



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 3135/1996

(1) Ram Chandra, aged about 61 years, S/o Shri Madan Lal Singhal,

(2) Lrs. of late Smt. Kalavati Devi

2/1(a) Smt. Kusum Lata, Aged about 62 years, W/o Late Shri Jugal Kishore,

2/1(c) Ms. Dipti, Aged about 33 years, D/o Late Shri Jugal Kishore,

(3) Lrs. of Late Shri Rakesh Kumar

3/1. Smt. Seema Devi W/o Late Shri Rakesh Kumar, Aged about 47 years.

3/2. Deep Singhal S/o Late Shri Rakesh Kumar, Aged about 22 Years, Minor Through his natural guardian Smt. Seema Devi.

3/3. Yachika D/o Late Shri Rakesh Kumar, Aged about 19 Years, minor through her natural guardian Smt. Seema Devi.

4. Smt. Madhu Devi, Aged about 63 Years, W/o Shri Ram Chandra Singhal.

5. Smt. Kusum Lata, Aged about 61 Years, W/o Late Shri Jugal Kishore.

6. Smt. Nirmala Devi, Aged about 50 years, W/o Shri Rajkumar, All by caste Agarwal, R/o Rughji Ku Pole, Balotra, District Barmer.

----Petitioners

Versus

(1) The Board of Revenue for Rajasthan at Ajmer, through the Registrar.

(2) The District Collector, Barmer.

(3) The State of Rajasthan, Through the Secretary to the Government, Revenue Department, Government of Rajasthan, Jaipur.

----Respondents

For Petitioner(s) : Mr. MS Singhvi, Sr. Counsel assisted by Mr. Abhishek Mehta

For Respondent(s) : Mr. Govind Lal Suthar

**JUSTICE DINESH MEHTA****Order****09/10/2024**

1. By way of present writ petition, the petitioners have challenged the order dated 05.11.1986, passed by the District Collector, Barmer making reference to the Board of Revenue (hereinafter referred to as the 'Board') so also the consequential order dated 28.08.1995, passed by the Board, whereby reference made by the District Collector was accepted and mutation entries relating to land belonging to petitioners were set aside.

2. The facts appertain are that a parcel of land measuring 72 Bigas falling in Khasra No.647, village Padru, Tehsil Siwana, District Barmer was mutated in the name of Shiva Ram and Shriram.

3. Later on, a reference came to made by the District Collector, Barmer on 05.11.1985, interalia with a stand that the subject land belonged to deity (Doli Mandir Shri Thakur Ji Purohitan) and thus, it could not have been recorded in the name of said Shiva Ram and Shriram.

4. Though Shiva Ram was being represented by a counsel before the Board of Revenue but during the pendency of the reference, he passed away. On information being received, the Board directed the Tehsildar, Siwana to ascertain the factum of death of Shiva Ram and give details of his legal representatives so that they may be substituted and proceedings be continued against them.

5. The Board allowed the reference so made by the District Collector, Barmer vide its order dated 28.08.1995 interalia holding





that the land had wrongly been mutated in the name of said Shiva Ram and the subject land belong to the deity (Doli Mandir Shri Thakur Ji Purohitan), which is perpetual minor.

6. During the pendency of the reference, the petitioners purchased the subject land from one Thakur Das – son of Shiva Ram, being ignorant of the pendency of reference.

7. The petitioners being subsequent purchasers have preferred the present writ petition laying challenge to the above referred order passed by the Board.

8. Mr. Singhvi, learned Senior Counsel appearing for the petitioners submitted that the order dated 28.08.1995 is a nullity in the eye of law, because the reference has been decided by the Board against a dead person as said Shiva Ram had passed away during the pendency of the reference proceeding and his legal representatives have not been brought on record.

9. While maintaining that the petitioners are bonafide purchasers having purchased the land from Thakur Das (son of said Shiva Ram) by way of a registered sale deed dated 24.04.1995, learned Senior Counsel argued that the reference having been initiated after twenty years of the mutation entry in question, was illegal.

10. In support of his contention aforesaid, learned counsel for the petitioners relied upon the judgment of full bench of this Court rendered in the case of **Tara vs State of Rajasthan**, reported in **(2015) 4 RLW 1** and judgment of Apex Court rendered in the case of **Joint Collector Ranga Reddy District and Anr. vs. D. Narsing Rao & Ors.** reported in **(2015) 3 SCC 695**, wherein the reference which was made after unexplained and inordinate delay



of about 42 years and 50 years respectively, was held liable to be set aside.

11. Mr. Suthar, learned counsel appearing for the respondents submitted that since the mutation entry in the name of Shiva Ram was made contrary to provision of law, no interference is warranted, regardless of the fact that reference was made after twenty years of opening mutation in the name of Shiva Ram. He submitted that if this Court is of the view that the impugned orders dated 05.11.1986 and 28.08.1995 have been passed against a dead person, the matter be remanded to the Board for a fresh decision.

12. Heard learned counsel for the parties and perused the record.

13. After considering the submissions of Mr. Singhvi on previous date of hearing, this Court had summoned the record from the Board so as to ascertain the correct factual position about the death of Shiva Ram and substitution of his legal representatives.

14. On perusal of the record of the Board, this Court finds that an intimation was received by the Board on 21.09.1987 that Shiva Ram, the owner of land in question had since passed away, whereafter the Board had sent a precept to the Tehsildar, Siwana asking details/particulars of the legal representatives of said Shiva Ram.

15. In furtherance whereof, the Teshildar, Siwana vide its communication dated 27.09.1988 sent details of legal representatives of Shiva Ram.



16. It is surprising to note that there is no order of issuance of notice to legal representatives of Shiva Ram nor any served copy of the notices is available on record.

17. It is therefore clear that the notices were never served upon Thakur Das being legal representative of Shiv Ram and petitioners' predecessor-in-title.

18. The impugned order passed by the Board is clearly contrary to law, as the same has been passed without substituting and affording any opportunity of hearing to Thakur Das being legal representative of Shiva Ram, who had passed away during the pendency of the reference proceedings.

19. The fact that legal representatives of said Shiva Ram had not been brought on record can be discerned from the cause title of the order dated 28.08.1995 passed by the Board.

20. Such being the position, ideally, this Court ought to have remanded the matter back to the Board for deciding the matter afresh after issuing notice to legal representatives of Shiva Ram. But this Court cannot ignore the legal position about delay in making reference - the reference was made after twenty years of the mutation entries in question.

21. Full Bench of this Court in the case of Tara (supra) so also Hon'ble the Supreme Court in the case of Joint Collector Ranga Reddy District (supra) have held that reference made after delay of more than three years is invalid in the eyes of law.

22. In view of the afore discussion, the writ petition is allowed.

23. The order dated 05.11.1986 (Annexure-5) passed by the District Collector, Barmer making reference so also the consequential order dated 28.08.1995 (Annexure-6) passed by



the Board of Revenue, Ajmer are hereby quashed and set aside.
Consequence to follow.

24. Record of the Board be returned.

(DINESH MEHTA),J

1-raksha/-

