

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Reference/LR/1051/2009/Jodhpur.

1. State of Rajasthan through Tehsildar, Phalodi Distt. Jodhpur.
2. Kishna Ram son of Deva Ram caste Bishnoi resident of village Raneri Tehsil Phalodi Distt. Jodhpur.

...Petitioners.

Versus

1. Deva Ram son of Harchander Ram
2. Bagdu Ram son of Harchander Ram
3. Reshma Ram (deceased) through LR:-
3/1 Sukhram son of Reshma Ram
3/2 Arjun Ram son of Reshma Ram
All by caste Bishnoi residents of Jhadasar (Raneri) Tehsil
Phalodi Distt. Jodhpur.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri S.K. Sharma, Dy. Govt. Advocate for the State.
Shri Dungar Singh, counsel for the non-petitioners.
Shri Amritpal Singh, counsel for the petitioner No.2.

Date: 4.2.2013

J U D G M E N T

This reference, under section 82 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act'), has been filed by the State Government through Tehsildar, Phalodi (Distt. Jodhpur) on the basis of order passed by Additional Collector-II, Jodhpur on 23.12.2008 in reference matter No. 2/08.

2. The factual matrix of the case is that Tehsildar, Phalodi filed an application before the Additional Collector under section 82 of the Act stating that the disputed land mentioned in mutation No. 6 attested on 18.10.1960 (khasra No. 792 min measuring 132 bighas) has been entered in the names of Reshma Ram, Deva Ram and Bagdiya sons of Harchander Bishnoi without any competent allotment order. This impugned mutation No. 6 of village Raneri has been decided by Multana Ram, Sarpanch, Gram Panchayat, Kanasar (Distt. Jodhpur). The Tehsildar requested the Additional Collector that mutation No. 6 of village Raneri has been fraudulently sanctioned in favour of Reshma Ram and others without any

allotment order and jurisdiction. In the column No. 16 of the mutation, this has been mentioned that Tehsildar, Phalodi has conferred khatedari rights under section 15 of the Act. On enquiry it has been found that there is no letter issued from Tehsil office or any other competent office but the mutation has been with the active connivance of local Patwari, Sarpanch of the Gram Panchayat and the non-petitioners in their favour. The Tehsildar requested the Additional Collector that earlier the village Jhadasar (Raneri) was under the colonization department but in the year 2007 this village has been decolonized and the revenue record has been transferred to the revenue department. Therefore, this reference is being put up for restoration of entries in the revenue record. The Additional Collector on enquiry found this reference legally acceptable and he referred this matter under section 82 of the Act before this court with his explicit opinion.

3. During adjudication of this reference one Kishna Ram son of Deva Ram applied before this court that on his complaint this reference has been filed by the Additional Collector. Therefore, he is a whistle-blower complainant so he should be made party in this case. In the circumstances of the case, Kishna Ram has been made party by this court in this reference proceedings on 10.12.2012.

4. Heard the learned counsels of the parties.

5. The learned Dy. Govt. Advocate and the advocate for Kishna Ram contended before this court that the disputed land entered in mutation No. 6 i.e. khasra No. 792 measuring 132 bighas was a government land classified as gair-mumkin-magra. It has a drinking water community well and other rights of ways of the local people. The land is used by the local community for grazing cattle. The learned advocates further submitted that there was no allotment order for the disputed land in favour of Reshma Ram and others nor Tehsildar conferred any khatedari rights on them under section 15 of the Rajasthan Tenancy Act, 1955. The mutation was sanctioned in connivance with the Sarpanch, local patwari and Reshma Ram and others who were the beneficiaries. The learned advocates argued that this precious government land which was used by the local community has been fraudulently grabbed by the non-petitioners

under the garb of a fake allotment order alleged to be issued by the Tehsil office. They also stated that such mutation on the basis of allotment or conferment of khatedari rights under section 15 of the Rajasthan Tenancy Act, 1955 cannot be decided by the Sarpanch of the Gram Panchayat because such mutations are sanctioned in compliance of the court orders. The learned advocates finally urged the court that the mutation No. 6 should be quashed and set aside and the disputed land be entered as government land gair-mumkin-magra.

6. The learned counsel for the non-petitioners argued that the disputed land has been in their possession since a long time and it has been in their khatedari. He further argued that Tehsildar conferred khatedari rights on them because this land was entered as siwai chak land by the settlement. Therefore, the mutation has been rightly sanctioned and the land of khasra No. 792 measuring 132 bighas has been rightly entered in the names of the non-petitioners. He also argued that the complaint is politically motivated and the reference filed by the State is hopelessly time barred. Therefore, be dismissed.

7. I have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and also perused the record available on file.

8. First of all this court will take the issue of limitation as the learned advocate for the non-petitioners has raised this issue that the reference filed by the State is hopelessly time barred. This is very pertinent to mention here that the Rajasthan Tenancy Act, 1955 and the Rajasthan Land Revenue Act, 1956 do not prescribe any time frame for filing the reference. When there is no time-line prescribed by the statute then this is expected from the State to file such reference in a reasonable time. This reference has been filed before this court after some 48 years. But when we carefully peruse the record of this case, it unequivocally suggests that there was no allotment order or any other order issued by the competent authority in favour of Reshma Ram and others to get this land mutated in their names. In such a case when prima facie fraud has been played on the government office. The Sarpanch of the Gram Panchayat and

the local patwari have connived with the beneficiaries (non-petitioners) to get this mutation sanctioned on a fake document. In such a case this court finds it appropriate to decide this case on merits. Besides it, Hon'ble Rajasthan High Court in *Chimman Lal and ors Vs. State* (2001(1) WLN (Raj.) 207) has held that when there is no time-line prescribed in the statute and the impugned orders is a void order, the reference can be heard on merit. The relevant extract of the judgment are as under:-

"In view of the above discussion, we are of the opinion that it is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. As held by the Supreme Court in *Ajaib Singh's case* the courts only interpret law and do not make laws. Personal view of the Judge presiding the court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. Hence we are of the opinion that when no period of limitation under Rule 272 of the Rules 1961 is prescribed by the legislature then we cannot prescribe any period of limitation that in what time the revisional powers can be by the authority under Rule 272 of the 1961 Rules. When no period of limitation is provided then in our opinion the same has to be exercised within a reasonable time and that will depend upon facts and circumstances of each case like (1) when there is fraud played by the parties; (ii) the orders are obtained by mis-representation or collusion with public officers by the private parties; (iii) Orders are against the public interest; (iv) the orders are passed by the authorities who have no jurisdiction; (v) the order are passed in clear violation of rules or the provisions of the Act by the authorities; and (vi) Void orders or the orders are void at initio being against the public policy or otherwise. The common law doctrine of public policy can be enforced wherever an action affect/ offends the public interest or where harmful result of permitting the injury to the public at large is evident. In such type of cases, revisional powers can be exercised by the authority at any time either suo moto or as and when such orders are brought to their notice."

The similar view has also been expressed by Hon'ble Apex Court in *Ajaib Singh's case* as reported in (JT 1999 (3) SC 38).

9. The Hon'ble Supreme Court has held in *Smt. Shrisht Dhawan Vs. Shaw Brothers*, AIR 1992 (SC) 1555, has observed as under:-

"Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. This is a concept descriptive of human conduct."

In United India Insurance Co. Ltd., Vs. Rajendra Singh and ors (2000) 3 SCC 581, Hon'ble Supreme Court has held that *fraud and justice never dwell together* and it is a pristine maxim which has never lost its temper over all these centuries. Ratio laid down by the Supreme Court in various cases is that dishonesty should not be permitted to bear the fruit and benefit to the person who played fraud or made misrepresentation and under these circumstances the court should not perpetuate the fraud by entertaining petitions on their on behalf."

10. In this case the non-petitioners could not produce any document even before this court which has been issued by the competent authority in their favour. This clearly shows that the impugned mutation has been fraudulently sanctioned by the Sarpanch of the Gram Panchayat in connivance with the non-petitioners. This is a peculiar case where the state has been put to loss of vast community land measuring 132 bighas and the local officers of the revenue department also connived with the non-petitioners and the local community at large was divested from the use of this big chunk of land for grazing their cattle and other ancillary usages.

11. In considered opinion of this court, this reference is hereby accepted. The disputed land of khasra No. 792 area 132 bighas of village Raneri which is presently entered in the names of the non-petitioners is quashed and set aside. The Tehsildar is directed to enter this disputed land as siwai chak land classification gair-mumkin-magra. The Tehsilar is further directed to take possession of the disputed land without any delay and open it for public use. This court finds it appropriate to direct Sub-Divisional Officer, Phalodi and Tehsildar, Phalodi to lodge a police complaint in the concerned Police Station for this fraudulent act against all the parties involved in this case, specially the then Sarpanch, Gram Panchayat, Kanasar and the then local Patwari and the non-petitioners.

Pronounced.

(Bajrang Lal Sharma)
Member