

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Appeal No.10916/2000/Ceiling/Bundi :**

1. Heeralal S/o Shri Biharilal (Deceased), represented by :-
 - 1/1. Dropadi Bai widow of Shri Heeralal
 - 1/2. Phool Singh S/o Shri Heeralal
 - 1/3. Madhu D/o Shri Heeralal
 - 1/4. Mukesh S/o Shri Heeralal, minor through his mother Smt. Dropadi Bai widow of Shri Heeralal
 All are by caste Meena, residents of Village Balkasa, Tehsil Keshoraipatan, District Bundi.
2. Mathuralal S/o Shri Biharilal, by caste Meena, R/o Village Balkasa, Tehsil Keshoraipatan, District Bundi.
3. Dhanraj S/o Shri Biharilal, by caste Meena, R/o Village Balkasa, Tehsil Keshoraipatan, District Bundi.
4. Shanti Bai D/o Shri Biharilal W/o Shri Ghanshyam, by caste Meena, R/o Village Teerath, Tehsil & District Bundi.
5. Manbhar D/o Shri Biharilal W/o Shri Santosh Kumar, by caste Meena, R/o Village Adeela, Tehsil Keshoraipatan, District Bundi.
6. Mohani Bai D/o Shri Biharilal W/o Shri Satyanarain, by caste Meena, R/o Village Binayka, Tehsil & District Bundi.
7. Gayatri D/o Shri Biharilal W/o Shri Jagdish, by caste Meena, R/o Village Bhindi, Tehsil Keshoraipatan, District Bundi.
8. Ramnathi Bai D/o Shri Rangal W/o Shri Birdhilal, by caste Meena, R/o Village Balkasa, Tehsil Keshoraipatan, District Bundi.

... Appellants.

Versus

State of Rajasthan.

... Respondent.

++*

S.B.

Shri Satish Chand Kaushik, Member

Present :

Shri Surendra Maheshwari : counsel for the petitioners.

Shri V.P. Singh, Govt. Advocate and Shri R.P. Sharma, Dy.Govt.Advocate: for the State.

++*

J U D G M E N T

This appeal has been preferred under section 23(2)A of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Ceiling Act of 1973") against the judgment of learned Additional Collector (Administration), Bundi dated 05.7.2000 passed in case No. 317/83(Ceiling) 'State Vs. Biharilal, Heeralal'.

2. The brief facts of the case are that on 11.2.1976, the Authorised Officer (Sub Divisional Officer, Bundi) passed a decision by which he decided that the non-applicants are holding land measuring 55 bigha 13 biswa beyond ceiling limit which land is liable for acquisition by the State under the Ceiling Act, 1973. Against that order, a review petition was filed by the non-applicants Biharilal etc. (appellants herein). After hearing the review petition, the learned Authorised Officer reviewed his judgment dated 11.2.1976 vide his order dated 21.4.1976 and held that only 13 bigha 16 biswa land is liable for acquisition. The process was completed and matter closed. It was apprised to the State that the judgment dated 11.2.1976 which was reviewed on 21.4.1976 was not passed according to law. The Authorised Officer passed the judgment against law and against the interest of the State because the son of non-applicant Heeralal was minor, but the learned Authorised Officer treated him as major. Apart from this, certain transfers of land were not found bonafide which was treated bonafide transfer by the Authorised Officer and as such the State Govt. has decided to issue the notice to the land holder under section 15(1) of "the Ceiling Act of 1973" and vide its order dated 14.7.1983, directed that the so-called ceiling case to be Re-opened after giving the show cause notice to all concerned and a detailed enquiry to be made according to section 15 of the Ceiling Act.

3. Accordingly, this ceiling case was re-opened and the learned Additional District Collector (Adm.), Bundi has passed his order under section 15(1) of "the Ceiling Act of 1973" after hearing of both the parties, by which the learned Authorised Officer declared that in old Act, the land holder was holding 35.33 acres of land in surplus which was liable for

acquisition in the interest of State. Being aggrieved with that judgment, the present appeal has been preferred before the Board of Revenue.

4. Heard learned counsel for the parties and perused the record.

5. The main contention of the learned appellants' counsel is that they had challenged the judgment of the learned Additional Collector on many grounds, but however at this stage he is pressing only upon the legal issue regarding non-compliance of section 4(1)(a) to (c) of "the Ceiling Act of 1973" read with Rule 4, 4A, 5 and 5(3) of the Ceiling Rule, 1973 to be decided by this Board and if it is found that the mandatory provisions of Rule 5(3) of the Ceiling Rules of 1973 were not complied with, then the matter to be remanded back to the learned trial court for the compliance thereof. In support of his arguments, the learned counsel cited following rulings :

1. 1985 RRD page 143
2. 1986 RRD page 93
3. 2006(2) RRT page 821
4. 2006(2) RLW Raj. page 818
5. 2014(1) RRT page 303
6. 2014 DNJ (Rev.) page 115

6. On the other hand, learned Government Advocate argued vehemently that there is no lacuna in the order of learned Additional Collector (Admn.), Bundi dated 05.7.2000. The order is a detailed order and all the legal requirements have been completed by the learned lower court as mentioned in order itself :

“पत्रावली का अवलोकन करने एवं उभय पक्षों की बहस पर मनन करने के उपरान्त हम यह उल्लेख करना चाहेंगे कि हालांकि प्रकरण को राज्य सरकार ने धारा 15(1) के अन्तर्गत खोला है परन्तु मामले का परीक्षण धारा 4(1) परन्तुक 2 के अन्तर्गत भी परीक्षण किया जाना अपेक्षित है।”

And thereafter the learned lower court has described the nature of the land and passed the impugned order after consideration of all the factual matrix. After all, before the learned lower court, it was never alleged by the appellants that the nature of land as is mentioned in the judgment is wrong. It was not averred earlier as well and earlier the nature of the land was already ascertained and accordingly the ceiling procedure was completed

and then there was no objection from any party. In such circumstance at this stage, the non-applicants (the appellants herein) has no right to challenge the order of the learned lower court on the ground that enquiry under Rule 5(3) was necessary and the nature of land was not specified under section 4(1)(a) to (c) and as such the appeal is liable to be dismissed on this ground.

7. I have given my thoughtful consideration to the rival contentions and scanned the matter carefully.

8. Let us see legal position now. As per Rule 5(1) of the Rules of 1973, the Authorised Officer shall within one month of the receipt of return furnished by a person under section 10 or section 11 forward a copy of the return to the Tehsildar of the Tehsil in which the land is situated for verification from the land record and other tehsil revenue records about the correctness of particulars furnished in the return including the correctness of particulars about the :

- (a) land under assured irrigation capable of growing atleast two crops in a year,
- (b) land under assured irrigation capable of growing atleast one crop in a year,
- (c) other land not within categories specified in classes (a) & (b) above.

As per section 10, land holder has to furnish the returns for the land in excess of ceiling area and as per section 11 if the land holder fails to submit the return, the Authorised Officer may by a notice require for filing of return and if the land holder fails, then the Authorised Officer may extend time or get the information as per his source. Under Rule 4A of "the Ceiling Act of 1973", compulsion was made on the State Government that the State Govt. shall by notification in the Official Gazette, constitute a committee for each tehsil in the State for performing the functions of the committee under these rules :

Provided that until a notification is issued under this sub-section, the committee shall consist of-

- (a) the members of the Rajasthan Legislative Assembly in whose constituency the land is situated;

- (b) the Pradhan of the Panchayat Samiti having jurisdiction;
- (c) the Sarpanch of Panchayat having jurisdiction;
- (d) the Vikas Adhikari of the Panchayat Samiti having jurisdiction;
- (e) a person belonging to the Scheduled Caste or Scheduled Tribe nominated by the Panchayat Samiti having jurisdiction from among its members; and
- (f) the Tehsildar having jurisdiction.

As per rule 5(3), the Authorised Officer was duty bound to ask for the report of the committee constituted under section 4A and if no committee is there, then it was required to ask report from two members committee as required for quorum under the proviso of rule 4(4). As such it was incumbent upon learned Additional Collector that he has to ask for the report of the committee constituted under Rule 4A and if there is no committee, then the report to be called from Tehsildar and other members as was required by law. But the learned Additional Collector/ Authorised Officer did not ask for any report and passed the order of ceiling which is primarily illegal.

9. This Board in the matter of 'Mst. Ramkanwari Vs. State of Rajasthan' RRD 1985 page 143 held that there is neither any report of the Tehsildar nor of the committee for determination of the nature of land under rule 5. There can be no dispute that first the ceiling area under the New Ceiling Law should be determined and thereafter it should be seen under the second proviso of sub section (1) of section 4 of the New Ceiling Law as to what shall be ceiling area. So far these mandatory provisions are not complied with, the Hon'ble Board set aside the order of the Additional Collector.

10. The Hon'ble Board mentioned specifically that in the matter of 'Ishwari Singh Vs. State of Rajasthan' RRD 1986 page 93, again the Hon'ble Board came to the conclusion that section 4(1)(a) to (c) of "the Ceiling Act of 1973" read with rule 5(3) of the ceiling rules, it was necessary for Authorised Officer to make enquiry from the Irrigation Department of the Government to determine the question whether the land was assured of irrigation from Government or private sources capable of

growing two crops or one crop in a year or not in the manner provided by that rule. No enquiry as contemplated by Rule 5 of the Ceiling Rules was made by the Authorised Officer or the Additional Collector. In such circumstances, the land could be held as land not within the categories specified in clauses (a) to (c) of sub section (1) of section 4 of the New Ceiling Law falling in fertile zone and ceiling area applicable to such lands. As such the appeal was allowed. In the matter of 'Dilbagh Singh Vs. State of Rajasthan & others' RRT 2006(2) page 821, the Hon'ble High Court of Rajasthan after giving a thoughtful consideration to section 15(1) and section 10 of the Ceiling Act and Rule 5 & 5(3) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 held that when the irrigation intensity available to land not considered which was necessary requirement and this issue goes to root of the case and this issue can be raised at any stage of the proceedings. Rule 5 of the Rules of 1973 pertains to verification of returns submitted by a person under section 10 or 11 of "the Act of 1973". Rule 5(3) of the Rules of 1973 provides that the Authorised Officer shall, on receipt of report from the committee and after such further enquiry as he deems necessary to make from other sources including enquiry from the Irrigation Department of the Government, determine the question whether any land assured of irrigation from Government or private concern capable of growing two crops or one crop in a year or not in the manner prescribed in clause (a), (b) or (c) or Rule 5(3) of the Rules of 1973. And as such, the procedure prescribed under Rule 5 of the Rules of 1973 was held to be necessary by Hon'ble High Court. In another matter 'Madan Lal Vs. State of Rajasthan & ors.' RLW 2006(2) Raj. page 818, the Hon'ble High Court of Rajasthan again held that the Additional Collector (Revenue), Baran ought to have asked the report of the Tehsildar along with the report of the committee of which Tehsildar is the secretary as well as further consider the other relevant factors. There is no mention at all of consideration of any of the relevant factors except the ratio method disclosed by the State Government in its reply. Thus, there is no material on record to show that on what basis the land has been held to be a land of assured irrigation capable of growing two crops in a year and as such, the matter was remanded back. The Hon'ble Board of Revenue in the matter of 'Puran Ram Vs. State of Rajasthan' also remanded the case on the same ground.

11. The point for consideration before this court is (1) whether the provisions of Rule 5 of the Rules of 1973 are mandatory in nature. (2) whether the appellants are having right to challenge the ceiling process on Re-opening of the process when earlier it was not challenged.

As discussed above, now it is clear from the pronouncements of the Hon'ble High Court of Rajasthan as well as of the Hon'ble Board of Revenue that the compliance of Rule 5 is mandatory. As per Rule 4A, the State Government has to constitute a committee by notification in the Official Gazette for each tehsil in the State for performing the functions. So far as the impugned order is concerned, there is no mention about the report of any committee or Tehsildar and other members as required under the rules. As per Rule 4A, if no committee has been constituted by the State Govt., then the committee shall consist of :

- (a) the members of the Rajasthan Legislative Assembly in whose constituency the land is situated;
- (b) the Pradhan of the Panchayat Samiti having jurisdiction;
- (c) the Sarpanch of Panchayat having jurisdiction;
- (d) the Vikas Adhikari of the Panchayat Samiti having jurisdiction;
- (e) a person belonging to the Scheduled Caste or Scheduled Tribe nominated by the Panchayat Samiti having jurisdiction from among its members; and
- (f) the Tehsildar having jurisdiction.

and the Tehsildar will be the secretary of the committee. Not more than 12 members to be nominated by the State Govt. for that purpose. At least 3 members will constitute the quorum for a meeting. As such, it is required that atleast 3 persons' committee to be nominated by the State Govt. and the report of the committee has to be summoned by the Authorised Officer prior to passing of the ceiling of land holdings. The Hon'bler High Court has held in the matter of Dilbagh Singh Vs. State of Rajasthan 2006(2) RRT page 821 that when the ceiling case has been reopened under section 15(1) and section 10 of "the Act of 1973", then Rule 5 and Rule 5(3) are to be followed and if there is reopening of process, the rule must be followed. Thus, the procedure prescribed under Rule 5 of the Rules of 1973 is

mandatory one. If the procedure has not been followed, then entire ceiling proceedings are void and liable to be quashed. The same view has been taken by the Rajasthan High Court in the matter of 'Madan Lal Vs. State of Rajasthan & ors.' reported in RLW 2006 (2) Rajasthan page 818. Thus, it is clear that if any ceiling process is being Re-opened by the State Govt., then whole of the process to be followed again as *de-novo* procedure is required.

12. As discussed above, I am of the considered opinion that when the process of the ceiling has been reopened, then the Authorised Officer is required to follow the *de-novo* procedure. The answers of both the points are inaffirmative.

13. In the result, this appeal is accepted. The orders of the Authorised Officer as well as of Additional Collector (Ceiling) are set aside. The case is remanded back to the Authorised Officer with the direction to proceed afresh. The interested assessee/ all parties concerned are directed to be present in the court of the Authorised Officer on _____. So far the matter has already been delayed a lot, the Authorised Officer/ Additional Collector should try to complete the ceiling process preferably within 6 months from the date of the receipt of the order and record concerned. The registry is directed to send the concerned record immediately to the learned trial court. The appeal is disposed of accordingly.

Pronounced in open court.

(SATISH CHAND KAUSHIK)
Member

++*