
(2013) 07 RAJ CK 0230

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2843 of 1995

Udai Singh

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Citation : (2014) 1 CDR 376

Hon'ble Judges : Vijay Bishnoi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vijay Bishnoi, J.—This writ petition has been preferred by the petitioner against the order dated 30.06.1992 passed by the Assessing Authority - District Collector, Barmer in the ceiling proceedings culminated under the provisions of Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (for short "the Act of 1973" hereinafter) and the order dated 24.10.1994 passed by the Revenue Board in an appeal preferred against the order passed by the District Collector, Barmer. Brief facts of the case are that proceedings under the provisions of Chapter III-B of the Rajasthan Tenancy Act, 1955 (for short "the Act of 1955" hereinafter) were initiated against the petitioner and the Assistant Collector, Barmer had dropped the proceedings vide order dated 17.09.1971, while holding that no surplus land was holding by the petitioner. The State Government, while exercising powers under Sec. 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1973 (for short "the Rules of 1973" hereinafter) had reopened the case, which came to be decided by the Collector, Barmer vide order dated 30.06.1992 (Annex. 1), wherein he had concluded that on 01.04.1966, the petitioner was holding 59 standard acres of the land, whereas he was entitled to hold 30 standard acres only and as such 29 standard acres of the land was surplus and the learned Collector had proceeded to declare 29 acres of land as surplus and also ordered for taking possession of the surplus land from the petitioner.

2. Being aggrieved with the order dated 30.06.1992, an appeal was preferred before the Board of Revenue, however, the Board of Revenue vide its order dated 24.10.1994, has dismissed the appeal and affirmed the order dated 30.06.1992 passed by the Collector, Barmer.

3. The learned counsel for the petitioner has argued that the agricultural land vested in the name of the petitioner is ancestral land and this fact has not been disputed by the State before the Board of Revenue but despite that the Board of Revenue has clubbed the land of two sons of the petitioner simply on the ground that the petitioner has said that they are his family members. It is further contended by the learned counsel for the petitioner that as per the provisions of Rule 17(4) of the Rules of Rajasthan Tenancy (Fixation of Ceiling of Land) Rules, 1963 (for short "the Rules of 1963" hereinafter), the sons of the petitioner namely Tan Singh and Ganpat Singh are entitled to their shares in the ancestral land and their shares in ancestral land cannot be clubbed with the land held by the petitioner for the purpose of the proceedings under the Ceiling Law. It is further contended by the learned counsel for the petitioner that the learned Board of Revenue has not given any finding regarding the dependency of these two sons and in the absence of any finding of this fact, the lands falling in the shares of sons of the petitioner cannot be clubbed with the lands of the petitioner.

4. The learned counsel for the petitioner has placed reliance on the decisions of this Court in Jagannath v. The Sub-Divisional Officer, reported in RLW 1985, 106; Ram Pratap & 3 Ors. v. State of Rajasthan & Ors., reported in RRD 1989, 127; and in Kesri Singh Vs. Mitha Lal Metha and Another, and prayed for quashing of the orders dated 30.06.1992 and 24.10.1994 passed by the Collector, Barmer and the Board of Revenue respectively.

5. Learned counsel for the respondents has supported the orders passed by the learned courts below and has argued that when the petitioner has shown his sons as his family members in the declaration filed by him, the land falling in the shares of his sons are liable to be clubbed with the holdings of the petitioner and as such there is no illegality in the orders passed by the Collector and the Board of Revenue and, therefore, the writ petition may be dismissed.

6. The fact that the land recorded in the name of the petitioner is ancestral land has not been disputed by the State before either of the courts below as well as before this Court.

7. This Court in Jagannath v. The Sub-Divisional Officer (supra) after taking into consideration the provisions of Sec. 30-B of the Act of 1955 and the provisions of Rule 17(4) of the Rules of 1963 has held as under:

10. In the cases before me, undoubtedly, it is true that specifically the petitioners have not come with the case that the minor sons are not dependent on their parents and are dependent on their respective shares in the ancestral land, which on division had fallen to their possession. There should have been such a specific case and the petitioners should have also proved that specific case. But

when the petitioner have come with a definite and a specific case, that the minors have specific shares in the ancestral land and partitions had taken place and from the extent of their share-holding therefore, the petitioners intended to put up this case that the minors are not dependent on their father. The purport of the pleading of the petitioners' case has to be looked and not its form. In Jagannath's case, the Revenue Appellate Authority had adverted to this aspect as to whether the minor Hemraj is maintaining himself independently of his father, out of his share of the land and the Revenue Appellate Authority found that such a case is not proved. In both the cases, the Board of Revenue proceeded to dispose of the matter on the basis that the sons being minors are dependent on their father and so their share of the land has to be clubbed with their father. On the basis of minority, dependency can be inferred. This approach to the question, in my opinion, appears to be erroneous in law. As already stated above, a minor may or may not be dependent on his father. When the matter has not been viewed from the correct legal perspective by the Ceiling Authorities, then their orders cannot be sustained and the orders deserve to be quashed and it would be proper that the Sub Divisional Officer may hold an enquiry into the question of dependency of the minors and thereafter decide as to whether their land can be clubbed with the land of their father or their land has to be excluded and dealt with separately.

8. A Division Bench of this Court in *Ram Pratap & 3 Ors. v. State of Rajasthan & Ors.* (supra), while considering the provisions of Sec. 30-B of the Act of 1955, has held as under:

Last plank of serious error which has crept into the judgment of the courts-below is that in the present case, the land in Khatedari of minor sons of Ram Pratap which they succeeded after partition and which was ancestral property in their hands, has been clubbed with the land of Ram Pratap while determining the ceiling limit merely on the ground that at the relevant time, four sons of Ram Pratap were minor. In our opinion, such basis for drawing a conclusion by the revenue authorities is fallacious and the finding is based on an entirely wrong view of law in disregard of the law enunciated in a catena of decisions because, only that child, whether minor or major, can be treated as member of the family who is dependent. This turns upon the interpretation of the word, "dependent" appearing in Sec. 30-B of the Rajasthan Tenancy Act. A child below 18 years of age by very reason of his or her age and relationship may or may not seek support and maintenance from his or her parents. Legislature by using the word "dependent", also meant to include a major child who is unable to look after himself or support himself because of imbecility, deformity, or other handicap or any other reason whether a child is member of the family or not. One need not be concerned with the question, whether child is a minor or major for in either case according to the definition, he would be a member of the family if he is dependent on his parents.

9. Another Division Bench of this Court in *Kesri Lal & 3 Ors. v. State of Rajasthan*

& Ors., while taking into consideration the provisions of Sec. 30-B of the Act of 1955, has held as under:

7. Apart from this, the learned member, Board of Revenue without examining the contention of the appellant that that his adult son living separately should have been treated as separate unit has held that the family of the original appellant consisted of five members.

Section 30-B(a) defines the family as under:

"family" shall mean a family consisting of a husband and wife, their children and grandchildren being dependent on them and the widowed mother of the husband so dependent.

Evidently the size of the family is not so important as is the question of dependency of children on their parents. Even assuming that the family of the original appellant consisted of five members, the definition of family u/s. 30-B of the Old Ceiling Law calls for determination of the question as to whether the son/ sons of the original appellant were dependent upon the original appellant or whether the son/sons constituted apart of the family of the original appellant. The dependency is a question of fact in each case and it is on the basis of evidence a finding is to be arrived at as to whether the children are dependent on their parents.

7. Under the Old Ceiling Law, a son, whether minor or major, can be treated as a member of family only if he is dependent. Crucial question is not whether the son is a minor or major, but whether he is dependent on his parents or not. The question of dependency has not been gone into by the Additional Collector and the Board of Revenue while deciding the ceiling case of the original appellant.

10. In the case in hand, the Board of Revenue has not taken into consideration the fact of dependency of the sons of the petitioner viz. Tan Singh and Ganpat Singh and has simply said that since sons of the petitioner are the members of the family, their shares in the ancestral land are liable to be clubbed with the holdings of the petitioner. The District Collector has also not decided the question of dependency of the sons of the petitioner.

11. From bare reading of the provisions of Sec. 30-B of the Act of 1955 and Rule 17(4) of the Rules of 1963, it is evident that under the Old Ceiling Law, the size of the family is not so important as the question of the dependency of children on their parents. The crucial question is not whether the son is minor or major but whether he is dependent on his parents or not. The question of dependency has not been gone into by the assessing authority as well as by the Board of Revenue while deciding the ceiling case of the petitioner. In the above circumstances, the writ petition preferred by the petitioner is allowed. The orders dated 30.06.1992 and 24.10.1994 passed by the District Collector, Barmer and the Board of Revenue respectively are set aside. The matter is remanded to the District Collector, Barmer for a fresh decision in the light of the provisions of Old

Ceiling Law and the provisions of Rule 17(4) of the Rules of 1963 after giving notice to all concerned. There shall be no order as to costs.