

Budha Ram Vs. the State and ors.

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Court : Rajasthan

Decided On : Apr-09-1999

Reported in : AIR1999Raj249; 2000(1)WLC604

Judge : Arun Madan, J.

Acts : [Administration of Evacuee Property Act, 1950](#) - Sections 50

Appeal No. : Civil Writ Petn. No. 982 of 1985

Appellant : Budha Ram

Respondent : The State and ors.

Advocate for Def. : G.D. Parwal, Dy. Govt. Adv.,; Rajkumar,; Resham Bhargava

Advocate for Pet/Ap. : D.L. Bardhar and; Govardhan Bardhar, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

Arun Madan, J.

1. The petitioner who has described himself as a landless agriculturist has filed this petition on the grounds inter alia that he filed a suit for declaration of his Khatedari Rights in respect of a land in Khasra No. 520 measuring 10 Bighas and

land measuring 11 Bighas and 4 Biswas in Khasra No. 125 situated in Village Rajgan, Tehsil Mandawar, District Alwar. The said suit was decreed ex parte by the Assistant Collector Kishangarh Bas, District Alwar vide order dated 11-3-1980. From the perusal of the decree dated 11-3-1980, it is apparent that the plaintiff's suit was decreed against the pro forma defendants. The plaintiff had described himself as tenant in possession of agricultural land falling in Khasra No. 520 measuring 10 Bighas and Khasra No. 125 measuring 11 Bighas and 4 Biswas as aforesaid and it was accordingly prayed that he is not liable to be evicted by the Tehsildar who may grant him Sanad after realising the value of the land after its assessment. Since the suit was decreed ex parte, though the said order was challenged in appeal, when this fact was brought to the notice of the Collector, Alwar, he took note of this glaring anomaly that how a decree had been drawn up in respect of a land which was an evacuee property. Thus taking note of the apparent jurisdictional error made by 'the Assistant Collector, the Collector, Alwar issued show cause notice to the petitioner, calling upon the latter to explain as to how he was entitled to claim possession of the evacuee land as of right and to claim bona fide allotment of the said land by virtue of his continuous possession vide notice dated 11-8-1982 (Annexure-1) contrary to the provisions of Rajasthan Land Revenue (Permanent Allotment of Evacuee Agricultural Land) Rules, 1963 thereafter referred to as 'the Rules of 1963') as well as the provisions of Sections 46 and 50 of the [Administration of Evacuee Property Act, 1950](#) thereafter referred to as 'the Act of 1950').

2. On receipt of the aforesaid notice from the Collector, Alwar, petitioner sent his reply taking various objections therein including a specific objection to the effect that the Collector was not competent to make a reference to the Board of Revenue, Ajmer being not permissible under Section 232 of the Rajasthan Tenancy Act (Act No. 3 of 1955) thereafter referred to as 'the Act of 1955').

3. Another objection was raised by the petitioner on the ground that assuming that the land in question was subject-matter of the Rules of 1963 and hence the petitioner was subject to applicability of the provisions of the Act of 1955, the land being an evacuee property, the Court of ACJM, Alwar had no jurisdiction to entertain any claim on petition with respect to the said land. Alternatively, it was

contended that the land in question was purchased by the State Government in the Districts of Alwar and Bharatpur for the sum of Rs. 1 crore in a package deal and, therefore, the Rules of 1963 had no applicability. It was also contended by the petitioner that since a reference in respect of a decree and the sanctity of a decree has been kept apart by the Act, there is no power vested in the Collector or in the Board of Revenue for making a reference in respect of a decree passed by the civil Court. Hence, the whole of powers exercised by the Collector and Board of Revenue are illegal and void.

4. Notwithstanding the aforesaid objections which were advanced by the petitioner, the Board of Revenue, Ajmer after dealing with the contentions advanced on behalf of the petitioner, allowed the Reference vide its order dated 30-4-1985. The Board after taking note of the aforesaid contentions advanced on behalf of the petitioner while passing the impugned order dated 30-4-1985, allowed the reference made by the Collector, Alwar under Section 232 of the Act of 1955 by observing that it was clear from the perusal of the order of the Sub-Divisional Officer who passed the decree that in the revenue record, the disputed land is recorded as Custodian property. Under Section 50 of the Act of 1950, if in any suit, it appears to the Civil or Revenue Court that a question relating to the property of an 'evacuee' or an 'intending evacuee' is involved, the Court shall not proceed to determine that question until after notice is given to the Custodian. It was further observed by the Board from the perusal of Section 46 of the Act of 1950 that no Revenue or Civil Court shall have the jurisdiction to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property. It was further observed by the learned Members of the Board who allowed the Reference that the learned Assistant Collector had not adjudicated upon this vital aspect of the matter as to whether the property in question is an evacuee property or not and without deciding this material question, has erroneously held that persons who are opposing the Reference are the Khaatedars which infact is contrary to the revenue record and, therefore, a notice to the Custodian was a must to decide the controversy. Consequently, it was held by the Board that since there has been a clear violation of the provisions of the Act of 1950, the Reference was accordingly allowed and the judgment and decree of the Assistant Collector, Kishangarhbas, dated 11-3-

1980 in Revenue Suit No. 219/16 being contrary to the provisions of the Act of 1955 and the Rules of 1963 was illegal and not enforceable and was consequently quashed and set aside. It is under the aforesaid circumstances that the petitioner has come up before this Court by way of the instant writ petition on the grounds inter alia that the impugned-judgment/order of the Board of revenue and the Reference made by the Collector, Alwar is bad in law and does not deserve to be sustained being contrary to the provisions of Section 232 of the Act of 1955 as per which there is no provision for making a Reference in respect of a decree, since sanctity of the decree has been kept apart by the Act and there is no bar against the Collector or in the Board of Revenue for making the Reference against a decree. The petitioner has further assailed the validity of the impugned judgment and decree of the Board of Revenue dated 30-4-1985 as well as the impugned order of the Collector dated 11-3-1980 under the provisions of the Act of 1955 since there are specific provisions dealing with appeals under Sections 223, 224 and 225 of the said Act, hence action could not be taken under Section 232 of the Act of 1955 by calling upon the record and referring the matter to the Board of Revenue by way of a Reference made by the Collector and consequently the Board was not competent to entertain the Reference and to pass any order in consequence thereof. The petitioner has also assailed the impugned orders of the Board of Revenue as well as that of the Collector who had made the Reference to the Board on the ground that there is a specific bar to entertain the appeals beyond-the period of limitation which is prescribes under the Act as period of 90 days for preferring any appeal as well as for making any reference under the Act which should be within 6 months from the date of the passing of the impugned order which instantly has been over tooked by the Board of Revenue in the instant case. The petitioner has also assai fed the impugned order of the Collector as well as Board of Revenue under Section 232 of the Act of 1955 which stipulates, as under :--

'Reference

232. Power to call for record and refer to the Board -- The Collector may call for and examine the record of any case or proceedings decided by or pending before any revenue Court subordinate to him for the purpose of satisfying himself as to

the legality or propriety of the order (or decree passed) and as to the regularity of the proceedings, and, if he is of opinion that (the order or decree) passed or the proceeding taken by such Court should be varied, cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board and the Board shall, thereupon, pass such orders as it thinks fit:

Provided that the power conferred by this section shall not be exercised in respect of suits or proceedings falling within the purview of Section 239.' (sic) has been violated.

5. This Court after hearing the learned counsel for the petitioner had admitted the writ petition for hearing vide its order dated 29-10-1985 which after detailed hearing to the learned counsel for both the parties is now being finally decided and disposed of by this order.

6. At the out set, learned counsel for the respondents while vehemently opposing the maintainability of the writ petition has controverted the aforesaid contentions advanced on behalf of the petitioner on the grounds inter alia , that by reason of mere continuous possession,' would not by itself confer any legal right or status to retain continuity of the land in question or to claim allotment thereof by the intending party unless the said party satisfies the requirements of the statute governing the same. Reliance was placed by the learned counsel representing the respondents on the provisions of Sections 46 and 50 of the Act of 1950 (Act No. 31 of the 1950) which is a Central legislation to protect and safeguard the interest of those persons who after partition of the country had come from Pakistan. to India as refugees after leaving their property in Pakistan and on presentation, their claims to the Government of India as against property which they left in Pakistan were given allotment of the land as per the aforesaid provisions of the Act of 1950 subject to their satisfying the conditions as stipulated in the said enactment. It was further contended that in this case the land in question had been admittedly entered in the revenue record as 'evacuee property' which obviously means and implies for public purpose, hence, the petitioner is not entitled to claim its allotment. The petitioner has to satisfy at first instance that he is an evacuee on migration from Pakistan to India and as against the land or property which he left

in Pakistan subject to his furnishing bona fide details specifically indicating his genuine claim, was entitled to allotment in India as against the property left in Pakistan. It was further contended that the petitioner was not entitled to claim any allotment merely on the strength of possession of the land but also has to satisfy the requirements of the Rules of 1963 as well as the Act.

7. I have heard learned counsel for the parties at length, examined their rival claims and contentions as well as the legal position on the subject. Prima facie, I am of the considered view that merely on the strength of possession, a person cannot claim allotment of a land unless he is able to satisfy at first instance the requirement of statute which in the instant case are the Act of 1950 and also the Rules of 1961.

8. In this case admittedly the land in question has been entered in the revenue records as 'evacuee property' which obviously is governed by the provisions of the Act of 1950 which is a Central legislation more particularly Sections 46 and 50 of the said Act which stipulates, as under :--

'46. Jurisdiction of Civil Courts barred in certain matters. -- Save as otherwise expressly provided in this Act, no civil or revenue Court shall have jurisdiction-

(a) to entertain or adjudicate upon any question whether any property or any right to or interest in any property is or is not evacuee property; or

(b) * * * * * (c) to question the legality of any action taken by the Custodian-General or the Custodian under this Act; or

(d) in respect of any matter which the Custodian-General or the Custodian is empowered by or under this Act to determine.

(a) Clause (b) was omitted by the Administration of Evacuee Property (Amendment) Act, 1953 (11 of 1953), S. 14 (6-5-1953).

50. Notice of suit to the Custodian.-

(1) If in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the Court shall not

proceed to determine that question until after notice has been given to the Custodian.

(2) A Court may, at any stage of a suit or proceeding, either on its own motion or on application made in this behalf by the Custodian, make an order that the Custodian shall be added as a party to the suit or proceeding, if the Court is satisfied that such addition is necessary or proper for the satisfactory determination of the suit or proceeding.'

Section 2 (d) of the Act of 1950 defines the 'evacuee', as under :--

'(d) 'evacuee' means any

(i) who, on account of the setting up of the Dominions of India and Pakistan or on account of civil disturbances or the fear of such disturbances, leaves or has, on or after the 1st day of March, 1947, left, any place in a State for any place outside the territories now forming part of India, or

(ii) who is resident in any place now forming part of Pakistan and who for that reasons is unable to occupy, supervise or manage in person his property in any part of the territories to which this Court extends, or whose property in any part of the said territories has ceased to be occupied, supervised or managed by any person or is being occupied, supervised or managed by an unauthorised person, or

(iii) who has, after the 14th day of August, 1947, obtained, otherwise than by way of purchase or exchange, any right to, interest in or . benefit from any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan, or

(iv) who has, after the 18th day of October, 1949, transferred to Pakistan, without the previous approval of the Custodian, his assets or any part of his assets situated in any part of the territories to which this Act extends; or

(v) who has, after the 18th day of October, 1949, acquired, if the acquisition has been made in person, by way of purchase or exchange, or, if the acquisition has

been made by or through a member of his family, in any manner whatsoever, any right to, interest in, or benefit from, any property which is treated as evacuee or abandoned property under any law for the time being in force in Pakistan.'

9. Any dispute pertaining to any land in question which is an 'evacuee property' have to be decided by presentation of property claims in law before either the Custodian-General or Deputy Custodian-General as per Section 5 of the Act of 1950. There has to be first of all a notification of evacuee property as per Section 7 of the Act of 1950 which provides, as under :--

'7. Notifications of evacuee property.-- (1) Where the Custodian is of opinion that any property is evacuee property within the meaning of this Court, he may after causing notice thereof to be given in such manner as may be prescribed to the persons interested, and after holding such inquiry into the matter as the circumstances of the case permit, pass an order declaring any such property to be evacuee property.'

10. In the instant case, admittedly there has been violation of the provisions of Sections 46 and 50 of the Act of 1950, since it was prima facie duty cast upon the Courts below to have embarked upon the enquiry with regard to the fact that the property in question being an evacuee property was subject-matter of adjudication by the Civil or Revenue Court. This fact has apparently been to sight of by the Collector, Alwar as well as the Board of Revenue, Ajmer which passed the impugned orders dated 11-3-1980 and 30-4-1985, respectively. A specific objection was taken before the Board of revenue on behalf of the State Govt. that from the perusal of the record which was produced before the trial Court, it was clear that the property in question was entered in records as evacuee property and hence, in my considered view the Assistant Collector or the Collector had no jurisdiction to decide the suit and a notice ought to have been given to the Custodian General or the Custodian in compliance with the requirements of Section 50 of the Act of 1950 which specifically mandates that if in any suit it appears to the civil or revenue Court that a question relating to the property of an evacuee or an intending evacuee is involved, the 'Court shall not proceed to determine that question until after notice has been given to the Custodian who has

been given sufficient opportunity of hearing before deciding the controversy between the parties. This salient aspect of the matter has admittedly not been examined and consequently an ex parte decree passed by the Civil Court admittedly is non est being nullity in the eye of law and consequently can neither be acted upon or implemented and consequently deserves to be quashed and set-aside as per the provisions of Section 232 of the Act of 1955 since admittedly an illegal decree is incapable of execution and the Court can always go behind the decree in appropriate cases which is a nullity on its very face so as to satisfy itself as regards its propriety and validity. Section 232 of the Act of 1955 mandatorily caste upon the Collector the duty to call for and examine the record of any case or proceedings decided by or pending before any revenue Court subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order (or decree passed) and as to the regularity of the proceedings, and, if he is of opinion that (the order or decree) passed or the proceeding taken by such Court should be varied, cancelled or reversed, he shall refer the case with the opinion thereon for the orders of the Board shall, thereupon, pass such orders as it thinks fit.

11. In my view, the Collector, Alwar was justified in examining the legality and validity of the order passed earlier by the Assistant Collector. Alwar who had directed the allotment of land falling in Khasra No. 520 measuring 10 Bighas and land measuring 11 Bighas and 4 Biswas in Khasra No. 125 situated in Village Rajgan, Tehsil Mandawar, District Alwar since the said earlier order dated 11-8-1982 (Annexure-1) passed by the Assistant Collector was illegal and non est having been passed in excess of jurisdiction not vested in him.

12. I am fortified in my observations from the judgment of the Division Bench of this Court in the matter of Fateh Khan v. State of Rajasthan, 1981 RRD 356, as well as the judgment of the learned single Judge in the matter of Balu v. Birda, 1983 RRD 159 : (AIR 1983 Raj 13).

13. In the matter of Fateh Khan (supra), a Reference was made by the Collector for setting aside the decree of the Assistant Collector under Sections 88 and 89 of the Act of 1955 which was accepted by the Board of Revenue wherein, the order of ejectment passed under Section 91 of the Land Revenue Act from 'gochar land'

was passed by the Tehsildar and upheld by the Collector was challenged. During the pendency of the appeal before the Revenue Appellate Authority the petitioner's suit was decreed by concealing the fact of proceedings pending under Section 91 of the Act of 1955. It was held by the learned Division Bench of this Court that even in cases where the Collector though not empowered to make a reference under Section 232 of the Act of 1955 or Board has no revisional jurisdiction. Board (is) empowered to set aside orders if clear breach of provisions of law comes to its notice and it considers that an illegality or impropriety has been committed by any subordinate authority and if it considers expedient to use its power of superintendence and control, such order shall stand set aside. In the instant case, since apparently a decree had been passed by a Civil Court which is ex facie nullity hence the Board of Revenue, Ajmer has rightly exercised its powers in accordance with Section 221 of the Act of 1955 in not permitting such an illegal decree to be 'enforced.

14. Hence, I am of the view that no interference is called for in the impugned orders dated 11-3-1980 as well as order dated 30-4-1985 passed by the Assistant Collector, Alwar and Board of Revenue, Ajmer, respectively and the legality and propriety of the same is not open to challenge.

15. As a result of above discussion, the writ petition is dismissed being not maintainable. No order as to costs.