

Faiyaz Khan Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Nov-24-2015

Appellant : Faiyaz Khan

Respondent : State and Ors

Judgement :

FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 1 FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) Dated:- 24.11.15. HON'BLE MR.JUSTICE SANGEET LODHA Mr.H.R.Soni alongwith Ms.Tripati Soni, for the petitioner. Mr.O.P.Boob, Government Counsel.

1. This writ petition is directed against order dated 10.9.98 of the Board of Revenue Rajasthan, whereby while accepting the reference made by the Additional Collector, Pali under Section 82 of Rajasthan Land Revenue Act, 1956 (for short the Act of 1956.) vide order dated 26.3.98, the transfer of the land measuring 4 bighas and 18 biswas comprising khasra no.166 situated at village-Jaitaran, District-Pali, made in favour of the petitioner, which was recorded in the revenue record as khudkast land of Doli banam Aasan Gudadpeer, has been held to be illegal and accordingly, the mutation effected in the revenue record is directed to be cancelled.

2. The relevant facts are that the land measuring 4 bighas and 18 biswas comprising khasra no.166 was recorded in the revenue record in the name of Doli

banam Aasan Gudadpeer and the name of Balunath Chela Shivrath was recorded as Pujari of the Idol. After resumption of Jagir, under the provisions of FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 2 Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (for short the Jagir Act, 1952.), the land in question was sold by Azeem Bux in favour of the petitioner vide registered sale deed dated 16.2.87, claiming himself to be khatedar tenant of the land. After a lapse of about 9 years, the Tehsildar, Jaitaran made an application under Section 82 of the Act of 1956 before the Additional Collector, Pali, stating that the land of the deity, a perpetual minor, could not have been transferred in favour of anybody else and therefore, the mutation of the land effected in the name of the petitioner herein on the basis of illegal transfer, deserves to be cancelled. The application was allowed by the Additional Collector, Pali vide order dated 26.3.98 and the matter was referred to the Board of Revenue Rajasthan, for cancellation of the mutation.

3. After due consideration of the rival submissions, the Board of Revenue arrived at the finding that the land entered in the revenue record in the name of the deity was not transferable and the same was wrongly mutated as khatedari land of Azim Bux vide mutation no.69. The Board observed that transfer of the land by Azim Bux in favour of the petitioner herein is also illegal and thus, the mutation effected in the name of the petitioner herein, vide mutation no.978 is also illegal. FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 3 Accordingly, by the order impugned, the mutation no.69 and 978 are directed to be cancelled. Hence, this petition.

4. Learned counsel appearing for the petitioner contended that the land recorded in the name of Aasan Gudadpeer cannot be said to be the land of deity, a perpetual minor and thus, the Board of Revenue has seriously erred in cancelling the mutation invoking the power under Section 82 of the Act of 1956. Learned counsel submitted that as per the revenue record, the land in question was in cultivatory possession of Azim Bux and therefore, after resumption of Jagir under the Jagir Act, 1952, Azim Bux had acquired khatedari rights over the land in question and thus, the transfer made by him in favour of the petitioner cannot be said to be illegal and thus, the mutation effected in the name of the petitioner

herein, on the strength of the transfer made as aforesaid, is absolutely in accordance with law. Learned counsel submitted that even according to the respondents, the petitioner was holding cultivatory possession of the land as sub-agriculturist and therefore, after coming into force the Act of 1952, for all intent and purposes, Azim Bux had become khatedar tenant of the land in question. Relying upon a Full Bench decision of this court in the matter of Tara & Ors. vs. State of Rajasthan & Anr.

. (2015) 3 WLN, 197, learned counsel FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 4 submitted that the land was not being cultivated by the deity as khudkast and the same was admittedly in cultivatory possession of Azim Bux, who had acquired the rights of khatedar of the State by operation of law and thus, the Board of Revenue has seriously erred in holding that the transfer made in favour of the petitioner is illegal.

5. On the other hand, the Government Counsel submitted that as per the revenue record, the land in question was entered as khudkast land of Doli banam Aasan Gudadpeer and therefore, Pujari or anybody else had no right to transfer the land claiming khatedari rights over the same. Learned counsel submitted that the land in question was never in cultivatory possession of Azim Bux as alleged and thus, the entire edifice of the writ petition raised by the petitioner is devoid of any merit. Learned counsel submitted that the findings arrived at by the Board of Revenue after due consideration of the revenue record objectively, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

6. I have considered the rival submissions and perused the material on record.

7. Indisputably, the land in question was recorded in the FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 5 revenue record as khudkast land of Doli banam Aasan Gudadpeer and the name of Balunath Chela Shivnath was recorded as Pujari of the Idol. But then, at the same time, the name of Azim Bux s/o Kadar Bux has also been recorded therein. From the perusal of the documents on record, it is not clear as to in what capacity, the name of Azim Bux s/o Kadar Bux was recorded in the revenue record. A

perusal of the order impugned reveals that the matter with regard to the nature of possession of Azim Bux over the land in question, if any, has not been dealt with by the Board of Revenue.

8. It is to be noticed that in Tara's case (supra), a Full Bench of this court while dealing with the issue whether the land held in Jagir, by Hindu Idol (Deity) as Dolidar or Muafidar cultivated by a person other than Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity, held:

26. In view of the above discussion, we decided the question no.(i) in favour of the State and against the Shebait/Pujari claiming the land to be saved by the Jagirs Act of 1952. The land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 6 servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol (deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than Shebait/Pujari of Hindu Idol (deity) became khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujari having no right to claim the land as khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State.. 9. It is true that the deity is a minor in perpetuity and therefore, its immovable property cannot be alienated for legal necessity after obtaining the permission of the court. But then, it has to be determined as to whether the land was held by the deity as khudkast land cultivated through Pujari of deity or by hired labour or servants engaged by its Pujari or the same was being cultivated by Azim Bux, the petitioner's predecessor-in- title as tenant of the deity

and therefore, the matter deserves to be remitted to the Board of Revenue for consideration afresh in light of the decision of this court in Tara's case (supra).

10. Accordingly, the writ petition is allowed. The order impugned dated 10.9.98 passed by the Board of Revenue is set aside. The matter is remitted to the Board of Revenue for FAIYAZ KHAN VS. STATE OF RAJASTHAN & ORS. (S.B.CIVIL WRIT PETITION NO.246/99) 7 decision afresh after due consideration of the revenue record in its entirety and objectivity, in light of the decision of Full Bench of this court in Tara's case (supra). The reference shall be decided by the Board of Revenue expeditiously, in any case, within a period of six months from the date of receipt of certified copy of this order. Till then, status quo as it exists today shall be maintained in respect of the land in question. No order as to costs. (SANGEET LODHA),J.

Aditya/

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