

Board of Revenue For Rajasthan, Ajmer & Ors.

Vs

Rao Bal Deo Singh & Ors.

Civil Appeal No. 454 of 1965

(J. C. Shah, V. Ramaswami-I, V. Bhargava JJ)

14.12.1967

JUDGMENT

RAMASWAMI, J. –

This appeal is brought, by certificate, from the judgment of the Rajasthan High Court dated October 7, 1963 in D. B. Civil Writ Petition No. 482 of 1962. By its judgment the High Court allowed the Writ Petition filed by the respondents and quashed the orders of the Board of Revenue dated July 24, 1959, April 8, 1960 and July 16, 1962.

The jagir of respondent No. 1, Rao Bal Deo Singh was resumed with effect from August 15, 1954 under the provisions of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 Act No. VI of 1952), hereinafter referred to as the 'Act'. A notice was issued by the Collector, Bikaner to respondent No. 1, on August 23, 1954 asking him to hand over the charge of the jagir but respondent No. 1 did not comply with the notice as he had filed a writ application in the High Court challenging the validity of the Act. A subsequent notice was issued to respondent No. 1, by the Collector on May 14, 1955 directing him to hand over charge of the jagir. Respondent No. 1 actually handed over charge of the jagir on September 27, 1955 and at the same time submitted a list of his private properties under s. 23 of the Act. In the said list was included 5490 bighas and odd of agricultural land in villages Mirgarh, Anandgarh and Rawla in Ganganagar district and Anupgarh in Bikaner district which respondent No. 1 claimed as his khudkasht land. On March 18, 1957 respondent No. 1 made an application to the Tahsildar, Anupgarh to correct entries in the revenue records and to show the area claimed by him as his khudkasht land. After an enquiry the Tahsildar, Anupgarh forwarded the application to the Assistant Collector, Ganganagar recommending the correction of the entries as prayed for by respondent No. 1. The Assistant Collector forwarded the papers to the Collector, Ganganagar who recommended to the Divisional Commissioner, Bikaner that the correction of entries may be made. By his order dated November 30, 1958 the Divisional Commissioner, Bikaner accorded sanction and directed the Collector to enter the disputed lands in the revenue records as khudkasht lands of respondent No. 1. On appeal to the Board of Revenue the case was remanded to the Divisional Commissioner on July 24, 1959 with a direction that he should refer the matter to the Jagir Commissioner and till his decision was received the entries in the revenue record should not be altered. It appears that the record of the case was transmitted for compliance to the Sub-Divisional Officer, Raisinghnagar by the office of the Commissioner of Bikaner, who, after making an enquiry, submitted his recommendation to the Jagir Commissioner instead of sending it to the Divisional Commissioner to correct the relevant entries. Meanwhile, the Director of Colonisation came to know of the proceedings which were going on and therefore he addressed a letter on December 22, 1958 to the Divisional Commissioner, Bikaner to review his order dated November 30, 1958 and requested him to refer the matter to the Jagir Commissioner

who was the only competent authority to determine the nature of the disputed property under s. 23(2) of the Act. On receipt of the said letter the Divisional Commissioner reviewed his previous order of November 30, 1958 and ultimately dismissed the objections of Director of Colonisation on March 5, 1959. It appears that the Additional Jagir Commissioner after receiving the papers from the Sub-Divisional Officer, Raisinghnagar also decided the matter on October 5, 1959 holding that the disputed land should be treated as the personal property of the ex-Jagirdar of Sattasar. The State of Rajasthan preferred appeals to the Board of Revenue against the orders of the Commissioner, Bikaner dated March 5, 1959 and against the order of the Additional Jagir Commissioner dated October 5, 1959. By its judgment dated July 24, 1959 the Board of Revenue set aside the order of the Commissioner of Bikaner and directed him to decide the case after referring the matter to the Jagir Commissioner for determining the nature of the property under s. 23(2) of the Act. By its order dated April 8, 1960 the Board of Revenue quashed the order of the Additional Jagir Commissioner and remanded the case to him with the direction that he should dispose of the matter after proper enquiry in accordance with the provisions of the Rules framed under the Act. Respondent No. 1 preferred a review against the order of the Board of Revenue dated April 8, 1960 but the review petition was dismissed by the Board of Revenue on July 16, 1962. Respondent No. 1 thereafter moved the High Court of Rajasthan for the grant of a writ under Art. 226 of the Constitution. By its judgment dated October 7, 1963 the Rajasthan High Court allowed the Writ Petition and quashed the orders of the Board of Revenue dated July 24, 1959, April 8, 1960 and July 16, 1962, holding that no enquiry under s. 23(2) of the Act was necessary in the case and the matter required to be disposed in accordance with the procedure laid down in the Rajasthan Land Revenue Act, 1956 (Act. No. 15 of 1956) regarding the correction of entries. The High Court accordingly directed that the Board of Revenue may either itself dispose the appeal if no further material was required for the purpose or may pass such orders which the circumstances required for final disposal of the case.

It is necessary at this stage to set out the provisions of the relevant statutes. On February 13, 1952 the Rajasthan Legislature enacted the Act to provide for the resumption of jagir lands. Under s. 21 of the Act the Government of Rajasthan was empowered to issue a notification appointing a date for the resumption of any class of jagir lands and under s. 22 of the Act the right, title and interest of the Jagirdar in his jagir lands stood resumed to the Government free from all encumbrances as from the date of resumption notified under s. 21. Section 23 of the Act, however, provided that the khudkasht lands of the jagirdar shall be continued to be held by the jagirdar. Section 23 states :

"23. Private lands, buildings, wells, house sites and enclosures. - (1) Notwithstanding anything contained in the last preceding section -

(a) Khudkasht lands of a Jagirdar;

(b) (i) all open enclosures used for agricultural or domestic purposes and in his continuous possession (which including possession of any predecessor-in-interest) for six years immediately before the date of resumption;

##(ii). . . ##

(iii) all private buildings, places of worship, and wells situated in, and trees standing on lands, included in such enclosures or house-sites, as are specified in clause (i) above, or land appertaining to such buildings or places of worship;

(iv) all groves and fruit trees wherever situate, belonging to or held by the Jagirdar or any other person;

(c) all private wells and buildings belonging to or held by the Jagirdar or any other person;

(d) all tanks in the personal occupation of the Jagirdar and not used for irrigating the lands of any tenant in the jagir land;

shall continue to belong to or be held by such Jagirdar or other person :

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(2) If any question arises whether any property is of the nature referred to in sub-section (1), it shall be referred to the Jagir Commissioner, who may, after holding the prescribed enquiry, make such order thereon as he deems fit."

Section 2(i) defines 'Khudkasht' to mean "any land cultivated personally by a jagirdar and includes : (i) any land recorded as khudkasht, Sir, or Hawala in settlement records; and (ii) any land allotted to a Jagirdar as khudkasht under Chapter IV". Section 37 reads as follows :

"37. Question of title. - (1) If in the course of a proceeding under this Act any question relating to title, right or interest in any jagir land, other than a question as to any khudkasht land or the correctness or otherwise of any entry relating thereto in settlement records or as to any boundary, map, field-book, record of rights or annual register or as to any Wazib-ul-arz or Dasturganwai or any other settlement paper lawfully prepared or as to the correctness or otherwise of any entry made therein or a question referred to in Section 3 of the Rajasthan Jagir Decisions and Proceedings (Validation) Act, 1955, arises and the question so arising has not already been determined by a competent authority, the Jagir Commissioner shall proceed to make an inquiry into the merits of the question so arising and pass such orders thereon as he deems fit.

(2) Every question referred to in Section 3 of the Rajasthan Jagir Decision and Proceedings (Validation) Act, 1955 shall be inquired into and decided by a revenue officer or court declared by the provisions of the said Act competent to do so.

(3) Every other question excluded by sub-section (1) from the jurisdiction of the Jagir Commissioner shall be inquired into and decided by a revenue officer or court competent to do so under the provisions of the Rajasthan Land Revenue Act, 1956 or the Rules made thereunder.

(4) If any such question as is referred to in sub-sections (2) and (3) arises in the course of a proceeding under this Act, the Jagir Commissioner shall refer it for inquiry and decision of the court competent to do so and shall be bound by, and act according to such decision."

Section 46 provides :

"Bar of Jurisdiction. - (1) Save as otherwise provided in this Act, no Civil or Revenue Court shall have jurisdiction in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under this Act.

(2) No order made by any such officer or authority under this Act shall be called in question in any Court."

Section 47 states :

"Act to override other laws. - Save as otherwise expressly provided in this Act, the provisions of this Act and of the rules and orders made thereunder shall have effect notwithstanding any thing therein contained being inconsistent with any existing Jagir law or any other law for the time being in force."

Rules 22, 23, 24, 26 and 28 of the Rajasthan Land Reforms and Resumption of Jagir Rules, 1954 are to the following effect :

"22. Submission of list of personal properties by Jagirdars. - (1) The Jagirdar shall submit to the officers taking over such charge a list of the properties which he claims as his private and personal properties under sub-section (1) of Section 23 of the Act.

(2) Copies of such list shall be annexed with the reports submitted under Rule 21 of sub-rule (3).

(3) If the officer taking over such charge is of the opinion that any item of property included in the list submitted under sub-rule (1) is not the property which the jagirdar is entitled to hold under sub-section (1) of Section 23 of the Act, he shall record reasons for such opinion and refer the matter to the Jagir Commissioner under sub-section (2) of Section 23 of the Act. While making the report under Rule 21, sub-rule (3), a copy of such reference shall be forwarded to the Government as well as to the Collector of the District in which the property in dispute is situated :

Provided that where the officer deputed to take over charge of a jagir is below the rank of Tehsildar he shall submit his opinion to the Tehsildar concerned who shall refer the same with his opinion to the Jagir Commissioner.

(4) A copy of such list shall also be affixed on the notice board of the Tehsil concerned, and the Municipal Board or Village Panchayat concerned shall be informed that they may see the list in the Tehsil and submit their objections, if any, to the inclusion of any property or part of it in the list to the Tehsildar within a specified time.

(5) The Tehsildar may extend the time specified by him under sub-rule (4), if he is satisfied that there are sufficient grounds for doing so and shall submit the objections received from the Municipal Board or the Panchayat with his opinion to the Jagir Commissioner through the Collector."

"23. Inquiry by Jagir Commissioner in the matter of personal properties. - (1) Upon receipt of a reference under the last preceding rule, or where he decides to review the list on his own motion, the Jagir Commissioner shall appoint a date for holding an

inquiry into the matter. Such date shall not be less than two months from the date of the order and a public notice thereof shall be issued within a week of such order.

(2) Instead of holding the enquiry himself under sub-rule (1) the Jagir Commissioner may entrust the enquiry to any officer not below the rank of an Assistant Jagir Commissioner or Sub-Divisional Officer."

"24. Notice how to be served. - (1) The notice given under Rule 23 shall be served on the Jagirdar concerned, the Revenue Secretary to the Government and the Collector of the district in which the property in dispute is situated in the manner provided for the service of summons on a defendant in a suit under the Code of Civil Procedure, 1908.

(2) Copies of the notice shall be sent to the Tehsildar within whose jurisdiction the property in dispute is situated :-

(a) for being proclaimed by beat of drum to the inhabitants of the locality where such property is situated;

(b) for being exhibited at some conspicuous place in such locality; and

(c) for being posted, thereafter on the notice board of the Tehsil."

"26. Who may contest. - (1) The State shall be represented at such inquiry by the Collector or any other Officer not below the rank of a Naib Tehsildar as the Collector may by order in writing appoint in that behalf.

(2) If any inhabitants of the locality in which the property in dispute is situated are in any manner interested therein, they may contest the claim of the Jagirdar in respect thereof and may jointly appoint one or more persons not exceeding three in number to represent them at such inquiry."

"28. Mode of inquiry regarding personal properties. - The Jagir Commissioner or the officer holding the inquiry shall allow the Jagirdar, the State and the inhabitants of the locality desiring to contest the claim of the Jagirdar reasonable opportunity to prove or disprove their respective contentions. The enquiry shall be held in the manner provided for the trial of a suit by a Revenue Court, and where the enquiry has been held by any officer other than the Jagir Commissioner such officer shall submit the record with a report of his findings to the Jagir Commissioner for his orders."

Section 122 of the Rajasthan Land Revenue Act, 1956 provides as follows :

"122. Attestation of entries and decision of disputes. - All undisputed entries in the record of rights shall be attested by the parties interested, and all disputes regarding such entries, whether taken up by the Land Records Officer of his own motion or upon application by any party interested, shall be disposed of by him in accordance with the provisions of Sections 123, 124 and 125."

Section 125 is to the following effect :

"125. Settlement of disputes as to entries in record of rights. - (1) All other disputes regarding entries on the record of rights shall be decided on the basis of possession.

(2) If in the course of inquiry into a dispute under this section the Land Records Officer is unable to satisfy himself as to which party is in possession, he shall ascertain by summary enquiry who is the person best entitled to possession and shall decide the dispute accordingly.

(3) No order as to possession passed under this section shall debar any person from establishing his right to the property in any civil or revenue court having jurisdiction."

Section 136 reads :

"136. Decision of disputes. - All disputes respecting the class or tenure of any tenant or regarding the rent or revenue payable or regarding entries in the annual registers shall be decided in accordance with the provisions of Section 123 or Section 124 or Section 125, as the case may be."

On behalf on the appellants Mr. M. C. Chagla put forward the argument that the High Court erred in law in holding that the dispute in the present case merely related to the correction of entries envisaged in Ss. 122 to 125 of the Rajasthan Land Revenue Act, 1956 and as such the Revenue Authorities were competent to order correction of such entries. It was submitted that the question as to whether the land claimed by respondent No. 1 was khudkasht land within the meaning of s. 23(1)(a) read with s. 2(i) of the Act was a matter which the Jagir Commission alone could determine under s. 23(2) of the Act and the jurisdiction of other authorities was completely barred. The argument was stressed that the dispute between the parties was essentially a dispute relating to the character of the properties claimed to be khudkasht by respondent No. 1 and therefore the Jagir Commissioner had the exclusive jurisdiction to determine that question under s. 23(2) of the Act. It is true that respondent No. 1 had applied for correction of entries in the revenue records but the correction of revenue records really depended upon the determination of the character of the dispute property and unless it was held by competent authority under the Act that the property was khudkasht land of the Jagirdar the application of respondent No. 1 for the correction of the revenue entries could not be decided by the Revenue Authorities under the provisions of the Rajasthan Land Revenue Act. To put it differently, the argument of the appellants was that the real question that arose for determination was whether the disputed land was khudkasht under s. 23(1) of the Act and by taking recourse to the provisions of the Rajasthan Land Revenue Act respondent No. 1 could not oust the jurisdiction of the Jagir Commissioner for determination of the dispute. In our opinion the argument put forward by Mr. M. C. Chagla on behalf of the appellants is well-founded and must be accepted as correct. The dispute in this case is essentially as to the character of the property claimed by respondent No. 1 as khudkasht and falls directly within the purview of s. 23 of the Act and therefore the Jagir Commissioner is the exclusive authority to hold enquiry into the dispute and given a decision thereon. The language of s. 23 of the Act is peremptory in character and the section requires that if any question arises whether any property is of the nature referred to in sub-s. (1), it shall be referred to the Jagir Commissioner, who may, after holding the prescribed enquiry, make such order thereon as he deems fit. Section 46 of the Act relates to bar of jurisdiction and states that no Civil or Revenue Court shall have jurisdiction in respect of any matter which is required to be settled, decided or dealt with by any officer or authority under the Act. The section makes further provision that no order made by any such officer or authority under the Act shall be called in

question in any Court. Section 47 expressly states that the provisions of the Act and of the rules and orders made thereunder shall have effect notwithstanding anything therein contained being inconsistent with any existing Jagir law or any other law for the time being in force. Reading s. 23 of the Act in the context of Ss. 46 and 47 of the Act it is manifest that an exclusive jurisdiction is conferred upon the Jagir Commissioner to decide the question as to whether any property of the Jagirdar is of the nature of khudkasht and the decision of the Jagir Commissioner on this question is final and cannot be challenged collaterally in a Civil or Revenue Court. It is true that Ss. 125 and 136 of the Rajasthan Land Revenue Act confer power on the Land Records Officer to decide disputes with regard to the entries in the record of rights or in the annual registers, as the case may be. But neither the Land Records Officer nor any other Revenue Court contemplated by the Rajasthan Land Revenue Act have jurisdiction to enquire into the question whether the property claimed by the Jagirdar is khudkasht within the meaning of s. 23 of the Act. The reason is that the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 is a special Act and the general maxim is that a subsequent General Act does not affect a prior special Act by implication-*Generalia specialibus non-derogant*. "When the legislature has given its attention to a separate subject and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms." (*Barker v. Edger*) [[1898] A. C. 748]. We are accordingly of the opinion that an enquiry under s. 23(2) of the Act was necessary in this case and that the Board of Revenue was right in taking the view that the matter should be referred to the Jagir Commissioner for determining the nature of the property under s. 23(2) of the Act and only after his decision is received should the Commissioner, Bikaner take up the question with regard to the correction of entries under the Rajasthan Land Revenue Act. We consider that the order of the Board of Revenue dated July 24, 1959 is based on a correct interpretation of the law and the High Court of Rajasthan was in error in setting aside that order.

On behalf of the respondents it was contended that s. 23 of the Act must be read along with s. 37 and since the Jagir Commissioner is not given any authority under s. 37 to make any enquiry with regard to the khudkasht land of the Jagirdar it must be held that under s. 23 of the Act also the Jagir Commissioner had no jurisdiction to make such an enquiry. In our opinion, there is no justification for this argument. In our view, s. 23 of the Act is independent of s. 37 of the Act as it deals with an enquiry of the nature of the property mentioned in s. 23(1) and it has nothing to do with the question of determining the right, title or interest of the Jagirdar in the land. Having regard to the scheme and purpose of the Act it is manifest that s. 23 empowers the Jagir Commissioner to determine the character of the properties claimed by the Jagirdar as khudkasht for determination of the compensation to be paid and determining other questions which are incidental to the resumption of the Jagir land. On the other hand, s. 37 of the Act deals with questions of disputed titles and with regard to such a question the section makes a provision for enquiry either by the Jagir Commissioner or by a revenue authority under the Rajasthan Land Revenue Act, 1956. It is manifest that the scope of s. 37 is quite different from that of s. 23 and the nature of the enquiry contemplated by the two sections also is different. As we have already pointed out, the question arising in the present case falls directly within the ambit of s. 23 of the Act and the Jagir Commissioner alone has the exclusive jurisdiction to determine that question.

It was objected on behalf of the respondents that, in any case, the question cannot be determined by the Jagir Commissioner after the resumption proceedings had come to an end. It was said that after the proceedings for resumption were completed under the Act and award of compensation has been made, there is no jurisdiction left in the Jagir Commissioner to proceed with an enquiry under s. 23(2) of the Act. For the purpose of this case it is not necessary for us to express any opinion as to

whether the Jagir Commissioner had jurisdiction to make an enquiry under s. 23(2) of the Act after the proceedings for resumption have come to a close. It appears that in the present case the Director of Colonisation addressed a letter to the Divisional Commissioner, Bikaner on December 22, 1958 for review of his order dated November 30, 1958 and that he also requested that the matter should be referred to the Jagir Commissioner as he was the only competent authority to determine the nature of the disputed property under s. 23(2) of the Act. On receipt of this letter the Divisional Commissioner, Bikaner reviewed his previous order of November 30, 1958 and dismissed the objections of Director of Colonisation on March 5, 1959. It is admitted that the final award was made by the Additional Jagir Commissioner with regard to compensation on January 20, 1959. We shall assume in favour of the respondents that the proceedings for resumption came to a close on January 20, 1959. Even on that assumption the dispute was raised by the Director of Colonisation on December 22, 1958, long before the date of the final award on January 20, 1959 and the Jagir Commissioner had jurisdiction to proceed with the enquiry under s. 23(2) of the Act since the proceedings for resumption were still pending. We are accordingly of the opinion that Counsel for the respondents is unable to make good his argument on this aspect of the case.

We proceed to consider the next question arising in this case viz., whether the High Court was in error in setting aside the orders of the Board of Revenue dated April 8, 1960 and July 16, 1962. The Board of Revenue has pointed out that the decision of the Additional Jagir Commissioner dated October 5, 1959 was illegal since he did not follow the procedure contemplated by Rules 23 and 26 of the Rajasthan Land Reforms and Resumption of Jagir Rules, 1954 (hereinafter referred to as the 'Rules'). It appears that by its previous order dated July 24, 1959 the Board of Revenue had set aside the orders of the Divisional Commissioner dated November 30, 1958 and March 5, 1959 and the matter was remanded to him with the direction to refer the matter to the Jagir Commissioner and till the decision of the Jagir Commissioner was received entire in the records should stand as they stood prior to the impugned orders. In compliance with this decision the record was transmitted to the Sub-Divisional Officer, Ganganagar by the office of the Commissioner, Bikaner who in turn sent them on August 24, 1959 to the Sub-Divisional Officer, Raisinghnagar. The letter reached the Sub-Divisional Officer, Raisinghnagar on August 29, 1959 and on it the Sub-Divisional Officer wrote down the following order : "Received today, inform the parties to appear before me on 5-9-59" : It appears that on September 5, 1959 Shri Murlidhar and Shri Sada Nand appeared before the Sub-Divisional Officer, statements of 5 persons were recorded and arguments were heard and the case was directed to be put up for writing out the report on September 9, 1959. On this date the Sub-Divisional Officer wrote out the report and forwarded the papers to the Additional Jagir Commissioner. On October 1, 1959, the Additional Jagir Commissioner heard the arguments of the parties and pronounced his decision on October 5, 1959. The Board of Revenue has pointed out that under Rule 23 a date not less than 2 months from the date of the order should have been fixed for hearing of the case and published notice should have been served not only on the Jagirdar but also upon the Revenue Secretary to the Government and the Collector of the district. Rule 28 states that the mode of inquiry was that provided for the trial of a suit by a Revenue court. The Sub-Divisional Officer instead of following the rules fixed the date of hearing within a week of the receipt of the order and within further 5 days submitted his report without giving the notices under Rules 23 and 24 and without holding the enquiry in the manner prescribed by Rule 28. The Board of Revenue accordingly set aside the order of the Additional Jagir Commissioner dated October 5, 1959 and remanded the case back to him with the direction that he should hold the enquiry himself or may entrust the enquiry under the provisions of s. 23(2) of the Act to Subordinate Officer and that the enquiry must be held in either case in accordance with law and the case should be decided thereafter afresh. In our opinion, the Board of Revenue was right in taking the view that the Additional Jagir

Commissioner should have followed the procedure prescribed by the statutory rules and the High Court had no justification for setting aside the order of the Board of Revenue dated April 8, 1960 and of July 16, 1962.

For the reasons expressed we hold that the order of the Rajasthan High Court dated October 7, 1963 quashing the orders of the Board of Revenue dated July 24, 1959, April 8, 1960 and July 16, 1962 should be set aside and Civil Writ Petition No. 482 of 1962 filed by the respondents should be dismissed. We accordingly allow this appeal and set aside the judgment of the Rajasthan High Court dated October 7, 1963, but in the circumstances of the case there will be no order as to costs.

Appeal allowed

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