reference made by it under Section 82 of the Rajasthan Land Revenue Act, 1956 ("the LR Act") has been rejected. The State by the reference had questioned the validity of mutation No. 62 dated 11.08.1995 and auction sale conducted by the Assistant Registrar, Cooperative Societies, Jalore.

2. The non-petitioner No. 1 Uka was recorded Khatedar of the land in question; the land was mortgaged with the Land Development Bank, Branch Raniwada; the Bank issued a demand notice to the respondent No. 1 to pay a sum of Rs. 13,075/- and when he failed to deposit the sum, a proclamation for sale was issued and the land in question was sold in auction, which was purchased by respondent No. 2 Manoj Kumar for a consideration of Rs. 44,501/-. After payment of the said amount, the land in question was redeemed from mortgage and mutation No. 62 dated 11.08.1995 was recorded in the name of respondent

No. 2.

3. The State through Tehsildar filed an application before the District Collector, Jalore on 21.07.1998, inter alia, indicating that the respondent No. 2 Manoj Kumar is not a member of Scheduled Tribe, whereas the respondent No. 1 Uka is a member of Scheduled Tribe and, therefore, the land in question could not be transferred in favour of respondent No. 2 in view of the provisions of Section 42(b) of the Rajasthan Tenancy Act, 1955 ("the Tenancy Act").

4. The Board after hearing the State, as the respondents did not appear, dismissed the reference, inter alia, holding as under:-

"11. In view of the fore-going discussions, it is not established that the non petitioner No. 1, who is a member of scheduled tribe, has transferred his agriculture land to a person who is not a member of scheduled tribe, but on the other hand, non petitioner No. 2 has purchased the land in question in public auction which was not a voluntary act of the non petitioner No. 1. Therefore, this reference is not maintainable and it is hereby dismissed."

5. Feeling aggrieved, the State filed the present writ petition. Initially, the writ petition was dismissed in limine on 14.05.2002. The State filed D.B. Civil Special Appeal (Writ) No. 158/2004. During pendency of the said Special Appeal, a reference was made to the Larger Bench regarding the validity of the judgment of this Court in Asuram vs. Tehsildar, Sanchore: , AIR 2000 Raj. 345.

6. The reference was answered on 10.05.2010 and the Division Bench by its order dated 13.12.2010 has remanded back the matter.

7. Learned counsel for the petitioner-State submits that the issue raised in the present writ petition is now squarely covered by Full Bench judgment of this Court in State of Rajasthan vs. Uka & Ors., , 2010 (2) RRT 738, and therefore the writ petition deserves to be allowed.

8. Learned counsel for the respondent No. 2 submitted that the proceedings for reference were initiated belatedly and, therefore, the same were rightly rejected by the Board; the auction proceedings are governed by provisions of Section 14(1) of the Rajasthan Agriculture Credit Operations (Removal of Difficulties) Act, 1974 ("the Act") and the full Bench judgment deals with the provisions of Section 14(2) of the Act and, therefore, the same is not applicable. It was prayed that the writ petition deserves to be dismissed.

9. Learned counsel for the respondent No. 1 supported the submissions made by learned counsel for the petitioner-State.

10. I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

11. The Board rejected the reference on coming to the conclusion that the transfer of the land in the present case was not effected by provisions of Section 42(b) of the Tenancy Act, inasmuch as, the transfer was not a voluntary act of

respondent No. 1 as the land in question was attached and put to auction by the Land Development Bank.

12. The Full Bench in the case of Uka (supra) while dealing with the said aspect of the matter and in fact noticing the facts of the present case itself laid down as under:-

"31. Under the Act of 1955 Scheduled Castes/Scheduled Tribes are treated as a class separate than the other tenants and this classification is founded on socio-economic and political circumstances of the Indian society. The classification, therefore, is having a nexus with the object sought to be achieved. The check as per sub-section (4) of Section 14 was necessary in view of the fact that while adopting the mode of recovery under this provision, the rights of an agriculturist stands transferred in favour of the financing agency.

32. The transfer of rights so made is essential to obtain financial assistance, and looking to this statutory transfer of rights the legislature in its absolute domain considered it appropriate to have a check on further transfer of tenancy rights by the creditor bank. Sub-sec. (4) of Section 14 of the Act of 1974 provides a shelter to the members of Scheduled Caste/Scheduled Tribe or in general the above mentioned privileged categories from losing their tenancy rights in favour of some other category. This check is absolutely in consonance to the constitutional mandate i.e. to safeguard the Scheduled Castes/Scheduled Tribes economic and social status, not only as an individual but as an independent class of tenants. Sub-sec. (4) of Section 14 of the Act of 1974 also serves the protection available to the privileged categories under Section 42 of the Act of 1955. As already stated earlier, the Act of 1955 is enlisted under Schedule IXth, thus, is having protection as per Article 31-B of the Constitution. The availability of same protection to sub-sec. (4) of Section 14 of the Act of 1974, thus, is implicit. The resultant is that the classification of the tenants and their tenancy rights adopted under the Act of 1974 are rational and the provision in question in no manner suffers from any arbitrariness, irrational or germination of discrimination or any inconsistency, otherwise too with the rights enshrined under part third of the Constitution.

33. The other argument advanced is that sub-section (1) of Section 43 of the Act of 1955 permits a khatedar tenant to hypothecate or mortgage his interest in whole or part of his holding for the purpose of obtaining loan from the Land Development Bank of the State Government or the Development Bank or Cooperative Society or any Scheduled Bank or any other institution notified by the State Government on its behalf and if such khatedar fails to repay the loan, the creditor agency possess every right to realise the loan amount by putting the land in question for sale through public auction and such land can be sold to any person irrespective of the category of his belonging.

34. True it is, Section 43 permits a khatedar tenant to hypothecate or mortgage his interest, however, if such tenant is belonging to Scheduled Caste or

Scheduled Tribe, then certainly the provisions of Section 42 shall be attracted and the creditor financing agency have to adhere the provisions aforesaid while making sale of such land or interest therein.

35. It is next contended by learned counsel for the respondent bank that as per Section 3 of the Act of 1974, an agriculturist can alienate land or his interest therein in favour of a bank for the purpose of obtaining financial assistance, thus, the bank is having every right to transfer the property/land alienated to it by the agriculturist, through public auction in the case of default in satisfying the loan advanced. This argument too deserves to be negated simply on the count that as per Section 3 of the Act of 1974, an agriculturist may alienate his rights and interest in the land holding by creation of charge or mortgage for the purpose of obtaining financial assistance from the bank and not for their permanent transfer. The purpose for marking charge or mortgaging land or interest in favour of a bank as per Section 3 is only for obtaining financial assistance. So far as permanent transfer of such rights is concerned, that is governed by Sections 13 and 14 of the Act of 1974.

36. In light of the entire discussions made above, the law laid down in the case of Asuram (supra) is correct, thus, do not require any reconsideration. The view taken by learned Single Judge in the case of Uka, under the judgment dated 14.5.2002, is not correct. The special appeal deserves to be dealt with as per the law laid down in the case of Asuram (supra)."

13. In Asuram (supra), it was held as under:-

"4. The scrutiny of two provisions makes it clear that in a sale conducted under Section 13 of the Act, no proprietary interest is acquired by the creditor-Bank in the land in question and the sale conducted under Section 13 of the Act is like a sale conducted by the Court in execution of a decree in which interest of the judgment-debtor involved is transferred through the agency of the Court but such transfers are governed by the rights and obligations attached to the land of the judgment-debtor which are attached under the general law. Therefore, if the interest of the judgment-debtor is transferred under Section 13 of the Act by the agency of the Bank upon obtaining an order from the Tehsildar, which is executed like a decree of Civil Court, what is really transferred through auction is the interest of the Judgment-debtor though there is involvement of the Bank or the auctioneer (auctioneer) and in that event, the provisions of the Rajasthan Tenancy Act, 1955 effecting restrictions on the persons on whom interest of judgment-debtors can be transferred are automatically attracted. In contrast, a sale under Section 14 of the Act takes place where the Bank being of the opinion that proper market price is not being achieved/obtained in the sale executed under Section 13 of the Act, it can acquire the land itself and, thereafter, it can dispose of the land of the debtor-mortgagee. Such sale by the Bank as a matter of law is transfer of Bank's own property which has been acquired by it under Sections 14 of the Act. However, keeping in view the basic scheme and the constitutional mandate which protracts the interests of weaker sections of the

society particularly members of SC/ST and the provisions of the Rajasthan Tenancy Act, 1955 which puts restrictions on the alienation of the interest of the members of the SC/ST, to the members of the SC/ST alone so that the sources of such weaker sections remains within such community and it does not go out of them, therefore, by dint of Sub-section (4) of Section 14 of the Act the legislative policy is maintained that interest of members of SC/ST should continue to remain with that community and it does not go out of them. In this view of the matter, we do not find anything which goes contrary to the constitutional mandate in making the provision like Section 14(4) of the Act."

14. As such, the case in hand is fully covered by the determination made by the full Bench and law laid down in the case of Asuram (supra).

15. So far as submissions made by learned counsel for the respondent No. 2 are concerned, the auction and the mutation in favour of the respondent No. 2 took place on 11.08.1995 and the reference proceedings were initiated on 21.07.1998 i.e. within a period of about three years and, therefore, it cannot be said that the proceedings were delayed in any manner/to the extent that on account of such delay, the reference itself was liable to be rejected.

16. The other submissions made by learned counsel for the petitioner with reference to provisions of Section 14(1) of the Act is without any substance, inasmuch as, the said provision only deals with the fact, where the Bank acquires the agriculture land or interest when despite public auction, no person offers to purchase the same at the public auction, whereas the petitioner has purchased the land, which aspect is governed by provisions of Section 14(2) of the Act only and, therefore, it cannot be said that the transfer to the petitioner was under Order 14(1) of the Act so as to distinguish the judgment in the case of Uka and/or Asuram (supra).

17. In view of the above discussion, the writ petition filed by the State is allowed. The judgment dated 24.01.2002 (Annex.-5) passed by the Board is quashed and set aside. A reference made by the State under Section 82 of the LR Act is accepted. The mutation No. 62 dated 11.08.1995 in favour of the respondent No. 2 and the auction sale conducted by the Assistant Registrar, Cooperative Societies, Jalore are set aside. Further, as directed in the case of Asuram (supra), it is directed that the State Government shall refund the amounts recovered from the respondent No. 2 as consideration of the land in question to the respondent No. 2 within a period of two months.