

तारीख हुक्म	हुक्म या कार्यवाही मय इनिशियल्सजज Reference No. 636/2005/TA/Bikaner State of Rajasthan Vs. Kasam Khan	नम्बर व तारीख अहकामजो इस हुक्म की तामीलमेंजारीहुए
22.01.2021	<p style="text-align: center;"><u>S.B.</u> Mahendra Kumar Parakh, Member</p> <p><u>Present:</u></p> <p>Smt. Poonam Mathur : Additional Govt. Advocate for the State. Shri N.K. Goyal: counsel for the Non-Petitioners.</p> <p style="text-align: center;">- - -</p> <p>This reference has been made to the Board of Revenue by Dy.Commissioner (Colonisation)-cum-Collector, Bikaner under section 232 of the Rajasthan Tenancy Act, 1955 and section 82 of the Rajasthan Land Revenue Act, 1956 vide his decision dated 07.01.2005.</p> <p>2. Brief facts of the case are that non-petitioner filed a suit in the court of Assistant Commissioner (Colonisation), Kolayat for declaration under section 88 & 53 of the Rajasthan Tenancy Act. The disputed land belonged to father of the plaintiffs measuring 165 bigha 8 biswa. After the death of Nidam Khan, mutation was recorded in the name of plaintiffs and defendants no. 1 to 5. This suit was decreed on 06.10.1998 by the Assistant Commissioner (Colonisation), Kolayat in favour of plaintiffs on the basis of consent by defendents and division of holding was also effected on the basis of oral statements of all the sisters (defendants) relinquishing their rights in the disputed land. The land in dispute is still in the gair khatedari of the recorded tenants, division of which has not been considered as per law by the Dy.Commissioner (Colonisation). Considering this judgment & decree in favour of non-petitioners as beyond jurisdiction, illegal and against record, Dy.Commissioner (Colonisation)-cum-Collector, Bikaner has made this reference to the Board of Revenue after affording an opportunity of hearing to the non-petitioners.</p> <p>3. I have heard the arguments of learned Addl.Govt.Advocate & learned counsel for the non-petitioners and perused the record.</p>	

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	<p>4. Learned counsel for the non-petitioners has submitted that Assistant Commissioner (Colonisation), Kolayat decided the case on 06.10.1998 and Dy.Commissioner (Colonisation) who is not Collector for the purpose of making reference to the Board has presented this reference after an inordinate delay of 7 years just to cover up the delay in making appeal against the order of Assistant Commissioner (Colonisation), Kolayat in competent court. Dy.Commissioner (Colonisation) should have appealed against the order of Assistant Commissioner (Colonisation), Kolayat in the competent court. The learned counsel for the non-petitioner cited the case 2017 RBJ page 6 and decision of Rajasthan High Court dated 02.3.2007 in D.B. Special Appeal 789/2003 wherein Rajasthan High Court upheld that the Dy.Commissioner (Colonisation) is not authorized to file reference before the Board of Revenue.</p> <p>5. Addl.Govt.Advocate has argued that if decree is illegal, reference can be presented. For this, she presented citation of RRD 1994 page 186. As for the delay in making reference to the Board, argued that decision to make reference was taken on 07.01.2005 after hearing both the parties and within a month it was filed in the Board of Revenue. As regards competence of the Dy.Commissioner (Colonisation) for making reference under section 232 of the Rajasthan Tenancy Act, it was argued that notification dated 17.10.1978 conferred the powers to make reference to Dy.Commissioner (Colonisation), Bikaner in Rajasthan Canal Project, Bikaner.</p> <p>6. Considered the arguments of the Addl. Govt. Advocate and learned counsel for non-petitioners. Perused the records carefully.</p>	

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	<p>7. As regards delay in filing reference, it is observed that the application moved for making reference was under trial in the court of Dy.Commissioner (Colonisation) from 2000 to 2005 and there is no delay after a decision was made on 07.01.2005 by Dy.Commissioner (Colonisation). Hence, delay condoned.</p> <p>8. Prima facie, the decision of the Assistant Commissioner (Colonisation) decreeing suit u/s 88 and 53 of the Rajasthan Tenancy Act, 1955 where the existing tenant is recorded as gair khatedar on the basis of consent of the reorded gair khatedars, seems to be inappropriate and mala fide but without going into the merits of the case, this court has considered the issue of jurisdiction in the instant case first relying upon the citations presented by the counsel for non-petitioners.</p> <p>9. The definition of Collector for the purpose of reference under section 232 of the Rajasthan Tenancy Act does not include any office of the Colonisation Department. Though the Dy.Commissioner (Colonisation) is included in the definition of Collector in the Colonisation Act,1954, but there are no provisions of making reference in Colonisation Act. Section 6 of the Rajasthan Colonisation Act, 1954 empowers the State Government to notify any officer of the Colonisation Department to exercise powers under Rajasthan Tenancy Act, 1955 and Rajasthan Land Revenue Act, 1956. Notification was issued on 17.10.1978 which empowered Dy.Commissioner (Colonisation) to exercise powers under Rajasthan Tenancy Act and Rajasthan Land Revenue Act in their jurisdiction. Thereafter, the notification dated 15.01.1992 was published conferring powers to make reference under section 232 of the Rajasthan Tenancy Act on the Commissioner Colonisation.</p>	

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	<p>10. As regards competence of the Dy.Commissioner (Colonisation) for making reference under section 232 of the Rajasthan Tenancy Act, the judgment cited by learned counsel for the non-petitioner in D.B. Special Appeal 789/2003 dated 02.3.2007 has dealt with this issue in detail. In the light of notification dated 15.01.1992 which confers power to make reference to the Board on the Commissioner Colonisation, it was upheld that any other authority other than Commissioner, Colonisation has ceased to exercise power to make reference to the Board under section 232 of the Rajasthan Tenancy Act in the colony area and therefore reference made by the Dy.Commissioner (Colonisation) was held to be incompetent in the cited judgment.</p> <p>11. As such, the reference under consideration is returned and sent back to Dy.Commissioner (Colonisation), Bikaner with the instructions that in the first instance, the impugned order of the Assistant Commissioner (Colonisation), Kolayat may be appealed against in the competent court. Secondly, if it is considered necessary and appropriate, reference can be made through the Commissioner Colonisation. The reference is disposed of accordingly.</p> <p style="text-align: center;">Pronounced.</p> <p style="text-align: center;">(Mahendra Kumar Parakh) Member</p>	