

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER****Reference No.11240/2007/TA/Ajmer :**

State of Rajasthan, through Tehsildar Nasirabad.

... Petitioner.

**Versus**

1. Kana S/o Shri Teja (Deceased), through LRs
2. Shrikishan S/o Shri Hagama (Deceased), through LRs
3. Sundari widow of Shri Hagama (Deceased), through LRs
4. Gyarsi widow of Shri Rama (Deceased), through LRs
5. Suva S/o Shri Rama

By caste Bheel, residents of Jaswantpura,  
Tehsil Nasirabad, District Ajmer.

... Non-petitioners.

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**S.B.**

Shri Satish Chand Kaushik, Member

**Present :**

Shri V.S. Panwar : Dy.Govt.Advocate for the State.

Shri Shahabuddin : counsel for the non-petitioners.

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Dated : 10.8.2016

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

In this case, a reference has been preferred by the learned Collector, Ajmer against the non-petitioners vide his order dated 03.5.2007.

2. After issuance of notices to the concerned parties, an application was moved on 01.8.2016 alleging therein that this reference is not maintainable because as on 03.5.2007, when order for reference was passed by the learned Collector, Ajmer, some of the non-applicants were not alive. The non-applicant no.1 Kana S/o Teja was died as early as on 05.7.1990 and any order passed against a dead person is a nullity. It was

also argued that order of reference was passed without hearing and it is against principle of natural justice as well.

3. The learned counsel also argued that the S.B. of this court in same type of matter ordered on 03.5.2016 that the order of the District Collector is against dead person and as such it is ab initio void judgment and in such circumstance the matter was remanded back for the fresh consideration after taking the LRs of the dead person on record. In this matter also, at the time of the reference order by the learned Collector, non-applicant Kana was died. Because order was passed in 2007 while Kana was died as early as on 5.7.1990.

4. On the other hand, the learned Dy.Govt. Advocate argued that there is no occasion to admit the application of the learned counsel for the petitioners because the order of reference is not a judicial order, it is merely an administrative order. Secondly, the order of the learned Collector dated 03.5.2007 for reference of the matter to the Board was passed in compliance of the judgment of the Hon'ble High Court of Rajasthan in the case of 'Abdul Rahman Vs. State of Rajasthan' in D.B. Civil Writ Petition No.1536/2003 pronounced on 02.8.2004 and as such there was no need to issue even the notice to the parties, because if any order is being made in compliance of the order of the Hon'ble High Court, then it will be treated as notice in general. The Hon'ble High Court of Rajasthan has passed the judgment in respect of the land belonging to river, nala, pond etc. and such type of land cannot be allotted to anyone and any allotment made thereof was declared void ab initio. More so, prior to passing the order, the notices were issued to the concerned parties as per rules and none was appeared before the court and thereafter order was passed. That order cannot be said to be an illegal order. The Govt. Advocate referred the judgment passed in (2007) 10 SCC page 635 Rajkumar Soni Vs. State of U.P. and argued that the Hon'ble Supreme Court in such type of matters specifically held that, "it is not always necessary to strike down an administrative order merely because it had been passed in breach of natural justice, especially if the same would revive as an illegal or void order." In this matter, the reference has been made in respect of land belonging to prohibited category viz. river, nala, pond etc. If the applicant is having any objection to this

reference, he is having authority to make his arguments and submit his documents before this Board because the power to cancellation of the name or deciding the matter whether the land is belonging to the prohibited category or not is only with the Board. The Collector is only the referring officer working as post-office. He is having no right to decide the matter or make any effective order and as such he requested that the application for preliminary objection to be dismissed and the matter to be decided on merit.

5. After hearing both the parties and after considering the authorities referred with due respect to the authorities cited, I am of the opinion that the reference order is an administrative order. By that order, the concerned authority is only referring the matter for decision of the Board. The reference is also made in compliance of the judgment of the Hon'ble High Court of Rajasthan. As such, the order of the District Collector is only an administrative order and if the matter has been referred against a dead person, then also the legal representatives are having right to come before the Board because Board has to decide the matter on merit. The notices have been issued by the Board to the concerned parties and thereafter the matter is pending here for hearing. The matter should not be remanded on the ground that reference has been made against a dead person, because if this order is being made, it will amount to restoration of illegal act of allotment of land of prohibited category. The Hon'ble Supreme Court of India in the matter of Rajkumar Soni Vs. State of U.P. (supra) specifically dealt with such type of matter and held that "it is not always necessary to strike down an administrative order merely because it had been passed in breach of natural justice, especially if the same would revive an illegal or void order." It is also pertinent to mention here that if any notice is being issued, all the concerned parties are duty bound to appear or if they are dead persons, it is the duty of their LRs to defend the matter before the court. If they are not appearing, then they cannot claim that the order was made against a dead person, because prior to making of the reference order, the notices were already issued and after due enquiry, the reference order was made. However, it is also clarified that when the Hon'ble High Court has declared the allotment of land belonging to river, nala, pond etc. void ab initio and ordered to make their original shape and

use, then in such a circumstance, it will be treated that all the persons concerned who have gotten such type of land in their possession are having notice about the reference order and if formal notice has been issued by the Collector, it will be treated that all concerned are having notice to it. As such, the application of preliminary objection is hereby dismissed. Let the matter be fixed for arguments on merit before any bench on 14.9.2016.

Pronounced.

**(SATISH CHAND KAUSHIK)**  
Member

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