

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Revision/TA/11665/2002/Hanumangarh.

1. Atma Ram) sons of Ramchandra
2. Harphool Singh)
3. Shanti) daughters of Ramchandra
4. Lichhma)

All by caste Jat residents of village Badopal Tehsil Pilibanga Distt.
Hanumangarh.

...Petitioners.

Versus

State of Rajasthan through Naib Tehsildar, Pilibanga.

...Non-petitioner.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Amritpal Singh Vanar and Shri Dunichand, counsels for the
petitioners.

Shri S.P. Ojha, Dy. Govt. Advocate, for the State.

Date: 5.4.2013

J U D G M E N T

The petitioners have filed this revision petition under section 230 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being aggrieved by the order passed by District Collector, Hanumangarh on 27.8.1998 in appeal No. 9/1998.

2. The factual matrix of the case is that Ramchandra, the father of the petitioners, filed an application before Assistant Colonisation Commissioner, Suratgarh on 19.5.1971 for allotment of 100 bighas of land under Rajasthan Colonisation (Rajasthan Canal Project prior to 1955 temporary tenants allotment of government land) Conditions, 1971. The first application of Ramchandra was rejected on 14.3.1972 by Assistant Colonisation Commissioner on the ground that he had ancestral land more than the prescribed ceiling limit. Therefore, under these conditions no allotment can be made to the applicant. Ramchandra filed a review application before Assistant Colonisation Commissioner which was accepted on 8.8.1975 and the learned Single Bench of the Board of Revenue directed Assistant Colonisation Commissioner to consider the review application afresh. The learned Assistant Colonisation

Commissioner rejected the review application of Ramchandra on 9.1.1976 and declared 52 bighas 16 biswas of land as government land which was allotted to him on temporary cultivation. Being dissatisfied from the order of Assistant Colonisation Commissioner dated 9.1.1976, Ramachandra filed an appeal before Additional Colonisation Commissioner-cum-Revenue Appellate Authority, Bikaner which was dismissed on 14.4.1977. Being dissatisfied by the judgment of the appellate court dated 14.4.1977 he filed a revision petition before the Board of Revenue which was dismissed in limine on 21.6.1977 (Revision No. 188/77).

3. In the meantime section 15AAA was inserted in the Rajasthan Tenancy Act on 29.12.1979 and sub-section (2A) of section 15AAA was also inserted on 11.11.1992. After amendment in section 15, the petitioners who are the heirs of late Ramchandra applied before Assistant Collector-cum-Sub-Divisional Officer under section 15AAA(2A) on 11.5.1993 for allotment of 140 bighas of land in chak 17 Z.W.D., Chak 76750 R.D., Chak 7 S.T.D. , Chak 1 N.M. and chak 2 N.M. total 140 bighas for conferment of khatedari rights. This application was transferred to Tehsildar, Pilibanga for disposal on merits. The Tehsildar accepted the application filed by the petitioners on 15.4.1995 and conferred tenancy rights on them measuring 52 bighas 16 biswas of land only. The State Government filed an appeal against the order passed by Tehsildar on 15.4.1995 before Collector, Hanumangarh who accepted the appeal on 11.4.1996 filed by the State government and quashed and set aside the order passed by Tehsildar (Revenue), Pilibanga dated 15.4.1995 and remanded the case to Tehsildar with certain directions. The Tehsildar, Pilibanga decided the application filed by Atma Ram and ors. afresh on 29.9.1997 wherein the petitioners were conferred khatedari rights on 104.06 bighas of land (82 bighas 16 biswas command and 16 bighas 10 biswas uncommand) under section 15AAA (2A) of the Act. Being aggrieved by the judgment passed by Tehsildar an appeal was again preferred before Collector, Hanumangarh which was accepted by Collector, Hanumangarh on 27.8.1998 and the Collector remanded the case again with certain

observations to Tehsildar. Being aggrieved by the judgment passed by Collector on 27.8.1998, this revision petition has been preferred before this court.

4. Heard the learned counsels of the parties.

5. The learned counsels for the petitioners contended that the Tehsildar, Pilibanga conferred khatedari rights on 104.06 bighas of land under section 15AAA (2A) of the Act on 15.4.1995 but the order passed by the Tehsildar was quashed and set aside by the Collector on 11.4.1996 and the matter was remanded to Tehsildar. He further submitted that the Tehsildar made detailed enquiry and conferred khatedari rights to the petitioners on 29.9.1997 on 104 bighas 6 biswas of land which was also quashed and set aside by the Collector on 27.8.1998. Their vehement submission is that the Tehsildar was fully competent to examine the case of the petitioners for conferment of tenancy rights under section 15 AAA (2A) of the Act and there was no illegality in the order passed by the Tehsildar but Collector arbitrarily quashed the order passed by the Tehsildar. They also argued that there has been continuous possession of the petitioners and their father right from commencement of the Act and there is no nursery on site nor there is any possession of Forest Department but unnecessarily the matter is being complicated by remitting it time and again. They further argued that the disputed land has been given in tenancy of the petitioners who had divided their lands and there is no ceiling excess land with them. Therefore, the order passed by the Tehsildar was quite logical and justified which needs to be upheld. The learned advocates for the petitioners argued that since 1995 they are being harassed on one or other pretext and they are not being conferred khatedari rights on the disputed land which has been in their possession even prior to commencement of this Act. The learned advocates finally urged the court that the judgment passed by the District Collector is capricious and illegal, therefore, be quashed and the judgment passed by the Tehsildar be upheld.

6. The learned Dy. Govt. Advocate for the State has argued that the petitioners have no claim on the disputed land as they are not in

possession of the disputed land as required under section 15AAA (2A) of the Act. He also contended that the disputed land is classified for nursery of the Forest Department in the revenue records. Therefore, khatedari rights on such a land which is classified as forest nursery cannot be conferred on the petitioners. The learned Dy. Govt. Advocate further submitted that the court that the father of the petitioners Ramchandra had land more than the ceiling limit in his tenancy and this has been on record since 1972 and the disputed land has also been notified for special allotment. Petitioner No. 3 and 4 are married daughters of late Ramchandra who never had any possession on the disputed land. Therefore, no conferment of tenancy rights can be made on the petitioners. The learned Dy. Govt. Advocate finally urged that the order passed by the Tehsildar is perverse, therefore, cannot be upheld and the claim of the petitioners under section 15-AAA(2A) of the Act deserves to be dismissed.

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. This court has carefully perused the proceedings conducted by Tehsildar, Assistant Colonisation Commissioner, Suratgarh and Collector, Hanumangarh regarding the disputed land right from the year 1968 when Ramchandra, the father of the petitioners, applied for allotment of agricultural land in Indira Gandhi Canal Project Area. The proceedings conducted in the Assistant Colonisation Commissioner office explicitly reveal that Ramchandra who was the father of the petitioners was refused allotment of land under Rajasthan Colonisation (Allotment of Government Land to Farmers prior to 1955 in Indira Gandhi Colony Area) Conditions, 1971. The application of Ramchandra was turned down by Assistant Colonisation Commissioner, Suratgarh on 14.3.1972 on the sole ground that Ramchandra had ancestral land in his tenancy which is more than the prescribed ceiling limit. Thereafter, no land could be allotted to Ramchandra on this ground. Thereafter, Additional Colonisation Commissioner and Revenue Appellate Authority,

Bikaner explicitly reiterated in their appeal on 14.4.1977 that Ramchandra had more than 55 bighas of irrigated land and 12.10 bighas of uncommand land in his tenancy. Therefore, he is not entitled for any allotment. The order of the Additional Colonisation Commissioner, and Revenue Appellate Authority, Bikaner was assailed before the Board of Revenue which was also dismissed in limine on 21.6.1977. These explicit and concurrent findings revealed by the competent authorities of revenue department that the family of Ramchandra had the land more than the ceiling limit right from the day when the ceiling law came into being in the State. This is also prima facie correct that petitioner No. 1 and 2 are the sons of late Ramchandra and petitioner No. 3 and 4 are his married daughters who are more than 70 years old today. Therefore, as far as this issue of ceiling limit is concerned, the family had more than the ceiling limit in their tenancy right from the beginning. This court is aware that conferment of tenancy rights under section 15 AAA (2A) of the Act can be made on a person under the following provisions:-

15 (AAA) Accrual of khatedari rights in the [Indira Gandhi Canal area] (2A) Notwithstanding anything contained in section 15-A, any person who was a holder of khudkasht or a tenant of land otherwise than as a sub-tenant or a tenant of khudkasht within the Indira Gandhi Canal area, whether recorded as such at the commencement of this Act or subsequently in the record of rights, prepared during the survey or re-survey and record operations conducted under sections 106 and 107 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act No. 15 of 1956), shall be entitled to all the rights, and be subject to all the liabilities, of a khatedar tenant under this Act, with respect to the whole or such part of the land held as does not exceed the maximum area of land which he is entitled to hold in accordance with the provisions of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973)Rajasthan Act No. 11 of 1973).

9. Under the provisions of (2A) under section 15AAA of the Act only a holder of khudkasht or a tenant of land is entitled for conferment of such rights in Indira Gandhi Canal Area but the case of Ramchandra's family had already attained finality after meticulous examination at various levels. His family already had land more than the ceiling limit therefore, could not have been conferred tenancy rights under the above provisions of this law. This

is an established law that all special enactments related to land which were enacted by the State after the independence of the country had a focus on mitigating the problems of the peasantry and decentralization of the land holdings from jagirdars and biswedars to the tillers of the land. These measures of land reforms were vital part of our national agenda. The provisions of section 15AAA (2A) of the Act were also inserted in the Act just to provide relief to such farmers who had their possession prior to 1955 on the land which came under command of the Indira Gandhi Canal. In this case the possession of the petitioners as holder of khudkasht or tenant or sub-tenant on the disputed land is not proved by documentary evidence on the disputed land. Besides this some part of the disputed land is presently classified for the Forest nursery in the revenue record.

10. This is very pertinent to mention here that when Ramchandra, the father of the petitioners, applied for allotment of 100 bighas of land under Colonisation Conditions of 1971; the Tehsildar reported that he had 55 bighas command land in chak 17 Z.W.D. and 12 bigha 10 biswas barani land in village Badopal. The Tehsildar also mentioned that the applicant Ramchandra has more land in Bhaklhra area also. This fact was also accepted by Ramchandra himself in his statement. Besides this, in the year 1975 Atma Ram also had 24 bighas 14 biswas land allotted to him under the Colonisation Act. The chronology of this case manifestly reveals that the family of Ramchandra had ancestral land even before the commencement of this Act which was more than the prescribed ceiling limit. Besides this Atma Ram, petitioner was also allotted 24.14 bighas of land under the Colonization Allotment Rules.

11. This is also very relevant to note here that Smt. Shanti and Lichhma who are the petitioners No. 3 and 4 are daughters of late Ramchandra who had got married and living with their own families since a long time. Their case for section 15AAA is pending before the trial court when these provisions of law were inserted in the year 1979. There is no evidence of their possession as holder of khudkasht or tenant/ sub-tenant on the disputed land. This case has

come before Collector twice and third time before this court and the case has been remanded time and again without any good reason. The only ground this court can see is that the family of the petitioners is an influential family of the area as they had more than adequate land even at the time of commencement of this Act. But still they are pressing hard for conferment of tenancy rights on 104 bighas of valuable command land of the government which is classified as forest nursery or notified for special allotment today.

12. This court has carefully perused the judgments passed by the Tehsildars on 15.4.1995 and 29.9.1997. In both the judgments the Tehsildars had no documentary evidence which could prove the possession of the petitioners on the disputed land prior to 1955. The possession of Ramchandra was entered on the disputed land in the revenue record and for that his case attained finality even up to the Board of Revenue. The Tehsildars did not examine the facts of lands held by the petitioners in their tenancy. The eligibility of Smt. Lichhma and Shanti (petitioners No. 4 and 3) was also not examined. Therefore, the findings given by the Tehsildar are perverse and arbitrary and have been given just to benefit the petitioners unduly.

13. In view of this court, the petitioners are not at all entitled for conferment of tenancy rights under section 15AAA (2A) of the Act. This provision has been made by the legislature to help the genuine farmers who had reasonable claim pre 1955 but certainly not for the persons like the petitioners whose father even had land more than the ceiling limit and their possession is not proved as provided in section 15AAA(2A) of the Act.

14. After examination of record available on this file, this court reaches on the following inescapable conclusions:-

(i) The benefit of section 15AAA(2A) of the Act can be given to cultivators who were holder of khudkasht or a tenant of land otherwise than as a sub-tenant or a tenant of khudkasht within the I.G.N.P. area. In this case there is inadequate documentary evidence which can prove uninterrupted possession of the

petitioners or entry in the revenue record in their favour as holders of khudkasht or tenant.

(ii) The Assistant Colonisation Commissioner in the year 1972 unequivocally inferred that Ramchandra had ancestral land more than the ceiling limit. Therefore, he is not entitled for allotment under Conditions of 1971 and this order became final when the revision petition filed by Ramchandra was dismissed by Board of Revenue on 21.6.1977 (Revision No. 188/77). In this way the matter attained finality as far as the allotment of land is concerned. But now the petitioners who are sons and daughters of late Ramchandra have filed a fresh case again under section 15 AAA (2A).

(iii) Atma Ram one of the petitioners was allotted 24 bigha 14 biswas of land as per Tehsildar report under Colonisation Act.

(iv) The petitioners No. 3 and 4 who are the daughters of late Ramchandra were married and at the time of application before Assistant Colonisation Commissioner under section 15 AAA (2A) of the Act they were with their respective families and their possession on the disputed land was never shown in records.

(v) As per revenue record available on file the disputed land situated in chak 2 N.M. classified as nursery of the Forest Department. Therefore, conferment of tenancy rights on nursery land cannot be accorded.

(vi) This is also factually true that the disputed land situated in chak 76750 R.D., chak 17 Z.W.D., chak 7 S.T.D., chak 1 N.M. and chak 2 N.M. also notified for special allotment.

15. In considered opinion of this court, the District Collector had enough material on file to decide the case on merits but this has been observed by this court that without any substantial reason the case has been remitted time and again. This is quite strange that the case has not been concluded even after 40 years. There should be some end somewhere, what enquiry is left now? The documentary evidence available on record manifestly suggests that the petitioners are certainly not entitled for conferment of tenancy rights on the

disputed land as they do not fulfill the conditions mentioned in section 15AAA (2A) of the Act.

16. In the circumstances mentioned hereinabove, the judgment passed by Collector, Hanumangarh on 27.8.1998 and Tehsildar (Revenue), Pilibanga dated 29.9.1997 are quashed and set aside and the revision petition filed by the petitioners is accordingly disposed of. The Tehsildar is directed to put the disputed land for the purpose which has been notified and classified in the revenue records. If the petitioners are found in possession of any part of the disputed land they must be evicted forthwith by adopting due process of law.

Pronounced.

(Bajrang Lal Sharma)
Member