
(2014) 01 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2480/1995 and 444/2001

Surajmal and Others

APPELLANT

Vs

The Revenue Board and Others

RESPONDENT

Date of Decision : 16-01-2014

Acts Referred:

Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 — Section 15(2)

Citation : (2014) 01 RAJ CK 0017

Hon'ble Judges : M.N. Bhandari, J

Bench : Single Bench

Advocate : Vijay Choudhary for N.C. Choudhary, Advocates for the Appellant; S. Zakawat Ali, Dy. Govt. Counsel, Advocates for the Respondent

Judgement

M.N. Bhandari, J.—By these writ petitions, a challenge is made to the order dated 27.02.1993 passed under Section 15(2) of Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (in short "Act, 1973"). The other challenge is to the order dated 28.10.1993 passed by the Board of Revenue in appeal preferred by the petitioners.

2. Learned counsel submits that ceiling case of petitioners was finalized under the old Ceiling Act however it was re-opened without a notice to the petitioners. A notice was given only to the co-tenant, Gopal and not to the petitioners thus the order dated 27.02.1993 was passed in violation of the principles of natural justice and provisions of Act, 1973. The case could have been reopened and decided after notice to the petitioners. The impugned orders thus deserve to be set aside on this ground alone.

3. It is further stated that before passing the order, the respondents were under an obligation to cause inquiry and to find out number of units for determination of land, whether coming under the ceiling. The respondents failed to do so and passed erroneous order without ascertaining as to how many units exist in the family of the present petitioners. They clubbed all the family members to determine ceiling limit of 60 bighas. The authority further committed illegality in

drawing presumption of maximum 5 members as provided under the new law, whereas a case settled under old law and on reopening, has to be determined as per old law.

4. Lastly it is contended that even nature of soil was required to be ascertained as it cannot be decided based on presumption. It is moreso when nature of the soil determines ceiling limit to occupy the land. The respondents failed to consider the aforesaid and treated the land under command area.

5. It is further contended that reopening of the case by the respondents was beyond limitation provided under the new Act. This court gave direction for submission of the affidavit and synopsis to give details of dates so as determine the issue of limitation.

6. Learned counsel for respondents, on the other hand, contested the matter.

7. It is stated that issue of limitation was never raised by the petitioners either at the time of causing notice under new Act or before filing of the appeal before the Board of Revenue. The plea of limitation has not even been raised in the writ petition thus arguments aforesaid may not be entertained. It is also stated that order dated 28.10.1993 was passed after giving notice to the petitioners and co-tenant. It is therefore only that petitioners kept silence of the issue while filing appeal and even in the writ petition. The oral arguments have been raised in regard to passing of the order dated 28.10.1993 without a notice. It is factually incorrect and should not be entertained in absence of pleading and material. The competent authority had issued notice to the petitioners and others. The petitioners and others failed to put in appearance after notice. The inquiry was caused as has been mentioned in the order dated 27.02.1993. It contains fact of absence of petitioners despite notice. The State Government vide its order dated 17.10.1989 asked to determine the issues raised therein after inquiry. The impugned order was passed after inquiry of the issues framed by the Government therefore, thus no illegality has been caused therein. The petitioners are those who failed to make declaration as required under the law thus presumption was drawn regarding maximum units.

8. The impugned order was passed after due inquiry where the petitioners remained absent. The appellate order makes things clear. Para 6 of the impugned order of the appellate court gives description and details of land and other facts relevant to the case. In view of the above, impugned orders were rightly passed holding possession of land in excess to the ceiling limit by the petitioners.

9. The question of nature of soil has been raised in the writ petition, though nothing was said while maintaining appeal. The issue aforesaid could have been considered by the appellate court however a factual aspect was not raised before the appellate court and has been pleaded herein with a request to be taken up without explanation and justification. In absence, should not be allowed to raise orally when it is based on facts.

10. I have considered the submissions made by the parties and perused the record.

11. The first question raised by the learned counsel for petitioners is regarding limitation to reopen the case earlier decided under Old Act. I find that the issue aforesaid was not raised by the petitioners before the Board of Revenue in appeal and even in the writ petition. In absence of pleading giving out the facts to show how reopening of the case was beyond limitation, the issue cannot be taken up. A reference of the interim order of this court has been given where direction was to file affidavit to show as to how reopening of the case was beyond limitation but I do not find a direction for it. The reference of order of this court dated 3rd December, 2013 has been given wherein no direction exist to file affidavit for the purpose of limitation. It is nothing but presumption of the petitioners for such a liberty. This court never asked the petitioners to file affidavit beyond the pleadings. In view of the above, even if affidavit has been filed by the petitioners to raise the issue of limitation, it cannot be entertained in absence of pleading in the writ petition to this effect. The first ground was not raised before the appellate court. A new case cannot be made out by filing affidavit. If petitioners intended to raise issue of limitation, they could have amended the writ petition for that purposes but simply filing of affidavit would not lead to amendment in the writ petition so as to raise an issue for the first time without pleading to this effect. The first ground is accordingly decided against the petitioners.

12. The next question is regarding opportunity of hearing. It is stated that impugned order was passed by the competent authority under Section 15(2) of the Act, 1973 without causing notice to the petitioners. I find total silence on the issue before the Board of Revenue in appeal and even in the writ petition. The issue aforesaid is factual in nature. In absence of the pleading, the issue raised orally cannot be determined in favour of the petitioners. It is moreso when impugned order passed by the authority concerned shows a notice to the parties who remained absent even after receipt of notice. In view of the above and in absence of pleading to this effect, second ground raised by the petitioner cannot be accepted and it is summarily rejected.

13. The issue now comes as to whether impugned order was passed on 27.02.1993 without causing inquiry and as per provisions of the Act, 1973 or old Act. The perusal of order reveals that authority concerned specifically noted that issues are to be determined after inquiry. It further makes reference of the issues directed to be determined, which includes the issue regarding units of Nathu as well as of Rameshwar. The impugned order was passed thereupon thus it cannot be presumed that no inquiry in the matter was conducted. It is a case where petitioners did not appear before the authority concerned even after receipt of notice and now raising issue of illegality in the order. It is moreso when issue aforesaid was not even raised in the appeal before the Board of Revenue, though it is question of fact. The authority concerned has taken note of the total land possessed by the petitioners and units so as ceiling limit permissible for

retention of the land. Para 6 of the appellate order narrates facts for that purpose. It does not refer new Act for deciding the issues. Accordingly, I am not impressed with third arguments raised by learned counsel for petitioners.

14. The issue now is as to whether authority was justified to presume 5 members of the family of the petitioners. I find that as per provisions of law, the petitioners were required to make a declaration. It is absent herein, rather no pleading to this effect exist. The authority concerned has taken note of the aforesaid inasmuch as co-tenant Gopal made a declaration as required. The earlier proceedings were dropped taking note of the fact that Rameshwar had two major sons thus he was not possessing land beyond ceiling limit. In absence of declaration, as required, presumption of the members to the extent of maximum of 5 was taken and accordingly petitioners were allowed to possess the land to the extent of ceiling limit. In view of the above, even last argument raised by the petitioner cannot be accepted.

15. The issue is as to whether nature of the land was taken note of or not. A reference of judgment of this court has been given where direction was to first determine the nature of the land. I have considered the aforesaid judgment and find that issue is required to be determined but in the instant case, the petitioners did not raise the issue regarding non-determination of nature of the land and even has failed to state that land in dispute does not exist in command area. The ground has not been taken after proper pleadings. The position would have been different, if petitioners could have come with the case that nature of land has wrongly been taken to be of command area. The pleading is totally silent on the aforesaid. In view of the above, the ground raised above remains nothing but hypertechnical in nature inasmuch as even the matter is remanded back, in absence of the pleading regarding nature of land, the result would be same.

16. In view of the discussion made above, I do not find any illegality in the impugned order.

17. Accordingly, writ petitions are dismissed along with stay applications.