

Hakam Singh Vs. Assistant Collector (Ceiling) and ors.

Hakam Singh Vs. Assistant Collector (Ceiling) and ors.

SooperKanoon Citation : sooperkanoon.com/768608

Court : Rajasthan

Decided On : Jul-15-1985

Reported in : 1985WLN(UC)254

Judge : Surendra Nath Bhargava, J.

Appeal No. : S.B. Civil Writ Petition No. 1031 of 1979

Appellant : Hakam Singh

Respondent : Assistant Collector (Ceiling) and ors.

Disposition : Petition allowed

Judgement :

Surendra Nath Bhargava, J.

1. Petitioner was holding agricultural land in Tehsil Ganganagar and so also his wife Jasnaikaur. Petitioner filed a declaration in the ceiling law and the Assistant Collector (Ceiling) by his order dated March 30, 1977, found that the petitioner was having total land of 103 bighas and 10 biswas whereas under the law he was entitled to retain only 62 bighas and 7 biswas of land and found 41.2 bighas of land in excess of the said ceiling limit.

2. Petitioner preferred an appeal (Annx. 2) before the Collector, Sri Ganganagar, and the Additional Collector, Sri Ganganagar, by his order dated 27-2-78 affirmed

the earlier order and dismissed the appeal.

3. Appeal filed before the Board of Revenue (Annx. 4) was also dismissed by the Board of Revenue by order dated 7-5-79 and it is against these orders, the present writ petition has been filed.

4. The State has not filed any reply to the writ petition.

5. Learned counsel for the petitioner has submitted that the definition of bonafide transferee as mentioned in the Ordinance was modified when the Act came to be enacted which shows the intention of the legislature. He has further submitted that the courts below have seriously erred in ignoring recitals of the sale deed and has placed reliance on 1971 SC 102E Smt. Rani v. Smt. Shantabala. He has further submitted that since no notice has been issued to the transferees whose particulars were mentioned in the declaration, which amounts to violation of principles of natural justice when the authorities have held that the transfers were not bona fide without hearing the transferees. He has further submitted that the authorities have failed to consider the documents and evidence produced by the petitioner by way of 'Girdawari', 'Parchalagan', Mutation to prove that the possession was transferred to the transferee. He has further submitted that the authorities have failed to consider the evidence of the petitioner on oath which was not challenged in cross-examination and no rebuttal was produced by the department. He further submitted that it is not necessary under the law to show as to how the amount was utilised by the petitioner. He has further submitted that the authorities have seriously erred in treating 19 bighas of barani un-command land as irrigated land inspite of specific objections, both before the Additional Collector as also before the Board of Revenue.

6. On the other hand, learned counsel for the State has submitted that there is no error apparent on the face of the record in the judgment of the Board of Revenue, therefore, no interference should be made in writ jurisdiction. He placed reliance to a Division Bench's judgment of this Court reported in 1981 RLW 561 Rajeshwarsingh v. S.D.O. Amer, in support of his argument that giving of notice to transferee is not essential.

7. On the other hand, learned counsel for the petitioner has placed before me on the certified copies of the judgment of the learned Chief Justice in S.B. Civil Writ Petition No. 1092/76 Pharas Ram v. State of Rajasthan decided on 16-2-84 wherein the Authorised Officer was directed to serve notice to the transferee and thereafter dispose of the matter in accordance with law. He has further submitted that the view expressed in Rajeshwar Singh's case is not applicable to the facts of the present case, because in that case it was observed that the transfers after April 1, 1966, are to be ignored in view of Section 30-D and Section 30DD of the Rajasthan Tenancy Act because the law then provided that where a transfer is not recognized, the land covered by such transfer has to be treated as of the Khatedar, whose land is being acquired. This judgment of the Division Bench given in Rajeshwar Singh's case was based on earlier judgment of this court reported in 1978 WLN 272 Nand Lal v. State of Rajasthan. He has also brought to my notice a judgment of the learned Single Judge in State of Rajasthan v. Bhera Ram reported in 1979 WLN 224 wherein his Lordship after noticing that the judgment of the Division Bench in Nand Lal's case after discussing number of SC cases came to the conclusion that notice to the transferee is necessary and opportunity be provided to the transferees and the orders passed without notice to the transferees are vitiated and ineffective. He has further brought to my notice that a Division Bench's view in D.B. Writ No. 1375/75 Kesha v. State of Rajasthan has already referred to the matter to larger bench to reconsider the view expressed in Nand Lal's case.

8. He has brought to my notice a recent decision of Board of Revenue in Sobhag Singh v. State reported in 1984 RRD 909 wherein the Board of Revenue itself after relying on the judgment of the Rajasthan High Court in Bhera Ram's case, has revised its earlier view and has held that the transferee is entitled to notice and that transferee should be heard before finally deciding the Ceiling matter.

9. I have considered the submissions and gave a serious thought to the whole matter and in view of the latest trend of the Supreme Court judgment and attaching lot of importance to the principles of natural justice which is great humanised principle intended to rest law with fairness and to secure justice. It will be difficult for me to hold that transferee is not entitled to a notice. The matter is

already pending before the Full Bench for authoritative pronouncement and I am in agreement with view expressed by Shri M.C. Jain, in Bhera Ram's case as also with that of Hon'ble the Chief Justice, expressed in Pharas Ram's case in his recent judgment dated 16-2-84. The observations of the Division Bench cannot be applicable to the facts of present case. Since I am accepting contention of the learned counsel for the petitioner and have come to the conclusion that notice to transferee is necessary. I have no option but to set aside the judgment and remand the case back to the Assistant Collector (Ceiling), Sri Ganganagar, for giving notice to the transferees before finally deciding the ceiling matter of the petitioner. It will be open for the petitioner to agitate all other points which he has pressed before this Court or earlier before the Additional Collector and the Board of Revenue and it will be open for the Assistant Collector (Ceiling), Sri Ganganagar, to come to a fresh finding on all these matters in accordance with law and keeping in mind the observations made here in above.

10. The writ petition is allowed. Orders of the Board of Revenue dated 7-5-79 and that of the Additional Collector dated 27-2-78 as also of the Assistant Collector (Ceiling) dated 30-3-77 are hereby quashed and the Assistant Collector (Ceiling) Sri Ganganagar is directed to decide the ceiling case of the petitioner in accordance with law after giving notice to transferees and in the light of observations made here in above.