(2014) 11 RAJ CK 0137

In the Rajasthan High Court

Case No : SB Civil Writ Petition No. 11249/2012

The State of Rajasthan APPELLANT

Vs

Sawai Tej Singhji RESPONDENT

Date of Decision : 26-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 363
Rajasthan Land Reforms and Acquisition of Land Owners Estates Act, 1963 — Section 10, 10(2), 28, 9A
Rajasthan Land Revenue Act, 1956 — Section 82, 91

Citation : (2014) 11 RAJ CK 0137

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

Bench : Single Bench

Advocate : Anurag Harit, Advocate for the Appellant; Narpat Mirdha, Authorised Representative, Advocate for the Respondent

Judgement

M.N. Bhandari, J.—By this writ petition, a challenge is made to the order dated 11.4.2008 at annexure-2 passed by the Board of Revenue. The order aforesaid was passed on a reference under section 82 of the Rajasthan Land Revenue Act, 1956 (for short ''the Act of 1956'') by the Additional District Collector, Alwar vide order dated 25.7.2007. The reference was for a land pertaining to khasra No. 1041 measuring 3.71 hectare.

2. The Officer-in-charge for the State submitted that the land of old khasra No. 2129 measuring 15 bigha 11 biswa was later on numbered as 2946 in the settlement proceedings of Samvat 2020. Presently, it is part of khasra No. 1041. At the time of settlement, the land in dispute, known as ''Naya Bagh'', was recorded as ''Mahakma Bagaat'' hence land was not belonging to erstwhile ruler.

3. The land in question was however sold by late Sawai Tej Singhji treating it to be his property, to respondent No. 2 vide sale deed dated 1.11.1962. The mutation was opened subsequently bearing No. 31. The land was thereafter sold further to respondent No. 3 to 8 vide sale deed dated 18.9.1995, followed by

mutation.

4. The State Government, after knowing that land in question has been recorded in the name of individual, referred the case to the Board of Revenue under section 82 of the Act of 1956. The Additional Collector, while passing the order of reference, clarified that as per the inventory of erstwhile ruler, land belonging to them known as ''Dadiji Ka Bagh'' is in front of Jai Kishan Club. The property in question is different and is known as ''Naya Bagh''. The land of ''Dadiji Ka Bagh was earlier in khasra No. 24 of Vilalge - Khohara which then becomes khasra No. 23 to 26 in Samvat 2020 and khasra No. 15 to 18 in Samvat 2051. Late Sawai Tej Singhji had no authority to sell the property of ''Naya Bagh'' thus reference was made to the Board of Revenue. The mutation No. 31 even does not refer to ''Dadiji Ka Bagh''. The Board of Revenue dismissed the reference on the ground that in order dated 9.11.1994 passed under the Rajasthan Land Reforms And Acquisition of Land Owners Estates Act, 1963 (for short ''the Act of 1963''), "Dadiji Ka Bagh" and "Naya Bagh" has been shown as one and the same property. After the order aforesaid, reference was not maintainable and otherwise it involves disputed questions of fact.

5. The respondents also raised a preliminary objection of reference under section 82 of the Act of 1955 as it is not maintainable as per Article 363 of the Constitution of India. It is apart from the ground of principle of res judicata as Tehsildar had earlier initiated proceedings under section 91 of the Land Revenue Act, 1956 but was then dropped finding it not to be a government land. The order thereupon was not challenged by the State Government.

6. The Officer-in-charge submitted that the order dated 9.11.1994 was passed after a notice under section 9A of the Act of 1963. It was on the ground that the property has vested in the State government, thus to be acquired. The plea was taken by the respondents that the land in dispute was described in the inventory of ruler thus cannot be made subject to acquisition and was sold prior to coming into force the Act of 1963 thus it cannot apply. The Additional Collector, exercising jurisdiction under the Act of 1963, accepted both the pleas based on the Commissioner''s report though it was contrary to the revenue entries where land was mentioned as ''Mahakama Bhagat''. The Tehsildar dropped the proceedings under section 91 of the Act of 1956 treating it to be ''Dadiji Ka Bagh''. The issue as to whether the land in dispute belongs to erstwhile ruler could have been determined by the Compensation Commissioner alone under section 10(2) of the Act. In view of the aforesaid, the Additional Collector under the Act of 1963 should have referred the matter to the Compensation Commissioner on a reply to the notice under section 9A of the Act of 1963. It was having no jurisdiction to hold the enquiry. Section 10 of the Act of 1963 provides for appeal but it is not against the order passed under section 9A of the Act of 1963. In view of above, Additional Collector, under the Act of 1963 had no right to decide the title of the property or exempt it by holding it to be a private property as per the inventory. The order of the Additional Collector was thus

illegal on the face of it.

7. So far as proceeding under section 91 of the Act of 1956 is concerned, it is nothing but summary proceeding and cannot decide the title.

8. It is lastly contended that order dated 9.11.1994 passed under the Act of 1963, cannot rule the reference. The reference was made on opening of mutation No. 31 and subsequently mutation No. 38 of the property in dispute. The reference should have been considered in pursuance to the Rajasthan Land Revenue Act, 1956 but the Board of Revenue failed to do so. The respondents never questioned revenue entries where land in dispute was shown to be of ''Mahakama Bhagat'' thus, for all these reasons, impugned order passed by the Board of Revenue deserves to be set aside by accepting reference and holding that the land in dispute is ''Dadiji Ka Bagh'' thus opening of mutation of the said land in favour of respondents is illegal.

9. Per contra, respondents have contested the writ petition and supported the impugned order passed by the Board of Revenue. It is submitted that reference has rightly been answered by the Board of Revenue holding it to be not maintainable. It is for the reason that prior to the reference, acquisition proceedings under the Act of 1963 were initiated and, therein, order was passed favourable to the respondents. The order passed thereupon was not challenged by the State Government, thus became final. The property in question was found to be of ex-ruler of Alwar. The order aforesaid was passed after seeking report from the Commissioner. It was found that ''Dadiji Ka Bagh'' and ''Naya Bagh'' are one and the same property. The Additional Collector therein found that vide letter dated 5.5.1975, Inspector, Department of Gardens, Alwar did not show land in question under the possession or management of the department. The order dated 9.11.1994 is clear in terms holding that ''Dadiji Ka Bagh'' and ''Naya Bagh'' refers to one and same property and was belonging to the ex-ruler of Alwar. It was also found that sale of the land took place on 3.10.1960 i.e. prior to the Act of 1963. The said order became final in absence of challenge thus no reference in respect of the same land was maintainable.

10. Article 363 of the Constitution of India bars jurisdiction of the revenue court to entertain any dispute of ownership of the property entered in the inventory of ex-ruler. The reference by the Collector under section 82 of the Act of 1956 was in ignorance of the provisions of the Constitution of India. To support the arguments, reference of the judgments in the case of Colonel his Highness Sawai Tej Singhji of Alwar Vs. Union of India (UOI) and Another, , Dr. Karan Singh Vs. State of Jammu and Kashmir and Another, and, lastly, judgment in the case of "Director of Estate v. Maharaja Brigadier Sawai Bhawani Singh & ors v. (2007 [4] WLC 87) has been given. In view of the above, reference itself was illegal and otherwise hit by res judicata. The disputed questions of fact cannot be referred but aforesaid was also ignored by the Additional Collector while making reference. It was ignored that the proceedings under section 91 of the Land Revenue Act, 1956 were also dropped as it was not found to be government land.

11. The petitioner State has even ignored their own letters. On 25.5.2005, a letter was sent by the Revenue Department to the Collector, Alwar showing land in dispute to be ''Dadiji Ka Bagh'' and under the ownership of erstwhile ruler of Alwar thus free to sell it. It was followed by letter of the Principal Secretary, Revenue dated 13.4.2006 to enquire about the land from the Estate Department. It was then informed that khasra comprised of 2946 belongs to ex-ruler of Alwar and its new khasra number is 1041. It was by the Dy Secretary, General Administration (Estate) Department, Jaipur, vide his letter dated 22.4.2006. The detailed description of the land and correspondence exchanged between them has been given in the written arguments.

12. The respondents further stated that in the year 2001, the Urban Improvement Trust, Alwar introduced a residential scheme in the name of Shyama Prasad Mukherjee (Scheme No. 8) and, therein, also land of khasra No. 2946 (old) and new khasra No. 1041 accepted to be under the ownership of the respondents. The proceedings of the acquisition were also undertaken under the Land Acquisition Act, 1894 but the State Government did not approve the award and directed that the land be regularised in favour of answering respondents. The Additional Collector, Alwar still referred the matter to the Government for acquisition of the land but was not accepted. All these facts prove that land in dispute belongs to the respondents.

13. The reference of the judgment in the case of Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, has been given to show that once the proceedings under the Act of 1963 and the Act of 1956 were dropped, reference was not maintainable. The prayer is accordingly to dismiss the writ petition.

14. I have considered rival submissions of the parties and perused the record.

15. The facts which are not in dispute are that prior to reference by the Additional Collector under section 82 of the Act of 1956, an order was passed in pursuance to the Act of 1963 on a notice issued under section 9A of the Act of 1963. Therein, proceedings for acquisition were dropped on finding land in question to be property of the ex-ruler. It was after seeking Commissioner''s report and report from the Inspector of Gardens. The land in dispute was not shown to be in the possession of the Garden Department. After considering all the relevant issues, which include an issue as to whether the land is of ''Dadiji Ka Bagh'' or ''Naya Bagh'', detailed order was passed on 9.11.1994 dropping acquisition under the Act of 1963. The said order was not challenged by the respondents but, surprisingly and while submitting written arguments, its validity has been questioned though it cannot be on a reference under section 82 of the Act of 1956. The order dated 9.11.1994 cannot be held to be void on the ground that the dispute about title of the property should have been referred to the Commissioner, Compensation. In fact, no such plea was raised by the respondents in the proceedings under section 9A of the Act of 1963. The plea aforesaid could have been taken even by challenging the order dated 9.11.1994, however, said order having attained finality in absence of challenge, cannot be

questioned in these proceedings.

16. The notice under section 9A of the Act of 1963 was in reference to khasra No. 2946 which is now khasra No. 1041. The respondents had given detailed reply to it, wherein, even reference to the letter sent by the Secretary of Estate Ministry Mr. V.P. Menon was also given. The order was then passed on 9.11.1994 and had not been challenged. In view of the aforesaid, reference was not maintainable for the same land.

17. The petitioner State has taken plea in reference to the provisions of section 10(2) of the Act of 1963 ignoring the fact that the order dated 9.11.1994 was not challenged by them on the ground referred above. In the proceedings under section 9A of the Act of 1963, land in dispute was found to be of ex-ruler based on inquiry with the department then section 10(2) cannot otherwise be attracted and plea aforesaid is not available now to the State Government after an order under section 9A of the Act of 1963 having attained finality. The land in dispute was sought to be acquired under the Act of 1963, however, order was passed in favour of the respondents. If, at all, the respondents had any doubt, they could have challenged the order in reference to section 10(2) of the Act of 1963 but it was not challenged by them and new argument has been taken for the first time before this court. It is dealt to have clarity on the issue and to show that even after finality of the proceedings under the Act of 1963, Additional Collector made a reference to the Board of Revenue. The provisions of section 28 of the Act of 1963 is also relevant thus quoted hereunder to show specific bar of the civil court or the revenue court to decide, settle or dealt with any issue which is to be decided by the authority under the Act:--

"28. Bar of jurisdiction.--(1) Save as otherwise provided in this Act, no civil or revenue court shall have jurisdiction in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under this Act.

(2) No order made by any such officer or authority under this Act shall be called in question in any court."

18. Perusal of the provision aforesaid reveals that no order made by any officer or authority under the Act of 1963 can be called in question, however, in the instant case, written arguments of the petitioner show nothing but their effort to question the order passed under the Act of 1963 and justify the reference before the Board of Revenue. The order of the Board of Revenue has been questioned for giving reference of the order passed under the Act of 1963. It is without realising that the Board of Revenue has no competence to hold any order passed under the Act of 1963 to be illegal or void. The competence of revenue court does not exist even if plea in reference to section 10(2) is also taken into consideration as jurisdiction of Revenue Court is barred under section 28 of the Act of 1963 for any matter to be decided under the Act by an officer or authority. The petitioner has further failed to consider that reference was made not at the initial stage but after sale of the property not once but twice. The Board of

Revenue thus rightly dismissed the reference. It was also for the reason that question of facts cannot be determined in reference, as it requires evidence.

19. In view of the discussion made above, I do not find it to be a case where interference can be caused by this court while exercising jurisdiction under Article 226 of the Constitution of India. Reference of the judgment of the Hon''ble Supreme Court in the case of Sadhana Lodh Vs. National Insurance Company Ltd. and Another, is relevant, wherein, it was held thus:--

"7. The supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution is confined only to see whether an inferior court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

8. For the aforesaid reasons, we are of the view that since the insurer has a remedy by filing an appeal before the High Court, the High Court ought not to have entertained the petition under Article 226/ 227 of the Constitution and for that reason, the judgment and order under challenge deserves to be set aside. We, accordingly, set aside the judgment and order under appeal. The appeal is allowed. There shall be no order as to costs. However, it would be open to the insurer to file an appeal if it is permissible under the law."

20. Perusal of the paras quoted above reveal limited jurisdiction of this court while exercising it under Article 226 of the Constitution of India. The case in hand is not such where interference in the order can be made by this court because all the relevant aspects have been considered at length, rather, I find serious lapse on the part of the State Government for not challenging the order passed under the Act of 1963 and, now, they are questioning it though it is not maintainable in these proceedings. The reference was made in ignorance of section 28 of the Act of 1963 and even the constitutional provisions. The effort of the State Government is also to get a decision on disputed questions of fact though not permissible in the reference. The writ petition was filed in ignorance of all those facts. The State Government even failed to take notice of various letters written by the Revenue Department itself holding that the land in question belongs to erstwhile ruler of Alwar thus contest of the matter is in ignorance of not only legal provisions but the factual aspect, adverse to the petitioner - State. Once it was declared that land of "Dadiji Ka Bagh" and "Naya Bagh" refers to one and the same land vide the order dated 9.11.1994, it could not be questioned in reference. It is more so when the said order became final. Article 363 of the Constitution of India does not permit present proceedings once property was found to be of ex-ruler, as per inventory. It is apart from the fact that proceedings under section 91 of the Act of 1956 were dropped and have bearing

on the case.

21. In view of the above, writ petition so as the stay application are dismissed with no order as to costs.