

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Application/Ceiling/1648/2005/Bikaner.

1. Jethu Singh son of Pokar Singh caste Rajput residents of village Nal Badi Tehsil & Distt. Bikaner.
2. Mst. Anchi widow of Pokar Singh (ceased) through LRs:-
2/1 Kishni Devi daughter of Pokhar Singh wife of Mahendra Singh caste Rajput resident of Thithawta Tehsil Ratangarh Distt. Churu.

...Petitioners.

Versus

1. State of Rajasthan.
2. Smt. Soni widow of Kashi Ram
3. Raidayal son of Kashi Ram
4. Ramdayal son of Kashi Ram
5. Param Dayal son of Kashi Ram
6. Babu Lal son of Kashi Ram
All by caste Brahmin residents of village Belasar Tehsil & Distt. Bikaner through power of attorney holder Himmta Ram son of Ramchand caste Brahmin resident of Belasar Tehsil & Distt. Bikaner.
7. Ram Lal son of Rugha Ram
8. Sohan Lal son of Rugha Ram

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Bhawani Singh, counsel for the petitioners.

Shri Ashok Nath, counsel for the non-petitioners No. 2 to 8.

Date: 6.2.2013

J U D G M E N T

This revision petition, under section 221 read with section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act', is directed against the judgment passed by Sub-Divisional Officer (North), Bikaner on 25.11.1972.

2. The brief facts of the case are that ceiling proceedings were initiated against Pokhar Singh (the father of the petitioner, Jethu Singh) under the old ceiling law and 931 bighas 16 biswas land was acquired on 25.11.1972 being excess to the ceiling area prescribed under the Act. This judgment passed by the trial court was appealed before Revenue Appellate Authority, Bikaner who accepted the appeal and the judgment dated 25.11.1972 passed by the trial court

was amended. The trial court reiterated its order dated 25.11.1972 and the land situated in khasra Nos. 148, 157/192, 193, 195, 147, 201 and 205 was taken in possession by the State. The father of the petitioner also filed a review petition on 6.11.1989. The petitioners filed the appeal against the order of the trial court before Revenue Appellate Authority which was partly accepted by the Revenue Appellate Authority on 28.4.1990. Being aggrieved by the judgment of the appellate court, the allottees went in appeal before the Board of Revenue which was accepted on 24.1.1996 and the judgment of the Sub-Divisional Officer was upheld. The petitioners filed this revision petition under section 221 of the Act. Being aggrieved by the judgment passed by Sub-Divisional Officer (North), Bikaner on 25.11.1972 before this court.

3. This is also very pertinent to mention here that when this revision petition came before this court for hearing, this court accepted the revision petition on 16.7.1996 and the case was remanded to Sub-Divisional Officer, Bikaner and the trial court was directed to acquire the land except khasra No. 148 measuring 255 bighas 5 biswas. Being aggrieved by the order of this court dated 16.7.1996, a review petition was filed before this court by the allottees which was decided on 5.4.2005 and the order passed by the Single Bench of this court on 16.7.1996 was recalled. The petitioners went in writ jurisdiction against the order passed by the Single Bench of this court but the Hon'ble High Court dismissed the writ petition No. 3201/06 on 17.2.2012 filed by the petitioners.

4. Heard the learned counsels of the parties on merits of this case.

5. The learned counsel for the petitioners contended that the order passed by the trial court is arbitrary and illegal as no option was taken from the assessee in this case and the entire land was entered as government land. He also contended that since the appeals were preferred before appellate authority and Board of Revenue in this case but the case was not heard properly and the legal issues raised by the petitioners remained unresolved. Therefore, only option left to the petitioner was to approach this

court under section 221 of the Act. He submitted that the petition filed by the petitioner is maintainable because this court has extraordinary powers under section 221 of the Act, wherein such grievances and manifest irregularities can be corrected by this court. The learned counsel also apprised the court that khasra No. 148 is very important to the petitioner because the petitioner has constructed his residential house, ware housing units for storage of grain and fodder along with other enclosures for the cattle. He submitted that this land is not vacant and unencumbered but without considering this facts, the trial court arbitrarily acquired this khasra number. The learned counsel vehemently argued that the option to the assessee is a pre requisite in the ceiling proceedings and no land can be acquired without seeking proper option from the assessee but the trial court arbitrarily acquired the land and entered it as the government land. Therefore, this application be accepted and the order passed by the trial court be quashed and the trial court be asked to consider the option of the petitioners.

6. The learned advocate for the non-petitioners contended that the revision petition filed by the petitioners is not maintainable before this court, as they have not come before this court with clean hands. The learned counsel argued that the judgment of the trial court dated 25.11.1972 was challenged before the appellate court and it came even up to the Board of Revenue. The judgments passed by the Board of Revenue and appellate court are on merits. The petitioners were given ample opportunities to file their option but they chose not to file the option. The learned advocate also argued that the ceiling excess land was acquired by the government and allotted in the seventies. He argued that the non-petitioners are the bona fide buyers from the allottees whose allotment orders were never challenged. The learned advocate also submitted that the order passed by the Board of Revenue on 16.7.1996 was an arbitrary order which was obtained by the petitioners without giving any notice to the concerned parties. Therefore, in the review judgment it was quashed and set aside and the judgment of the review petition was upheld even by the High Court. The learned advocate urged the

court that the petition filed by the petitioners is not maintainable and it has been filed after concealing the material facts. Therefore, the petition may be dismissed with costs.

7. I have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and also perused the record available on file.

8. Indisputably, the Sub-Divisional Officer (North), Bikaner initiated the ceiling proceedings against deceased tenant Pokhar Singh under the Chapter-III of the Rajasthan Tenancy Act which came to an end on 25.11.1972 and on the basis of this judgment 931 bighas 16 biswas land was declared excess to the ceiling area. This judgment of the trial court was challenged before Revenue Appellate Authority, Bikaner which was also decided on 24.12.1974 and the appellate court explicitly mentioned that in total 931 bigha 16 biswas land should be acquired. The petitioner Pokhar Singh also filed a review petition before the Sub-Divisional Officer which was dismissed by the trial court on 6.1.1989. Being aggrieved by the judgment of the review petition, the petitioner filed an appeal before Revenue Appellate Authority, Bikaner which was accepted on 28.4.1990. Being aggrieved by the judgment passed by the Revenue Appellate Authority, the allottees went in appeal before the Board of Revenue which was accepted on 24.1.1996 and the order passed by Revenue Appellate Authority on 28.4.1990 was quashed. After the acceptance of the revision petition filed by the petitioners-allottees, the petitioner Jethu Singh filed an application under section 221 of the Act before this court which was accepted by Hon'ble Single Bench on 16.7.1996 and he directed the trial court to acquire land except khasra No. 148 measuring 255 bighas 5 biswas. Being aggrieved by the order dated 16.7.1996 passed by the Single Bench, a review petition was filed by Smt. Soni and ors which was accepted on 5.4.2005 and the order passed by the Single Bench of this court on 16.7.1996 was quashed.

9. This is crystal clear from the facts available on record that the petitioner has availed all the opportunities of appeal and revision even up to the Board of Revenue and the excess land which was

931 bighas 16 biswas was acquired from late Pokhar Singh and this land was allotted to the landless persons. The non-petitioners are the buyers of the land and the facts before this court came when the petitioner secretly filed an application under section 221 of the Act and obtained an ex-parte order on 16.7.1996 from this court. In light of the circumstances of this case, the order obtained by the petitioner on 16.7.1996 from the Single Bench of this court was a bad order because when the disputed land stood allotted in the names of the allottees for last 15-20 years, the petitioner had no right to assail the order of 25.11.1972 without revealing the facts of the case and to get relaxation of khasra No. 148 measuring 255 bighas 5 biswas which already stood allotted. The conduct of the petitioner has not been clean and he came to the court concealing many material facts which should have been brought to the notice of the court that the ceiling acquired land stands allotted.

10. This court is of the considered view that the petitioner came to this court under section 221 of the Act which is an extraordinary jurisdiction of this court which can be invoked in rare cases of manifest irregularities and illegalities. This court was made instrumental to take a decision on 16.7.1996 releasing khasra No. 148 from the acquisition already made in the seventies. He unnecessarily pushed the non-petitioners and the state into frivolous litigation for along passage of 15 years. This court condemns the conduct of the petitioner and dismisses his revision petition on cost of Rs. 25000/- (Rupees twenty five thousand only). The petitioner is directed to deposit this amount in the court of Sub-Divisional Officer (North), Bikaner within thirty days of this order. If this money is not deposited within the stipulated period, the Sub-Divisional Officer is directed to recover this amount as arrears of land revenue from the petitioner Jethu Singh. The Registry of the Board of Revenue is directed to send a copy of this judgment to the Sub-Divisional Officer (North), Bikaner by registered post for compliance.

Pronounced.

(Bajrang Lal Sharma)
Member