

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.5702/2009/LR/Nagaur :

State of Rajasthan, through Tehsildar Ladnu, District Nagaur.

Petitioner.

Versus

1. Chhogaram S/o Shri Noparam
2. Hanmanaram S/o Shri Noparam
3. Dhanni Devi widow of Shri Noparam

All are by caste Jat, residents of Village
Bader, Tehsil Ladnu, District Nagaur.

... Non- Petitioners.

* * *

S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Hagami Lal Choudhary : Dy. Govt. Advocate for State.

Shri Jasraj Jaipal : counsel for the non-petitioners.

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Dated : 20 February, 2013

ORDER

This reference is listed before this court for disposal of the application submitted by the Additional District Collector, Deedwana (Nagaur) on 27.01.2010 by which he has requested to the Board of Revenue to dismiss the reference as withdrawn.

2. Before proceeding further, it is essential to have a bird's eye view of this reference petition :-

As stated, the disputed land bearing khasra nos. 256/335, 256/336 & 256/337 measuring 18 bigha, 3 bigha 10 biswa & 17 bigha 11

biswa respectively situated at Village Bader, Tehsil Ladnu in Nagaur District was recorded in the name of Doli Bhumi Dadhimata Ji in revenue records. By lapse of time, the name of Doli was deleted from revenue records and the above land was recorded in favour of non-petitioners. The mutation no.302 was effected thereto and accordingly, the non-petitioners were entered as khatedar in the Jamabandi of Samvat 2064 to 2067. Considering this transfer of the Doli land to the non-petitioners as illegal being violative of section 46 of Rajasthan Tenancy Act,1955, Additional District Collector, Deedwana (Nagaur) has made this reference to the Board of Revenue by his order dated 20.4.2009.

3. Thereafter, present non-petitioners had filed review petition against submission of earlier reference dated 20.4.2009 before Additional Collector, Deedwana (Nagaur), who by his order dated 06.01.2010 accepted the review petition and chose to proceed further for rehearing on original reference. The Additional Collector finally dismissed the reference by order dated 25.01.2010 and set aside the earlier order of reference dated 20.4.2009 with the directions to withdraw present reference petition pending before the Board of Revenue. Resultantly, Additional Collector, Deedwana (Nagaur) has moved the application for withdrawal of reference petition which is under consideration before the Board of Revenue.

4. Heard the arguments of learned Dy. Govt. Advocate & learned counsel for the non-petitioners and perused the record.

5. Learned counsel for the State has submitted that in view of the letter dated 27.1.2010 tendered by Additional Collector, Deedwana (Nagaur), this reference petition is ordered to be withdrawn as prayed by concerned Additional Collector.

6. Learned counsel for the non-petitioners has accorded his consent to pass the order accordingly.

7. I have given my earnest consideration to the arguments advanced by learned counsels and critically scanned the material available on record.

8. At the outset, it is required to be noted that the question as to whether permission to withdrawal of reference petition can be given or not, is dependable on certain factual & legal aspects which though not patently visible in the matter under hand, but certainly it has latent impacts. In this scenario, from the perusal of the case file, it transpires that the then learned Additional Collector, Deedwana (Nagaur) had moved the reference by order dated 20.4.2009. Thereafter, a review petition was filed before the concerned Additional Collector and the concerned Additional Collector allowed the review petition on 06.1.2010 and after rehearing, he dismissed the reference petition by detailed order dated 25.01.2010 and earlier order of reference dated 20.4.2009 was also set aside and it was also ordered that earlier reference moved before the Board of Revenue may be withdrawn. On that behest, above letter for withdrawal was filed.

9. It is manifest from a reading of section 82 of the Rajasthan Land Revenue Act, 1956 that Collector has been entrusted with power *“to call for and examine the record of any case decided or proceedings held by any revenue court or officer subordinate to him for the purpose of satisfying himself as to the legality or propriety of the order passed and as to the regularity of proceedings;*

and, if he is of opinion that the proceedings taken or order passed by such subordinate court or officer should be varied cancelled or reversed, he shall refer the case with his opinion thereon for the orders of the Board, if the case is of a judicial nature or connected with settlement, or for the orders of the State Government if the case is of a non-judicial nature not connected with settlement.”

10. In other words, the power given to the Collector by legislature under section 82 of “the Act” is to make a recommendation to the Board or to the State Government and not to pass any order himself about the legality or propriety of the order or proceedings held by any revenue court or the officers subordinate to him.

11. In my considered opinion, this question is not res integra that petition by which a reference is made, is only an expression of opinion and not an order. My this view is also covered by the decisions rendered by the various benches of this court in the cases of :

- (i) 'Ugam Kanwar Vs. Pokar Singh'
1978 RRD page 439
- (ii) 'M/s Hindustan Copper Ltd. Vs.
State of Rajasthan & others'
1973 RRD page 650
- (iii) 'Laddu Lal Vs. Bhairon'
1983 RRD page 759

12. Apart from the above, the power of review can be exercised by the revenue courts in the manner as available in section 86 of the Rajasthan Land Revenue Act, 1956 which provides that :

“(1)

*(2) Every other revenue court or officer may either on its or his own motion, or on application of any party interested, review any **order** passed by itself or himself or by any of its or his predecessors in office and pass such orders in reference thereto as it or he thinks fit :*

Provided that :

- (i)*
- (ii)*
- (iii)*

(3)”

which reveals that power of review can be exercised only when any person considering himself aggrieved by the order of any revenue court. The genesis of review is an **order** which must be in existence.

13. Keeping in view the above stated legal position, let us examine whether this is a fit case in which the application for withdrawal of reference petition be allowed.

14. As discussed above that *reference is not an order, it is mere an expression of opinion; therefore, the opinion of Collector is not within the purview of review because for the purpose of review, it is necessary to show existence of an “order” which requires judicial intervention. When the position of law is very much clear on the point that reference is mere an expression of opinion and it is not an order, therefore, in the garb of the review petition, Collector has no power to exercise the power of judicial review on his opinion made in the reference petition.* Otherwise also, if such acts are allowed to be prevailed, then certainly there will be no distinction between the opinion and order and the power of reference as enumerated in section 82 of the Rajasthan Land Revenue Act, 1956 and in section 232 of the Rajasthan Tenancy Act, 1955 will serve no useful purpose and any intentional or innocent act of the Additional Collector by exercising the power of review may frustrate the intention of the legislation to incorporate the power of reference designated to the Board of Revenue.

15. Therefore, for the reasons stated above, I am of the candid view that in the guise of the judicial power of the review, a reference cannot be withdrawn by the Collector/ Additional Collector. Therefore, the withdrawal application filed by the Additional Collector, Deedwana (Nagaur), being against the law, is dismissed accordingly. A copy of this order may be circulated to all the revenue courts after prior approval of the Hon'ble Chairman, Board of Revenue.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member

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