

(1995) 02 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Sp. App. No. 303 of 1984

Surendra Narain Goswami	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 21-02-1995

Acts Referred:

Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 — Section 19B, 40A

Citation : AIR 1995 Raj 233

Hon'ble Judges : P.K. Palli, J;M.P. Singh, J

Bench : Division Bench

Advocate : B.L. Purohit, for the Appellant; U.C.S. Singhvi, Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Palli, J.—This special appeal is directed against the order of the learned single Judge dated 26-10-1983 whereby a writ petition challenging the order of Khudkast Commissioner dated 25-3-1975 was dismissed.

2. One Kameshwar Goswami was treated as Jagirdar while 36 other persons were mentioned as co-sharers. Father of the appellant Jogeshwar was one of the co-sharers in the amount of compensation and rehabilitation grant payable from the resumption of jagir.

3. The co-sharers applied for allotment of land as ex-Jagirdars u/s 14 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (referred to hereinafter as "the Act"). The Khudkast Commissioner treating these co-sharers as former Jagirdars allotted them land measuring one murabba each vide order dated 16-12-1965. A complaint appears to have been made that the allotment was secured on false representation and the Government vide the order dated 5-10-1968 directed the Khudkast Commissioner to look into the matter u/s 19-B of the Act. This was objected to by the co-sharers on the ground that the Government should itself enquire u/s 19-B of the Act and the Khudkast

Commissioner could not examine the matter. The Khudkast Commissioner suspended the enquiry and referred the matter to the State Government for necessary direction. After the necessary directions were received from the State Government, the Khudkast Commissioner decided to proceed in the matter u/s 40-A of the Act. The petitioner and other allottees objected to the review petition mainly on the ground that the same was without jurisdiction, unauthorised and that the allotment having been made in the year 1965 could not be reopened and no suo motu review proceedings can be initiated. The Khudkast Commissioner after examining the entire controversy and looking into the provisions of the Act passed a detailed order on 25-3-1975, rejecting the objections raised by the petitioner and other co-sharers and ordered that the case was fit to be reviewed suo motu. This order was challenged by the appellant by way of writ petition, which has been dismissed vide the impugned order.

4. Learned single Judge after examining the matter has held that the petitioner himself had conceded that the State Government itself should enquire into the matter. It is an admitted case that the Commissioner himself had referred the matter to the State Government and it was only after the order was passed that the matter could be reviewed by the Khudkast Commissioner himself, that the machinery was set in motion for reviewing the order of allotment. These proceedings have been initiated u/s 40-F of the Act.

5. It may be stated that no further proceedings as yet have been initiated by the Khudkast Commissioner after the impugned order was handed down since the matter remained pending in this Court for all the years and there was a stay of the operation of the order.

6. It would be useful to reproduce the provisions contained in Sections 19-B and 40-A hereunder:--

"19-B. Examination and cancellation of allotment of certain lands as Khudkast.-- Notwithstanding anything contained in Section 19 or in the rules made under this Act, the State Government, upon a complaint in writing made in that behalf or upon the facts otherwise coming to its knowledge, within six months from the date of the commencement of the Rajasthan Land Reforms and Resumption of Jagirs (Eighth Amendment) Act, 1958 or the date of such allotment, whichever may be later, may after hearing the person complained against--

(i) order that the matter of the allotment of any land specified in Sub-section (1) of Section 19 may be examined by such officer, not below the rank of a Collector, as the State Government may by such order authorise, and

(ii) cancel such allotment if it is found to have been secured by means of fraud or misrepresentation or the part of the allottee."

"40-A. Review.-- (1) The Board, the Jagir Commissioner or the Commissioner for Khudkast Land may either on an application made, within three months of the 18th of January, 1958 or of the date of order, whichever is later, by any

interested party or suo motu, review an order passed by the Board or by such Commissioner himself or his predecessor-in-office and pass such order in relation thereto as it or he thinks fit.

(2) No order passed by the Board or the Jagir Commissioner or the Commissioner for Khudkast Lands shall be reviewed under Subsection (1) otherwise than on any of the grounds mentioned, in Rule 1, Order 47 of the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908), and the provisions of the said Order shall apply."

7. The provisions, thus, authorise the Board of Revenue or the Jagir Commissioner or the Khudkast Commissioner either on the application of the interested party or suo motu to review the order. This power, however, restricts and circumstances the limits within which the said power can be exercised by these authorities.

8. The learned single Judge has held that so far as the suo motu proceedings are concerned, there was no limitation prescribed u/s 40-A as reproduced above.

9. Before the learned single Judge an argument was sought to be raised that the co-sharers of a Jagirdar would also be treated at par and with the same status which is conferred on the Jagirdar himself and that the Khudkast Commissioner was reviewing the matter from the angle that the co-sharers of a Jagirdar can in no way be termed as independent Jagirdars and, thus, the land could not be allotted to them in that capacity. The learned single Judge refrained to express any opinion on that question and in our opinion rightly so. Since only review proceedings have been initiated and no final order has yet been passed, the learned single Judge made certain observations that the question will be considered by the Khudkast Commissioner when he proceeds to decide the matter on merits and it would depend upon whether the petitioner or his father was a recognised Jagirdar under the then State law or not. The writ petition was, thus, dismissed with certain observations.

10. Learned counsel appearing for the appellant submits that the matter could not be reopened and the Khudkast Commissioner lacks inherent jurisdiction to review the matter under the provisions of the Act.

11. In reply the learned State counsel has reiterated the arguments adopted by the Khudkast Commissioner and the observations made by the learned single Judge.

12. In our opinion, the argument of the learned counsel is misconceived. The matter has been examined in detail by the learned single Judge on this point and we are in complete agreement with the observations made that the matter can be opened for review by the Khudkast Commissioner under the provisions reference to which has already been made above.

13. Learned counsel next contends that the co-sharers of the Jagirdar would be the Jagirdars themselves as they have a share in the income and produce of the

Jagir property and the Act defines only a "Jagirdar" and not "co-sharers of the Jagirdar". Notice may also be taken of Section 29 of the Act where a co-sharer of a Jagirdar under any existing law is entitled to receive any share out of the income of any Jagir land and is so entitled to payment of proportionate share out of the compensation and rehabilitation grant vis-a-vis the income of the share of the Jagir land. Section 2(g) of the Act defines "Jagirdar" as under:--

"2(g). "Jagirdar" means any person recognised as a Jagirdar under any existing Jagir Law and includes a grantee of Jagir land from a Jagirdar."

Section 2(h) defines "Jagir land" as under:--

"2(h). "Jagir land" means any land in which or in relation to which a Jagirdar has rights in respect of land revenue or any other kind of revenue and includes any land held on any of the tenures specified in the first Schedule."

14. Section 14 of the Act is also relevant and is reproduced hereunder:--

"14. Application for allotment of Khudkast.-- (1) A Jagirdar who on the 1st day of July, 1954, does not hold any Khudkast or who on such date holds khudkast less in area than the maximum area specified in Section 11 (may not later than (the thirty-first day of August, 1958) or within three months of the date of resumption whichever is later, apply to the Collector or to the Commissioner for Khudkast land for allotment of Khudkast.

(2) Every such application shall be in the prescribed form and shall be signed and verified in the manner provided in the CPC 1908 (Act V of 1908) for the signing and verification of plaints."

15. Learned counsel further presses in service the observations made by the Hon"ble Supreme Court of India in a case of Jagir of Bikaner State and this judgment has been placed on the record of the writ petition at page 34 of the paper-book: Writ Petition No. 7/1959: Omrao Singh v. State of Rajasthan decided on 12-1-62. This case also pertained to a Jagir of villages having been granted by the then Ruler of the Bikaner State and the question arose that whether the petitioners in that case were independent Jagirdars or not, as their names as proprietors of the Jagir existed in the revenue record. An argument was sought to be raised in that case that in order to be a Jagirdar one has to have rights to the land revenue in the specified areas and each of the petitioner who is entitled only to an undivided share in the Jagir land whether can be said to be an independent Jagirdar. An observation was made by the Hon"ble Supreme Court that the definition of "Jagirdar" in the Bikaner Act does not seem to be well founded. It was also held that:--

"The Jagir land of such a person would be a specific undivided share in the Jagir village. There is nothing in the definitions of "Jagir land" or "Jagirdar" which would indicate that such a person is not a Jagirdar or that the land in respect of which he has a specific but "undivided share of land revenue" is not Jagir land. The question whether such a co-sharer Jagirdar is an independent Jagirdar will

depend on whether he has been so recognised by the State under the proviso to Section 31."

16. Proviso to Section 31 of the Bikaner State Land Revenue Act, 1945 is reproduced hereunder: --

"Provided that all cases of inheritance or adoption of Tazimi Safdars will be subject to the sanction of His Highness the Maharaja, and those of Bhog -- as will be subject to the sanction of His Highness" Government. All such cases will be reported to the Tehsildar who will have the necessary corrections made in the revenue records in terms of the sanction above referred to."

17. After hearing the learned counsel for the parties and after perusing the record as well as the judgment of the Hon"ble Supreme Court on the point referred to above, we are of the opinion that there is nothing wrong in the approach of the learned single Judge. The order does not suffer from any illegality or infirmity. The petitioner has unnecessarily rushed to this Court under writ jurisdiction apprehending that an order may be passed against him and that it is likely that the Khudkast Commissioner will hold that co-sharer would not come within the definition of a "Jagirdar". The apprehension of the petitioner is ill founded. The matter has to be gone into by the Khudkast Commissioner and the petitioner would be at liberty to bring all these points to the notice of the concerned authority and we also direct the Khudkast Commissioner to look into the law relating to the Jagirs and the rights of the Jagirdar in respect of such grants made by the then Ruler of the State and the concerned authority shall also keep in mind the observations made by the Hon"ble Supreme Court as noticed by us above before finally deciding the controversy.

18. The Khudkast Commissioner will also keep in mind the provisions contained in the proviso to Section 31 of the Bikaner State Land Revenue Act, 1945 in order to find out whether the petitioner in this case is independent Jagirdar within the meaning of Section 2(g) of the Act. This will result on the question whether the father of the petitioner was recognised by the former State of Bikaner as Jagirdar.

19. No other point has been stressed by the learned counsel for the appellant.

20. There is, thus, no occasion for us to differ from the view arrived at by the learned single Judge and consequently this appeal has no force and is, thus, disposed of with the above said observations.

21. No orders as to costs.