

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal /decree/TA/10037/2008/Hanumangarh

- 1- Chhatar Singh s/o Daluram
- 2- Shubhakaran s/o Gopal
- 3- Amarsingh s/o Daluram
- 4- Ramniwas s/o Hetram
- 5- Motaram s/o Kesaram
- 6- Ramchandra s/o Daluram

All caste Jat, r/o village Rakhi, Tehsil Bhadra, District Hanumangarh
(Raj.)

..... Appellants

Versus

- 1- Rajendra s/o Lichhmanram
- 2- Mahendra s/o Lichhmanram
- 3- Vijaypal s/o Lichhmanram
- 4- Subhash s/o Lichhmanram
- 5- Pratap s/o Lichhmanram
- 6- Mahesh s/o Lichhmanram
- 7- Sharda d/o Lichhmanram

All caste Jat, r/o village Dungarana, Tehsil Bhadra, District Hanumangarh.

- 8- Rajasthan Government through Tehsildar -----
- 9- Forest Department through Assistant Forest Officer, Bhadra, District Hanumangarh
- 10- Gram Panchayat, Bojhla through Sarpanch Gram Panchayat Bojhla, Tehsil Bhadra, Dist. Hanumangarh.

..... Respondents

Division Bench

Shri Niranjana Kumar Arya, Member
Shri Moolchand Meena, Member

Present:-

- 1- Shri Bramhanand, Advocate for appellants.
- 2- Shri Manish Pandya & Shri L.K. Pandya, Advocates for Respondent No1.
- 3- Shri Amritpal Singh Vanar, Advocate for Respondent No.9.
- 4- Shri Dunichand, Advocate for Respondent No.10.
- 5- Shri R.K. Gupta, Government Advocate.
- 6- Shri S.K. Sharma, Deputy Government Advocate.
- 7- Respondents No.2 to 7 were not present.

J U D G M E N T

Date:- 24-02-2014

1- This 2nd appeal, under section 224 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act') has been preferred by the appellants against the judgment and decree dated 28-12-2005 passed by the First Appellate Court, the Revenue Appellate Authority, Hanumangarh.

2- As mentioned in the appeal memo, the relevant facts of the case leading to this 2nd appeal are, in brief, that plaintiff Lichhmanram, who was father of respondent No.1 to 7, filed a suit under section 88 and 188 of the Act in the Court of Sub Divisional Officer, Bhadra (Trial Court) with averments that:-

- (1) That the disputed land bearing khasra number 101 area 33 bigha 9 biswa (present khasra number 196 area 14 bigha 10 biswa and number 201 area 18 bigha 7 biswa) situated in village Rakhi, Tehsil Bhadra has remained in continues cultivatory possession of the plaintiff, which was allotted to him on 12-05-1966. But the Sub Divisional Officer ordered to record the disputed land as Johad Paitan in the revenue record on 05-09-1977.
- (2) That an appeal was filed by Lichhmanram before the Revenue Appellate Authority, which was allowed vide order dated 18-05-1979 by the Revenue Appellate Authority, and the order dated 5-09-1977 passed by the Sub Divisional Officer was set aside. The Tehsildar was directed to file a regular suit for correction of entries before the Sub Divisional Officer, to be decided after affording opportunity for hearing to both the parties, and if necessary, after framing the issues. A suit was accordingly filed by the Tehsildar, but the proceeding was dropped by the Sub-Divisional Officer without any effective order. A reference application was also submitted to the Collector which was also rejected.
- (3) That, thereafter, the plaintiff filed an application under section 144 of Civil Procedure Code, 1908, which was also rejected.
- (4) That the plaintiff filed a writ petition to the Hon'ble High Court which was accepted on 15-07-1989 and the Sub

Divisional Officer was directed to decide the matter under section 136 of Land Revenue Act within 3 months.

- (5) That, the Sub Divisional Officer, without considering decision of 1979, passed an order to delete the plaintiff's name from revenue record and record the land in question as Johad Paitan.
- (6) For the reasons mentioned hereinabove, the suit was filed under section 88 and 188 of the Act in the Trial Court, against the State Government for declaration of rights, correction of entries in revenue record and permanent injunction.
- (7) During the pendency of suit in the Trial Court, the plaintiff Lichhmanram died, so present respondents No.1 to 7 were impleaded in the suit as his legal representatives.
- (8) The defendant, State Government, did not file any written statement in the Trial Court, so their reply was closed on 20-10-2001, arguments of the plaintiff were heard, and the suit was dismissed on 14-01-2004 on the pretext that it was not proved.
- (9) The present respondent No.1 Rajendra filed an appeal in the First Appellate Court, against the decision dated 14-01-2004 of the Trial Court. The appeal was allowed by the First Appellate Court vide its order dated 28-12-2005 (impugned order), and the plaintiff/respondents' suit was decreed. The present respondents were declared khatedar tenants of the land in question admeasuring 32 bigha 17 biswa and a permanent injunction was also issued in their favour restraining the State Government not to interfere in their cultivatory possession.
- (10) The present appellants, Chhatar Singh & others were not party to the litigation in the Trial Court or the First Appellate Court, so being the residents of the village they have filed this 2nd appeal in the Board, with an application under section 96 of Civil Procedure Code, 1908 seeking permission to appeal. It has been requested that the land in question, being Johad Paitan is of public utility and appellants are aggrieved by decision of the First Appellate Court, so permission may be granted to file the appeal. The State Government through Tehsildar, Forest Department through Assistant Forest Officer and the Gram Panchayat have also been impleaded as respondents in the appeal. It

has been requested by the appellants that the appeal be allowed, impugned order dated 28-12-2005 passed by the First Appellate Court be set aside, and decision of the Trial Court be upheld.

3- An application under section 5 of the Limitation Act with an affidavit has also been filed by the appellants with request to condone the delay in filing of this 2nd appeal.

4- We have heard the learned counsels for the parties.

5- The learned counsel for the appellant, while repeating the facts and grounds mentioned in their appeal memo and application under section 96 of the Civil Procedure Code, 1908, has submitted:-

- (1) That, the disputed land is a Paitan land (catchment area of water reservoir) since beginning and it is recorded as such in the revenue records. A big Talab (tank) is there, surrounded by this land in question, which is used for drinking water for village cattle. If the land in question is allotted for agricultural purpose, the talab will go dry and it will create problem for cattle as well as villagers. Thus the land in question is a public land and khatedari in such land cannot be given to an individual. It is prohibited by section 16 of the Act.
- (2) Further, it was also argued that decision dated 28-02-1996 has reached finality and unless it is cancelled by a competent court, the land in question, being Johad Paitan, is not available for conferment of khatedari rights. The plaintiff or his successor-in-title, present respondents, have not challenged the Sub Divisional Officer's decision dated 28-02-1996, so he or they now cannot claim any rights in the disputed land.
- (3) That, the Trial Court, after analyzing the documentary evidence available in the file had rightly rejected the plaintiff's suit for declaration. The First Appellate Court, with an erroneous view on record and law has allowed the appeal of present respondents. Such a decision being perverse and against the mandatory provisions of Section 16 of the Act, deserves to be set aside.

- (4) That, the disputed land being a public utility land, the present appellants and other villagers are directly aggrieved by the First Appellate Court's impugned decision. They were not aware of the decision passed by the First Appellate Court. The appellants and villagers came to know about the impugned decision, when respondents No.1 to 7 started digging the land and cutting off the trees thereon in the mooring of 24-09-2008. From the date of knowledge, this appeal has been filed in time. So application under section 5 of the Limitation Act may be accepted and the appeal may be treated in limitation.
- (5) It has also been contended by the learned counsel for the appellants that entire village is beneficiary of the disputed land as Johad Paitan. The decision and decree dated 28-12-2005 passed by the First Appellate Court is prejudiced to the interests of the entire village including present appellants. So application under section 96 of Civil Procedure Code, 1908 may be allowed.
- (6) Further, it has also been contended that land in question being recorded as Johad Paitan (catchment), the Gram Panchayat was necessary party in the suit which was intentionally not impleaded by the plaintiff/respondents in the suit and the first appeal. So the Gram Panchayat and the forest department have been impleaded as respondents in this second appeal.

With these arguments, the learned counsel for the appellants, relying upon decision of the Hon'ble Supreme Court of India in Jagpal Singh's case reported at 2011 (2) RLW 1389, has requested that the appeal may be allowed and impugned decision and decree dated 28-12-2005 may be set aside.

6- The learned counsels for respondent No. 7 to 10 have also supported the appeal.

7- The learned counsel for respondent No.1, opposing the grounds of appeal, has vehemently argued:-

- (1) That, the disputed land has been under cultivatory possession of the plaintiff Lichhmanram since Svt 2010 and he was paying rent to the Government. The land was allotted to Lichhmanram on 12-05-1966 on permanent

basis, and for this reason Lichhmanram was recorded as khatedar of the disputed land during settlement operations. But the Sub Divisional Officer wrongly recorded the land as Johad Paitan on 05-09-1977 and again on 28-02-1996. The Trial Court without recording reasons therefor, ignored documentary evidence submitted by the plaintiff and dismissed the suit against law and evidence. Looking into the facts, and after appreciating documentary evidence available in the file, the First Appellate Court has rightly decreed the plaintiffs' suit.

- (2) That, the disputed land was in khatedari and possession of plaintiff Lichhmanram since prior to commencement of the Act, therefore it was not affected by provisions of Section 16 of the Act.
- (3) It has also been contended that the present appellants do not represent the village community. They belong to a particular family and this appeal has been filed only harass the respondents. The appellants are not aggrieved party, so their application under section 96 of the CPC and consequently this appeal, deservbbves to be dismissed.
- (4) Further it has been argued that appeal is badly time barred and reasons for delay, as mentioned in the application of section 5 of the Limitation Act, are neither genuine nor satisfactory. So the appeal is liable to be dismissed as time barred.

With these arguments, the learned counsel for the respondent No.1 has requested that the appeal in hand may be rejected.

8- We have gone through the record of the case available in the file and have given a thoughtful consideration to the rival contentions made by learned counsels for the parties.

9- The suit was dismissed by the Sub Divisional Officer on 14-01-2004 with observations that disputed land has been recorded as Johad Paitan by order dated 28-02-1996, and the plaintiff did not challenge that decision before a competent forum. Thus the decision dated 28-02-1996 is final. At present, the status of plaintiff is as trespasser on the disputed land and his suit for declaration of khatedari is not proved.

10- The substance of the respondent's appeal memo before the Revenue Appellate Authority is that the plaintiff is in continuous cultivatory possession of the land in question since Svt. 2010 and it was later on allotted to the plaintiff Lichhmanram on 12-05-1966. During the settlement operation, the land was recorded in khatedari of Lichhmanram. But the Sub Divisional Officer Nohar, without issuing any notice to the plaintiff Lichhmanram, ordered for recording the land in question as Johad Paitan vide order dated 05-09-1977. The plaintiff filed an appeal before the Revenue Appellate Authority. The order dated 05-09-1977 was set aside by the Revenue Appellate Authority and the Tehsildar was directed to submit regular suit before the Sub Divisional Officer for correction of entries. A case was filed by the Tehsildar but it was dropped without any effective order by the Sub Divisional Officer. A reference application was submitted to the Collector, which was also dismissed. Thereafter, the plaintiff filed an application for restitution under section 144 of the Civil Procedure Code, 1908, which was rejected by the Sub Divisional Officer in 1982, by the Revenue Appellate Authority in 1983 and by the Board in 1989. A writ petition was filed by the plaintiff in Hon'ble High Court, and it was directed by the High Court that status quo of the land be maintained in view of Revenue Appellate Authority's order dated 18-05-1979 and Sub Divisional Officer was directed to pass a final order on application under section 136 of the Rajasthan Land Revenue Act, 1956. It has also been alleged in the appeal memo that Sub Divisional Officer without paying any attention to Revenue Appellate Authority's order of 1979 passed decision dated 28-02-1996 and the land was ordered to be recorded as Johad Paitan. So the suit for declaration of rights was filed which has been dismissed by the Trial Court.

11- The Revenue Appellate Authority in its decision dated 28-12-2005, having reliance on Ex-P-2 and Ex-p-7A has concluded that the land was earlier recorded in the name of plaintiff Lichhmanram as per Zamabandi Svt. 2010. We have gone through the said Ex-p-2 Zamabandi of Svt. 2010 available in the Trial Court's file, and we are unable to understand on what basis the Revenue Appellate Authority has concluded that that land was in the name of plaintiff in Svt.2010. Actually, the land in question is recorded in the name of some 'Tilokchand s/o Ram

Singh Mahajan' in the said Ex-P-2, and the plaintiff has never claimed in the shoes of said Tilokchand. Thus conclusion of the Revenue Appellate Authority on this point is apparently erroneous.

12- So far allotment on 12-05-1966 is concerned, the Revenue Appellate Authority has relied upon the said allotment order Ex-P-7A, a faint and illegible copy of which is available in the file. The name of the allottee is not clear and even the land allotted by that order is only 25 bigha and not 32 bigha 17 biswa. So this document Ex-P-7A is not a reliable proof to conclude that the land in question was allotted to the plaintiff Lichhmanram. If for the sake of arguments, the land in question measuring 32 bigha 17 biswa was allotted to Lichhmanram, then why it was not recorded in his Gair Khatedari or Khatedari. It is the settlement record, Ex-P-4 khasra of settlement, in which the name of plaintiff Lichhmanram finds place for the first time. The name of the plaintiff has been recorded on the basis of decision dated 27-11-70 passed by the Assistant Settlement Officer. The said decision of ASO was based on the pretext that the land in question, earlier has remained in khatedari of Lichhmanram, but the Collector cancelled his khatedari and the land was again allotted to him for 10 years. The land was recorded as Government land at that time and it was recorded as Gair Khatedari land of Lichhmanram under the ASO's decision dated 27-11-70. We are of the view that the finding of the settlement department is not supported by any reliable document or record that the disputed land remained in khatedari of Lichhmanram earlier, and it was cancelled by the Collector. Further, it is settled position of law that settlement department is not authorized to change the entries in revenue record. It has to repeat the previous entries pertaining to rights and title. So this Court is of considered opinion that the order dated 27-11-1970 passed by the Assistant Settlement Officer was without jurisdiction.

13- Though some documents regarding previous litigation such as rejection of application of the plaintiff Lichhmanram under section 144 of Civil Procedure Code, 1908 upto the level of Board, filing of writ petition in Hon'ble High Court by the plaintiff, decision of that writ petition with directions to the Sub-Divisional Officer, decision dated 28-02-1996 passed

by the Sub-Divisional Officer ordering to record the disputed land as Johad Paitan etc. are not available in the file, but as these facts have not been disputed by any of the parties, the factual position of the matter before us, emerges as under:-

- (1) That, the Sub Divisional Officer passed an order dated 05-09-77 to annul unauthorized action of the settlement department and it was ordered that land in question be recorded as Johad Paitan. The plaintiff Lichhmanram preferred an appeal before the Revenue Appellate Authority against this order dated 05-09-1977. The appeal was allowed by the Revenue Appellate Authority on 18-05-1979, the order dated 05-09-1977 was set aside and the Tehsildar was directed to file a case before the Sub Divisional Officer for correction of entries.
- (2) That, a case was filed by the Tehsildar, but the Sub Divisional Officer did not finally decide it and it was dropped without any effective order. A reference application was submitted to the Collector, but it was also rejected.
- (3) Thereafter, the case went through proceedings under section 144 of the Civil Procedure Code, 1908, which was rejected upto the level of Board and the matter came before the Hon'ble High Court as a writ petition by Lichhmanram. The High Court decided that writ petition with directions to Sub Divisional Officer to decide the application under section 136 of Rajasthan Land Revenue Act, 1956 finally. So the Sub Divisional Officer passed decision dated 28-02-1996 and it was finally ordered that the land in question be recorded as Johad Paitan. The plaintiff did not prefer any appeal against this order dated 28-02-1996. So the order dated 28-02-1996 reached finality and thus the land has been finally recorded as Johad Paitan.

14- The suit relating to present litigation was filed in August, 1997 by Lichhmanram, and at that time the land in question is recorded as Paitan land as evident from Ex-P-6 Zamabandi of Svt. 2052, which is equivalent to a catchment area of water body which feeds rain waters to water reservoir or Talab. Thus the land in question, as Paitan, is hit by prohibitory provisions of Section 16 of the Rajasthan Tenancy Act, 1955. The legal position is very much clear that no khatedari rights can be

accrued in such land. Therefore the decision dated 14-01-2004 passed by the Trial Court is in accordance with the law and impugned decision dated 28-12-2005 passed by the Revenue Appellate Authority is against the law and record available in the file. As the land is recorded as Johad Paitan in revenue records on the date of filing the suit, the suit itself was barred by law as prohibited by provisions of Section 16 of the Act. The only remedy available for the plaintiff/respondents was to get Sub Divisional Officer's decision dated 28-02-1996 set aside from a competent forum. But this remedy was not availed by the plaintiff/respondents and therefor, the decision dated 28-02-1996 reached finality. The disputed land has now, finally, come under the prohibited category as provided in section 16 of the Act. The said Section 16 of the Act provides as under:-

“16. Land on which Khatedari rights shall not accrue.-

Notwithstanding anything in this Act or [in any other law or enactment for the time being in force in any part of the State, Khatedari rights shall not accrue in-

(xiv) Land which has been set apart or is, in the opinion of the Collector, necessary for flow of water thereon in to any reservoir or tanka for drinking water for a village or for surrounding villages:”

15- The land in question being a catchment area of a Tank (Talab) is a public utility land for common use of the villagers. In the case of Jagpal Singh (reported at 2011 (2) RLW 1389 and cited by the learned counsel for appellants), the Hon'ble Supreme Court has given a serious message to the Courts of Justice and State Authorities for dealing with matters of grabbing such common lands by private parties. Just to percolate the message of the Hon'ble Supreme Court to lower Revenue Courts and concerned authorities, even at the cost of time and space, it is proper to give here a brief of Jagpal Singh's case. The facts of the case of Jagpal Singh are that an application was filed by the Gram Panchayat, Rohar to the Deputy Commissioner (Collector) for eviction of respondents (appellants before the Hon'ble Supreme Court) from the land of common use, recorded in the revenue records as Gair Mumkin Toba i.e. a village pond. It was stated in the application that the villagers have been using the land and drain water of the village falls into the pond, and it is used by the cattle of the village for drinking and bathing. The respondents have illegally raised constructions on the said land, and the lower

officials of the department and even the Gram Panchayat colluded with them. Instead of ordering the eviction of these unauthorized occupants, the Collector, Patiala held that it would not be in the public interest to dispossess them, and he directed the Gram Panchayat, Rohar to recover the cost of the land as per the Collector's rates from the respondents. Some persons from the village appealed to the Commissioner against the said order of the Collector, and that appeal was allowed. The Commissioner held that it was clear that the Gram Panchayat was colluding with these respondents and it had not even opposed the order passed by the Collector in which directions were issued to the Gram Panchayat to transfer the property to these persons, nor filed an appeal against the Collector's order. As held by the learned Commissioner, the village pond has been used for the common purpose of the villagers and cannot be allowed to be encroached upon by any private respondents. The respondents filed writ petition before the Punjab & Haryana High Court, which was rejected and therefore, the matter came before the Hon'ble Supreme Court through A Civil Appeal. The appeal was dismissed by the Hon'ble Supreme Court with serious observations. We deem it appropriate here to reproduce a few lines from para 3, 5 and 22 of the decision dated 28-11-2011 (reported at 2011 (2) RLW 1389) passed by the Hon'ble Supreme Court, as under:-

“3. Since time immemorial there have been common lands inhering in the village communities in India, variously called gram sabha land, gram panchayat land, (in many North Indian States), shamlat deh (in Punjab etc.), mandaveli and poramboke land (in South India), Kalam, Maidan, etc., depending on the nature of user. These public utility lands in the villages were for centuries used for the common benefit of the villagers of the village such as ponds for various purposes e.g. for their cattle to drink and bathe, for storing their harvested grain, as grazing ground for the cattle, threshing floor, maidan for playing by children, carnivals, circuses, ramlila, cart stands, water bodies, passages, cremation ground or graveyards, etc.”

“5. What we have witnessed since Independence, however, is that in large parts of the country this common village land has been grabbed by unscrupulous persons using muscle power, money power or political clout, and in many States now there is not an inch of such land left for the common use of the people of the village, though it may exist on paper. People with power and pelf operating in villages all over India systematically encroached upon communal lands and put

them to uses totally inconsistent with its original character, for personal aggrandizement at the cost of the village community.”

“22. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/ unauthorized occupants of Gram Sabha/ Gram Panchayat/ Poramboke/ Shamlat land and these must be restored to the Gram Sabha/ Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession.”

Thus the message of the Hon’ble Supreme Court is very clear to the State Authorities that common lands are to be protected at any cost.

16- In view of the discussions hereinabove, this Court is of considered opinion that the appeal in hand deserves to be allowed and the impugned decision dated 28-12-2005 is liable to be quashed.

17- Resultantly, the appeal in hand is accepted and impugned decision and decree dated 28-12-2005 is hereby set aside.

Pronounced in the open Court.

(Moolchand Meena)
Member

(Niranjan Kumar Arya)
Member