

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.4382/2010/LR/Jaipur :

State of Rajasthan, through Tehsildar Amer, District Jaipur.

... Petitioner.

Versus

Nathu S/o Shri Raghunath, by caste Balai, resident of
Village Nangalsiras, Tehsil Amer, District Jaipur.

... Non-Petitioner.

* * *

S.B.

Shri Pramil Kumar Mathur, Member

Present :

Smt. Poonam Mathur : Additional Govt. Advocate for the State.

Shri Bhawani Singh : counsel for non-petitioner.

* * *

Dated : 12 February, 2013

J U D G M E N T

This reference has been made by Additional Collector (Third), Jaipur under section 82 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') by his order dated 29.8.2008.

2. Brief facts of the case are that according to Additional Collector (Third), Jaipur the disputed land bearing khasra nos. 4, 5 min, 11 min, 12, total four in number measuring 4 bigha 19 biswa situated at Village Nangalsiras, Tehsil Amer in Jaipur District was recorded in Khatauni Bandobast of Samvat 2010 to 2023 in the name of temple Muafi Mandir Shri Dwarkadhish Ji. As per Milan Kshetraphal, this land was given new khasra numbers 4/864, 10, 11, 14, 17, 21/866, 22/867, 36, total eight in number area 1.25 hectare. By lapse of time, the name of temple was deleted from revenue records and the above land was recorded in favour of non-petitioner and accordingly, the non-petitioner was entered as khatedar in the Jamabandi of Samvat 2061 to 2064. Considering this transfer of the temple land to the non-petitioner as illegal being violative of

section 46 of Rajasthan Tenancy Act,1955, Additional Collector (Third), Jaipur has made this reference to the Board of Revenue.

3. I have heard the arguments of learned counsel for the parties and perused the record.

4. In support of reference, learned Addl.Govt.Advocate submitted that initially disputed land was entered in the name of Muafi Mandir Shri Dwarkadhish Ji; but ignoring the settled position of law & violating the provisions of the Rajasthan Tenancy Act, 1955 khatedari rights were given to non-petitioner, which is illegal. Hence, reference be accepted.

5. Learned counsel for the non-petitioner has contended that the disputed land does not belong to Mauafi Mandir Shri Dwarkadhish Ji and had never been in the khatedari & possession of the temple. Disputed land is not khudkasht land of temple and is in possession of non-petitioner and khatedari of this land was given to him as per the provisions of the Rajasthan Land Reforms & Resumption of Jagirs Act, 1952 (in short "the Jagirs Act"). He was continuously cultivating over it. He further argued that Government of Rajasthan has also issued various circulars on this issue, by virtue of that, non-petitioner has become khatedar tenant of the disputed land. Reference was moved with inordinate delay. Additional Collector has made this reference unnecessarily. Hence, the present reference deserves to be rejected. He has filed following judicial pronouncements in support of his contentions :-

- (i) 2009-10 (Supp.) RRT page 173, 294
- (ii) 2000 RRD page 14, 109, 189
- (iii) 2003 RRD page 71
- (iv) 1996 RRD page 535
- (v) 2006(1) RRT page 99
- (vi) 2005 RRD page 365, 669, 713, 742
- (vii) 1996(3) RBJ page 199
- (viii) 2005(12) RBJ page 297, 598, 600

6. I have given my earnest consideration to the rival arguments advanced by learned counsels and scanned the matter carefully.

7. From perusal of Khatauni Bandobast of Samvat 2010 to 2023, it appears that khatedari rights of the disputed land were recorded in the name of Muafi Mandir Shri Dwarkadhish Ji. Jamabandi of Samvat 2058 to 2061 reveals that disputed land has been entered in favour of non-petitioner and by efflux of time, the name of temple Muafi Mandir Shri Dwarkadhish Ji was deleted from the revenue records and non-petitioner was recorded as khatedar tenant of the temple land without any justified reasons.

8. Indisputably as held by legal fiction and by series of cases decided by different Hon'ble High Courts as well as by Hon'ble Apex Court, temple/ idol is a perpetual minor and it is not possible for temple to cultivate the land personally even the provision of section 2(K) of "the Jagirs Act" says that in the case of a person who is a minor, land shall be deemed to be cultivated personally even in the absence of such personal supervision.

9. It transpires from the revenue records produced by the petitioner that the disputed land was recorded in the name of non-petitioner without any convincing reasoning and without any legal edifice. As per sections 16 & 46 of the Rajasthan Tenancy Act, 1955, no khatedari rights can accrue to any person on the land originally held for idol/temple. No one can acquire khatedari rights derogating to the title of the temple. Under the revenue law, idol/temple is a juristic person having the status of perpetual minor and the transfer of khatedari rights of perpetual minor for whatsoever purpose is legally prohibited.

10. The temple is a perpetual minor and rights of temple are to be protected by the courts as is held by their Lordships of the Supreme Court in **A.A. Gopalkrishnan Vs. Chochin Devaswom Board (2007)7 SCC 482.**

11. Though it is trite that State Government has issued various circulars in the light of section 9 of "the Jagirs Act", yet section 9 of "the Jagirs Act" carries the very simple language stating that "Every tenant in a jagir land who at the commencement of this Act is entered in the revenue records as a khatedar, pattedar, khadamdar, or under any other description implying **that the tenant has heritable and full transferable rights** in the tenancy shall continue to have such rights and shall be called a khatedar tenant in respect of such land",

conveying the meaning that all the persons who were shown as khatedar, pattedar, khadamdar, or under any other description having the **heritable and full transferable rights** shall continue to have such rights. Therefore, on the basis of the above circulars along with the provisions of "the Jagirs Act", it must have to be seen that the person claiming the khatedari rights must have **heritable & transferable rights** in the tenancy at the time of commencement of "the Jagirs Act".

12. The circulars issued by the Government of Rajasthan on 24.5.2007 and 06.01.2010 categorically emphasise that only on satisfaction of the condition precedent of heritable or full transferable rights, the khatedari of land of Muafi Mandir can be entered in favour of such person. For the sake of arguments, if above circulars carry different intentions of the executive, then the position of law is vividly explained by constitutional bench of the Hon'ble Supreme Court in '**Santram Sharma Vs. State of Rajasthan & ors.**' AIR 1967 Supreme Court 1910 as under :-

"It is true that Government cannot amend or supersede statutory rules by administrative instruction."

13. A constitutional bench of the Supreme Court in '**Secretary, State of Karnataka & Ors. Vs. Uma Devi & Ors.**' AIR 2006 Supreme Court 1806 held as under :-

"It is recognized that no Government order, notification or circular can be substituted for the statutory rules framed under the authority of the law."

14. In '**K.P. Sudhakaran & Anr. Vs. State of Kerala & Ors.**' AIR 2006 Supreme Court 2138, the Apex Court held that where statutory rules govern the field, prior executive instructions ceases to apply.

15. Thus, it is settled law that executive instructions cannot be issued in contravention of the statutory rules for the reason that an administrative instruction is not a statutory rule nor does it have any force of law.

16. So merely on the basis of the Government circulars, which in view of what has been stated above, have no legal force unless the conditions

enumerated in section 9 of "the Jagirs Act" are fulfilled or proved by non-petitioner and **heritable or transferable rights** as envisaged in section 9 of "the Jagirs Act" were disclosed and proved, the khatedari of the disputed land cannot be claimed by the non-petitioner.

17. The pre-requisite condition for claiming khatedari rights on the strength of section 9 of "the Jagirs Act" is that person claiming such rights should prove the fact that he was entered in the revenue record as a khatedar, pattedar, khadamdar or under any other description implying **that the he had heritable and full transferable rights** in the tenancy. The non-petitioner did not specifically plead such a case and they did not at all prove any of the requirements of section 9 of "the Jagirs Act".

18. My above view has found force from the following judgments published in :-

- (i) AIR 2007 (NOC) 1742 (Rajasthan)
'Narain & ors. Vs. State of Rajasthan & ors.'
- (ii) AIR 2008 (NOC) 2849 (Rajasthan)
'Kailash Chand & ors. Vs. Board of Revenue & ors.'
- (iii) AIR 2008 (NOC) 2080 (Rajasthan)
'Thakurji Shri Radhda Ballabhji Birajman,
Gram Mandawar Vs. Board of Revenue'
- (iv) AIR 1998 Rajasthan 85
'Temple of Thakurji Vs. State of Rajasthan & ors.'
- (v) 1994 RRD page 1
'Rampratap & anr. Vs. Board of Revenue & ors.'
- (vi) 1991(2) RLR page 657
'Prabhudas Vs. State of Rajasthan & ors.'
- (vii) 2001 WLC (Rajasthan) UC page 451
'State of Rajasthan Vs. Tara & ors.'
- (viii) RLW 2001(2) Rajasthan page 966
'Mishru Vs. Board of Revenue & ors.'
- (ix) 2001(3) WLN page 363
'Idan Vs. State of Rajasthan & anr.'
- (x) Judgment passed on 29.01.2004 by Hon'ble Apex Court
in Civil Appeal No.12624/1996
'Prithvi Lal Vs. Board of Revenue'

19. As the transfer of temple land is void ab initio and has no sanctity in the eye of law, hence it can be challenged at any point of time as held by larger bench of Hon'ble Rajasthan High Court in '**Chiman Lal Vs. State of**

Rajasthan & others' reported in 2000(1) WLN page 200; therefore, the contention raised by the non-petitioner about submission of reference with inordinate delay, carries no value. Therefore, the reference made by Additional Collector (Third), Jaipur deserves to be accepted.

20. In view of the above backdrop of the case, the ratio of the judgments cited by the learned counsel for the non-petitioner cannot be made fully applicable to the present case.

21. Consequently, the reference is accepted and the disputed land is ordered to be restored in the khatedari of "Muafi Mandir Shri Dwarkadhish Ji" with deletion of the name of non-petitioner as khatedar from the revenue records. The reference is disposed of accordingly.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

* * *