

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.1918/2003/LR/Bharatpur :

State of Rajasthan

Petitioner.

Versus

1. Navi Khan) sons of Shri Shitab, by caste Mev
2. Subhan)
3. Harbhajan) sons of Kuda, by caste Aheer
4. Ratiram)

All residents of Luhesar, Tehsil Kama, District Bharatpur.

... Non- Petitioners.

S.B.

Shri Pramil Kumar Mathur, Member

Present :

Shri Vijendra Choudhary, Dy.Govt.Advocate for the State.

Shri Dhanesh Dutt Sharma, counsel for non-petitioners No.1 & 2.

None present on behalf of the non-petitioners No.3 & 4.

Dated : 19.1.2012

JUDGMENT

This reference has been made by Additional Collector, Deeg (Bharatpur) under section 232 of the Rajasthan Tenancy Act, 1955 (in short to be referred as 'the Act') by order dated 13.03.2003.

2. Brief facts of the case are that non-petitioners No.1 & 2 filed a suit in the court of Assistant Collector, Kama claiming that 1/4th portion of the disputed lands situated at Village Luhesar bearing khasra Nos.129 min area 0.12 hectare, 130 min area 0.03 hectare, 131 min area 0.12 hectare, 132 min area 0.69 hectare, 135 min area 0.03 hectare, 136 min area 0.56 hectare was given to them for perpetual cultivation by the father of non-petitioners No.3 & 4 in Samvat 2016 and since then the disputed land has continuously been cultivated by them, but is not so recorded in the revenue records. Hence, on the basis of long cultivatory possession, it may be declared that they are the khatedars of disputed land. Believing on the consented written statement filed by non-petitioners No.3 & 4, the Assistant Collector, Kama decreed the suit on 15.03.1994 and ordered to record the above mentioned

COMPARED BY

(Signature)



W.P.

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disputed lands in favour of non-petitioners No.1 & 2 as khatedar tenant. On the basis of this judgment & decree, mutation No.884 was made. Considering this judgment & decree in favour of non-petitioners as beyond jurisdiction, illegal and against record, Additional Collector, Deeg (Bharatpur) has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.

3. I have heard the arguments of learned counsel for the parties and perused the record.

4. In support of reference, learned Dy.Govt.Advocate submitted that in support of their claims, non-petitioners have not submitted any documentary evidence of long cultivatory possession before trial court. Assistant Collector, Kama has passed the judgment & decree only on the basis of oral evidence ignoring the bar created under section 45 of "the Act". Transfer of khatedari on given grounds also causes revenue loss to the State. The above said judgment & decree is absolutely against the record and in violation of the provisions of "the Act", hence deserves to be set aside. In view of above, learned Dy.Govt.Advocate requested that the reference be accepted.

Learned counsels for the non-petitioners have submitted that non-petitioners are continuously cultivating on the disputed land and are in cultivatory possession since long; hence they are the khatedars of the said land. On this basis, Assistant Collector, Kama has rightly passed the impugned judgment & decree on 15.03.1994 and hence mutation No.884 has been made which does not cause any revenue loss to the government. Therefore, the present reference deserves to be rejected.

6. I have given my thoughtful consideration to the rival contentions and scanned the matter carefully.

7. From perusal of available record, it appears that the non-petitioners No.1 & 2 had filed a revenue suit on the basis of fact that disputed land was given for cultivation by father of non-petitioners No.3 & 4 in Samvat 2016 and since Samvat 2016 they are in continuous possession of the land. So on the basis of continuous possession since Samvat 2016, they may be declared as khatedars.


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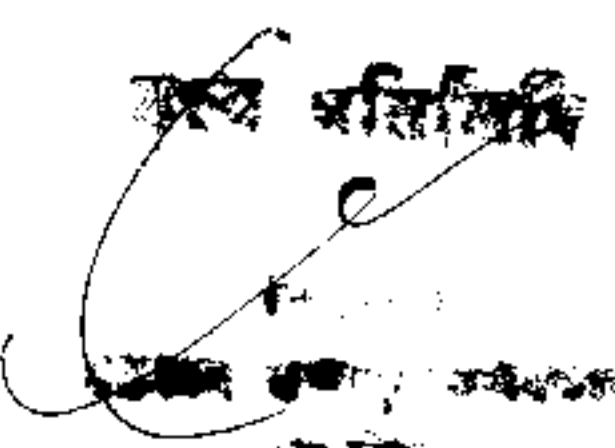
8. "The Act" provides the conferment of khatedari right only on the basis of khudkasht, khatedar tenant or sub tenant at the commencement of this Act i.e. 1955 or Samvat 2012 and after the enactment of this Act as per section 45 of "the Act", the holder of khudkasht shall not let and khatedar tenant shall not sub let whole or any part of his holding for a term exceeding five years at any one time. It simply connotes that land cannot be given for cultivation in perpetuity.

9. Here also before the trial court non-petitioners No.1 & 2 have pleaded that the disputed land was given for perpetual cultivation in Samvat 2016 i.e. after enactment of "the Act". But the bar created by section 45 of "the Act" does not support the pleadings submitted by the non-petitioners No.1 & 2.

10. This is also important to mention that no provision exists in the Act by which it can be inferred that khatedari rights can be granted on the basis of possession starting from Samvat 2016.



11. It will also be pertinent to mention here that only on the basis of consented written statement, mandatory provisions of "the Act" cannot be overlooked and khatedari rights ignoring the provisions of "the Act" could not be granted and transfer of khatedari rights through such collusive litigation, also causing revenue loss cannot be maintained.



12. Viewing from another angle, as per definition of "Tenant" provided in Rajasthan Tenancy Act, 1955 tenant shall mean the person by whom rent is payable, so this important fact has to be proved by non-petitioners No.1 & 2 that they are in possession of land as tenant and they have paid the rent regularly. But before learned trial court, non-petitioners did not produce any kind of documentary evidence in support of their contentions and suit was decreed only on the basis of oral evidence. That oral evidence too does not reveal that they are in possession of land as tenant and have paid the rent whatsoever any time to competent authority.

13. So on the background of this holistic view of the case, it appears that only on the basis of unsupported & uncorroborated testimony of oral evidence, khatedari rights of disputed land cannot be granted to non-

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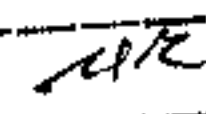
petitioners. Hence under these circumstances, learned trial court has passed the judgment & decree in utter violation of sound & settled proposition of law. Therefore, the judgment & decree passed by Assistant Collector, Kama on 15.03.1994 being illegal and against provisions of law is liable to be quashed and the reference made by Additional Collector, Deeg (Bharatpur) deserves to be accepted.

14. In view of above discussion, the reference is accepted and the judgment & decree of Assistant Collector, Kama dated 15.03.1994 made in favour of non-petitioners is quashed and the mutation No.884 made thereof is hereby cancelled. The reference is disposed of accordingly.

Pronounced in open court.


(PRAMIL KUMAR MATHUR)
Member

COMPARED BY


(MS Sarda)
19.1.2012