Supreme Court of India
Vikram Singh & Anr vs State Of Rajasthan & Ors on 25 April, 1947
Author: P C Ghose
Bench: Gyan Sudha Misra, Pinaki Chandra Ghose

NOT-REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1958 OF 2003

Vikram Singh & Anr. … Appellants

Vs.

State of Rajasthan & Ors. … Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. This appeal is directed against an order passed by the High Court of Judicature for Rajasthan at Jodhpur, dismissing the writ petition filed by the appellants/writ-petitioners with liberty to the writ-petitioners to raise the defence before the Collector which was available to them.

2. The issue raised before the High Court on the question is whether in view of the provisions of Section 15(2) of the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as 'the Act of 1973'), the Collector has any jurisdiction to initiate any proceedings for making reference to the Board of Revenue in respect of an order passed on June 30, 1970 for determining the ceiling area of the land that could be held by the petitioners (appellants) under Chapter III-B of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955'). The facts of the case, in brief, which are necessary for deciding the question are that Chapter III-B of the Act of 1955 was introduced by Section 3 of the Rajasthan Tenancy (Amendment) Act, 1980 published in the Rajasthan Gazette Extraordinary, Part IV-A dated 21.3.1960 vide Notification No. F.6(2) Rev. B/70 (I) and this chapter came into force with effect from 15.12.1963. Chapter III-B provides "Restriction of holding land in excess of ceiling area". Chapter III-B contains various sections providing for declaration of the extent of agricultural land which can be held by agriculturists and the mode of determination of excess agricultural land. The agriculturists are required to surrender excess land which shall vest in the State Government. As per the provisions of Chapter III-B of the Act of 1955, appointed date was fixed as 1.4.1966 by the agriculturists in accordance with the provisions of Chapter III-B.

3. It appears that one Ummaid Singh, ancestor of the appellants submitted a return before the Sub-Divisional Officer, Jalore, upon which a case was registered bearing No.13/68. During the pendency of the case, Ummaid Singh expired. His successors-in-interest were taken on record and

the proceedings were completed. The S.D.O. held by an order dated September 30, 1979 that 514-1/2 standard acres of land were surplus in the hands of the agriculturists. The land was surrendered by the petitioner in pursuance of the said order and no appeal was preferred. Hence, the said order became final. The Act of 1955 was repealed by an Ordinance and thereafter by the Act of 1973, which came into force on 1.1.1973, the State Government was given power to avail the remedies under the Act of 1973 against the case decided under the old ceiling law of Chapter III-B by making provision under Section 15(2) of the Act of 1973. The old law of ceiling has been saved for this purpose by virtue of Section 40 of the Act of 1973.

4. It appears from the facts that an application was filed before the District Collector, Jalore by the Tehsildar under Section 232 of the Act of 1955 with a prayer to re-open the mutation made in accordance with the decision in Ceiling Case No.13/68 of the predecessors of the petitioners and prayed for cancellation of the said decision and to refer the matter before the Board of Revenue. On such prayer, the District Collector issued notice dated August 11, 1999 fixing a date that is September 8, 1999. The issuance of such notice had been challenged on the ground of inordinate delay in initiation of such proceedings under Section 232. In these circumstances, the appellants filed a writ petition challenging the notice dated 11.8.1999.

5. Mr. Sushil Kumar Jain, learned counsel appearing in this matter, submitted that the Act of 1973 is a special Act and a complete Code specifically dealing with the issues of agriculture land ceiling in the State of Rajasthan. He submitted that in relation to cases that have attained finality under the repealed law, Section 15 has been enacted which is the only source of power in relation to cases already decided under the repealed law. The power that is provided under Section 15(2) of the Act can be exercised to re-open the cases already decided. He further submitted that once Chapter III-B of the Rajasthan Act of 1955 has been repealed, power under Section 232 cannot be used or utilized to determine or re-determine the issues relating to land ceiling. The said action, according to him, can now only be taken under the provisions of the Act of 1973. Therefore, no right has been conferred upon the authorities which can be exercised under the Act of 1955 excepting all steps can be taken under the 1973 Act. He further submitted that Section 40 of the 1973 Act has repealed the entire Chapter III-B except for the purposes of second proviso to Section 4(1) and Section 15(2) of the 1973 Act. Since Section 40 saves the said Chapter for the purposes of Section 15(2) only, latter part of Section 15(2) specifically enables the authorities to decide the cases in accordance with the repealed provisions. Therefore, he submitted that Chapter III-B is not saved for the purpose of Section 232. Therefore, he further submitted that there would be no existing law under which re-determination can be made once the power is exercised under Section 232. It is necessary for us to quote Section 15 at this stage for our purpose :

“15(2) Without prejudice to any other remedy that may be available to it under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955), if the State Government, after calling for the record or otherwise, is satisfied that any final order passed in any matter arising under the provisions repealed by Section 40, is in contravention of such repealed provisions and that such order is prejudicial to the State Government or that on account of the discovery of new and important matter or evidence which has since come to its notice, such order is required to be reopened, it may direct any officer subordinate to it to reopen such decided matter and to decide it afresh in accordance

with such repealed provisions."

6. He further pointed out that the entire provision of Section 15(2) is subject to the second proviso which lays down limitation of seven years or up to 30th June, 1979. According to him, Section 15(2) saves the "remedies" against a "final order" and not "powers" under the Rajasthan Tenancy Act. He submitted that against a "final order", the remedy is in the nature of an appeal under Section 55 of the Rajasthan Tenancy Act or review under Section 225 of the Act. Therefore, he submitted that at this stage the authority cannot reopen the same. He further submitted that the power under Section 232 is sought to be exercised after 29 years which cannot, by any stretch of imagination, be construed as a reasonable period to sustain the initiation of such proceedings. In these circumstances, he submitted that the High Court was wrong in dismissing the writ petition and remit the matter before the authority for consideration.

7. Per contra, it is submitted by Dr. Manish Singhvi that Chapter III-B is a substantive law with regard to the determination of ceiling proceedings and does not provide for any machinery provisions with regard to the computation of ceiling. The machinery provisions like computation of ceiling land, appeals, reference and revision were provided by the Act of 1955. The Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 repealed Chapter III-B of the Act of 1955. The repeal of Chapter III-B by the Act of 1973 has both substantive as well as procedural aspects. Accordingly, he submitted that the substantive rights and liabilities under Chapter III-B are being saved by Section 40 of the repealing Act as well as Section 6 of the General Clauses Act. In support of his contention, he relied on the Constitution Bench judgment of this Court reported in Bansidhar & Ors. v. State of Rajasthan & Ors.[1] He drew our attention to paragraph 39 of the said judgment and submitted that the State of Rajasthan has an accrued or vested right to the excess land as available on 1.1.1966 in terms of Chapter III-B of the Act of 1973. Therefore, the substantive rights are duly saved in favour of the State of Rajasthan and if there is any excess land then it ought to have been surrendered to the State of Rajasthan by the appellant/s.

8. He further contended that the main question that the procedural law which is to be applied for purposes of determination of substantive rights which have accrued in favour of State of Rajasthan in terms of excess land under Chapter III-B of the ceiling law is governed by Chapter 15(2) of the Act of 1973. Section 15(2) begins with a rider or caveat which states as follows :

"Without prejudice to any other remedy that may be available under Rajasthan Tenancy Act, 1955, if the State Government...."

9. Thus, Section 15(2) has two components: The first part saves the right of the State Government or any other person to pursue any remedy which is already available under the Rajasthan Tenancy Act; the second part refers to power to re-open and it is also subject to several riders that it could be re-opened within a stipulated period of seven years.

10. The power under Section 15(2) of the Rajasthan Tenancy Act has been saved and the State of Rajasthan in exercise of power proceeded in the matter to avail the remedy under the said Act. Accordingly, the State has exercised its power under Section 232 of the said Act, and no limitation

has been prescribed to reopen the proceedings at any point of time which have been obtained by fraud or misrepresentation. This aspect of section 15(2) delineated in two parts is also brought forth clearly in the impugned judgment.

11. Therefore, the words "Without prejudice to any other remedy that may be available under Rajasthan Tenancy Act, 1955" would be rendered surplus or redundant if it has to be read only as power to reopen within a period of seven years. The power to reopen was conferred on the State Government in addition to the existing power under the Rajasthan Tenancy Act. Thus, the power of rider of limitation of seven years would only arise if the State Government was to reopen the proceedings. The power exercised in the present case is emanating out of Section 232 of the Rajasthan Tenancy Act which stands duly protected and preserved by first four lines of Section 15(2) of the Act of 1973.

12. If the arguments canvassed by the appellants are accepted, then the State Government would be denuded of its power to refer any matter to the Revenue Board even if fraud, collusion or misrepresentation comes to the knowledge of the State Government. The State Government cannot be denuded of its power to rectify any mistake which has been committed earlier on account of fraud, misrepresentation or matters pertaining to void transactions. Thus, the exercise of power is imperative and it has been expressly provided in first four lines of Section 15(2) itself which is in addition to power of reopening, which of course is no longer available within limitation of seven years.

13. He further submitted that Section 232 of the Rajasthan Tenancy Act does not prescribe any period of limitation. Thus, when there is no period of limitation, power can be exercised at any point of time. According to him, the reasonable period of time in exercise of power is essentially a question of fact. The High Court has abdicated its responsibility to determine the reasonable period of time and has left it to the authorities to determine the same. Therefore, the reasonableness of the period of time has to be decided by the authorities below even if the petition is dismissed. He further relied upon a Full Bench decision of Rajasthan High Court in Chiman Lal vs. State of Rajasthan & Ors.[2] In support of his contention, he contended that when no period of limitation is provided then it has to be exercised within a reasonable time and that will depend upon the facts and circumstances of each case like: when there is a fraud played by the parties; the orders are obtained by misrepresentation or collusion with public officers by the private parties; orders are against the public interest; the orders are passed by the authorities who have no jurisdiction; the orders are passed in clear violation of rules or the provisions of the Act by the authorities; and void orders or the orders are void ab initio being against the public policy or otherwise. The common law doctrine of public policy can be enforced wherever an action affects/offends the public interest or where harmful result of permitting the injury to the public at large is evident. In such type of cases, revisional powers can be exercised by the authority at any time either suo motu or as and when such orders are brought to their notice.

14. The exercise of power whether it is reasonable or not would depend upon whether the proceedings on earlier occasion were after due consideration of facts or due to fraud or misrepresentation. The learned counsel further submitted that it is a settled proposition of law that

fraud vitiates all transactions and the point of limitation would never come whenever the fraud is alleged. In the instant case, according to him, the appellant has directly availed of writ remedy against the notices issued for reference and the appellant got liberty to agitate all points as to whether the fraud was played or not and, secondly, whether exercise of power was belated or not. Basically, the question is whether the competent authority or reference under Section 232 was based on fraudulent representation or not. It is quintessentially a question of fact to be determined by Reference Board which is in the nature of a tribunal. The High Court has also remitted the matter to the competent authority to decide the said question in the context of Chiman Lal's case (supra).

15. After considering the submissions made on behalf of the parties and after considering the counter filed before this Court to which our attention has been drawn, it appears that the facts which have been pleaded by the respondents in the counter would show that on the basis of the misrepresentation, the order passed in the land ceiling cases, in particular Ceiling Case No.13/68 and the declaration which was filed by the ancestors of the appellants, would reveal that the declarations which have been given by the predecessors of the appellant, suffered from suppression of material facts. It is also revealed from the facts that there is an allegation of fraud which requires an enquiry. Therefore, the notice has been issued only to make an enquiry in the matter. Hence, in the given facts, such notice cannot be said to be bad at this stage. The appellant would only face the enquiry. In view of that, we do not intend to interfere with the order passed by the High Court. However, we also restrain ourselves from making any comment with regard thereto. The point of limitation also can be urged by the appellant before the said authorities.

16. In our opinion, we do not find any reason to interfere with the order passed by the High Court. We accept the reasoning of the High Court. The submissions made on behalf of the appellants, in our opinion, cannot be accepted by us as the same have no substance and further fraud as alleged, if proved, all steps would vitiate. On the contrary, it appears that the submissions made on behalf of the respondents have substance and we accept contentions of the respondents. In the result, we find no merit in the appeal and the same is dismissed.

.....J.

(Gyan Sudha Misra)

New Delhi;
April 25, 2014.

.....J.
(Pinaki Chandra Ghose)

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[1] (1989) 2 SCC 557
[2] RLR 2000 (2) 39