

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Reference No.10883/2002/LR/Jodhpur :

State of Rajasthan

Petitioner.

Versus

1. Secretary, Rajput Education Trust, Jodhpur.
2. Ummed Sikshan Sansthan, Bali district Pali, through
Chairman Jagat Singh S/o Ugam Singh, by caste Rajput,
R/o Saderao, Tehsil Bali, District Pali.

... Non- Petitioners.

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S.B.

Shri C.R. Meena, Member

Present :

Shri Ramsukh Chaudhary : Dy.Govt.Advocate for the State.

Shri Virendar Singh Rathore and Shri Yogendra Singh : counsels for the
non-petitioners.

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Dated : 26.12.2022

J U D G M E N T

This reference has been referred by Director, Land Records vide order dated 27.6.2002 in the Board of Revenue under section 82 of the Rajasthan Land Revenue Act, 1956 (in short to be referred as 'the Act').

3. Brief facts of the case are that the disputed land bearing khasra nos. 765, 766 and 767 measuring 3000 bighas situated in Village Bali Tehsil Bali District Pali was transferred through gift deed by the erstwhile Jodhpur Ruler to the Rajput Education Trust, Jodhpur on 27.12.1969. Tehsildar, Bali vide his order dated 23.8.1972 rejected the mutation on the basis of above transfer deed stating that adequate stamps had not been put up on the gift deed and the disputed land is affected by the Ceiling Law. Aggrieved by this, the non-petitioner filed an appeal before the Sub Divisional Officer, Bali who vide his order dated 03.01.1975 accepted the

appeal directing Tehsildar to attest the mutation in favour of the Rajput Education Trust, Jodhpur. During this course, the Additional Collector, Pali vide his order dated 28.9.1996 referred this matter to the Board of Revenue through Director Land Records for setting aside the order passed by the S.D.O. dated 03.01.1975. Hence, Director Land Records referred this matter on 27.6.2002 to the Board.

3. I have heard the arguments of learned counsel for the parties and perused the record.

4. In support of reference, learned Dy.Govt.Advocate argued that as per provision of Section 17(1)(A) of the Indian Registration Act, such deeds have to be registered with requisite value of stamps. Since these conditions have not been fulfilled, the Tehsildar had rightly rejected the mutation. In this regard, he drew my attention to Section 123 of the Transfer of Property Act wherein it has been laid down that such deeds have to be registered. Moreover, he argued that no proof has been submitted by the non-petitioner to substantiate his claim that above land was declared as personal property of the erstwhile ruler. Hence, he requested to accept the reference.

5. Learned counsels for the non-petitioners argued that the disputed land was rightly transferred to the Rajput Educational Trust by the erstwhile ruler through a rightful document. He argued that according to the Rule 131 and 142 of the Rajasthan Land Record Rules where both the parties agreed regarding the transfer of possession under a deed, the Tehsildar has to attest the mutation on the basis of the report of Patwari. He also argued that the transfer was not affected by the ceiling law as there was no proof that in the ceiling proceedings against erstwhile ruler the disputed land was included. He argued that no ceiling case was initiated against erstwhile ruler or against the Rajput Educational Trust, therefore, Tehsildar wrongly rejected the mutation by putting a note that disputed land is ceiling affected. He also argued that Trust is in possession of the disputed land and has deposited the land revenue dues, so mutation should have been attested in favour of the Trust. S.D.O. has rightly accepted the appeal of the non-petitioner and directed mutation to be attested in favour of the Trust. He further argued that if the document was not properly stamped then it could have been sent to the

Collector Stamps for the determination of the deficit stamp duty and the penalty payable, but mutation cannot be rejected on this ground. In support of his contentions, he submitted 2018 RBJ 456. Therefore, he has requested that the reference should be rejected.

6. I have given my earnest consideration to the rival arguments advanced by learned counsels and scanned the matter carefully.

7. It is clear from the record of the case that the document through which land has been transferred by the erstwhile ruler to the Trust is unregistered and on the basis of unregistered document, mutation cannot be attested by the Tehsildar as per Rule 132 of Rajasthan Land Revenue(Land Records) Rules, 1957. In case of transfer through donation, sale, will and mortgage the Patwari is bound to ensure that the said deed is registered or not. He has to personally ensure the registration status of the deed and if the deed is not registered, he should not start the mutation proceedings. Moreover, if the disputed land is under ceiling proceedings then according to Rule 137 of Rajasthan Land Revenue(Land Record) Rules, 1957 the Patwari should not register any mutation. In these circumstances, Tehsildar has no option but to reject the mutation. I do not find any force in the contention of counsel for the non-petitioner that if the document was not properly stamped then it should have been sent to the Collector Stamp for determination of deficit stamp duty because a mutation proceeding is not equivalent to the declaratory suit in which title is considered on various grounds and evidences. Hence, the ruling cited by the non-petitioner is not applicable in this case. Since the land transferred by the erstwhile ruler was never declared as personal property under the Rajasthan Land Reforms(Land Owners Estate Act, 1963); as such, he was not entitled to transfer this land to the Trust. Moreover, the non-petitioner has not produced anything which proves that the land was not affected by the provisions of the Ceiling Law. As such, in my considered opinion, Tehsildar has rightly rejected the mutation while S.D.O. has wrongly accepted the appeal against the facts of the case.

8. In view of the above discussion, I find force in the reference made by the Director Land Records. Therefore, the reference is accepted and

Reference No.10883/2002/LR/Jodhpur
State Vs. Secretary Rajput Education

the order of the Sub Divisional Officer, Bali dated 03.01.1975 passed in
mutation Appeal No. 18/73 is set aside.

Pronounced in open court.

(C.R. Meena)
Member

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