

THAKUR NARAIN SINGH

v.

B STATE OF RAJASTHAN

March 5, 1982

[A.D. KOSHAL, V. BALAKRISHNA ERADI AND
R.B. MISRA, JJ.]

C *Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, section 6(3)*
(a) (i) *read with the definition of "settled village" in section 2(n)—Scope of.*

D Thakur Sangram Singh, the father of the appellant was a jagirdar of Thikana Diggi in the erstwhile State of Jaipur. His jagir was resumed on 1st of July, 1954 under section 21 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952 entitling him to compensation on the date of resumption of his jagir under section 26 of the Jagirs Act. The compensation was to be determined according to the principles laid down in the Second Schedule attached to the Act. If the jagir was a settled one the compensation would be assessed on the basis of the rent rates as settled in settlement operation which were prevalent on the date of resumption and as entered in the Revenue records of the village within the meaning of section 6(3) (a)(i) read with the definition of "settled village" contained in section 2(n). If on the other hand, the jagir was an unsettled one the compensation would have to be assessed on the actual income from the rents during the three agricultural years: 1949-50, 1950-51 and 1951-52 as provided in section 7 of the Act.

E *Prior to the date of resumption settlement operation were going on under the Jaipur State Grants Land Tenures Act, 1947 in respect of the jagir. The rent rates proposed by the Settlement Officer were published in the Rajasthan Gazette dated 23rd of August, 1952. The rent rates fixed were made applicable with effect from 1st of July 1953 and, therefore, on the date of resumption, namely, on 1st July, 1955, rent rates assessed by the Settlement Officer and approved by the Government were in force, for the purpose of payment of compensation under the Jagirs Act.*

F *Sangram Singh challenged the validity of the rent rates fixed under the settlement operation by means of a writ petition No. 308 of 1953. The High Court quashed the order settling the rent rates being in flagrant violations of sec. 82 (1) (a) and (b) of the Jaipur State Grants Land Tenures Act, 1947 with a direction to settle fresh rent rates in accordance with the said provision. Pursuant to the order of the High Court fresh rent rates were settled by the Settlement Officer on 6th of June, 1955 with retrospective operation from 1st July, 1953. According to the new settlement the total rental income from the jagir was reduced from Rs. 1,31,657.48 to Rs. 82,501.50.*

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The Jagir Commissioner by his order dated 25th November, 1960 granted compensation on the basis of the rent rates assessed in 1955. The Jagirdar unsuccessfully preferred an appeal before the Board of Revenue. Sangram Singh died in the mean time so his son the appellant challenged the order of the Board of Revenue on two grounds: (1) that the compensation should have been assessed on the basis of rent rates determined in 1953 as it stood on the date of resumption. (2) or in the absence of a valid settlement on the basis of actual income from rents during the three agricultural years. Treating the Jagir as unsettled, the High Court rejected both the grounds. Hence the appeal by certificate under Article 133 (1) (a) of the Constitution.

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Allowing the appeal and remanding the case, the Court

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HELD: 1. As a result of the quashing of the order of Settlement of rent rates of 1953 by the High Court, the jagir would be taken as an unsettled one on the date of resumption. The quashing of the order of Settlement only means *tabula rasa* (clean slate) as if there was no determination of rent rates in 1953.

[479 E-F]

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2. The criterion to determine whether a particular jagir is a settled one or not is to see whether the rent rates determined in settlement operations have been made applicable. It is only from the date of effectuation of a valid settlement of rent rates in respect of a particular jagir which makes the jagir a settled one. [480 C-D]

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3. Section 86 of the Jaipur State Grants Land Tenures Act, 1947 clearly indicates that the rent fixed by the Settlement Officer shall normally be payable from the first of July next following the date of such order and further authorises the Settlement Officer to make the same shall be payable from some earlier date. The realisation of rent from a retrospective date will not make the jagir in question a settled one as from that date. The settlement of rent rates is one thing and the realisation of rent on the basis of the settlement is quite another. In the case of a settled village the compensation would be determined on the basis of the rent rates settled during the settlement operation recorded in the Revenue Papers on the date of resumption. Thus it is the effectuation of the rent rates determined during the settlement made prior to the date of resumption which would make the village a settled village as on that date. [480 F-H]

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In the instant case, the jagirdar became entitled to compensation on the date of resumption. If the village was an unsettled village on the date of resumption he would be entitled to compensation on the basis of the village being unsettled. The right of compensation vested in the jagirdar on the date of resumption and he could not be deprived of his right by a subsequent amendment unless the amendment in law specifically or by necessary implication provided for depriving the jagirdar of his vested right. There is nothing in the definition of the term "settled" under sec. 2 (n) of the Act or in sec. 86 of the Jaipur State Grants Land Tenures Act to indicate that the Legislature intended to affect the vested right. [481 A-D]

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1825 of 1970.

From the Judgment an order dated the 28th August, 1969 of the Rajasthan High Court in D. B. Civil Writ No. 365 of 1962.

B *S.N. Kacker, K. K. Jain, P. Dayal & S. K. Gupta* for the Appellant.

Badri Das Sharma for the Respondent.

C The Judgment of the Court was delivered by

MISRA, J. The present appeal by certificate granted under Article 133 (1) (a) of the Constitution is directed against the judgment of the High Court of Rajasthan dated 28th of August, 1969 dismissing writ petition No. 365 of 1962.

D Thakur Sangram Singh, the father of the appellant was a jagirdar of Thikana Daggi in the erstwhile State of Jaipur. His jagir was resumed on 1st of July, 1954 under section 21 of the Rajasthan Land Reforms and Resumption of Jagirs Act, 1952, hereinafter referred to as 'the Jagirs Act, 1952'. The Jagirdar became entitled to compensation on the date of resumption of his jagir under section 26 of the Jagirs Act. The compensation was to be determined according to the principles laid down in the second schedule attached to that Act. He filed his claim for compensation in August, 1954. He claimed compensation on the basis of rent rates which were in force on the date of resumption.

F It appears that settlement operations were going on under the Jaipur State Grants Land Tenures Act, 1947. The rent rates proposed by the Settlement Officer were published in the Rajasthan Gazette dated 23rd of August, 1952. The final proposals of the Settlement Officer were sanctioned by the Government on 25th of November, 1953. The rent rates fixed were made applicable with effect from 1st of July, 1953. Obviously, therefore, on the date of resumption, namely, 1st of July, 1954, rent rates assessed by the Settlement Officer and approved by the Government on 25th November, 1953 were in force.

H Sangram Singh, however, challenged the validity of the rent rates fixed under the settlement by means of writ petition No. 308 of

1953, which was allowed by the High Court on 23rd of November, 1954, quashing the rent rates as they were in flagrant violation of section 82 (1) (a) and (b) of the Jaipur State Grants Land Tenures Act, 1947. The High Court gave a direction for fresh rates to be proposed in accordance with the said provisions. Pursuant to the order of the High Court dated 23rd November, 1954 the rent rates were revised and fresh rent rates were fixed by the Settlement Officer on 6th of June, 1955 and they were applied retrospectively from 1st of July, 1953. The revised rent rates were substantially lower than the rent rates assessed in 1953. According to the rent rates of 1953 the total rental income from the jagir was Rs. 131,657.48 while according to the revised rent rates the rental income was reduced to Rs. 82,501.50.

The jagirder again filed a writ petition No. 135 of 1955 for a direction to the State Government not to apply the rent rates assessed in 1955 retrospectively with effect from 1st of July, 1953. The High Court, however, held that it was open to the Settlement Officer to apply rent rates retrospectively under section 86 of the Jaipur State Grants Land Tenures Act, 1947. But the High Court specifically left open the question whether or not the rent rates assessed in 1955 and applied retrospectively from 1st July, 1953 could form the basis for determining compensation payable to the jagirdar under the Act.

When the jagirdar filed his claim for compensation in August, 1954 his writ petition challenging the rent rates enforced by the Government order dated 25th of November, 1953 was pending. The jagirdar, therefore, based his claim for compensation alternatively under sections 6 and 7 respectively of the Jagirs Act. As pointed out earlier, on the basis of the settlement of 1953 the rental income from the jagir came to Rs. 1,31,657.48. If on the other hand the jagir was taken to be unsettled, he was entitled to compensation on the basis of actual rental income for three years which came to about Rs. 3 lakhs. The Jagir Commissioner by his order dated 25th of November, 1960 granted compensation on the basis of rent rates assessed in 1955. The jagirdar preferred an appeal before the Board of Revenue but the same was dismissed.

Sangram Singh died in December 1961 and the order of the Board of Revenue was challenged by his son the petitioner appellant in the High Court of Rajasthan. Two alternative contentions were

A raised before the High Court on behalf of the petitioner : (1) that the compensation should have been assessed on the basis of rent rates determined in 1953 as they were the rent rates assessed on the jagir lands as entered in the revenue records of the village within the meaning of section 6 (3) (a) (i) read with the definition of 'settled village' contained in section 2 (n) as it stood on the date of resumption; (2) that in the absence of a valid settlement on the date of resumption the jagir should be treated as not being a 'settled village' and compensation should be assessed on the actual income from rents during the three agricultural years ; 1949-50, 1950-51 and 1951-52, as provided in section 7 of the Act.

C The High Court declined to accept either of the contentions. The first contention was rejected by the High Court on the ground that the petitioner was estopped from taking up the position by his own conduct inasmuch as his father had challenged the rent rates assessed in 1953 by means of a writ petition which was allowed and the rent rates assessed in 1953 were quashed, and secondly because the rent rates assessed in 1953 were a nullity and in the eyes of law there were no valid rent rates assessed and entered in the revenue records on the basis of which compensation could have been determined. The second contention was also negatived on the ground that fresh rent rates in accordance with the directions of the High Court were assessed in 1955 and were applied retrospectively with effect from 1st July, 1953 and, therefore, the jagir could not be taken to be an unsettled village. The petitioner has now come to challenge the order of the High Court by the present appeal.

F It may be pointed out that if the jagir was a settled one the compensation would be assessed on the basis of the rent rates as settled in settlement operations, which were prevalent on the date of resumption and as entered in the revenue records of the village within the meaning of section 6 (3) (a) (i) read with the definition of 'settled village' contained in section 2 (n). If on the other hand, the jagir was an unsettled one the compensation would have to be assessed on the actual income from the rents during the three agricultural years : 1949-50, 1950-51 and 1951-52 as provided in section 7 of the Act.

H Shri S.N. Kacker has contended on behalf of the appellant that the rent rates settled in 1953 having been quashed by the High

Court, the jagir would be deemed to be an unsettled village and, therefore, the compensation should be determined in accordance with the provisions of section 7 of the Act and not in accordance with the rent rates determined in 1953. From the observations made by the High Court itself it is evident that the rent rates notified in 1953 were quashed as invalid. After the quashing of rent rates determined in 1953 it can by no stretch of imagination be said that the settlement made in 1953 still stood for the purpose of determining the compensation for the jagir in question.

Shri Badri Das Sharma appearing for the State on the other hand has contended that it is true that the determination of rent rates in 1953 had been quashed, but the High Court had directed re-determination of the rent rates in accordance with the provisions of section 82 and, therefore, the direction of the High Court was for rectifying the mistake that had cropped in the determination of the rent rates of 1953 and if this be so, the rent rates determined in 1953 were still there and the compensation could be determined on that basis.

Having given our anxious consideration to the contentions raised on behalf of the parties we are of the positive view that after the quashing of the settlement made in 1953 it cannot be said that the settlement of the jagir still existed. It is to be noted at this stage that the settlement of 1953 was quashed by the High Court on the ground that the procedure laid down in the statute had not been followed. The quashing of such an order only means *tabula rasa* (clean slate) as if there was no determination of rent rates in 1953. In this view of the matter the jagir would be taken to be an unsettled village on the date of resumption.

Shri Badri Das Sharma, however, contended that pursuant to the direction of the High Court in Writ No. 308 of 1953 fresh rent rates were assessed in 1955 which were made applicable with retrospective effect from 1st of July, 1953 and that, therefore, the rent rates assessed in 1955 will be taken to be the rent rates prevalent on the date of resumption and as such the Board of Revenue as well as the High Court were fully justified in taking the view that compensation was to be determined on the basis of the rent rates assessed in 1955. In support of his contention Shri Sharma referred to the definition of the 'settled village' in section 2 (n), which reads :

A "(n) 'Settled' when used with reference to a village or any other area, means the village or other area to which the rent rates determined during settlement operations have been made applicable whether prospectively or retrospectively, and the whole of such village or other area shall be deemed, for the purposes of this Act and the rules and orders made thereunder, to be so settled if such rates have been made so applicable to not less than three fourths of such village or other area."

B On the strength of this definition it is sought to be contended that the jagir in question would be deemed to be a settled village as it is open to the authorities to apply the settlement either prospectively or retrospectively, and it was made applicable by the Settlement Officer retrospectively. We are afraid, the argument cannot be accepted. The criterion to determine whether a particular jagir is a settled one or not is to see whether the rent rates determined in settlement operations have been made applicable. It is only from the date of effectuation of a valid settlement of rent rates in respect of a particular jagir which makes the jagir a settled one.

Reliance was also placed on section 86 of the Jaipur State Grants Land Tenures Act, 1947, which runs thus :

E "86. Any rent fixed by order of the Settlement Officer under this Act shall be payable from the first day of July next following the date of such order, unless the Settlement Officer thinks fit, for any reason to direct that it shall be payable from some earlier date."

F A plain reading of this section indicates that the rent fixed by the Settlement Officer shall normally be payable from 1st of July next following the date of such order. The section, however, further authorises the Settlement Officer to direct that the same shall be payable from some earlier date. The realisation of rent from a retrospective date will not make the jagir in question a settled one as from that date. The settlement of rent rates is one thing and the realisation of rent on the basis of the settlement is quite another. In case of a settled village the compensation would be determined on the basis of the rent rates settled during a settlement operation recorded in the revenue papers on the date of resumption. Thus, it is the applicability of the rent rates determined during a settlement made prior to the date of resumption which would make the village a settled village as on that date.

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There is yet another aspect from which the matter can be looked into. The jagirdar became entitled to compensation on the date of resumption and, therefore, we have to examine the position as it stood on the date of resumption. If the village was an unsettled village on the date of resumption he would be entitled to compensation on the basis of the village being unsettled. The right of compensation vested in the jagirdar on the date of resumption and he could not be deprived of his right by a subsequent amendment unless the amendment in law specifically or by necessary implication provided or depriving the jagirdar of his vested right. We do not find anything in the definition of the term 'settled' under section 2 (n) of the Act or in section 86 of the Jaipur State Grants Land Tenures Act to indicate that the legislature intended to affect the vested right.

In this view of the legal position, the jagir Commissioner was not justified in assessing the compensation on the basis of the assessment of rent rates in 1955. The only correct basis will be to treat the jagir in question as an unsettled one and determine the compensation in accordance with section 7 of the Act.

In the result the appeal is allowed with costs. The orders of the High Court, the Board of Revenue and that of the Jagir Commissioner are set aside and the case is sent back to the Jagir Commissioner to determine the compensation afresh treating the jagir in question to be unsettled one and in accordance with the provisions of section 7 of the Act. The appellant will also be entitled to interest at the rate of ten per cent per annum on the amount of compensation so determined, from the date of resumption till the date of payment of the compensation.

S.R.

Appeal allowed.