

The State of Rajasthan Vs. Bhawani Singh Former His Highness and ors.

The State of Rajasthan Vs. Bhawani Singh Former His Highness and ors.

SooperKanoon Citation : sooperkanoon.com/756909

Court : Rajasthan

Decided On : May-09-1980

Reported in : 1980WLN295

Judge : M.L. Shrimal and; M.B. Sharma, JJ.

Appeal No. : D.B. Special Appeal No. 41 of 1978

Appellant : The State of Rajasthan

Respondent : Bhawani Singh Former His Highness and ors.

Judgement :

M.L. Shrimal, J.

1.This special appeal taken under Section 18 of the Rajasthan High Court Ordinance, 1949, is directed against the judgment dated May 2, 1977, of learned Single Judge of this Court, allowing S.B. Civil Writ Petition No. 1739 of 1973.

2. The petitioner's case before learned Single Judge was that there used to be a village known as Bhojpura, Tehsil Jaipur. Its entire land forms part of Jaipur City. This village had been granted in 'Bhog' by the former State of Jaipur to seven temples. Before the formation of the United State of Rajasthan the erstwhile State of Jaipur had acquired from time to time the following chunks of land forming part of village Bhojpura:

- (a) For Race Course-119 Bighas, in 1938 A.D.,
- (b) For Ram Bagh Palace, 99 Bighas 4 Biswas, In 1936 A.D.,
- (c) For Man Guard Barracks, 28 Bighas (now known as Secretariat building),
- (d) For the Palace to Shri Maharaj Kumar Singhji 144 Bighas 4 Biswas in 1944 A.D.
- (e) For Improvement Scheme, 19 Bighas 10 Biswas, in 1944 A.D.

The lands acquired for Ram Bagh Place and for the construction of the place for the when His Highness's eldest son Maharaj Kumar Bhawani Singh ji became his personal property and the lands automatically became 'Abadi' lands. No separate orders were required to be or were passed for conversion of agricultural land into 'Abadi' land. It was also averred that no compensation had been paid in the year 1944 for the acquisition of land, measuring 134 Biswas. Only compensation, in the form of grant of Rs. 199.96, was fixed: vide Government letter No. D3222-F. 4. 4 (226) Rev. A. 50 dated November 16, 1959. Thereafter an entry had been made in the Khatoni' i. e. record of rights, to show that 134 Bighas and 4 Biswas of land, as shown in the map of the said village, belonged to Maharaj Kumar Bhawani Singh ji. The above noted 134 Bighas and 4 Biswas of land situate on. the either side of the road, named as 'Bhawani Singh Marg', constructed in the year 1944. At the time of the formation of the United State of Rajasthan the settlement of the personal property of the Maharaja of Jaipur had been made. A site plan had been prepared, wherein the entire plot of land acquired for the palace of Maharaj Kumar Bhawani Singhji had been shown. The plot towards the northern side of the 'Bhawani Singh Marg' had been utilised by the State of Rajasthan and the land towards the south of this 'Marg' remained the personal property of the Maharaja of Jaipur and the petitioner's plot formed a part of the remaining land.

3. In the inventory a mistake regarding the boundaries of this 134 Bighas 4 Biswas of land had cropped up, which had subsequently been corrected in 1952 by the Government of India. His Highness Maharaja Man Singhji sub divided a portion of the above land into a number of small plots. The petitioner had purchased plot No,

A/9 measuring 10662/3 yards situated towards the south of 'Bhawani Singh Marg' on the main road, just opposite the Rajasthan Canal Board's Office, for a sum of Rs. 16,000/- by a registered deed, dated July 23, 1965.

4. On September 28, 1966, the petitioner had applied to the Secretary, Urban Improvement Trust, Jaipur and the Municipal Commissioner, Jaipur for permission to construct a boundary wall, a garage and a Chowkidar's room. Thereafter the petitioner had applied in the year 1972, for permission to construct a residential house. But not such sanction had been accorded. Not only this, but a constructed house on the adjoining plot had been got demolished by the Urban Improvement Trust, Jaipur, on the ground that the petitioner's predecessor-in-interest had no right to the said land.

5. Faced with the above situation, the petitioner filed a writ petition No. 1739 of 1973, from which the present appeal stems.

6. No parawise reply was filed by the respondent. However, the averments made in the writ petition were refuted. It was averred that the land in dispute along with the adjoining land was being acquired and that notice under Section 52(2) of the Rajasthan Urban Improvement Act, 1959 (to be referred to hereinafter as 'the Act of 1959'), were issued for the purpose.

7. Thereafter with the permission of the Court the writ petition was amended and the amended writ petition was filed on September 16, 1974.

8. On an application, filed on February 1, 1974, the Single Bench of this Court: vide order, dated July 4, 1974, directed the learned Counsel for the State to produce the documents, mentioned in the above noted application at serial Nos. 12, 13 and 14, for the perusal of the Court.

9. At the time of arguments learned Additional Advocate General submitted an application mentioning there in that the Government had decided not to acquire the land in dispute under the provisions of the Act of 1959, as the same had already been acquired under the provisions of the Rajasthan Land Reforms and Acquisition of Landowner's Estate Act, 1963 (Act No. XI of 1964), to be hereinafter

called 'the Act of 1963. The rest of the prayers contained in the prayer clause were not maintainable in view of Section 7A of the Act of 1963 as amended by Act No. 15 of 1975, keeping in view the Constitution of India.

10. Learned Single Judge, placing reliance on the averments made in the writ petition relating to the judgment, dated September 25, 1949, of the Board of Revenue, Jaipur, in file No. 2451 (Case No. St. 2004/190 delivered by Mr. A.A. Kheri, letter No. D 3222 F. 4.4. (226) Rev. A. 50, dated November 16, 1959 and the report of Shri R.D. Mathur coupled with the effect of their non-production, held that the plot of land, purchased by the petitioner from the former Maharaja of Jaipur, was a building plot and a part of the 'Abadi' or urban land, meant for the construction of residential building and the same formed part of the land, originally acquired as far back as the year 1944 for the purpose of construction of a palace for the then Maharaj Kumar Shri Bbawani Singhji. Learned Judge further held that the disputed plot could not be acquired under the provisions of the Act of 1963, as amended by the Act No. 15 of 1975. Directions were issued to the respondents to consider the building plans, submitted by the petitioner for making construction and decide the same within a period of three months, keeping in view the findings arrived as in the judgment.

11. Dissatisfied with the order of the learned Single judge, the State Government has come up in appeal before the Division Bench.

12. We are in agreement with the contention of the learned Advocate General that Hon'ble Joshi J., vide his order, dated July 4, 1974, rightly directed the petitioner to produce copies of the documents mentioned in her application, dated February 1, 1974, except the documents at serial Nos. 12, 13 and 14. Under the Rajasthan High Court, Jodhpur Standing Order No, 165, dated November 12, 1974, all judicial orders, judgments and the proceeding of the Courts of law (Revenue, Civil or Criminal Courts) may be produced by means of certified copies by the party placing reliance upon them. Items Nos. 12 and 13, mentioned in the application, relate to the title-deed of Col. Bhawani Singhji. Inventory has been produced and in forms part of the record As regards item No. 13, suffice it to say that vague averment regarding the report of Mr. R.D. Mathur without mentioning the file

number and date of the order cannot be said to be a sufficient notice to the State Government to raise presumption under Section 1(SIC)4(g) of the Indian Evidence Act, 1872.

13. Thus, learned Single Judge was not correct in drawing presumption against the State placing reliance on the extract of the judgment of the Board of Revenue, specially when the certified copy of the order was not placed on the record by the petitioner or respondent No. 1. More over, the extract incorporated in the writ petition suggests that order, dated September 25, 1949, passed by Shri A.A. Kheri in file No. 2451 (Case No. St. 5004/ 190) was only a recommendation to the Government to acquire 330 bighas of land remaining with the Matmidars. Reference regarding acquisition of 13 Bighas and 4 Biswas of land therein has been made only by way of the history of the case.

14. It was for the petitioner to substantiate her case. The petitioner cannot be allowed to take advantage of indefinite allegations made by her in the petition. In the course of arguments both the parties submitted that on the existing material substantial justice cannot be done. By common consent of the parties they were allowed by this Court's order to produce additional evidence.

15. The first and foremost question which needs to be determined is whether 134 Bighas and 4 Biswas of land, situated in village Bhojpura, had been acquired for the construction of the palace of Maharaj Kumar Bhawani Singhji in she year 1944

16. The Jaipur Land Acquisition Act, 1943, had received the assent of His Highness the Maharaja on May 24, 1943 and it has been promulgated from the date of its publication. Neither In the petition nor in the course of arguments learned Counsel for the petitioner and the respondent No. 1 Maharaja Bhawani Singhji has shown as to when the Notifications under Sections 4 and 6 of the Jaipur Land Acquisition Act, 1943 had been published for acquiring the land, including the land in dispute. It is an admitted case of she petitioner that no award had been given or compensation had been paid upto 1949

17. The land could have vested in the Government of Jaipur only after the determination of the amount of compensation and making of the award under

Section 16 of the Jaipur Land Acquisition Act, 1943 A similar question came up for consideration before a Division Bench of this Court, presided over by the then Chief Justice Shri K.N. Wanchoo, in D.B. Civil Writ Petition No. 116 of 1955, Sahibzada Zafarjang Khan v. The State of Rajasthan. Their Lordships, after considering the relevant provision of the Act of 1943, held as under:

Thus there was no compensation fixed in October, 1944, whether in the shape of cash or in the shape of land to be given in exchange. There was thus no award so far as this long land was concerned under Section 11 and alt that the land Acquisition Officer did under Section 4 was to postpone the making of award. Therefore, in spite of the proceedings under the Jaipur Land Acquisition Act, 1944 the land cannot be said to have vested in the State under Section 4.6

18. On the parity or analogy of the reasoning and the proved facts of the case, there is nothing on record to hold that 134 Bighas and 4 Biswas of land out of Bhojpura village stood vested in the State of Jaipur or Maharaj Kumar Bhawani Singhji in the year 1944.

19. We also do not subscribe to the view that a piece of land which is being used for agricultural purposes and which has been recorded in revenue records as agricultural land stands converted as 'Abadi', land as soon as the bounduries of a Municipality of a town or a city are extended and the land once comprised within these limits. SubSection (1) as Section 90A of the Rajasthan Land Revenue Act, 1956 (Act No. 15 of 1956) reads:

No person holding any land for the purpose of agriculture and or any part thereof, shall use the same or any part thereof by the construction of building thereon or otherwise, for any other purpose except with the written permission of the State Government....

The above law puts restriction on the use of agricultural land for non-agricultural purposes and prohibits the construction of any building except with the written permission of the State Government to be obtained In the manner prescribed under the section. In the inventory of the properties of the Maharaja of Jaipur the piece of land, Including the disputed plot appears under the heading immovable

property', (A) Property, which will be family property of His Highness and to be preserved for future successors This description does not necessarily mean that all the properties mentioned under the above heading are excluded from the definition of the word 'land' appearing in the Rajasthan Land Reforms and Acquisition of Landowner's Estate (Amendment) Act, 1975 (Act No. 15) of 1975). The definition simply excludes forts, palace building and building plots and not the agricultural lands.

20. At the final stage of the arguments, the controversy with the common consent of the parties, was reduced to a very narrow compass. It is the admitted case of the parties that in the course of time the site has changed and out of the land measuring 134 Bighas and 4 Biswas a large chunk thereof has been utilised by the State Government and now remains only 72 Bighas and 7 Biswas of land, as shown in Annexure: B/4 B/5. Learned Advocate General, appearing on behalf of the State Government, has not been able to controvert the fact that the State Government (vide letter No. B 3222-F.4.4 (226) Rev.-A 50 dated November 16, 1959) issued directions to the Commissioner, Ajmer Division, sanctioning compensation amounting to Rs. 199.96, as annual grant, to the Pujaries in lieu of the resumption of the land, of which the plot in dispute forms a part. It is an agreed case of the parties that out of 72 Bighas and 4 Biswas of land, mentioned in Annexure B/4 B/5, land covered by Khasras Nos. 5, 6 7, 93, 95, 92, 8 and 94, measuring 14.3 Bighas and marked in red, in the above noted annexure, was reserved by late Maharaja of Jaipur prior to the formation of the United State of Rajasthan for construction of a palace for his eldest son Col. Bhawani Singhji. The erstwhile ruler had the authority to convert the agricultural land into 'Abadi' land by a specific order prior to the merger of the State and signing the Covenant.

21. Admittedly plot No. A/3, shown in Annexure B/4, falls within the above noted Khasras and the learned Single Judge was correct in holding that the plot of the petitioner was covered by the proviso to Section 2(1) of the Act of 19 3 as amended by Act. No. 15 of 197, the relevant portion of which reads as under:

land....

but does not include forts, palace buildings and building plots, specified in the inventory.

22. The legislature in its wisdom has defined the word 'land' appearing in the Act of 1963 as amended by Act No. 16 of 1975 as under:

'land' means any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land agricultural labourers and village artisans and includes:

(a) tanks, lakes, ponds, rivers and water channels held for purposes of irrigation.

(b) surface of hills,

(c) landing grounds or strips, and

(d) shikargah,

but does not include forts, palace buildings and building plots, specified in the Inventory.

The word 'land' has been used in the Act of 1968 in its widest connotation. According to the definition the term 'land' includes land held for the purposes of agriculture and for purposes ancillary thereto, including waste land, forest land, land for pasture, even sites for buildings and other structures occupied by a cultivator of land. It also includes tanks, lakes, ponds, landing ground or strips, shikargahs, surface of hills. The land set apart or used by a cultivator for his residential place comes within the definition of the word 'improvement of land' and forms part of it. Simply because some construction has been made over it or it has been set apart for construction, its character is not changed. A poor farmer constructs a hut on his land. An affluent farmer may construct a pucca house and a millionaire performing agricultural operations on the land by way of sowing seeds or by making an orchard by planting fruit trees or making a grove also needs some residential place over the land on or just attached to it to store the produce of the land, protect himself and his servants employed on the land from scorching heat,

cold breeze and rains. It does not make any difference whether the so-called construction is called a hut or a borne or a palace so long as the construction made is just attached to the land which is being used for agricultural purposes. Each and every cultivator is allowed to make improvement on his holdings on an area which falls within particular limits prescribed by the Government from time to time. The word 'land' used in the Act of 1963 signifies that the definition is not exhaustive but enumerative. This denotes that the list of different types of lands mentioned therein is no. complete and final, but may include some more lands which are being used for the purpose mentioned therein or can be used for agricultural activities.

23. In this part of the country the entire land is essentially agricultural in character. Its economy is agrarian Small patches of cultivable land are scattered among the valleys and are separated from each other by rocky, difficult hilly tracks. A large portion of the western Rajasthan consists of the desert Every man likes to live where he can keep a watch upon his crop Accordingly every valley or the track of land had its little hamlet. The holdings all over the State are generally very small. All the lands in the erstwhile Indian States were broadly divided into two classed, Khalsa, or the private domain of the rulers of the land held in estates or baronies of feudatories known as Jagirdars or Muafidars. It was obligatory for each of them to render military services to the rulers as and when the situation arose or they were ordered. With the passage of time fuedal disputes increased. Pindaries and others started plundering the inhabitants of hamlets. Sense of insecurity compelled the peasantry to live together and from fortified and inaccessible central villages, which later on turned into towns and with the advent of industrial development they became cities. Reference in this connection may be made to the Rajasthan District Gazetteers, published in the year 1966 Bach and every portion of land, whether in the village or in the town or in the city has been given a 'Khasra' number of in the record of rights. Each of them is assessable to land revenue. The character of the land from agricultural to non agricultural changes when set apart for any special purpose such as development of 'Abadi', for development of saline areas, for settlement of Mandies for development of industrial complex or excavation of mines. The land revenue being the chief source of State revenue, some amount is charged in some way or other when the land is put to a purpose other than

agriculture or ancillary thereto We stand supported in this view by various rules made by the State Government under various Acts. Under Sub-rule (2)(a) of Rule 17 of the Rajasthan Miner Mineral Concession Rules, 1959, a lessee of a mining lease is required to pay, for the surface area, used by him for the purpose of mining, surface rent equivalent to land revenue. This amount is charged from the lessees in lieu of loss of land revenue, due to mining operations. The Rajasthan Land Revenue (Conversion of Agricultural Land for Residential and Commercial Purposes in Rural Areas) Rules, 1971 as well as the Rajasthan Land Revenue (Allotment and Conversion of Agricultural Land for Residential or Commercial Purpose in Urban Areas) Rules, 1971 have also been framed to serve the same object.

24. In Rajasthan generally, the agriculture is taken to be a process of tilling, sowing, rearing harvesting the crop, growing of fruit trees, raising small plant, for the purpose of nursery and growing trees, which can be utilised for commercial purposes as well as breeding of cattle which is considered to be subsidiary or ancillary to agriculture.

25. The Oxford English dictionary has defined the word 'agriculture' as 'the science and art of cultivating the soil including the allied pursuits of gathering the crop and rearing live stock, village husbandry and framing.

26. In the Webster's dictionary, 'agriculture' is defined as the art and science of cultivating the ground including the harvesting and management of lives stock, tillage, husbandry, framing. It includes framing horticulture, forestry together with other ancillary operations. The restricted meaning given to word 'agriculture' in the Income-tax Act, 1961 does not apply to the word 'agriculture' given in the Act of 1963. The word 'land' appearing in the Act of 1963 envisages only one exception i. e., forts, place buildings and building plots specified in the inventory. It is a well settled position of law that the burden to prove an exception lies on the person, who wants to take advantage of it. It is the duty of the party to introduce some evidence which will bring his case within an exception and satisfy the Court that such circumstances to exist or at least may have existed at the time of preparation of inventory. Under Section 101, Evidence Act, the burden is upon the party who

comes to the Court to get a decision on the existence of certain facts which he asserts: vide *Nanji and Company v. Jata Shankar Dassa* : [1962]1SCR492 No such burden has been discharged.

27. Keeping in view the historical concept of the word 'land' right from Manu's time, Mughal period and British rule, the terms and conditions of the covenant settled between the rules of the erstwhile States and the Central Government, a broad meaning has been given the word 'land' in the Act. Land is presumed to be agricultural land unless the same has been put to non-agricultural use by construction of forts, palaces or has specifically been set apart as building plots and the same has been recognised as such by the Central Government. To bring the case within the exception it is not sufficient for the land-holder to only prove that the land in dispute contains a fort, palace, buildings or building plots. He is further required to prove that the same had been specified as such in the inventory. Unless both the above noted conditions are fulfilled, the landowner cannot save the land from its acquisition under the Act. (emphasis added)

28. learned Counsel appearing for the petitioner respondent as well as Col. Bhawani Singhji have agreed both orally and in writing that the land marked in Annexure-B/5 in green in Annexure-B/4-B/5 is grove land and is being used at present for grove and nursery. At the time of resumption it was meant for the construction of a garden for the Maharaja. Preparing the soil for planting trees, sowing seeds therein and thereafter rearing the plants is nothing but an operation of husbandry. Though the word 'land', as defined in Section 4 Sub-Clause (6) of the Jaipur Tenancy Act, 1945 (Act No. 24 of 1945), does not expressly include a grove land, but it does so by necessary implication. In this view of the matter, we stand supported by a Division Bench decision of this Court in *Hussain Beg and Ors. v. Board of Revenue, Rajasthan* ILR 1966 (16) Rajasthan 219. Sub-section (24) of Section 5 of the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955) and sub-Section ((SIC)) of Section 3 of the Act of 1963 as amended by Act No. 15 of 1975 expressly includes 'grove land' within the definition of 'land', The definition of agriculture in sub-Section (2) of Section 5 of the Rajasthan Tenancy Act reads as under:

'agriculture' includes horticulture.

learned Counsel appearing on behalf on the petitioner and respondent No. 1 Col. Bhawni Singhji within his usual frankness has candidly admitted that the lands covered by Khasras Nos. 84, 85, 86, 87 88. 89, (90, 125, 126, 127, 128, 130, 132), 122, 123, 124, 129, 131, (133, 154, 141), 134, 133, 136, (137, 138), 139, 140, (142, 151), and 143 were resumed for construction of a garden and they were used as grove lands at the time of the preparation of inventory and are now being used as grove land and nursery.

29. The economic development of the country itself requires a wider division of ownership of land amongst the actual tillers than has been affected so far through the earlier land reform programmes. The Act of 1963 puts an end to absentee landlordism and all other forms of parasitism in respect of land. It does ensure full protection to the actual tiller of the soil and aims to break up to prevent concentration of land in the hands of the erstwhile rulers and provides for distribution of lands among the landless and land hungry peasants. However, the Government is proceeding with the reforms, introduced in the Act of 1963 with a snail's speed.

30. Before we part with this case, we make it clear that the question of alienability of inalienability of the property mentioned in the inventory under the heading 'I A' of the inventory of the private property of the ruler of Jaipur has neither been raised nor discussed nor decided in this appeal.

31. In the result, the special appeal, filed by the State Government, is partly accepted. The order, passed by learned Single Judge, dated May 2 1977, is modified as under:

Out of 72 Bighas and 7 Biswas of land, shown in Annexure-B/4-B/5, land consisting of Khasras Nos. 5, 6, 7, 93. 62, 8 and 94, measuring 14, 3, Bighas marked in red and shown as B/4 is declared as 'Abadi' land and, therefore, it does not stand resumed under the provisions of the Rajasthan Land Reforms and Acquisition of Landowner's Estate Act. 1963, it being the building site reserved by then Maharaja of Jaipur for construction of a palace thereon. The rest of the land,

measuring 58. 2, Bighas, consisting of Khasras No. 84, 85, 86, 87, 88, 89, (90, 125, 126, 127, 128, 130, 132.), 122, 123, 124, 129, 131, (133, 154, 141), 134, 133, 136, (137, 138), 139, 140. (142, 951) and 143 and shown by B/5 is declared agricultural land within the meaning of sub-Section (24) of Section 5 of the Rajasthan Tenancy Act, 1955 (Act No. 3 of 1955) and sub-Section (f) of Section 2 of the Rajasthan Land Reform and Acquisition of Land Owner's Estate Act, 1963. as amended by Act No. 15 of 1975. It stands vested in the State Government with effect from September 1, 1964, in pursuance of Notification, dated August 11, 1964, published in the Rajasthan Gazette, Part - 1V-C (Ordinary), dated August (SIC)2, 1964, as held by the Division Benches of this Court, to which one of us was a party; vide D.B. Special Appeal No. 10 of 1970, State of Rajasthan v. Smt. Gayatri Devi and D.B. Special Appeal No. 291 of 1971, Lt. Col. H.H. Maharaja Sawai Bhawani Singhji v. State of Rajasthan, by judgment, dated April 2, 1980. The findings made by the learned Single Judge. regarding other portion of the land alleged to have been acquired by the then Maharaja of Jaipur in the year 1944 out of the Bhojpura area are herd-(SIC) quashed and set aside. Nothing mentioned hereinabove will in any way effect the interests of the parties or order dated April 17, 1976 passed by Collector, Jaipur In case No. 71 of 1976, State v. Ltd. Col, H.H. Bhawani Singh under the provisions of the Rajasthan Land Reforms and Acquisition of Landowner's Estate Act, 1963 as amended by Act No. 15 of 1975, except in so far as it relates to the land, mentioned in Annexure-B/4-B/5, the details of which have been given above. For the purpose of ex attitude Annexre B/4 B/5 shall for part of this judgment.

33. As the plot No. A/9, measuring 1062/3 sq. yards falls within the area, marked in red, in Annexure-B/4 and which has been held to be 'Abadi' land the appellant and the Urban Improvement Trust, Jaipur are directed, as held by learned Single Judge, to consider the building plans, submitted by the respondent No. 2, for raising construction over the above noted plot, in accordance with the Rules, framed by the Municipal Council, Jaipur and the Urban Improvement Trust, Jaipur in that behalf and to decide the matter of sane there of within a period of four months from today, keeping in view the finding arrived at by his Court in this appeal. In the circumstances of the case, the parties are left to bear their own costs.

