

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

I. Appeal Decree No.9830/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.

2. Babulal S/o Shri Kana

3. Jagdish S/o Shri Kana

4. Khamoshi D/o Shri Kana

5. Kaushalya D/o Shri Kana

6. Patasi D/o Shri Kana

7. Santi D/o Shri Kana

8. Sundari widow of Shri Kana

All are by caste Dhobi, residents of Village Bhabru,
Tehsil Viratnagar, District Jaipur.

9. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar,
Jaipur.

... Respondents.

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II. Appeal Decree No.9831/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.

2. Hajari S/o Shri Gyarsa

3. Nathi D/o Shri Gyarsa

4. Dhapa D/o Shri Gyarsa

5. Phuli D/o Shri Gyarsa

6. Kamli Devi D/o Shri Gyarsa

All are by caste Khatik, residents of Village Bhabru,
Tehsil Viratnagar, District Jaipur.

7. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar,
Jaipur.

... Respondents.

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III. Appeal Decree No.9832/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.
... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Bhagirath S/o Shri Sugla, by caste Raigar, resident of Village Bhabru, Tehsil Viratnagar, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.
... Respondents.

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IV. Appeal Decree No.9833/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.
... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Chhotu S/o Shri Balu, by caste Naik, resident of Village Mandha, Tehsil Kotputli, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.
... Respondents.

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V. Appeal Decree No.9834/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Moolchand Meena, Royal World, Sansar Chandra Road, Jaipur.
... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Rama Devi W/o Shri Sheodayal, by caste Meena, resident of Village Gudha Churani, Tehsil Thanagaji, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.
... Respondents.

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VI. Appeal Decree No.9835/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Moolchand Meena, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Sheodayal S/o Shri Nanga, by caste Meena, resident of Village Gudha Churani, Tehsil Thanagaji, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.

... Respondents.

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VII. Appeal Decree No.9836/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Gulli widow of Shri Jeewan
3. Moolchand S/o Shri Jeewan
4. Mali
5. Kamli
6. Anguri
7. Santi
8. Meera

} daughters of Shri Jeewan

All are by caste Khatik, residents of Village Jawanpura,
Tehsil Viratnagar, District Jaipur.

... Respondents.

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VIII. Appeal Decree No.9837/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director
Moolchand Meena, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Narbada Devi W/o Shri Ramchandra, by caste Meena, R/o Luhakana, Tehsil Viratnagar, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.

... Respondents.

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IX. Appeal Decree No.9838/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director Moolchand Meena, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Manbha Devi W/o Shri Rameshwar, by caste Meena, R/o Bhabru, Tehsil Viratnagar, District Jaipur.
3. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.

... Respondents.

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X. Appeal Decree No.9839/2012/TA/Jaipur :

Joy Bharat Buildhome Private Limited, through Director Ashok Kumar Balai, Royal World, Sansar Chandra Road, Jaipur.

... Appellant.

Versus

1. State of Rajasthan, through Tehsildar Viratnagar, District Jaipur.
2. Sarbati widow of Shri Mula, by caste Khatik, R/o Bhabru, Tehsil Viratnagar, District Jaipur.
3. Vimla Devi W/o Shri Rajendra, by caste Khatik, R/o Bhabru, Tehsil Viratnagar, District Jaipur.
4. Kamlesh Soni S/o Shri Sohanlal, R/o 1/409, Vidhdhyadhar Nagar, Jaipur.

... Respondents.

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D.B. (Camp : Jaipur)

Shri Pramil Kumar Mathur, Member

Shri B.L. Gupta, Member

Present :

Shri K.N. Sharma : counsel for the appellant.

Shri O.P. Bhatt : Dy.Govt.Advocate for respondent no.1.

None present : on behalf of rest of the respondents.

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Dated : 7th February, 2013

J U D G M E N T

Aggrieved by the various judgments dated 03.9.2012 passed by the Revenue Appellate Authority, Jaipur in civil appeals nos. 166/2007 to 172/2007 & 174/2007 to 176/2007, whereby the learned Revenue Appellate Authority has dismissed each appeal preferred against the common judgment dated 29.3.2007 passed by Sub Divisional Officer, Viratnagar District Jaipur in revenue applications filed under section 175 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred as “the Act”) titled as ‘State Vs. Joy Bharat Buildhome Private Limited & others’, the appellant has approached this court.

2. Since all the appeals have arisen from same set of facts & contain same questions of law; hence, all are being decided by the common judgment.

3. Briefly stated, respondent no.1 i.e. State has initiated several proceedings under section 175 of “the Act” against the present appellant and rest of the respondents in the court of Sub Divisional Officer, Viratnagar District Jaipur narrating that Joy Bharat Buildhome Private Limited has purchased the disputed agriculture land from rest of the non-petitioners/ respondents who are the members of Scheduled Caste/ Scheduled Tribe. The transaction made by appellant Joy Bharat Buildhome Private Limited and other respondents is against the spirit of prohibition contained in section 42(b) of “the Act”; thus, Joy Bharat Buildhome Private Limited be evicted from the suit land and disputed revenue land be recorded as sewai chak land. Thereafter, the respondent/

respondents contested the proceeding by filing written reply and controverted the averments made in the application presented by the State Government. The learned Sub Divisional Officer by his common judgment dated 29.10.2007 has allowed all the applications and passed the order of eviction against the present appellant & rest of the respondents and also ordered to record the land as sewai chak land.

4. Being dissatisfied with the judgment dated 29.10.2007, present appellant has filed first appeal before the Revenue Appellate Authority, Jaipur distinctly. Learned Revenue Appellate Authority, Jaipur has dismissed all first appeals by impugned judgment dated 03.9.2012 respectively. Hence, appellant has preferred these second appeals before this court.

5. We have heard learned counsel for the parties at admission stage and perused the record.

6. Learned counsel for the appellant has basically contended three arguments namely appellant is a juristic person and he through his Director who is the member of Scheduled Caste/ Scheduled Tribe has purchased the land from the members of Scheduled Caste/ Scheduled Tribe. Therefore, the question of violation of section 42(b) of “the Act” does not arise. Secondly, learned trial court has not tried the application as suit while after submission of reply, it is mandatory as per section 175(4) of “the Act” to convert the application into the suit and decide the matter after full trial. Lastly, he submits that learned trial court did not frame any issue and not recorded any evidence and without following the procedure which is necessary for the determination of the suit, decided the matter capriciously. In support, reliance is placed on the following decisions reported in :-

- (i) State of Rajasthan Vs. L.Rs. of Madho Singh & ors.
2009 RRD page 269
- (ii) Jawahar Lal Vs. Megha
1970 RRD page 236
- (iii) Maganlal Vs. State of Rajasthan & ors.
1995(2) RBJ page 580
- (iv) Ramlal & ors. Vs. State of Rajasthan & ors.
2009(16) RBJ page 361

7. Per contra, learned Dy. Govt. Advocate for respondent no.1 has vehemently argued that both the subordinate courts did not commit any mistake in passing the judgments. This is the clear cut case of infringement of section 42(b) of “the Act”. The judgments of the subordinate courts have been passed legally & validly. Therefore, the second appeals are liable to be dismissed.

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

9. The first contention raised by the learned counsel for the appellant appears to be meritless because in the cases under hand, there is no gainsaying that the member of Scheduled Caste/ Scheduled Tribe has executed several sale deeds in favour of appellant, who wants to escape from the action of State launched under section 175 of “the Act” by taking plea that Company being juristic person is not covered under the protective umbrella provided under section 42(b) of “the Act”, to a member of Scheduled Caste/ Scheduled Tribe.

10. With a view to appreciate contention raised by the learned counsel for the appellant, it is necessary to elucidate the provisions of section 42(b) of “the Act” which run as follows :-

“42. General restrictions on sale, gift & bequest -

The sale, gift or bequest by a khatedar tenant of his interest in the whole or part of his holding shall be void, if :

- (a) xxxxxxxx deleted.
- (b) such sale, gift or bequest is by a member of Scheduled Caste in favour of a person who is not a member of of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who is not a member of the Scheduled Tribe.”

The spirit of this section conveys that the following transaction of transfer shall be void :-

- (i) from a member of Scheduled Caste to a person who is not a member of Scheduled Caste.

or

- (ii) from a member of Scheduled Tribe to a person who is not a member of Scheduled Tribe.

Thus, as per imperative legislation, the transfer of khatedari rights by a member of Scheduled Caste or Scheduled Tribe to a non-member of that caste or tribe is illegal & void.

11. Both the courts below have concurrently held that this is case in which the agriculture land has been illegally transferred by a member of Scheduled Caste/ Scheduled Tribe in favour of member of the other caste, who are not the member of Scheduled Caste/ Scheduled Tribe. Though the learned counsel for the appellant has emphasised that appellant is a juristic person and the provision of section 42(b) of “the Act” is not applicable to the juristic person, but this notion is basically incorrect & misconceptual because the expression “person” includes both the natural person as well as juristic person. Our this view has found force from recent judgment of the Hon’ble Supreme Court delivered in “**State of Rajasthan & ors. Vs. Aanjaney Organic Herbal Pvt. Ltd.**” reported in **2012(2) RRT page 1279** whereby it has been observed :-

“The expressions ‘Scheduled Castes’ and ‘Scheduled Tribes’, we find in Section 42(b) of the Act have to be read along with the constitutional provisions and, if so read, the expression ‘who is not a member of the Scheduled Caste or Scheduled Tribe’ would mean a person other than those who has been included in the public notification as per Articles 341 and 342 of the Constitution. The expression ‘person’ used in Section 42(b) of the Act therefore can only be a natural person and not a juristic person, otherwise, the entire purpose of that section will be defeated. If the contention of the company is accepted, it can purchase land from Scheduled Caste, Scheduled Tribe and then sell it to a non-Scheduled Caste and Schedule Tribe, a situation the legislature wanted to avoid. A thing which cannot be done directly can be not done indirectly over-reaching the statutory restriction.”

From the binding nature of the judgment cited supra, we are, therefore, of the view that the appellant being a juristic person, the sale effected by a member of Scheduled Caste/ Scheduled Tribe to a juristic person which does not have a caste, is entirely illegal & hit by section 42(b) of “the Act”

because as quoted earlier, a thing which cannot be done directly can be not done indirectly defeating the legislative embargo.

12. Having considered the other contentions raised by the learned counsel for the appellant, this is not disputable that as per the mandate of section 175 of “the Act”, if a tenant transfers or executes the instrument purporting to transfer the whole or any part of his holding, otherwise than in accordance with the provisions of this Act, both the tenants and any person who may have thus obtained or may thus be in possession of the holding or any part of the holding, shall on the application of the landholder, be liable to ejection.

13. This is not the case of appellant that recorded tenant has not executed sale deed for transfer of his holding in favour of appellant, therefore, inculpatory facts make it essential to initiate the proceedings under section 175 of “the Act” by the concerned authority. Though there is a provision under section 175(4) of “the Act” to treat the application to be a suit and proceed with the case as a suit, but with a view to providing the speedy remedy against the illegal transfer, legislature in an unequivocal & in unambiguous language has incorporated a new proviso as section 175(4)(a) in “the Act” in the following terms :-

175(4)(a) - Notwithstanding anything to the contrary contained in sub-section (4), if the application is in respect of contravention of the provision contained in section 42 or the proviso to sub-section (2) of section 43 or section 49A, the court shall, after giving a reasonable opportunity to the parties of being heard, conclude the enquiry in a summary manner and pass order, as far as may be practicable within a period of three months from the date of the appearance of the non-applicants before it, directing ejection of the tenant and his transferee or sub-lessee from the area transferred or sub-let in contravention of the said provisions.”

According to this section, in case of illegal transfer, the detailed procedure of suit viz. framing of issues, recording the evidence etc. will not be followed & only after providing reasonable opportunity to the parties of being heard and conducting enquiry in summary manner, the proceedings under 175 of “the Act” may be concluded. Therefore, the contentions raised by the learned counsel for the appellant in this regard carry no value.

14. In State of Rajasthan Vs. L.Rs. of Madho Singh & ors. (2009 RRD page 269), the provision as enshrined in section 175(4)(a) of “the Act” was not considered, therefore, the ratio of this judgment cannot be made applicable to the present case.

15. Similarly, in the case reported in Maganlal Vs. State of Rajasthan & ors. (1995(2) RBJ page 580), surrounding facts about the illegal transfer were not proved; but in the present case, transfer to a juristic person by a member of Scheduled Caste/ Scheduled Tribe is admitted and also pleaded, therefore, this judgment also does not throw any light on the factual & legal aspect of the present case.

16. Other citations Jawahar Lal Vs. Megha (1970 RRD page 236) and Ramlal & ors. Vs. State of Rajasthan & ors. (2009(16) RBJ page 361) relate to non-maintainability of the revision & maintainability of the second appeal against the judgment passed under section 175 of “the Act”. As the maintainability of second appeal was not debated & questioned by any counsel in the present case, therefore, these judgments do not help to the appellant in any manner.

17. Hence, the prime assertions advanced by the learned counsel for the appellant are squarely against the mandatory provisions contained in “the Act” & the law on section 42(b) of “the Act” about transfer of land to juristic person by a member of Scheduled Caste/ Scheduled Tribe, is now well settled by the judicial pronouncement of the Hon’ble Apex Court. Therefore, we refrain ourselves in entertaining these second appeals.

18. Consequently, these second appeals are liable to be dismissed at threshold; resultantly all are hereby dismissed accordingly.

Pronounced in open court.

(B.L. GUPTA)
Member

(PRAMIL KUMAR MATHUR)
Member

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