

SB Civil writ Petition No.2333/1993Dilbag Singh v. State of Raj. & Ors.Date of Order :: 25th November, 2005HON'BLE MR. JUSTICE GOVIND MATHUR

Mr. N.S.Acharya]

Mr. J.L.Purohit] for the petitioner.

Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given by the petitioner to the order dated 15.4.1993 passed by Board of Revenue for Rajasthan, Ajmer in Review Petition No.2/92/Ceiling/Ganganagar; order dated 4.2.1992 in Appeal Ceiling No.14/87/Ganganagar; and the order dated 30.12.1986 passed by Additional Collector (Vigilance), Sriganganagar holding 11.16 bighas of land in excess of ceiling limits with the petitioner.

The facts in brief necessary for adjudication of present writ petition are that the proceedings under Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973") were initiated against the petitioner and the same were dropped by an order dated 31.12.1974 passed by the authorised officer.

The State Government while exercising powers under Section 15(1) of the Act of 1973 reopened the ceiling case against the petitioner and directed the

Additional Collector (vigilance), Sriganganagar to decide the case afresh. The Additional Collector in pursuant to the order dated 21.8.1981 decided the petitioner's case under the Act of 1973 afresh and by order dated 30.12.1986 found the petitioner with 11.16 bighas of land excess to the prescribed ceiling limits for holding agricultural land, an order accordingly was passed to resume the surplus land. The petitioner being aggrieved by the order dated 30.12.1986 preferred an appeal before the Board of Revenue for Rajasthan, Ajmer under Section 23(2-A) of the Act of 1973 which too came to be rejected by order dated 4.2.1992. A review petition subsequently was filed by the petitioner with a contention that the Additional Collector while determining the excess ceiling land did not consider irrigation intensity available to the land which is mandatory under Rule 5 of the Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1973 (hereinafter referred to as "the Rules of 1973"). The Board of Revenue dismissed the review petition on the count that the contention with regard to irrigation intensity as prescribed under Rule 5 of the Rules of 1973 was not raised by the petitioner while contesting the appeal. Hence this writ petition is preferred by the petitioner.

A reply to the writ petition has been filed by the respondents supporting the order impugned, however, nothing is said in reply to writ petition

with regard to irrigation intensity available to the petitioner and with regard to determination of surplus land without taking into consideration intensity of irrigation available to the land in the year immediately preceding the year in which the question pertaining to excess land was decided.

Shri N.S.Acharya, counsel for the petitioner has emphasised that provisions of Rule 5 of the Rules of 1973 are mandatory and the authorised officer while considering a return submitted under Section 10 of the Act of 1973 and while determining agricultural land holding under the Act of 1973 must consider irrigation intensity available to the land. According to him the question whether the land held by a tenant is in excess to ceiling limits or not depends on intensity of irrigation available to the land also. The irrigation intensity according to counsel for the petitioner is an important aspect which is required to be kept in mind by competent authority while deciding a case under the Act of 1973. If a ceiling case is decided without determining irrigation intensity then the same shall be illegal as the irrigation intensity available to the land may change the decision of the authority competent with regard to agricultural holding. It is also contended by counsel for the petitioner that the question as to whether the authorised officer has taken into consideration irrigation intensity while deciding a case under the

Act of 1973, is a question which goes to the route of the matter, therefore, it can be raised at any stage.

Per contra, it is contended by counsel for the respondents that the issue with regard to irrigation intensity was never raised by the petitioner before the appellate authority, therefore, it is not open for him now to raise this question.

Heard counsel for the parties and considered the rival contentions.

Rule 5 of the Rules of 1973 pertains to verification of returns submitted by person under Section 10 or 11 of the Act of 1973. Rule 5(3) of the Rules of 1973 provides that the authorised officer shall, on receipt of report from the committee and after such further inquiry as he deemed necessary to make from other source including from the irrigation department of the Government determine the question whether any land is assured of irrigation from Government or private source capable of growing two crops or one crop in a year or not in the manner prescribed in clauses (a), (b) and (c) of Rule 5(3) referred above. Clause (a) of Rule 5(3) of the Rules of 1973 reads as under:-

“(a)where the land falls within the command area of the major irrigation project, the

aforesaid question shall be decided on the basis of the extent of intensity of irrigation available to the land in the year immediately preceding the year in which the question is required to be decided. The land to the extent of irrigation growing two crops or one crop in a year, as the case may be, and the rest of the land shall be deemed to be dry land."

From perusal of the provisions of Rule 5(3) of the Rules of 1973 it is apparent that the authorised officer while proceeding under the Act of 1973 and while verifying the return under Section 10 of the Act of 1973 is required to take into consideration irrigation intensity available to the land in the year immediately preceding to the year in which the question with regard to holding of agricultural land is to be decided. The procedure prescribed under Rule 5 of the Rules of 1973 is mandatory for the reason that it is having effect on determination of holding of the agricultural land by a person. In event the authorised officer does not adhere the procedure provided under Rule 5 of the Rules of 1973, he cannot reach at the correct determination of exact agricultural holding by the person concerned. If the proceedings under the Act of 1973 are taken without adhering the procedure under Rule 5 of the Rules of 1973 then the result with regard to determination of agricultural holding by a person may have all chances of being erroneous.

In the present case from perusal of the order passed by the Additional Collector (Vigilance) it is apparent that before deciding case of the petitioner under the Act of 1973 the question with regard to agricultural intensity available to the land concerned was not decided. The issue with regard to consideration of availability of irrigation intensity to the land goes to the route of the proceedings under the Act of 1973, therefore, can be raised at any stage. The Board of Revenue in its appellate jurisdiction should have considered this aspect of the matter. The petitioner by filing a review petition pointed out this error before the Board of Revenue but the Board of Revenue refused to consider it on the count that this issue was not raised while contesting the appeal. The approach of the Board of Revenue is erroneous as under Section 23(2-A) of the Act of 1973 the Board of Revenue is having power to examine validity of the proceedings taken place under the Act of 1973 and also have power to take additional evidence to reach at a definite finding. The Board must have looked into the question as to whether the proceedings under the Act of 1973 taken place in accordance with law by adhering the procedure prescribed. In the present case the Board failed to examine validity of the proceedings properly. It is not in dispute that no verification as required under Rule 5 of the Rules of 1973 was made, before declaring the petitioner, holder of surplus land.

In view of whatever discussed above I am of the considered opinion that the entire ceiling proceedings taken place without adhering the provisions of Rule 5 of the Rules of 1973 are void. The same, therefore, deserve to be quashed. Accordingly, the writ petition is allowed. The orders impugned dated 15.4.1993 passed by Board of Revenue for Rajasthan, Ajmer in Review Petition No.2/92/Ceiling/Ganganagar; dated 4.2.1992 in Appeal Ceiling No.14/87/Ganganagar; and dated 30.12.1986 passed by Additional Collector (Vigilance), Sriganganagar holding 11.16 bighas of land in excess of ceiling limits with the petitioner are hereby quashed and set aside.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.