

Hemsingh Vs. the Collector and anr.

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Court : Rajasthan

Decided On : Mar-08-1976

Reported in : 1976WLN125

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 68 of 1973

Appellant : Hemsingh

Respondent : The Collector and anr.

Disposition : Petition dismissed

Judgement :

C.M. Lodha, J.

1. These two petitions under Article 226 of the Constitution of India are directed against the common order passed by the Collector, Barmer on February 7, 1973 in exercise of his powers of review under Section 40A of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 (which will hereinafter be referred to as 'the Act').

2. The facts of the two cases, stated to brief, are that the Deputy Collector, Jagir, Barmer vide his order dated November 29, 1986 allotted 110 bighas of land in village Chohatan and 340 bighas of land in village Jesar to Chimansingh, father of

the petitioner Hemsingh for Khudkast (petitioner in S.B. Civil Writ No. (sic) of 1973) By another order dated December 5, 1966 he allotted 270 bighas and 11 biswas, of land in village Chohatan. 375 bighas in village Intada and 32J bighas in village Jesar for Kbudkast to Udaisingh, Ex-Jagirdar Chohatan (petitioner in civil writ petition No. 662 of 1973)

3. The grievance of the petitioner is that a group of villagers became hostile to the petitioners for political considerations and made an application to the Sub Divisonal Officer, Barmer for declaring as 'Gocbar' a part of the land in Khasra No. 110 in village Jesar allotted to the petitioners and the Sub-Divisional Officer. Barmer, by his order dated August (sic), 1963, allowed toe application and declared the land allotted to the petitioners as 'Gochar' Later on, they also moved review applications some time in July 1972 before the Deputy Collector, Jagir, Barmer to set aside the allotment made in favour of the petitioners. As already stated above, the Collector, Barmer by the impugned order set aside the allotments and reopened their cases,

4. It is urged on behalf of the petitioners that the Collector had no jurisdiction to review the orders of allotment after a period of more than force months as prescribed under Section 40A of the Act Another submission of the learned Counsel is that there existed no grounds for the Collector to review the order and, therefore, the order is bad. Lastly it is submitted that that the Collector had no jurisdiction to review the order passed by the Deputy Collector, Jagir.

5. The petitions have been opposed on behalf of the Collector, Barmer as well as by the persons at whose instance the order of review was passed, and I have heard the Deputy Government Advocate and Mr. G.S. Smghvi in opposition to the writ petitions.

6. In order to appraise the contentions raised on behalf of the petitioners, it would be proper to reproduce Section 40A, here:

40A. Review. - (1) The Board, the Jagir Commissioner or the Commissioner for Khudkasbt Lands may either on an application made, within three months of the 13th January, 1958 or of the date of order, whichever is later, by any interested

party or suo moto, review an order passed by the Board or by such Commissioner himself or his predecessor in office and pass, order in relation thereto a) if he thinks fit.

(2) No order passed by the Board of the Jagir Commissioner or Commissioner for Kaudkast Lands shall be reviewed under Sub-section (1) otherwise than on any of the grounds mentioned in Rule, 1, Order 47 of the First Schedule to the Code of Civil Procedure 1908 (Central Act V of 1908), and the provisions of the said Order shall apply.

7. The period of limitation prescribed for an application for review of an order is undoubtedly three months either from 18th January, 1958 or from the date of the order whichever is later. The contention on behalf of the petitioner is that this period of limitation is applicable even to orders of review passed suo moto by the authorities mentioned in the section, I am, however, unable to accept this contention for two reasons. Firstly, from the language of the Section it is clearly borne out that the application for review must be made within three months. The period of three months does not govern the action which may be taken by the authorities under this Section suo moto. This clearly means that a private party has no right to make an application for review after the expiry of a period of three months from the date of the order or from 18th January, 1958 as the case may be. But there is no period of limitation prescribed for the authorities to act suo moto. Sub-section (1), when analysed means that the Board or the Jagir Commissioner or the Commissioner for Kaudkast Lands may review an order passed by the Board or by such Commissioner himself or his predecessor-in office either on an application made within three months of the 18th January, 1958 or of the date of the order or these authorities may suo moto review an order passed by them the second Clause is not governed by the limitation prescribed by the first clause.

8. Learned Counsel for the petitioner has urged that putting such a construction, as I am inclined to do, would lead to anomalous results inasmuch as what a person may not be able to do directly on account of expiry of limitation may indirectly be done by the authorities concerned after the expiry of limitation. Undoubtedly this is possible, but for that reason, no anomaly arises, case of r

viewing certain order suo moto, the authority is not to be governed by any private malice or vengeance and in appropriate circumstances it may act suo moto even after the expiry of three months from the date of the order. Another reason for not accepting the interpretation put by the learned Counsel is that if the period of three months is attached to the action taken by the authorities concerned, then it may lead to certain insurmountable difficulties. So far as an application for review is concerned, once it is made within the prescribed period, thereafter the order of review may be passed at any time. But in case the period of three months is made applicable for allowing the review, then the provisions may very well be defeated inasmuch as the authority concerned may issue notice to the party concerned why the order may not be reviewed. But the party may evade service or for certain other reasons, the service may not be effected for a period of three months and the authority concerned may not be able to make an order to review within the period of three months. In this view of the matter also I am of the opinion that the period of three months is prescribed only for an application and not to the action of review suo moto.

9. Learned Counsel then referred to Article 124 of the Limitation Act, 1963 in which a period of thirty days is prescribed for review. In this connection, attention may be drawn to Section 47 of the Act which provides that 'save as otherwise expressly provided in this Act, the provisions of this Act and of the Rules and Orders made thereunder shall have effect notwithstanding anything therein contained being inconsistent with any existing Jagir law or any other law for the time being in force'. In view of this provision, the limitation prescribed for review under the law of limitation cannot apply. Apart from that Article 124 speaks of review of judgment by a court and it is difficult to hold that the Jagir Commissioner or the Commissioner for Khudkast Lands constituted under the Act possesses all the trappings of a court. I am, therefore, of opinion that Article 124 of the Limitation Act has no application to the present case.

10. From the foregoing discussion it follows that the impugned order by the Collector cannot be set aside on the ground that he had no jurisdiction to review the order as he did, after the expiry of period of three months from the date of the order sought to be reviewed.

11. As to the grounds on which review can be granted, there is a clear provision in Sub-section (2) of Section 40A of the Act that review can be granted only on the grounds mentioned in Rule 1, Order 47 of the Code of Civil Procedure. Therefore, the only question is whether the case is covered by the Order 47 Rule 1. The Collector has held that there were errors apparent on the face of the record in the orders sought to be reviewed and that there was sufficient reason for reviewing the orders. He held that the orders in question had been passed without, making the State a party and that part of the land allotted to the petitioners was declared, 'Gochar'. Lastly he has held that the allotments made in favour of the petitioner offended against the provisions of the ceiling law inasmuch as they were granted land for Khudkhabt far in excess of the permissible limits under the ceiling law. As already stated above, the petitioners themselves have averred in their writ petitions that the Sub Divisional Officer, Burner by his order dated 30th August, 1968 declared a part of the land covered by Khasra No. 110 and allotted to the petitioners as 'Gochar'. Learned Counsel, however, urges that the order was honest inasmuch as it was passed by the officer before the data fixed in the case. It is urged that 2nd September, 1908 was the date given in the case whereas before that, the Sub Divisional Officer decided the case on 20th August, 1968. The reply of the State in this connection is that the petitioners had joined hands with the clerk concerned and got the record tampered with. However, I wish to make clear that it is not possible for me to give any finding in the respect on the record, as it stands. But the order of the Sub Divisional Officer dated 30-8-1968 which has been placed on the record and marked EX. R/1 shows that no objection had been filed to the land in question being declared 'Gochar'. Be that as it may, the order has not been set aside so far and I am unable to accede to the submission that the order is void and consequently a non-set. The matter is still to be enquired into but the fact is there that subsequent to the orders sought to be reviewed a part of the land allotted to the petitioners for Khudkashi has been declared 'Gochar'. The Collector, therefore, cannot be said to have committed any error when he observed that a part of the land had been declared 'Gochar'. Another observation made by the Collector that the lands allotted to the petitioners are in excess of the permissible limits under the ceiling law has not been successfully assailed before me.

12. In addition to what has been stated in the impugned order, Mr. Singhvi on behalf of the respondents No. 2(i), (ii) and (iii) has invited my attention to the applications moved by the petitioners on 29.11.1966 wherein it was prayed that land may be allotted to the petitioners for Khudkast in village Jasar. This was not the prayer contained in the original application and it appears that on the same day the Deputy Collector, Jasar allotted the Unci in Khasra No. 110 in village Jasar without holding any further enquiry as contemplated by Section 14 of the Act and the Rules on the subject. This point has not been adverted to by the Collector in his order but there does appear some force in it. I do not wish to give my opinion on it at this stage, as the matter is yet to be decided afresh. Suffice it to say, that the reasons given by the Collector in the impugned order for granting the review cannot be said to be perverse or extraneous. They are clearly covered by the provisions of Order 47 Rule 1, CPC and I am unable to quash the impugned order on the ground that the case is not covered by Order 47 Rule 1, CPC.

13. This brings me to the last contention of the learned Counsel for the petitioner that the original order was passed by the Deputy Collector, Jagir. It is urged that even though the powers of review had been delegated to the Collector yet he could not have reviewed the order of the Deputy Collector. This argument also in my opinion, is devoid of substance, inasmuch as if the power of the Deputy Collector must be deemed to have stepped into the shoes of the Deputy Collector, Jagir were being exercised by the Collector at the relevant time, then the Collector must be deemed to have stepped into the shoes of the Deputy Collector, Jagir who passed the original order. Apart from that, there is a specific provision in Section 40A itself which empowers both the said Commissioners to review orders of their predecessor-in-office respectively. It is submitted on behalf of the State that the post of the Deputy Collector, Jagir was abolished and his functions were being performed by the Collector at the relevant time. In these circumstances, the Collector had jurisdiction to review the earlier order of the Deputy Collector, Jagir.

14. The result is that this petition fails and hereby dismissed. No order as to costs.