

(2002) 11 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 683 of 2001

State of Rajsthan and Others

APPELLANT

Vs

Prem Shankar and Others

RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 WLC 519 : (2003) 1 WLN 149

Hon'ble Judges : N.N. Mathur, J;H.R. Panwar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.N. Mathur, J.—Being aggrieved by the part of the order of learned Single Judge dated 24.03.2000 to the extent that while relegating the respondents-writ petitioners to the alternate remedy of revenue suit learned Single Judge extended the protection from forcible dispossession without specifying any time period.

2. The respondents-writ petitioners filed a writ petition seeking directions not to disturb their possession in any manner including auctioning the subject land and further to direct the appellants-respondents to treat them as Khatedar tenants of the said land.

3. The brief facts as culled out from the pleadings are that the subject land bearing Khasra Nos. 22/2 and 23/2 originally stood in the name of Shri Abdul Haq and others. However, some of the co-sharers of the subject land left India in the year 1949-50 and out of all the co-sharers only Shri Abdul Rehman remained in India. Abdul Rehman raised a claim before the Deputy Custodian of Evacuee Property with respect to the entire land of 190 Bighas and 5 Biswas in Khasra Nos. 22, 23, 24, 25 and 26. However, the Deputy Custodian by order dated 16.05.1951 accepted his claim only to the extent of 1/3 share. The subject property was also declared as evacuee property. The said order was modified in

revision by order dated 14.07.1953. It is submitted that according to the State 126 Bighas and 17 Biswas of land was entered in the name of evacuee property under the charge of Tehsildar, Hurda. It further appears from the record that petitioners were called by the Rehabilitation Department to pay the double amount than the normal land revenue which they have paid for three years from Samvat 2017 to 2019 and continued to pay the additional land revenue to the Rehabilitation Department in their capacity as old Khatedar tenants of Evacuee Department. They continued to pay the land revenue for subsequent years. The Assistant Settlement Officer initiated proceedings against Shri Bhola Nath and others similarly situated as "Shikmi Tenants" of Abdul Shakoor and Zalaluddin who had migrated to Pakistan. The Assistant Settlement Officer regularised the Khatedari rights of Shri Bhola Nath but the petitioners were recorded as Sub-tenants as per the order dated 02.08.1971. The petitioners came to know about the pendency of the proceedings of recording of Khatedari rights in their favour before the State Government after the death of their father Kalyanmal. The Tehsildar, Hurda made a recommendation to the Collector, Bhilwara to confer full Khatedari rights to the petitioners. However, the Rehabilitation Department threatened the petitioners to dispossess them from the land in question. Thus, they approached to this Court by way of petition under Article 226 of the Constitution of India.

4. Learned Single Judge rejected the petition on the ground that no relief in the form of grant of Khatedari rights can be granted in exercise of powers under Article 226 of the Constitution of India. Accordingly, the learned Single Judge relegated the petitioners to seek appropriate remedy before the competent court. However, the learned Single Judge considering the fact that petitioners continued in possession on the subject land since 1946, directed riot to forcibly dispossess them.

5. Mr. C.L. Jain, learned Counsel appearing for the State contends that learned Single Judge has committed error in granting relief which infact amounts to accepting the entire writ petition. Once the learned Single Judge relegated the petitioners to the alternate remedy, he had no jurisdiction to protect their possession on the subject land for all times to come. Mr. D.S. Shishodia, learned Senior Advocate appearing for the respondents-writ petitioners while justifying the part of the order of directing not to dispossess the writ petitioners has also challenged the order of the learned Single Judge by way of filing cross-objection so far as it relates to relegating the writ petitioners to the alternate remedy is concerned. It is submitted by Mr. D.S. Shishodia that persons as envisaged by Section 19(1A) automatically acquired right at the commencement of the Act and there is no need to initiate separate proceedings for declaration of such rights. learned Counsel has placed reliance on the decision of this Court reported in Gangaram Vs. Taruram and Others, and an unreported Division Bench judgment dated 14th September, 1988 rendered in the case of Balveer Singh and Others v. Board of Revenue. On the other hand, it is submitted by Mr. C.L. Jain, learned counsel appearing for the State that if the tenant migrates from India to foreign

country without obtaining a valid passport or without lawful authority, the interest of such person in holding or part thereof shall stand extinguished. In view of the provisions of Section 63 of the Rajasthan Tenancy Act, 1955.

6. We have carefully considered the rival contentions and perused the documents placed on record. It appears from the Jamabandi of Samvat 2012 to 2013, Annexure-1, that petitioners' father Kalyanmal S/o Ganesh Lal was recorded as Sub-tenant. This corresponds to year 1947. A copy of Jamabandi of Samvat 2014 to 2017, Annexure-2, and further Jamabandi of 2018 to 2021 and 2022 to 2025, Annexure-3 & 4 respectively shows that petitioners' father Kalyanmal S/o Ganesh Lal continued to be recorded as "Shikmi" Kashtkar. Khasra Girdawari of Samvat 2010 to 2013 (Annexure-5) also shows that petitioners' father Kalyanmal was in possession over the subject land. The revenue receipts of Samvat 2007 to 2014 (Annexure-6 to 12) shows that the petitioners' father continued to pay the land revenue. The petitioners also continued to pay the additional revenue as per the order of Rehabilitation Department. Thus, there can be no doubt that petitioners were in possession over the subject land on the date of commencement of the Rajasthan Tenancy Act, 1955 as Sub-tenant. Further, the Assistant Settlement Officer by order dated 02.08.1971 has ordered to record the petitioners as Sub-tenant.

7. Section 19 of the Rajasthan Tenancy Act provides the procedure for acquiring Khatedari rights. Section 19(1A) was added to remove the difficulties. This is one of the major land reform introduced by the Act to confer Khatedari rights on Sub-tenants of Kasht. The persons falling in this category acquire the Khatedari rights automatically without any step being taken by them. In view of this, the learned Single Judge has committed error in relegating the respondents-writ petitioners to alternate remedy before the competent court. The contention of the appellant for extinguishment of the rights of holding u/s 63 of the Act is wholly misconceived. It has no application to the facts of the case. In view of the continuous possession over the subject land of the writ petitioners prior to year 1946 and they being Sub-tenant on the date of commencement of the Rajasthan Tenancy Act, 1955, have automatically acquired Khatedari rights.

8. Consequently, the special appeal filed by the State is dismissed. The judgment of the learned Single Judge is set aside. The writ petition is allowed. The State and its officers are restrained from dispossessing the respondents-writ petitioners from the subject land. No order as to costs.