

Worth Reporting

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference/LR/6116/2015/Bharatpur

The State of Rajasthan through Tehsildar Weir, District Bharatpur

...Applicant

Versus

Shri Alisher son of Chiranji by caste Luhar resident of Hisamada Tehsil
Veir District Bharatpur

...Non-applicant

.....

Larger Bench

Shri V.Srinivas, Chairman

Shri Shyam Lal Gurjar, Member

Shri Ravi Prakash Sharma, Member

Present :-

1. Shri V.P.Singh, Government Advocate
 2. Shri Rajendra Prasad Sharma, Dy. Government Advocate
 3. Shri Basant Vijayvargiya, Advocate Bhartiya Kisan Sangh
 4. Shri Poorna Shankar Dashora, Advocate
 5. Shri Bhawani Singh, Advocate
 6. Shri Virendra Singh, Advocate
 7. Shri Hemant Sogani, Advocate
 8. Shri O.L.Dave, Advocate
 9. Brahmanand Sharma, Advocate
 10. Shri Rajendra Singh Barar, Advocate
 11. Shri Pradeep Bishnoi
 12. Shri Madan Lal Gurjar, Advocate
 13. Shri Satish Pareek, Advocate
 14. Shri Hagami Lal, Advocate
 15. Shri Sohan Pal Singh, Advocate
 16. Shri Raghvendra Singh Ranawat, Advocate
- Amicus Curiae

JUDGMENT

Dated 15.12.2017

A reference has been made to larger bench to examine the question of law in the case of State of Rajasthan Vs. Alisher, where references were made by District Collector Bharatpur in pursuance of the judgment of Hon'ble High Court in D.B.Civil Writ Petition No.1536/2003 Abdul Rehman Vs. State of Rajasthan dated 2.8.2004. The single bench has asked the larger bench to examine if a reference is to be made to High Court of Rajasthan on 12 issues which were placed before it by the 13 advocates acting as amicus curiae in the case. In the larger bench notices for hearings were issued to Rajasthan Revenue Bar Association and State Government as also the respondents. The Bharatiya Kisan Sangh appeared in the case through senior advocates Shri Basant Vijayvargiya and Shri P.S.Dashora.

2. The Government counsel pleaded that a very limited reference has been made to the larger bench by the single bench, under Section 12 of Rajasthan Land Revenue Act. The single bench was competent to make a reference to the Hon'ble High Court. Yet instead of making a reference directly to the High Court it has made a reference to the larger bench seeking its views on making the reference to the high court. The procedure is not in conformity with the provisions of S.12 Rajasthan Land Revenue Act. The single bench also heard a number of advocates in the reference matter and formulated a series of 12 issues for consideration of larger bench. The Board of Revenue for Rajasthan cannot file a writ before the Rajasthan High Court. If any individual is

aggrieved by the decision of the High Court in C.W.P. No.1536/2003 Abdul Rahman Vs. State of Rajasthan then he is free to approach the Hon'ble High Court. Based on the above narration the Government advocate prayed that the reference to the larger bench is not maintainable and the matter may be returned to the single bench for deciding the case in accordance with the binding judgment of the Hon'ble High Court.

3. We would like to present the arguments made by the amicus curiae jointly. Advocate Shri Basant Vijayvargiya said that different-rulings have been given by different Members of the Board. He cited 2017 (1) RRT 511, 2017 (2) RRT 844, 2017 (2) RRT 1367, 2016 (1) RRT 396, 2010 (1) RRT 630. Further he said that the judgment of the

High Court is not a binding principle, yet it was being used as a binding principle. The Rajasthan Land Revenue Act, 1956 contains a number of rules for temporary allotment of common lands. Unless these rules are abolished, the reference cases cannot be decided. The case of Abdul Rahman Vs. State of Rajasthan pertains to environmental issues and khatedari rights cannot be annulled on these grounds.

4. Advocate Shri Hemant Sogani said thousands of cases have been decided by the Board of Revenue and thousands of cases continue to be pending. The constitution of a larger bench is justified. The counsel said that the Hon'ble High Court has not given any finding or recommendation on the expert committee report submitted in the PIL.

5. The counsels felt that the PIL of Abdul Rehman Vs. State of Rajasthan was dropped and not concluded. Besides following the Jagir Resumption Act, the Rajasthan Tenancy Act, the Zamindari &

Biswedari Abolition Act, the State through Tehsildar act as landholder. The counsels pleaded that the reference cases curtailing the rights of khatedari tenants need to be interpreted rigidly. Under Section 82 Rajasthan Land Revenue Act no reference can be made on recorded entries and the factual context must be examined. Revenue Courts have not been constituted to curtail rights of khatedar tenants who are tillers of the soil.

6. Advocate Shri Bhawani Singh said that many districts have undergone settlement operations and the entries of 1947 are no longer relevant. Advocate Shri Rajendra Singh Brar said that the references made are premature. Government is already the land holder and suo-moto review process of all references decided by the Board of Revenue should be undertaken. These views were supported by Advocates Shri P.S.Dashora, Advocate Shri O.L.Dave and Advocate Shri Pradeep Bishnoi.

7. After hearing the arguments, we have reached the following decision :

The reference of the Single Bench to the Larger Bench is not necessary. The Single Bench was fully empowered under section 12 Rajasthan Land Revenue Act, 1956 to make a reference to the Hon'ble High Court in this case had it felt necessary. Having heard the arguments we find that there are no legal issues or questions to be decided by this Larger Bench of the Board of Revenue. The Board of Revenue has been mandated to decide the references filed before it in

compliance of the Hon'ble High Court judgments. We do not find any merit in making a reference to the High Court in the matter.

8. The Larger Bench places on record its appreciation for the amicus curiae in the case. The file is returned to the Single Bench with the above observation.

9. Judgment pronounced in open court on 15.12.2017.

(Ravi Prakash Sharma)
Member

(Shyam Lal Gurjar)
Member

(V.Srinivas)
Chairman