

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Reference No.1419/2001/TA/Barmer :**

State of Rajasthan, through Tehsildar Chauhtan District Barmer.

... Petitioner.

Versus

1. Kheem Singh S/o Shri Heer Singh (Deceased),
through legal representative :-
1/1. Chhail Singh S/o Shri Kheem Singh, by caste Rajput,
R/o Village Bamadla, Tehsil Chauhtan, District Barmer.
2. Prabhuram }
3. Babulal } sons of Shri Tulchharam
4. Achlaram }
5. Thakraram }
No.2 to 5 are by caste Meghwal, residents of
Village Bamadla, Tehsil Chauhtan, District Barmer.
6. Bhupal Singh S/o Shri Chhail Singh, by caste Rajput
7. Madan Kanwar W/o Shri Tan Singh, by caste Rajput
8. Purna Singh S/o Shri Chhail Singh, by caste Rajput
No.6 to 8 are residents of Village Bamadla,
Tehsil Chauhtan, District Barmer.
9. Jiyaram }
10. Purkharam } sons of Shri Rasigaram
11. Cheemaram }
12. Bheemaram }
13. Chaina S/o Shri Mala, by caste Bheel (Deceased),
through legal representatives :-
13/1. Gordhan }
13/2. Nagaram } sons of Shri Chaina
13/3. Nimbaram }
- 13/4. Magaram S/o Shri Punmaram
13/5. Chetanram S/o Shri Punmaram
13/6. Khetu widow of Shri Punmaram
No.13/1 to 13/6 are by caste Bheel, residents of Village Lukhu,
Tehsil Gudamalani, District Barmer.

... Non-Petitioners.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

- Shri Surendar Sharma : Dy.Govt.Advocate for the State.
 Shri Bhawani Singh : counsel for non-petitioner no. 8.
 Shri Dungar Singh Rathore : counsel for non-petitioners no. 9 to 12.
 Shri Sameer Ahmed : counsel for non-petitioner no. 13/4.
 None present : on behalf of rest of the non-petitioners.

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Dated : 10 January, 2013

J U D G M E N T

This reference has been made by District Collector, Barmer under section 232 of the Rajasthan Tenancy Act, 1955 (in short to be referred as 'the Act') by order dated 23.2.2001.

2. Brief facts of the case are that the disputed land situated at Village Bamadla Tehsil Chauhtan District Barmer bearing khasra no.288 measuring 4 biswa & khasra no.289 measuring 188 bigha 2 biswa was recorded in the khatedari of member of scheduled tribe i.e. Chaina S/o Mala, father of non-petitioners no. 13/1 to 13/3, by caste Bheel in the revenue records. Thereafter, non-petitioner no.1 Kheem Singh filed a revenue suit before the Assistant Collector, Barmer for declaration of khatedari rights of the disputed land, which revenue suit was decreed on 15.6.1967 in favour of Kheem Singh S/o Heer Singh, father of non-petitioner no.1/1, by caste Rajput (member of general caste & not the member of scheduled tribe) and he was recorded as khatedar in the revenue records. Later on, this land was sold to non-petitioners no.2 to 12 and through subsequent mutations, they were recorded as khatedar in revenue records. Considering this judgment & decree dated 15.6.1967 in favour of non-petitioner no. 1 as illegal being violative of section 42(b) of the Rajasthan Tenancy Act, 1955, District Collector, Barmer has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.

3. I have heard the arguments of learned Dy.Govt.Advocate and learned counsels for the non-petitioners and perused the record.

4. In support of reference, learned Dy.Govt.Advocate & counsel for non-petitioner no.13 submitted that Assistant Collector, Barmer has passed the judgment & decree which is forbidden by law and against public policy. The disputed land belongs to the member of scheduled tribe, therefore, as per section 42(b) of "the Act", khatedari rights cannot be transferred to a member of general caste. The above said judgment & decree is absolutely against the provisions of law, hence deserves to be set aside. In view of above, learned Dy.Govt.Advocate requested that the reference be accepted.

5. Learned counsels for the non-petitioners no.8 & 9 to 12 have submitted that non-petitioners' names have been entered in revenue records validly and they are continuously cultivating on the disputed land and are in cultivatory possession since long. He further submitted that Chaina has filed a consented written statement before the trial court and on the basis of the consented written statement, trial court has decreed the revenue suit validly. Reference has been filed with an inordinate delay. Therefore, the present reference deserves to be rejected. In support of their contentions, they have placed reliance on the following judgments :-

- (i) RRT 2007 (1) page 39
- (ii) RRD 2005 page 365

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

7. From perusal of the record, it is crystal clear that concerned Tehsildar, Chauhtan has moved a reference application before learned District Collector, Barmer on the principal ground that Assistant Collector, Barmer has decreed the suit in flagrant violation of section 42(b) of "the Act".

8. Indisputably, as per revenue record, the land in question was originally recorded in the name of Chaina, father of non-petitioner no.13/1 to 13/6 and from the perusal of the judgment & decree dated 15.6.1967 passed in revenue suit no.21/67 of Assistant Collector, Barmer, it is evident that suit was decreed on the basis of consented written statement.

9. The prohibition of section 42(b) of "the Act" about the transfer of agriculture land by a member of SC/ST in favour of non-SC/ST person is absolute and cannot be evaded by consent. The word 'transfer' used in section 42(b) of "the Act" should be treated as comprehensive and even if an agricultural land in khatedari of scheduled tribe is given to non-scheduled tribe by a consent decree, then also it would be covered by the protective umbrella of section 42(b) of "the Act".

10. Admittedly, non-petitioner no.13 was the member of scheduled tribe and non-petitioner no. 1 belonged to member of non-scheduled tribe.

Therefore, in view of the bar contains in section 42(b) of "the Act", the judgment passed entirely on the basis of the consented written statement, is absolutely forbidden by law & is void ab initio and has the effect of nullity. Therefore, on the basis of ab initio void judgment, consequential act could not be held valid.

11. Moreover, from the perusal of the case file of the revenue suit filed by the non-petitioner no.1 Kheem Singh, it appears that learned trial court has decreed the suit without disclosing any reason by a non-speaking order passed in a few lines which is not permissible & legal.

12. As far as contentions with regard to inordinate delay is concerned, as law does not permit the conferment of khatedari to non-scheduled tribe person by a member of scheduled tribe in any manner and having distinguished status of member of scheduled tribe, such transfer is ab initio void; therefore, on the technical ground of limitation, such illegal practices cannot be encouraged.

13. The larger bench of the Hon'ble Rajasthan High Court in "Chiman Lal Vs. State of Rajasthan & others" reported in 2000(1) WLN page 200 has specifically arrived to the conclusion that -

“when (i).....;

(ii).....;

(iii) orders are against the public interest;

(iv) the orders are passed by the authorities who have no jurisdiction;

(v) the orders 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 ab 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.”

14. Hence, in view of the above discussion and the judgment pronounced by the larger bench as quoted above, the citations submitted by the learned counsels for non-petitioners supply no force.

15. Consequently, in the above scenario, the impugned judgment & decree passed in flagrant violation of section 42(b) of "the Act" and being against the public policy, is liable to be set aside. Thus, the reference is hereby allowed and the impugned judgment & decree of Assistant Collector, Barmer passed on dated 15.6.1967 in revenue suit no. 21/67 is set aside.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

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