

Reportable

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal Decree/TA/1353/2013/Jaipur.

Teja Ram son of Kalyan caste Jat resident of Hathoj Tehsil &
Distt. Jaipur.

...Appellant.

Versus

1. State of Rajasthan through Tehsildar, Jaipur.
2. Jaipur Development Authority, through Secretary, Jawahar
Lal Nehru Marg, Jaipur.

...Respondents

D.B. (Camp Jaipur)

Shri Chandra Mohan Meena, Chairman

Shri Bajrang Lal Sharma, Member

Present:-

Shri Ramchandra Degra, counsel for the appellant.

Shri O.P. Bhatt, Dy. Govt. Advocate for the State.

Date:.....

J U D G M E N T

This second appeal has been filed under section 224 of the Rajasthan Tenancy Act, 1955 (in short 'the Act') being dissatisfied by the judgment and decree passed by Revenue Appellate Authority, Jaipur on 22.1.2013 in appeal No. 517/2011.

2. The factual matrix of the case in hand is that the appellant-plaintiff filed a regular suit under section 88, 188 and 92-A of the Act for declaration of tenancy rights on the disputed land on the basis of long possession. This suit was filed before Sub-Divisional Officer, Jaipur-I which was dismissed on 23.9.2011. Being aggrieved by the judgment and decree passed by the trial court, an appeal was preferred before Revenue Appellate Authority, Jaipur by the appellant which was also dismissed on 22.1.2013. The appellant has assailed the judgments and decrees passed by both the lower court in second appeal before this court.

3. Heard the learned counsels of the parties on admission of this second appeal.

4. Mr. Ramchandra Degra, the learned counsel for the appellant contended that the appellant is in possession of the disputed land since jagir time and he has been depositing the

penalty amount regularly with the State Government after resumption of jagir. He also contended that the disputed land has been erroneously entered as *gair-mumkin-talai* whereas the disputed land was never used as *talai* but it has been cultivated by the forefathers of the appellant and it is in contiguity to the tenancy land held by the appellant. The learned advocate further submitted that the appellant's case is explicitly proved by the documentary evidence that the disputed land is in possession of the appellant since a long time and the disputed land was not entered as *gair-mumkin-talai* in the revenue record earlier. The learned advocate also argued that both the courts have dismissed the claim of the appellant on the basis of Public Interest Litigation case of Abdul Rehman, whereas the disputed land has never been in existence as *gair-mumkin-talai*. Therefore, this second appeal be admitted and stay may be granted for maintaining status quo on the disputed land. He finally urged the court that both the courts below have committed grave error in dismissing the suit as well as appeal filed by the appellant which is based on sound evidence.

4. Mr O.P. Bhatt, the learned Dy. Govt. Advocate appearing for the State contended that the disputed land is entered in the name of Jaipur Development Authority since more than 20 years and the appellant has no right title on this precious urban land. Therefore, the second appeal be dismissed in limine.

5. We have given thoughtful consideration to the rival contentions raised by the learned counsel for the appellant and have perused the record available on file.

6. This court has carefully perused the judgment passed by learned trial court on 23.9.2011. Indisputably, the disputed land situated in khasra No. 319 measuring 4 bigha 11 biswas, khasra No. 318 measuring 19 biswas, in total 5 bigha 10 biswas is located in village Hathoj. Presently, the disputed land is entered in the tenancy of Jaipur Development Authority

as it falls within the Jaipur Development Authority city agglomeration limits. Jaipur Development Authority in its written statement categorically mentioned that previously the disputed land was entered as siwai chak government land and after the Jaipur Development Authority Act came into being, the disputed land was entered in the name of Jaipur Development Authority and it is in possession of Authority and its title vests with the authority. The trial court framed following issues in this case:-

- (1) Whether the appellant is in possession of khasra No. 318 and 319 of village Hathoj right from the jagir time and the plaintiff has got tenancy rights on the disputed land?
- (2) Whether the disputed land has been erroneously entered as siwai chak *gair-mumkin-talai* whereas it has never been used as *talai*. This part of the tenancy land of the plaintiff being irrigated by the well?
- (3) Whether the plaintiffs are about 200 persons in the family whose main sustenance is agriculture and the family members do not have more than half bigha of land each, therefore, the plaintiff is entitled for regularization of the disputed land?
- (4) Whether the disputed land has been entered as Jaipur Development Authority's land in the year 1998, whereas temporary injunction issued by Revenue Appellate Authority, Jaipur was in force in the year 1998 and it was an act of contempt on the part of the State Government?
- (5) Whether the entries in favour of Jaipur Development Authority in the revenue record are erroneous and it do not have any legal force?
- (6) Whether the plaintiff is entitled for declaration of khatedari rights on the disputed land and determination of rent on the basis of the classification?
- (7) Whether the plaintiff is entitled for the decree of perpetual injunction against the defendants for restraining

them not to interfere in the peaceful possession of the plaintiff?

(8) Whether the suit has been filed by the plaintiff without proper notice under section 80 of the Civil Procedure Code, whether, the suit deserves to be dismissed on this ground?

(9) Whether the disputed land of khasra No. 318 and 319 situated in village Hathoj is in possession and tenancy of Jaipur Development Authority?

(10) Whether the statement made by the plaintiff regarding his possession on the disputed land is baseless?

(11) Whether the plaintiff is not entitled for declaration of khatedari rights on the disputed land?

(12) Relief.

7. The learned trial court has analysed ocular as well as documentary evidence produced by both the parties in this case and has expressed its opinion on all the issues. The trial court has dismissed the suit filed by the appellant-plaintiff on 23.9.2011 and expressed its opinion that the disputed land is in tenancy and possession of Jaipur Development Authority and has been recorded in the revenue record as *gair-mumkin-talai*, therefore, no tenancy rights can be declared in favour of the plaintiff.

8. The first appellate court also dismissed the appeal filed by the appellant on 22.1.2013. The learned appellate court has also expressed its opinion on all the issues and concurred with the judgment and decree passed by the trial court while dismissing the first appeal filed by the appellant.

9. This court has carefully perused both the judgments passed by learned appellate court as well as by learned trial court. Both the courts below have concurrently inferred that the disputed land is *gair-mumkin-talai* in the revenue record and since 1998 the disputed land has been entered in the tenancy of Jaipur Development Authority. This court is aware that the Jaipur Development Authority has been created by an Act of legislation for providing residential and other

infrastructure to Jaipur city. The disputed land is situated in village Hathoj in Jaipur District which is in the city agglomeration limit and all such lands which were either classified as pasture land or siwai chak government land were given to the Jaipur Development Authority in compliance of the provisions of law for its better management.

10. In this case the appellant has claimed tenancy rights on the disputed land on the basis of his long possession. Both the lower courts have concurrently opined that the disputed land has not been in uninterrupted possession of the appellant. His trespass on the disputed land was firstly entered in Svt. 2029. The documentary evidence produced by the appellant was not adequate to prove his uninterrupted possession since Svt. 2012 on the disputed land.

11. This court is also aware that systematic revenue records about title and possession on the lands are being maintained by the State Government in every Tehsil of the State since 1955, when the Rajasthan Tenancy Act came into being. If the possession of the appellant was on the disputed land prior to svt. 2012 (year 1955) he could have produced certified copies of khasra girdawari or jamabandi or khasra parivartansheel wherein his possession could have been mentioned but the appellant did not produce such document which could prove his uninterrupted possession on the disputed land. We hold that when the revenue record meticulously maintained by the state is available then the oral evidence pertaining to possession and title cannot be taken as reliable. The presiding officer of the court is under obligation to reconcile the factum of possession by the revenue record before conferring tenancy rights on the siwai chak land.

12. This court is also aware that the disputed land has been classified as *gair-mumkin-talai* in the revenue record right from the beginning. Hon'ble Rajasthan High Court has unequivocally held in Abdul Rehman's case that such lands which were classified as river, stream, nala, talai, talab, johad

etc be restored to its original form since 1947. The relevant portion of the said judgment (1536/2003) passed on 2.8.2004 (2004 (4) WLC (Raj.) 435) is as under:-

All land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.8.1947 should be declared as Government land. Any conversions made after 15.8.1947 should be declared illegal. The relevant act and rules must be amended accordingly.

---In the Government owned lakes and other water bodies, the Khatedari rights of private persons in their submergence area should be brought under the ownership of the Government. "

13. In this case the appellant has filed a suit for declaration of tenancy rights on the disputed land which is classified as *gair-mumkin-talai*. Section 16 of the Act manifestly bars conferment of khatedari rights on such lands, therefore, in considered opinion of this court, the tenancy rights cannot be conferred on the appellant on this disputed land because it has been classified as *gair-mumkin-talai* in the revenue record right from beginning.

14. As discussed above, this court is in full conformity with the judgments and decrees passed by both the lower courts. We do not find any legal or factual infirmity in the impugned judgments and decrees. Therefore, the second appeal filed by the appellant is dismissed in limine and the judgments and decrees dated 22.1.2013 and 23.9.2011 passed by Revenue Appellate Authority, Jaipur and Sub-Divisional Officer, Jaipur-I respectively are upheld.

(Bajrang Lal Sharma)
Member

(Chandra Mohan Meena)
Chairman