
(1977) 03 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1010 of 1976

Suraj Mal	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 24-03-1977

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 30E(2)

Citation : AIR 1977 Raj 178 : (1977) RLW 314 : (1977) WLN 135

Hon'ble Judges : A.P. Sen, Acting C.J.; M.L. Jain, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; H.N. Calla, Deputy Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sen, Actg. C.J.

1. This writ petition by Surajmal is directed against the order of the Board of Revenue dated 5th July, 1976, dismissing the revision preferred by him against the order of the Revenue Appellate Authority, Kota, dated 13th June, 1974, upholding that of the Assistant Collector, Bundi, dated 25th September, 1971, by which the Assistant Collector declared 54 bighas 15 biswas of land belonging to the petitioner, as being in excess of the ceiling area applicable to him u/s 30-E (1) of the Rajasthan Tenancy Act, 1955, hereinafter referred to as "the Act".

2. The material facts are these: The total holding of the petitioner comprises of 114 bighas 18 biswas of land in village Tirath. Before the Assistant Collector, the petitioner claimed the benefit of Section 30-DD of the Act alleging that there had already been a partition between him and his son effected by a decree of the Civil Court in the year 1969 and that he had already transferred 26 bighas 10 biswas of land to one Kesra. Incidentally, 2 bighas 10 biswas of land belonging to the petitioner had been taken over by the Irrigation Department for the construction of a canal.

3. The Assistant Collector, Bundi, by his order dated 25th September, 1971, held that the petitioner was not entitled to the benefit of Section 30-DD of the Act on the ground that the so-called partition and the alleged transfer were nothing but devices to defeat the ceiling law. The petitioner went up in appeal to the Revenue Appellate Authority, Kota, which by its order dated June 13, 1974, affirmed the decision of the Assistant Collector. In revision, the Board of Revenue by its order dated 5th July, 1976, maintained the order of the Revenue Appellate Authority upholding the order of the Assistant Collector, Bundi. In consequence thereof, 54 bighas 15 biswas of land belonging to the petitioner, has been declared to be in excess.

4. Before the Board of Revenue as well as the authority subordinate to it, the only point raised on behalf of the petitioner was that he was not in possession of any excess land. In short, the petitioner pressed into service Section 30-DD of the Act. That point has, however, been abandoned before us. It must, therefore, be taken that the petitioner is not entitled to the benefit of Section 30-DD of the Act.

5. Shri Sagarmal Mehta, learned counsel for the petitioner, contends that even if the petitioner was not entitled to the benefit of Section 30-DD of the Act, he was still entitled to be given an opportunity to exercise his option u/s 30-E (2). In reply, Shri H.N. Calla, learned Deputy Government Advocate, urges that the question of giving option to the petitioner u/s 30-E (2) of the Act did not arise for three reasons, namely, (1) the petitioner has not fulfilled his obligation u/s 30-E (2) of surrendering the excess land within six months of the notified date; (2) the petitioner had not complied with the requirements of Rule 24 of the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963; and (3) the option is allowed in case of a person, who is holding land in different Tehsils as enjoined by First proviso to Section 30-E (2) of the Act and not in cases of a person holding different parcels of land in the same Tehsil.

6. Having heard the learned counsel, we have formed an opinion that the petition cannot succeed. While it is true that there was no question of the petitioner fulfilling his obligations u/s 30-E (2) of the Act of surrendering the excess land in his possession, within six months of the notified date, inasmuch as there was, according to him, no land in excess of the ceiling area, with him. He was, in fact, claiming the benefit of Section 30-DD of the Act. If that be so, there was also no question of his complying with Rule 24 of the Rajasthan Tenancy (Fixation of Ceiling of Land) Government Rules, 1963, or of filling in Form X, at the time of the filing his return. But these questions only became germane when the Assistant Collector held that the claim of the petitioner based on Section 30-DD of the Act, could not be accepted. At that stage, the petitioner should have been, it is said, asked whether he would still like to exercise his option under the proviso of Section 30-E (2) of the Act. The question is not free from difficulty.

7. Section 30-E (2) of the Act, so far it is relevant, reads as follows :--

"30-E. Maximum land that can be held and restriction on future acquisitions-

XX XX XX

(2) Every person, who, on such date, is in possession of land in excess of the ceiling area applicable to him or who thereafter comes into possession of any land by acquisition under Clause (b) of Sub-section (1), shall, within six months of such date or within three months of acquisition, as the case be, make a report of such possession or acquisition to, and shall surrender such excess land to the State Government and place it at the disposal of, the Tehsildar within the local limits of whose jurisdiction such land is situate:

Provided that if any person holding or acquiring land in excess of the ceiling area applicable to him holds land in more than one Tehsil he shall have the option to choose which of the lands held by him in different Tehsils should be surrendered so as to leave with him the land up to ceiling area applicable to him."

8. The question whether or not the petitioner was entitled to be given an option must, in our view, turn on the language of the first proviso. Where the words of an Act are clear, there is no room for applying any of the principles of the interpretation. The language of the first proviso is clear and unambiguous. The words used are "in more than one Tehsil". On the terms of the first proviso to Section 30-E (2) of the Act, as it now stands, option is allowable only if a person is holding lands in excess of ceiling area in more than one Tehsil, i. e., in two or more Tehsils. The contention of Shri Sagarmal Mehta, learned counsel for the petitioner, that the words "in more than one Tehsil" should be interpreted, in the context, to mean "in one or more Tehsils," cannot be accepted. That would be against the plain meaning of the words used, The Court must interpret the section as it stands. It has no power to alter the words used in the section.

9. In *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, their Lordships observed:--

"It must always be borne in mind, as said by Lord Halsbury in *Commr. for Special Purposes of Income Tax v. Pemsel* 1891 AC 531, that it is not competent to any Court to proceed upon the assumption that the Legislature has made a mistake. The Court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by Legislature the Court cannot, as pointed out in *Crawford v. Spooner* (1846) 6 Moo PC 1 aid the Legislature's defective phrasing of an Act or aid and amend or, by construction, make up deficiencies which are left in the Act. Even where there is *casus omissus*, it is, as said by Lord. Russel of Killowen in *Abdullah Ashgar Ali v. Ganesh Das*, AIR (20) 1933 PC 63 for others than the Courts to remedy the defect."

10. On the terms of the first proviso to Section 30-E (2) of the Act, as it now stands, there can be no doubt that the petitioner was not entitled to any option, because he has all his land in one and the same Tehsil, The question then arises

whether the Legislature can be attributed with the intention to differentiate between two classes of land-holders. If the legislative intent was not to benefit one class of landholders alone, viz., persons holding land in more than one Tehsil, i. e., in different Tehsils, the Government may consider whether the first proviso to Section 30-E (2) of the Act should not be suitably amended. That would remove the obvious lacuna in the Act, so as to extend the benefit to another class of land-holders, viz., persons holding different parcels of land in the same Tehsil. There is no reason why one class of land-holders should be differentially treated as against another class of land-holders. There is no rational basis for such differential treatment. That, however, is a matter for the State Legislature to consider. We rest ourselves content by pointing out the lacuna in the first proviso to Section 30-E (2) of the Act.

11. There is, therefore, no alternative for us than to leave the petitioner to his remedy, if any, u/s 15 (2) of the Rajasthan Imposition of Ceiling on Agri-cultural Holdings Act, 1973.

12. The result, therefore, is that the writ petition fails and it is dismissed. There shall be no order as to costs.