

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.2337/2002/LR/Tonk :

State of Rajasthan, through Tehsildar Malpura, District Tonk.

... Petitioner.

Versus

Trust Asthal Dadu, through Shridayal Village Soda,
Guardian Mahant Jawahar Das Chela Harikishan Das, by caste
Swami (Dadu Panthi), R/o Village Soda Tehsil Malpura District Tonk.

... Non-Petitioner.

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S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Surendra Sharma, Dy.Govt.Advocate for the State.

Shri Yogendra Singh, Shri Jagdamba Prasad Mathur & Shri Khadag Singh,
counsels for the Non-Petitioner.

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Dated : 11th April, 2012

J U D G M E N T

This reference has been made by Additional Collector, Tonk under section 82 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act') by his order dated 21.02.2002.

2. Brief facts of the case are that according to Additional Collector, Tonk the disputed land bearing Arajki khasra Nos. 359 area 8 biswa, 360 area 2 bigha 5 biswa, 361 area 12 biswa, 362 area 1 bigha 15 biswa, 363 area 9 biswa, 364 area 4 biswa, 365 area 5 biswa, 366 area 1 bigha 9 biswa, 367 area 11 biswa, 368 area 2 bigha 15 biswa, 369 area 8 biswa, 1571 area 2 biswa, 1572 area 2 biswa, 1573 area 3 biswa, 1574 area 6 bigha 4 biswa, 1575 area 3 bigha 9 biswa, 1576 area 1 bigha 14 biswa and 1586 area 1 bigha 15 biswa situated in Village Soda Tehsil Malpura District Tonk was recorded in the name of Temple Maufi Mandir Shri Sitaram Ji as per Khatauni Bandobast of Samvat 2010-2019. By lapse of time, the name of temple was deleted, the name of Madhudas Chela Jawahardas Swami (Dadu Panthi) was entered in revenue records and through mutation No.1012, the disputed land was entered in the name of non-petitioner. Considering this transfer of the temple land to the non-petitioner as illegal being violative of section 46 of Rajasthan Tenancy Act,1955, Additional Collector, Tonk has made this reference to the Board of Revenue.

3. I have heard the arguments of learned Dy.Govt.Advocate & learned counsels for the non-petitioner and perused the record.

4. In support of reference, learned Dy.Govt.Advocate submitted that initially disputed land was entered in the name of Maufi Mandir Shri Sitaram Ji as Khudkasht land; but ignoring the settled position of law & violating the provisions of the Rajasthan Tenancy Act, 1955 khatedari rights were given to non-petitioner, which is illegal. Hence, reference be accepted.

5. Learned counsels for the non-petitioner have argued that the disputed land has been in possession of the non-petitioner. As per Khatauni of Samvat 2010-2019, disputed land is not khudkasht land of the temple but name of non-petitioner has been entered in the tenant column; therefore, by virtue of the Rajasthan Land Reforms & Resumption of Jagirs Act, 1952 (in short to be referred as "the Jagirs Act"), by operation of law, non-petitioner has acquired khatedari automatically. By mutation No.1012, the disputed land has been entered in the name of non-petitioner. Additional Collector has made this reference unnecessarily. Hence, the present reference deserves to be rejected.

6. I have given my thoughtful consideration to the rival contentions and examined the record cautiously.

7. Indisputably as held by legal fiction and by series of cases decided by different Hon'ble High Courts as well as by Hon'ble Apex Court, temple/ idol is a perpetual minor and it is not possible for temple to cultivate the land personally even the provision of section 2(K) of "the Jagirs Act" says that in the case of a person who is a minor, land shall be deemed to be cultivated personally even in the absence of such personal supervision.

8. It is evident from the case file that originally the land in dispute was entered in the name of Maufi Mandir Shri Sitaram Ji and thereafter without any convincing reason khatedari of disputed land has been entered in the name of the non-petitioner instead of Maufi Mandir Shri Sitaram Ji. Though it is trite that section 9 of "the Jagirs Act" provides for acquisition of khatedari rights, but this section does not provide khatedari by operation of law on suo-motu conferment. It has certain restrictions & limitations which says that "Every tenant in a jagir land who at the commencement of this Act is entered in the revenue records as a khatedar, pattedar, khadamdar, or under any other description implying **that the tenant has heritable and full transferable rights** in the tenancy shall continue to

have such rights and shall be called a khatedar tenant in respect of such land." conveying the meaning that all the persons who were shown as khatedar, pattedar, khadamdar, or under any other description having the **heritable and full transferable rights** shall continue to have such rights. Therefore, on the basis of the above circulars along with the provisions of "the Jagirs Act", it must have to be seen that the person claiming the khatedari rights must have **heritable & transferable rights** in the tenancy at the time of commencement of "the Jagirs Act".

9. The pre-requisite condition for claiming khatedari rights on the strength of section 9 of "the Jagirs Act" is that person claiming such rights should prove the fact that he was entered in the revenue record as a khatedar, pattedar, khadamdar or under any other description implying **that the he had heritable and full transferable rights** in the tenancy. The non-petitioner did not specifically plead such a case and they did not at all prove any of the requirements of section 9 of "the Jagirs Act". So unless the conditions enumerated in section 9 of "the Jagirs Act" are fulfilled or proved by non-petitioner and **heritable or transferable rights** as envisaged in section 9 of "the Jagirs Act" were disclosed and proved, the khatedari of the disputed land cannot be claimed by the non-petitioner.

10. In alternate also, as per sections 16 & 46 of the Rajasthan Tenancy Act, 1955, no khatedari rights can accrue to Pujari and/or his successor on the land originally held for idol/temple. A pujari cannot acquire khatedari rights derogating to the title of the temple. Under the revenue law, idol/temple is a juristic person having the status of perpetual minor and the transfer of khatedari rights of perpetual minor for whatsoever purpose is legally prohibited. Thus, the transfer of the land pertaining to temple/idol in the name of non-petitioner is completely prohibited by the law, having no legal sanctity and void ab initio. Therefore, the reference made by Additional Collector, Tonk deserves to be accepted.

11. In view of above discussion, the reference is accepted and the disputed land is ordered to be restored in the khatedari of "Maufi Mandir Shri Sitaram Ji" with deletion of the name of non-petitioner as khatedar from the revenue records. The mutation No. 1012 made in favour of non-petitioner is hereby cancelled. The reference is disposed of accordingly.

Pronounced in open court.

(PRAMIL KUMAR MATHUR)
Member