

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Review No.6445/2002/Escheat/Jaipur :**

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| 1. | Gangasahai | } | sons of Shri Nanu, nephew of Shri Sujya |
| 2. | Ganpat | | S/o Radha, by caste Brahman, residents of
Village Jaisinghpura Khor, Tehsil & Distt. Jaipur. |

...Petitioners.

Versus

State of Rajasthan.

... Non-Petitioner.

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D.B.

Shri Pramil Kumar Mathur, Member
Shri Madan Mohan Sharma, Member

Present :

Shri Virendra Singh Rathore : counsel for the petitioners.

Shri R.K. Gupta : Government counsel for the non-petitioner.

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Dated : 16 January, 2013

J U D G M E N T

This review petition has been brought against the judgment passed by the Division Bench of this court on 03.10.2002 in appeal no.160/2000 filed under the Rajasthan Escheats Regulation Act, 1956 (in short “the Act”).

2. The facts of the case are that Ex-Sarpanch of Village Jaisinghpura Khor Tehsil & District Jaipur, Shri Ramgopal Sharma presented an application before the District Collector, Jaipur stating that Sujya, sole khatedar of the land bearing Arajhi khasra no.2134 area 22 bigha 15 biswa situated at Village Jaisinghpura Khor has died intestate leaving no heirs. But Gangasahai and Ganpat by personating themselves falsely as sister’s sons of deceased Sujya got the mutation of the above land in their favour while they are even not remotely related with deceased Sujya.

3. This application was forwarded by District Collector, Jaipur to concerned Tehsildar. After obtaining the report from the concerned Tehsildar, the District Collector, Jaipur initiated an enquiry under the provisions of section 6 of “the Act” and after due satisfaction, he came to the conclusion by order dated 26.6.2000 that last owner of the disputed property has died without leaving any heir and submitted the case file to District Judge, Jaipur for passing vesting order in respect of disputed property. Being aggrieved with the order dated 26.6.2000 passed by District Collector, Jaipur, present petitioners filed an appeal before the Board. The learned Division Bench of the Board while concurring with the order passed by the District Collector, dismissed the appeal by impugned order dated 03.10.2002. By this review petition, the present petitioners have assailed the order passed by the Board of Revenue on 03.10.2002.

4. We have heard the arguments of learned counsel for the parties and perused the record.

5. Learned counsel for the petitioners has vehemently argued that earlier the Division Bench of the Board of Revenue in judgment reported at 2003 RRD page 54 has held that provisions of “the Act” are not applicable to the agricultural holdings; therefore, the revenue court has no jurisdiction to deal with it and Hon’ble Division Bench has passed the impugned order against the settled principles of law; this is an error apparent on the face of the record, which deserves to be set aside.

6. On the contrary, the learned counsel for the State Government submits that “the Act” contains no provision of review; therefore, the review of the impugned order is not maintainable. He further argued that “the Act” is a Special Act on which the provisions of the General Law cannot prevail. Hence, the review provisions of the Rajasthan Land Revenue Act, 1956 and Civil Procedure Code are not applicable in the present case. Thus, the review petition is liable to be rejected.

7. We have given our thoughtful consideration to the contentions made by learned counsel for the parties and scanned the matter carefully.

8. **The question of law presented for determination is that whether the Board of Revenue has power to review its previous order passed under the provisions of “the Act”.**

9. This fact is beyond challenge that District Collector has passed the order dated 30.10.2000 under the provisions of “the Act” which contains effective 14 sections in force. Sections 1 & 2 of “the Act” say about the short title, extent, commencement & definitions. The general superintendence of all property has been given to Collector as per section 3. Section 4 speaks about the report by Tehsildar for entitlement of property. Section 5 gives directions for maintenance of register while section 6 which is backbone of “the Act” deals with the enquiry by Collector. According to section 7, any person aggrieved by the final order of the Collector passed under section 6, may appeal to the Board. Section 8 deals with the proceedings by the court of District Judge which culminates in claims or vesting order passed under section 9. Section 10 & section 11 are the follow up actions by the Collector upon receipt of the order passed under section 9. Section 12 gives the State to make rules for the purpose of carrying out the provisions of “the Act”. By virtue of section 13, State Govt. may delegate its power to Board. Section 14 carries certain saving provisions. Thus, upon perusal of the entire Act, we find no provision in “the Act” granting express power of review to the Board.

10. It is well settled that review is a creature of Statute and cannot be entertained in the absence of the explicit provision.

11. Hon’ble Supreme Court in its judicial pronouncement reported in AIR 1966 Supreme Court page 641 has held that **“in the absence of any express power, it is manifest that the competent authority cannot review its previous order.”**

12. Hon’ble apex court in AIR 1970 Supreme Court page 1273 has specifically held that **“the power to review is not an inherent power, it must be conferred by law either specifically or by necessary implication.”**

13. Similar view has been reiterated by the Hon'ble Supreme Court in latest pronouncement reported in AIR 2010 Supreme Court 3745. Hon'ble Apex Court has observed that **“It is settled legal proposition that unless the statute/ rules so permit, the review application is not maintainable. In absence of any provision in “the Act” granting an express power of review, it is manifest that a review could not be made and the order in review, if passed, is ultra virus, illegal and without jurisdiction.”**

14. The learned counsel for the petitioners was unable to attract our attention towards any provision in “the Act” by which it could be gathered that the Board has power to review its earlier order passed under “the Act”. Thus, the question whether the impugned order is correct & valid in law does not arise for consideration.

15. Though, the learned counsel for the petitioners has filed this review petition under the provisions of Rajasthan Land Revenue Act, 1956 read with Civil Procedure Code, but “the Act” is a Special Law, so it has overriding effect in relation to the provisions which are inconsistent with the provisions of General Law. The provisions of the Special Law will govern the provisions of General Law.

16. Therefore, we are of the opinion that a case is not open to review unless the statute gives such a right. Jurisdiction of review can only be derived from the statute; thus in view of the above, the law on point can be summarised to the effect that in absence of any statutory provision, providing for review, entertaining an application for review is not permissible. As a result, we refrain ourselves to entertain this review petition; hence it is dismissed accordingly.

Pronounced in open court.

(MADAN MOHAN SHARMA)
Member

(PRAMIL KUMAR MATHUR)
Member

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