

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal No.2295/2012/TA/Jaipur :**

Ramsahai Meena alias Ramsi S/o Shri Sheobux, by caste Meena,  
R/o Village Khatiura alias Kalyanpura, Tehsil Sanganer, District Jaipur.

... Appellant.

**Versus**

1. Durgawati W/o Shri Anandilal, by caste Brahman,  
R/o Plot No. 18/34, Gandhinagar, Ratlam (Madhya Pradesh).
2. State of Rajasthan, through Tehsildar Sanganer.
3. Rajasthan Housing Board, through Commissioner,  
Rajasthan Housing Board,, Head Office "Aavasani Bhawan",  
Jyoti Nagar, Jaipur.

... Respondents.

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**D.B. (Camp: Jaipur)**

Shri Satish Chand Kaushik, Member  
Dr. Shamsuddin Khan, Member

**Present :**

Shri Sanjay Sharma : counsel for the appellant.

None present : on behalf of respondents.

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Dated : 09.9.2016

**J U D G M E N T**

This second appeal has been preferred under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter to be called "the Act") against the judgment & decree dated 05.3.2012 passed by learned Revenue Appellate Authority, Jaipur in appeal No.405/2010.

2. In this case, a suit for declaration was filed by Ramsahai Meena alias Ramsi against Viridi Chand S/o Chunni Lal in respect of the land bearing old khasra no. 343 present khasra no. 574, 575, 576 and 524/1216 measuring 0.69 hectare situated at Village Khatipura alias Kalyanpura Tehsil Sanganer. The plaintiff-appellant claimed that he is in possession of land in question since Svt. 2018 and has been owner of the land by adverse possession and he is having right to get his name entered into revenue record as tenant. During the pendency of the suit, Viridi

Chand was died and thereafter the name of Anandilal was inserted as adopted son of Viridi Chand. However, Anandilal also has been died and now Durgawati, widow of Anandilal has been inserted as respondent herein. When the proceedings were pending before the learned S.D.O., application under Order 7 Rule 11 was moved before the learned S.D.O. on the ground that the land in question has been acquired by the Rajasthan Housing Board and the possession of the land has been taken by the Housing Board, as such, the land is not the agricultural land and the suit is barred by law. It was requested that the suit has to be dismissed as being barred by law under Order 7 Rule 11 CPC. After hearing the arguments of both the parties, learned Assistant Collector, Jaipur-I vide his order dated 15.11.2010 accepted the application under Order 7 Rule 11 and dismissed the suit of the plaintiff. The learned Assistant Collector held that the proceeding for acquisition of the land was started as early as in 1992 and the award has been passed. The plaintiff was having right to plead his interest and ownership before the Land Acquisition Officer, but he miserably failed. The relief claimed in the suit cannot be granted by this court and as such the suit is barred by law. Being aggrieved with the order of the learned Assistant Collector, Jaipur, the plaintiff filed the first appeal before the learned R.A.A., Jaipur which was entered as appeal no. 405/2010/223/RT Act. After hearing both the parties, the learned R.A.A. vide his order dated 05.3.2012 dismissed the appeal and confirmed the order of the learned Assistant Collector, Jaipur-I dated 15.11.2010. The learned appellate authority mentioned that the appellant is not denying the acquisition but he is asking for the declaration of rights in his favour for compensation. The appellant has also moved the application under section 18 of the Land Acquisition Act for reference. Although the Housing Board has not made the reference, no such evidence has been produced before the court. The plaintiff-appellant is claiming his interest in land in dispute for the purpose of compensation and for that purpose, he is asking declaration. In such a circumstance, he has to apply before the Authorised Officer under the relevant provision of Land Acquisition Act. The learned counsel for respondent presented the judicial pronouncement RRT 2007(1) page 3. In that case, the Hon'ble Revenue Board decided that if the land has been acquired for public purpose, then no khatedari rights can be provided and if there is any dispute regarding compensation, then it is required that the

party should apply before the Land Acquisition Officer for compensation and get the matter referred before the competent civil court for the relief asked for. If there is any dispute in respect of title, then the case has to be filed under section 30 and 31 of the Land Acquisition Act in civil court and as such, the appeal was dismissed.

3. We have heard learned counsel for the appellant and perused the record.

4. The learned counsel for the appellant argued that both the learned lower courts have failed to appreciate the relevant provisions of law. They failed to appreciate the fact that the land for which the suit has been filed, is agricultural land and no civil court can decide the dispute regarding title or possession of the revenue land. If land has been acquired, then also the parties are having right to file the suit for declaration of their rights before the learned revenue court. In the case of Munna Devi Vs. Smt. Manbhar 2012(2) RRD page 432, it was specifically held that even after acquisition of land, revenue court can determine the right and share of the parties to get the compensation. The appellant had share in the land acquisitioned or not, has also to be examined by the revenue court. As such, the dismissal of the suit or appeal under Order 7 Rule 11 is erroneous. In the matter of Ganpat Lal & ors. Vs. State of Rajasthan 2010(1) DNJ (Raj.) 191, the Hon'ble Rajasthan High Court held that the land was acquired by the Rajasthan Housing Board; a suit was filed by the petitioners which was dismissed under Order 7 Rule 11 on the ground that notice under section 50 Rajasthan Housing Board Act, 1970 was not given. The Hon'ble High Court held that petitioners are not challenging any action of Housing Board regarding acquisition, but they are asking for the relief for declaration as khatedar-tenant and looking into the nature of lis, notice under section 50 was not necessary. As such, the petition was allowed and matter was remanded back to decide it on merit. The learned counsel for the appellant also argued that in the matter of 2010(2) DNJ Rajasthan page 776, it was specifically held that the civil court is having no right to decide the suit for declaration and permanent injunction relating to agricultural land under sections 207, 88 and 188 of the Rajasthan Tenancy Act, 1955. The khatedari rights on the basis of adverse possession can be declared by

only the revenue court and the suit is triable in respect of agricultural land only in revenue court and not in civil court. The learned counsel referred the judicial pronouncement AIR 2010 Rajasthan page 12 Abdul Fazal Vs. M/s S.J. Marble Mines and argued that at the time of rejection of plaint, only averments made into the plaint have to be seen. The leaned lower courts failed to appreciate this legal requirement also. Other legal pronouncement Teja Ram Vs. Beerbal Ram 2004 WLC Rajasthan UC 391 was referred and it was argued that only the statement made in the plaint has to be seen. If there is no pleading in the application that suit is barred by any law, then application has to be rejected. The learned counsel argued that in this case, the application under Order 7 Rule 11 has not disclosed any ground upon which the suit was barred by law and when the suit is not barred by law, then it cannot be dismissed. It was also argued that the Land Acquisition Officer or the civil court is having no right to decide the share of the parties. Only revenue court can determine the right and share of the parties. In this case, the relief asked for can be decided only by the revenue court. As such, the order of the learned Assistant Collector dated 15.11.2010 and that of the learned R.A.A. dated 05.3.2012 are erroneous and liable to be rejected. The matter has to be referred for fresh consideration on merit before the learned trial court.

5. After hearing the arguments of the learned counsel and going through the matter, the question for consideration before this Board is whether a suit filed after the acquisition of the land for determination of plaintiff's tenancy right for getting compensation is maintainable or not? We are of the considered opinion that rejection of the plaint under Order 7 Rule 11 in this case is not proper. The Land Acquisition Officer is having no right to determine the share or decide the rights of the parties under sections 88 and 188 of the Rajasthan Tenancy Act. This power is only with the revenue courts. When the parties not challenging the acquisition but only asking for determination of their shares, this suit is maintainable as held by the Hon'ble Board in the case of 2012(2) RRT 1431. It is the established principle that for the public purpose, land can be acquired under the Land Acquisition Act, 1894. Under section 4 the proceeding for the acquisition will be started, under section 5 objections have to be taken, under section 6 after considering the objections- appropriate decisions have

to be taken and thereafter under section 9 notice has to be issued. When once the notification has been issued for the acquisition, then the acquisition proceedings cannot be challenged and their finality has to be assumed. But so far the determination of rights is concerned, the right to get compensation has to be decided by the court competent to determine their share and rights. In a series of judgments, it has been held that cases which arise because of the acquisition cannot be challenged before the civil court. Land was acquired after following the procedure under Land Acquisition Act. In such a case, civil court has no jurisdiction to question the acquisition proceedings. As such, no injunction can be granted against the acquisition. The Hon'ble Supreme Court specifically held it in 1995 DNJ (SC) 310 State of Bihar Vs. Dhirendra Kumar & ors. As such, it is the established law that acquisition proceeding cannot be challenged; but so far determination of right to get compensation is concerned, only revenue court is competent to decide the rights of the parties who are having right to get compensation. As such, we are of the considered opinion that the matter may be remanded back to the learned trial court. In the result, the appeal is accepted and the order of learned Assistant Collector, Jaipur-I dated 15.11.2010 and that of learned Revenue Appellate Authority, Jaipur dated 05.3.2012 are hereby quashed. The matter is remanded back to the learned trial court. The registry is directed to send the files to the concerned officials without any delay. The appeal is disposed of accordingly.

Pronounced in open court.

**(DR. SHAMSUDDIN KHAN)**  
Member

**(SATISH CHAND KAUSHIK)**  
Member

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