

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Reference/LR/971/2004/Bikaner.

State of Rajasthan through Tehsildar (Colonisation) Chhatargarh
Distt. Bikaner.

...Petitioner.

Versus

Fattu Khan son of Mange Khan resident of Ranisar Tehsil
Chhatargarh Distt. Bikaner.

...Non-petitioner.

S.B.

Shri Subodh Agarwal, Member

Present:-

Shri Mukesh Dadhich, Dy. Govt. Advocate for State.

Shri K.K. Purohit, counsel for the applicant Bhara Ram.

Date:- 29.12.2011

JUDGMENT

This is an application under section 65 of the Rajasthan Land Revenue Act 1956 against the judgment dated 3.6.1999 passed by this court in Reference/LR/94/99/Bikaner.

2. Briefly stated, the facts of the case are that the non-petitioner Fattu Khan submitted an application before Assistant Colonisation Commissioner, Chhatargarh and prayed that out of his khatedari land, 3 bigha land of Chak 8 K.J.D, Murabba No. 102/4 has been acquired for construction of road. Therefore alternative land in Chak No. 11 K.Y.D be allotted to him. As per the report of Patwari Halka, Fattu Khan has 12 bigha 10 biswa land in Chak No. 8 K.J.D. Murabba No. 102/4, out of which 2 bigha 4 biswa land had been acquired for construction of road from Bikaner to Beriyawali. The Patwari Halka proposed to Assistant Colonisation Commissioner, Chhatargarh to allot 2 bigha 15 biswa land of Chak 11 K.Y.D. Murabba No. 156/22 in exchange of the land coming under road construction. Assistant Colonisation Commissioner has sanctioned the proposal of patwari vide his order dated 7.10.1987. against which this reference has been made before the Board of Revenue.

3. This reference has earlier been decided and accepted ex-parte by the learned Single Bench of the Board vide its judgment dated

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3.06.1999. However, an application under section 65 of the Rajasthan Land Revenue Act, 1956 was filed on 1.03.2004 by the learned counsel for the applicant Bhara Ram, who was not a party in the reference. This application was heard on the issue of limitation, admission and stay on 17-03-2004. The petition admitted after condonation of delay, stay granted and the record called for.

4. I have heard the learned counsel for both the parties.

5. The learned Dy. Govt. Advocate contended that the disputed land has been granted in exchange of land of the petitioner acquired for road, but there is no report of concerned Tehsildar about the acquisition. The learned Dy. Govt. Advocate further contended that Assistant Colonisation Commissioner has no power under the law to exchange the agriculture lands. It is also contended that in cases where the land acquired is for public utility, only land revenue and other surcharges can be reduced but there is no provision of providing land in exchange of the land. He further submitted that Bhara Ram was not the party in the reference at any stage and as such he has no locus standi to file the application under section 65 of the Rajasthan Land Revenue Act. Only a person who has been a party can file such application. Therefore, the application filed by the applicant Bhara Ram is not maintainable.

5. Opposing the contentions of the petitioner, the learned counsel for the non-petitioner contended that the disputed land was recorded in the name of Fattu Khan who gave it through mutual exchange to Kunj Bihari son of Kundan Lal Brahmin. Kunj Bihari had sold the disputed land through registered sale deed dated 7.2.1994 to the applicant and in compliance of the registered sale deed, mutation No. 54 dated 15.3.1995 has been attested in favour of the petitioner. The petitioner is in possession of disputed land since the date of purchase as the recorded khatedar tenant of the disputed land.

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6. I have given thoughtful consideration to the rival contentions, perused the impugned judgment and gone through the material on record.

7. Learned counsel Shri K.K. Purohit has submitted the application under section 65 of the Rajasthan Land Revenue Act 1956 on behalf of Shri Bhara Ram son of Kushala Ram who was not a party in the reference sent by Additional Collector (Administration) Bikaner and there is no application for becoming a party in the reference on record. It is pertinent to reproduce the provision of section 63 and 65 of the Land Revenue Act which are as under:-

Section 63:-Hearing in absence of party - (1) If any party to a case of proceeding before a revenue court or officer does not appear on the date fixed for hearing, or on any subsequent date or dates to which the hearing may have been postponed, the case or proceeding may be heard and determined in his absence or may be dismissed in default.

(2) If, on the date fixed for hearing a case or proceeding, a revenue court or officer finds that a summons or notice was not served on any party due to the failure of the opposite party to pay the requisite process-fees for such service, the case or proceeding may be dismissed in default of payment of such process fees.

Section 65:-No appeal from order passed under section 63-

(1) Except where a case or proceeding before any revenue court or officer has been decided on the merits, no appeal shall lie from an order passed under sec. 63.

(2) The party against whom any order is passed under section 63 may apply within 30 days from the date of such order, to have it set aside on the ground that he was prevented by any sufficient cause from appearing at the hearing or from paying the requisite process-fee for the service of a summons or notice on the opposite party, and the revenue court or officer may, after notice to the opposite party and after making such inquiry, as may be considered necessary, set aside the order passed.



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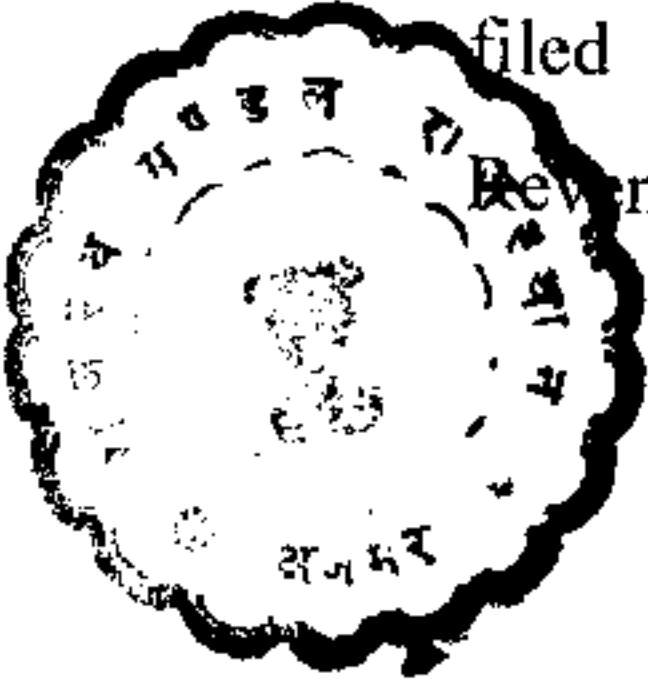
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From bare perusal of the above mentioned sections, it is quite evident that Bhara Ram was not the party before any of the lower courts and as such has no locus to file such an application under Sec.65 of the Land Revenue Act. If the applicant has any grievance against the impugned judgment in the said reference, he is free to avail legal remedy under the law in vogue before the competent court.

8. In view of the aforesaid discussion, the present application filed by the applicant Bhara Ram under Sec. 65 of the Land Revenue Act has no force and as such it stands rejected.

Pronounced in the open Court.



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अजमेर

S. W. B. O. O. H.

(Subedh Aganyal)

COMPALED BY Member

2/11/12