HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

D.B. Spl. Appl. Writ No. 59/2024

Joga Ram S/o Shri Chaina Ram, Aged About 72 Years, By Caste Seervi, R/o Narlai, Tehsil Desuri, District Pali.

----Appellant

Versus

1. The Board Of Revenue Of Rajasthan, Ajmer (Raj.)
2. The Revenue Appellate Authority, Second, Jodhpur.
3. The Sub Divisional Officer, Bali.
4. The State Of Rajasthan, Through Tehsildar Desuri, Tehsil Desuri, District Pali.
5. Doli Banam Mandir Shri Charbhujaji, Narlai, Tehsil Desuri, District Pali.

----Respondents

For Appellant(s)	:	Mr. J.L. Purohit, Sr. Advocate assisted by Mr. Shashank Joshi, Mr. R.S. Bohra
For Respondent(s)	:	Mr. SS Ladrecha, AAG Mr. Kshitij Vyas Mr. Deepak Suthar

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HON'BLE THE CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Judgment

(Reportable)

03/07/2024

1. This appeal arises out of the order dated 01.11.2023, passed by the learned Single Judge in the petition filed by the appellant, whereby, the learned Single Judge has upheld the orders passed by the Revenue Appellate Authority as well as the Sub-Divisional Officer in the matter of dispute relating to appellant's status *qua* the land in dispute.

2. Facts of the case stated briefly and succinctly, being relevant for adjudication, are that a parcel of land bearing *Khasra* nos.2255, 2256, 2259 and 2260 (Old *khasras* no.472 and 473)

situated in village Narlai, Tehsil Desuri, district Pali was recorded in the name of the appellant as *Khatedar* (tenant). The Sub-Divisional Officer, however, passed an order on 30.11.1987 directing the land in dispute to be recorded in the name of *Doli Banam Mandir Charbhujaji* by striking off the name of the appellant. This order adversely affected the recorded tenancy rights of the appellant and, therefore, he preferred a revenue appeal. The appeal was partly allowed vide order dated 24.06.1993. Though the order of the Sub-Divisional Officer directing the land in dispute to be recorded in the name of *Mandir* was upheld, however, it was held that if the appellant is to be dispossessed, appropriate remedy will have to be taken before the competent Court. Thereafter, the appellant preferred second appeal which was dismissed vide order dated 26.11.1998 and the review against the same was also dismissed vide order dated 04.12.2001. The appellant, thereafter, filed petition before this Court which also came to be dismissed giving rise to the present appeal.

3. Submission of learned counsel for appellant is that the Sub-Divisional Officer, without affording any opportunity of hearing to the appellant, carried out correction in the revenue entries by striking out his name as *Khatedar* and directing the name of *Doli Banam Mandir Charbhujaji* to be entered in the revenue records. He would submit that this order entailed serious civil consequences and otherwise also the procedure prescribed under the Land Revenue Act required the Sub-Divisional Officer to issue notice, hold an enquiry and then only pass an order, which was not complied with.

4. On merits, learned counsel for the appellant contended that as the appellant was cultivating the land as a tenant, which is not a disputed factual position, therefore, the legal consequences flowing after coming into force of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952 would be that the appellant would acquire tenancy rights and will become *Khatedar*. He would submit that it was in accordance with this legal position that the legal status of *Khatedar* was recorded by making necessary entries in the revenue records. He would submit that even before coming into force of the Act of 1952, the appellant was cultivating the land as a tenant and, therefore, in view of the decision of the full Bench of this Court in the case of **Tara & 35 Ors. Vs. State of Rajasthan & Anr. [2015(3) WLC (Raj.) 548],** the appellant acquired tenancy rights and became *Khatedar*. He would further submit that had a proper opportunity been given, he would have satisfied the Sub-Divisional Officer. He would further submit that though revenue appeal was preferred by him firstly before the Revenue Appellate Authority and, thereafter, before the Board of Revenue, this aspect was not gone into. Further, the learned Single Judge has also not appreciated this aspect of the matter. His submission is that the revenue Courts as well as learned Single Judge have misdirected themselves in not approaching the issue in the light of the decision rendered by the full Bench of this Court and have proceeded on an erroneous assumption of law that the deity, even if it is not continuing as Jagirdar, would continue as *Khatedar* irrespective of whether or not the land was being cultivated by a tenant, not being Shebait/Pujari or any hired labour or servant engaged by them for the benefit of the expenses

of the temple. Therefore, the impugned order passed by the learned Single Judge and various orders and proceedings drawn by the revenue authorities and the appellate Courts are unsustainable in law and are liable to be set aside.

5. Learned counsel for the respondent-State and respondent no. 5 would submit that though Sub-Divisional Officer may not have given any notice or opportunity of hearing to the appellant, the legal position is quite clear. In their submission, the revenue records/settlement records unmistakenly show that the appellant was engaged to carry out cultivation on behalf of the deity and not in his capacity independent of that. His submission is that in such a case, even after coming into force of the Act of 1952, such person cannot claim any *Khatedari*/tenancy rights as against the deity, which is perpetually minor. They would also submit that all the revenue Courts as well as learned Single Judge have consistently held in favour of the respondents and against the appellant on this legal and factual aspect. Therefore, there is no merit in this appeal.

6. We have extensively heard learned counsel for the parties and perused the records of the case.

7. Two revenue entries filed by the appellant along with the writ petition, first being "Parcha Tazwij Lagan" and "Khatoni Bandobast" record *Doli Banam Mandir Charbhujaji* as the owner/bhokta whereas, the name of Durga (predecessor of appellant Joga Ram) is recorded as the cultivator. These two revenue entries in the revenue records were made prior to coming into force of the Act of 1952.

8. It, however, appears that at the instance of Pujari of the temple, dispute was going on between the temple administration and the appellant. The Pujari of the temple submitted an application before the Assistant Land Records Officer stating that the land in dispute situated in village Narlai be recorded in the name of *Doli Banam Mandir Charbhujaji,* which application was rejected on 18.01.1987. On appeal being preferred, the appellate authority, vide order dated 08.07.1987, set aside the order and the case was remanded for holding proper enquiry in terms of the order and pass appropriate orders.

9. It appears that after the aforesaid order was passed, the Sub-Divisional Officer proceeded to pass order dated 30.11.1987 directing the land to be recorded in the name of the deity. As we have already stated herein above, the appellant challenged various orders from time to time but remained unsuccessful.

10. After going through all these orders what we find is that a common thread running through these orders shows that as the land was earlier recorded in the name of deity and the appellant was only a tenant, the land is directed to be recorded in the name of deity by striking out the name of the appellant.

11. At this juncture, we may usefully refer to the full Bench judgment of this Court in the case of Tara & 35 Ors. (*supra*), wherein, issue regarding rights of the persons, who were cultivating the land of deity as tenant, came up for consideration. The larger Bench posed to itself following three questions for determination:

> *"(i) Whether the land held in Jagir, by Hindu Idol (deity) as Dolidar or Muafidar cultivated by a person*

other than the Shebait/Pujari of the deity or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, such idol being treated as a perpetual minor, will still be regarded as land held in the personal cultivation of the deity or will such land be regarded as held in the tenancy by the person cultivating such land as tenant of a deity?
(ii) What are the rights of the Hindu Idol (deity) in the lands held by them in the name of its Shebaits/Pujari on the date of resumption of such Jagir, under the provisions of the Rajasthan Land Reforms & Resumption of Jagir Act, 1952?
(iii) Whether such a Jagir land/Muafi held by the Shebait/Pujari of Hindu Idol (deity) in their name after the date of resumption of the Jagir (Muafi) can be alienated by them? If so, what is the effect?"

12. On the first issue, the full Bench, upon detailed consideration of the scheme of the Land Revenue Act and the Resumption of the Jagir Act, recorded its conclusion as below:

"25. In our opinion, on the aforesaid settled principles of law, the Hindu idol (deity) could only hold such lands in Jagir, which Shebait/Pujari was cultivating for such deity, having direct nexus with agricultural operations either themselves or through hired labour or servant engaged by them as to claim to be khudkasht and to be protected from resumption/acquisition under the Jagirs Act of 1952. If the land was given for cultivation to a tenant or was cultivated through a tenant, such land became khatedari of the tenant and on which the tenant had direct relations with the State. The Jagirs Act of 1952 took away all the rights of the Jagirdars including Hindu Idol (deity) as Dolidar or Muafidar on the land cultivated by the tenants. They ceased to have any right on such land. The Shebait/Pujari could not have any independent status to have claimed any right over such land cultivated by tenants. Such tenancy could also not be regarded as sub-tenant of Hindu Idol (deity) to confer any right on the Hindu Idol (deity).

26. In view of the above discussion, we decide the question no.(i) in favour of the State and against the Shebait/Pujari claiming the land to be saved by the Jagirs Act of 1952. The land held in Jagir by Hindu idol (deity) as Dolidar or Muafidar cultivated by a person other than the Shebait/Pujari of the deity personally or by hired labour or servants engaged by its Shebait/Pujari as a tenant of the deity, shall vest in the State, after the Jagirs Act of 1952. The Hindu idol

> *(deity), even if it is treated to be a perpetual minor, could not continue to hold such land. Such land cannot be treated to be in its personal cultivation. A tenant of such land cultivating the land acquired the rights of khatedar of the State. Such land under the tenancy of a person other than Shebait/Pujari of Hindu Idol (deity) became Khatedari land of such tenant. The name of Hindu Idol (deity) from such land had to be expunged from the revenue records with Shebait/Pujari having no right to claim the land as Khatedar. Consequently, they had no right to transfer such lands, and all such transfers have to be treated as null and void, in contravention of the Jagirs Act 1952, and the land under such transfers to be resumed by the State."*

13. In the present case, on facts, the issue which arose for consideration and determination before the revenue authorities was whether the appellant was entitled to be recorded as *Khatedar* (statutory tenant) after coming into force of the Act of 1952 and resumption of Jagir. The legal position, as is adumbrated in the aforesaid judgment, is that the Hindu idol (deity) could only hold such lands in Jagir, which *Shebait*/Pujari was cultivating for such deity, having direct nexus with the agricultural operations either themselves or through hired labour or servant engaged by them so as to claim to be *Khudkasht* and to be protected from resumption/acquisition under the Jagirs Act of 1952, which has also been clarified as the legal position that if the land was given for cultivation to a tenant or was cultivated through a tenant, such land become *Khatedari* of the tenant and on which the tenant had direct relations with the State. The Jagirs Act of 1952 took away all the rights of the *Jagirdars* including Hindu Idol (deity) as *Dolidar* or *Muafidar* on the land cultivated by the tenants. They ceased to have any right on such land as *Shebait*/*Pujari* could not have any independent status. Such tenancy could also not be

regarded as sub-tenant of Hindu Idol (deity) to confer any right on the Hindu Idol (deity).

14. The orders were passed by the revenue authorities including appellate authority prior to the decision of full Bench judgment of this Court in the case of Tara & 35 Ors. (*supra*). However, the writ petition filed against the said order remained pending before the writ Court and came up for consideration of the learned Single Judge after the full Bench settled legal position in the case of Tara & 35 Ors. (*supra*). Therefore, the rights of the parties were required to be adjudicated keeping in view the legal position as settled by the full Bench in the case of Tara & 35 Ors. (*supra*). In other words, the enquiry which was to be made was whether the appellant was cultivating the land in dispute as a tenant or he could be said to be a person hired as a labourer or employed by *Shebait*/*Pujari*. If it is found that he was cultivating the land as a tenant at the time of resumption of Jagir under the Act of 1952, the legal consequences would be that he would acquire the status of a tenant. However, if it is found that the cultivation was not as a tenant but either he himself was *Shebait* or *Pujari* or a labour hired by them or a person employed by them, then in such a case, he would not be entitled to be recorded as *Khatedar* upon resumption of Jagir under the Act of 1952.

15. We are of the opinion that this aspect is required to be examined by a proper enquiry by the revenue authority as the legal position came to be settled only in the year 2015 after the judgment of the full Bench in the case of Tara & 35 Ors. (*supra*).

16. In view of the above consideration, without commenting upon the merits of the case, we are inclined to set aside the order

passed by the learned Single Judge and all the orders and proceedings drawn by various revenue authorities/appellate authorities *qua* the appellant. The Sub-Divisional Officer, Bali is directed to hold an enquiry by allowing the parties to lead their oral and documentary evidence and then pass a reasoned order in accordance with law and the legal position as declared by this Court in the case of Tara & 35 Ors. (*supra*).

17. The parties are directed to appear before the Sub-Divisional Officer, Bali on 05th August, 2024 along with a certified copy of this order. The Sub-Divisional Officer shall do well to complete the enquiry as early as possible, preferably within a period of four months.

18. The appeal is accordingly allowed in the manner stated above.

(MADAN GOPAL VYAS),J **(MANINDRA MOHAN SHRIVASTAVA),CJ**

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