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**Court** : Rajasthan

**Decided On :** Apr-14-1981

**Reported in** : 1981WLN516

**Judge** : M.L. Shrimal and; Mahendra Bhushan, JJ.

**Appeal No.** : D.B. Writ Petition No. 372 of 1981

**Appellant** : Dilip Kumar and anr.

**Respondent** : Board of Revenue and 2 ors.

**Disposition** : Petition dismissed

**Judgement** :

1. By this writ petition under Article 226 of the Constitution of India, the petitioners, Dilip Kumar and Jugal Kishore, have challenged the validity of the order, dated June 23, 1978, Ex, 9, passed by the Government of Rajasthan for reopening the ceiling proceedings under section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as 'the Act'). In the same petition the order of the Additional Collector, dated September 6, 1979 and the order of the Board of Revenue, dated 27th August, 1980, upholding the order of the Additional Collector, have also been challenged.

2. The facts giving rise to this writ petition are that one Raghunath died in the year 1962, leaving behind him Dilip Kumar and his widow Mst. Nathi. This is an

admitted case of the petitioner that at the time of the death of Raghunath he left 199 Bighas and 7 Biswas of agricultural land. This land was entered in the revenue record in the joint Khatedari with Mst. Nathi and Dilip Kumar, adopted son of Righunath, half to half. Accordingly, Dilip Kumar was eight years' old at the time of his adoptive father's death. Keeping in view the fact that the policy of the State was to give land to the tillers of the soil, certain revenue laws were introduced and chapter l IT-3 was inserted in the Rajasthan Tenancy, 1955 (hereinafter referred to as `the Act of 1955'). Proceedings under chapter HI-B of the Act of 1955 were instituted and a notice was served on Mst. Nathi. The Sub-divisional Officer (vide his order, dated 25-5-72) held that there was no surplus land in possession of either Mst. Nathi or Dilip Kumar. Thereafter, proceedings were taken under the Act and the Authorized Officer (vide order, dated 22-7-77), held that 37 Bighas and 16 Biswas of land in possession of of the unit consisting of the petitioner No. 1 and Nathi Bai was in excess and the same was liable to be resumed.

3. The State Government after perusal of the record came to the conclusion that the decision arrived at by the Sub-divisional Officer, on May 25, 1972, suffered from a mistake apparent on the face of record and as such show-cause notice, dated June 7, 1978, was issued in the name of the deceased Nathi Bai. In response to that notice, both the petitioners appeared before the concerned Deputy Secretary, Revenue and submitted their objections. After hearing both the petitioners, the Deputy Secretary, Revenue (vide his order dated 23-6-78), Annexure 9, ordered that the case be reopened and fresh notices be issued and the case should be decided afresh in accordance with the provisions of Chapter III-B of the Act of 1955.

4. Incompliance with the order of the Deputy Secretary, Revenue, the Additional Collector issued notice to the land-holder, in response to which both the petitioners appeared before him. After considering the submissions, oral and written, made by the petitioners, the Additional Collector issued order, dated September 6, 1979, holding that the petitioners were in possession of 22 standard acres of land in excess and the same was resumable. The appeal filed by the petitioners before the Board of Revenue met with no success. Hence, this writ petition.

5. There is no dispute on behalf of petitioners on the point that under the provisions of the Act of 1955 ceiling area of the land was to be determined as it stood on April 1, 1966. Reference in this connection may be made to Banshidhar and Ors. v. State (1), Kesri Lal v. Sub-divisional Officer, Ramganjmandi and Ors. (2), and Rameshwar and Ors. v. JoiRam and Ors. (3).

6. The main plank of the argument of the learned counsel for the petitioner is that under section 30-B of the Act of 1955 Dilip Kumar could not be termed to be a member of the family with his adoptive mother and considered as one unit within the meaning of section 30-B of the Act as his adoptive father bad expired prior to April 1 1966. For appreciating the argument of the learned counsel for the appellant, we reproduce section 30-B which reads as under.

(a)'family' shall mean a family consisting of a husband and wife, their children and grand children being dependent on them and widowed mother of the husband so dependent, and

(b) 'persons' in the case of an individual, shall include the family of such individual.

7. The validity regarding the artificial definition of a family given in section 30-B of the Act of 1955 cannot be questioned, even if the section, in so far as it introduces an artificial concept of family unit and fixes ceiling on holding of agricultural land by such family unit, in violation of second proviso to clause (1) of Article 31. It is prohibited by Article 31 by reason of its inclusion in the Ninth Schedule. A similar provision of Gujarat Agricultural Land Ceiling Act (27 of 1961) in Hasmukh Lal Dhayabhai v. State of Gujarat : [1977]1SCR103 was held valid.

8. It can be seen from the brief resume of the relevant provision of the section (supra) that there are two units recognized of the purpose of fixing the ceiling in holding of agricultural land (a) 'family' (b) 'person'. So far as applicability of the Act to a person is concerned, there is no conceptual difficulty, because any person, natural or artificial can hold land and if the land is in excess of ceiling area fixed, the surplus land would vest in the State Government. But the Act has created an artificial family unit constituted by husband, his wife, their children or grand children dependent on them. It is clear from the schemer of the Act that for the

purpose of determining whether land is held in excess of ceiling area, family unit has to be taken as a single unit and the limitation of ceiling area is applied in relation to the land deemed to be held by such family unit and in such a case each individual member of the family unit is not treated as a separate unit for the purpose of applicability of limitation of ceiling. The land held by each member of the family unit is fictionally treated as land held by the 'family'.

9. We are satisfied that (the plain meaning of the word 'family' given in section 30-B clearly indicates that a son will always be considered as a member of the family if he is dependent upon either his father or mother and the land held by them shall be considered to be that of a unit.) The use of the word 'their' in section 30-B does not mean that the legislature mean that son will be considered as a member of the family only when both the father and mother are alive and if one of them expires, he will cease to be member of family. Such a construction cannot be said to be rational. The word 'their' appearing in section 30-B (a) is required to be read as singular or plural or both in its proper context.

10. The second contention that the notice in the prescribed form was not given to the petitioners is equally devoid of any merit and needs to be mentioned for simply being rejected. Both the petitioners appeared before the Deputy Secretary, Revenue, as Well as before the Additional Collector and the Board of Revenue and filed written reply, which were considered in detail and thereafter the respective rights of the parties were determined. Not giving of a notice in their names' in no way has prejudiced the case of the petitioner because both of them appeared before the concerned authorities and had full opportunities to place their case and the Board of Revenue rightly held that even if it is considered to be an irregularity, it was not going to vitiate the decision of the Additional Collector arid on the some reasoning it does not vitiate the order passed by the Board of Revenue. Rules of procedure are intended to be a hand maid of administration of justice and they cannot be used as road block the agrarian reforms, which have been introduced in the State for the interest of the people at large. The argument regarding form of the service of the notice is of no substance. The petitioners had fully understood the nature of the proceedings instituted against them. It is too late in the day to raise such a frivolous objection with a view to taking chance to obtain

a decision in their favour.

11. Last but the least important point urged before us is that neither the Deputy Secretary, Revenue, nor the Revenue Authorities came to the conclusion that Dilip Kumar was dependent on his mother on April 1, 1966. Admittedly Dilip Kumar was a minor and his age was not beyond 10 years on the appointed date. We are at a loss to understand how Dilip Kumar was not dependent or was not being maintained by his own mother, who was his natural guardian. There was no allegation before any of the Revenue Authorities nor is before us to the effect that the interests of Dilip Kumar and his mother were divergent to each other or they were inimical to each other. Besides, it would be interesting to note that after getting the decision, Mst. Nathi, in order to defeat the provisions of the ceiling law, executed a will in favour of Jugal Kishore who is none else but natural father of Dilip Kumar. This step is nothing but a device adopted to defeat the provisions of ceiling law. Land to the tiller has been our cherished ideal. The history of agrarian reform in Rajasthan has been dealt with in detail in D.B. Civil Writ petition No. 1703 of 1980 decided on July 2, 1980. It should not be forgotten that agriculture constitutes 50% of the national income. It is the largest employer. It has the richest history of legal experimentation. It is the craddle of poverty. Proper machinery of the land laws would decide whether there will be mass employment or not. The anxiety of the land holder lovy not to surrender surplus land mostly leads to futile and tiring litigation to the detriment of, landless labour employed in agriculture and the case on hand is a timing example of the fact.

12. For the foregoing reasons, we find no merit in this writ petition and we dismiss it summarily. It is, however, made clear that 30 standard acres of land will be kept with Dilip Kumar and he should not be deprived of any portion of the land under his possession within the ceiling unit.

13. Learned counsel for the petitioner prays .that this case may be certified to be a fit one for filing the appeal to the Supreme Court. The decision of this case has mainly turned upton the peculiar facts of this case and in our considered opinion no substantial question of law of general importance, which needs to be decided by the Supreme Court, is involved therein. We, therefore, decline to certify that the

case as a fit one for appeal to the Supreme Court. The oral prayer for leave to appeal to the Supreme Court is refused.

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