

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAI PUR

ORDER
IN
S. B. Civil Writ Petition No. 3016/2001

Jagdish and Others Vs. Board of Revenue and Others

Date of Order :: 30.11.2010

Present
Hon'ble Mr. Justice Mohammad Rafiq

Shri Suresh Pareek with
Shri S. L. Sharma and
Shri N. C. Sharma, Counsel for petitioner
Shri S. D. Khaspuri a, Additional Government Counsel
for respondents

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By the Court:-

This writ petition has been filed by petitioner assailing order of Board of Revenue dated 04.11.1999 by which reference made by respondent has been accepted and judgment and decree passed by Sub Divisional Officer in favour of petitioner dated 26.02.1996 has been set-aside.

Contention of learned counsel for petitioner is that learned Board of Revenue has cursorily passed order without examining pleadings of parties made in plaint and written statement in which respondent did not controvert most of pleadings and admitted that khasra no. 1248/1761 does not appear to be part of old khasra no. 541 in para no. 6 and that they also agreed in para no. 7 that land of old khasra no. 1308 was part of way and was erroneously recorded in khatedari of petitioner. It is contended that as against land

which was claimed by petitioner in suit, measuring 0.71 hectare, for which decree was passed, he also proposed to surrender land of 0.33 hectare of khasra no. 1308. Learned counsel submitted that arguments which have prevailed with Board of Revenue are not informed of these facts. It has simply proceeded to compare measurement of two khasra numbers namely khasra no. 539 and 541 whereas matter has not been examined in totality, this happened because no notice was served upon petitioner of proceedings and he remained unaware of dates of proceedings and in his absence the order was passed.

Learned Additional Government Counsel submitted that separate notice was not required to be served on petitioner because in the order making reference, District Collector himself fixed date on which parties were directed to appear before Board of Revenue on 06.09.1999. Even then it is submitted that comparison of 'jamabandi' prior to settlement indicating five khasras entered in name of petitioner and 21 khasra entered in 'jamabandi' subsequent to settlement, show that total land with petitioner is more than what he had prior to settlement.

In my considered view such contentious issue where disputed questions of facts are involved ought to be threadbare first examined by Board of Revenue by giving opportunity of hearing to petitioner and petitioner for any reason

whatsoever has not had opportunity to present his view point before Board of Revenue. It is not known what proceedings transpired before Board of Revenue on the date was fixed by the Collector i.e. on 06.09.1992 for appearance of the parties while making reference. But end result is that such order, which is passed by Board of Revenue, has been so passed in his absence where he did not have occasion to plead his case before Board of Revenue. Ends of justice would be served by remitting this matter to Board of Revenue for hearing the parties afresh and pass a fresh order including on the question of competence of settlement officer whether or not he could have deleted or reduced the land of petitioner or otherwise increase the land of petitioner, in the revenue records.

Writ petition is accordingly allowed. Impugned order dated 04.11.1999 of Board of Revenue for Rajasthan, Ajmer, is set aside. Matter is remanded to Board of Revenue for decision afresh.

(Mohammad Rafiq) J.