



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

S.B. Civil Writ Petition No. 7128/2005

1. Lr.s of Dalip Singh -

- 1/1 – Jasweer Singh s/o Dalip Singh, Age-35 years
1/2- Virendra Kumar s/o Dalip Singh, Age-31 years
1/3- Satnam Singh s/o Dalip Singh, Age-29 years
All are R/o22 M.D. Teh.-Gharsana, Dist.- Sri Ganganagar.
1/4- Sumitra Devi w/o Bagga Singh D/o Dalip Singh, Age-40 years
1/5- Gurjeet Kuar w/o Gurmeet Singh D/o Dalip Singh, Age-42 years
Both are R/o Peerkaamdiya, Teh.-Tibbi, Dist.-Hanumangarh.

2. Lr's of Surjeet Singh -

- 2/1- Sawarn Kaur w/o Surjeet Singh, Age-50 years
2/2- Harvindra Singh s/o Surjeet Singh, Age-30 years
2/3- Ajeet Singh s/o Surjeet Singh, Age-24 years
All are R/o M.D., Teh.-Gharsana, Dist.- Sri Ganganagar.
2/4- Rajvindra Kaur w/o Kulvindra Singh, Age-26 years
R/o-13 APD, Teh.- Sri Vijaynagar, Dist.-Sri Ganganagar.

3- Lr's of Foja singh s/o Kishan Singh -

- 3/1 Prem Kaur w/o Foja Singh, Age-57 years
3/2- Gurmeet s/o Foja Singh, Age-37 years
3/3- Ranjeet s/o Foja Singh, Age-31 years
R/o-22, M.D., Teh.-Gharsana, Dist.-Sri Ganganagar.
3/4- Chinder Kaur d/o Foja Singh w/o Pappu Singh, Age-39 years
R/o-25 KYD, Teh.- Khajuwala, Dist.-Bikaner
3/5- Suman d/o Foja Singh w/o GurjantSingh, Age-34 years
R/o- Lohara, Teh. And Dist.-Muktsar, Punjab
3/6- Vimla d/o Foja Singh w/o Raj Singh, Age-32 years
R/o Dablil Rathan, Teh. And Dist.- Hanumangarh.

4. Harnam Singh S/o Kishan Singh, Age-60 years R/o-22 MD,
Gharsana, Dist.- Sri Ganganagar

-----Petitioners

Versus

1. State of Rajasthan through District Collector, Sri Ganganagar.
2. Sub Divisional Officer (Revenue), Gharsana, District Sri Ganganagar.
3. Arjun Singh Son of Saldar Singh (correct name Ranga Singh) resident of 20 M.D. (B) Teh.- Gharsana, Dist.- Sri Ganganagar.

-----Respondents

For Petitioner(s) : Mr. N.L.Joshi
Ms. Kirti Pareek
Mr. Salam Khan
For Respondent(s) : Ms. Jaya Dadhich



JUSTICE DINESH MEHTA

Order

09/10/2024

1. The instant writ petition lays challenge to order dated 06.10.2005 passed by Sub Divisional Officer, Gharsana, District Sriganganagar (hereinafter referred to as 'trial Court'), whereby the sale affected by petitioners' predecessor-in-title, namely, Saldar Singh has been declared void; the land has been resumed and Tehsildar has been ordered to record the land in the name of the State.

2. The facts narrated in short are that one Saldar Singh, being the landless person was allotted 25 bighas land at Chak 20 M.D. (B) on 11.04.1978.

3. On 27.03.1986, said Saldar Singh entered into an agreement with prepositus of petitioner Nos. 1-3 and petitioner No.4 (hereinafter referred to as 'the purchasers') to sell such land on payment of consideration for Rs.1,50,000/-. A sum of Rs.1,40,000/- was paid at the time of agreement and the possession was handed over to the buyers.

4. Since the said Saldar Singh did not execute the sale deed, the purchasers instituted a suit for specific performance, which was decreed by the learned Additional District and Sessions Judge, Anoopgarh, District Sriganganagar by his judgment and decree dated 16.12.1999.

5. Pursuant to the decree aforesaid, a registered sale deed dated 09.04.2003 came to be executed in favour of the petitioners



and khatedari sanad in the names of Dalip Singh, Surjeet Singh, Foja Singh and Harnam Singh came to be issued and the land was accordingly mutated in their name.

6. A complaint came to be filed by one Arjun Singh claiming himself to be son of Saldar Singh. The Sub Divisional Officer, Gharsana proceeding in furtherance of said complaint passed impugned order dated 06.10.2005 inter-alia observing that the owner of the land (Saldar Singh) had transferred the land without obtaining prior consent in writing from the State Government and therefore, the sale was void.

7. Mr. Joshi, learned counsel for the petitioners submitted that the land came to be registered in the name of purchasers (petitioner/petitioners' predecessor) on account of judgment and decree passed by competent Civil Court on 16.12.1999. He submitted that once the competent Civil Court has passed a decree and ordered a sale deed to be executed in favour of the purchasers (petitioner/petitioners' predecessors), the Sub Divisional Officer could not have ignored the decree and pass the order impugned.

8. It was argued that with effect from 22.04.1991, the provisions under section 13(1) of the Rajasthan Colonization Act, 1954 (hereinafter referred to as 'the Act of 1954') have been made inapplicable in relation to the area in question and therefore, the Sub Divisional Officer was not legally justified in setting aside the sale in the year 2005. He submitted that when the applicability of provision of section 13(1) of the Act of 1954 has been done away with, there was no reason/ground for which



the Sub Divisional Officer could declare the sale to be illegal, simply because a formal consent from the State Government was not obtained.

9. Ms. Jaya Dadhich, learned counsel appearing for the State submitted that admittedly, Saldar Singh had entered into an agreement to sell without taking prior consent from the State Government, hence, the transaction between Saldar Singh and the purchasers was contrary to law. She argued that the Sub Divisional Officer has rightly invoked provision of section 13(1) of the Act of 1954 and no infirmity can be found in the order dated 06.10.2005.

10. Mr. Joshi, learned counsel for the petitioners, in rejoinder, submitted that the purchasers (petitioners and their predecessors) are in cultivatory possession of the land since 1986 and a registered sale deed has been executed in their favour in the year 2003. He alternatively argued that even if this Court finds some substance in the contention of the State that the agreement to sell entered into without prior consent of the State Government was invalid, a lenient view be adopted and purchasers' property rights be not negated on hyper technical ground of not taking previous consent of the State Government.

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

12. True it is that, prior to entering into an agreement to sell, the khatedar tenant - Saldar Singh did not obtain prior consent of the State Government. A perusal of the order impugned passed by Sub Divisional Officer shows that he was swayed by the fact that



on account of not obtaining the consent, the State was deprived of summons fee, thereby causing loss to the State exchequer.

13. The sole reason for setting aside the sale has been the absence of prior consent of the State Government and non-payment of summons fee. According to this Court, simply because the predecessors in title of Saldar Singh due to illiteracy or ignorance of law failed to obtain prior consent, the rights duly crystallized in favour of the purchasers (petitioner/predecessors of the petitioners) cannot be set at naught, that too after 20 years of the contentious sale.

14. There is yet another aspect of the matter. It is not in dispute that the agreement to sell was executed in the year 1986 and the decree came to be passed by the trial Court on 16.12.1999, by which time the provisions of section 13(1) of the Act of 1954 ceased to apply in the area and over subject land.

15. According to this Court, since provision of section 13(1) of the Act of 1954 ceased to operate from the year 1991 and the sale deed which is the basic document for transfer of the land in favour of the predecessors in title came to be executed on 09.04.2003, it cannot be said that the consent of the State Government was required or was mandatory, more particularly when the same was executed in light of the judgment and decree dated 16.12.1999.

16. A perusal of section 13(1) of the Act of 1954 reveals that a prior consent is mandatory in case of transfer by way of sale, gift, mortgage etc. The purchasers had simply agreed to purchase the land on 27.03.1986. Legally no transfer or sale had taken place. The transfer or sale was made on 09.04.2003, when the sale deed



came to be executed, as provided under the provisions of Transfer of Property Act. On the date of transfer, i.e. 09.04.2003, the provision of section 13(1) of the Act of 1954 became admittedly inoperative. Hence, the impugned order is liable to be set aside.

17. That apart, even if it is assumed that prior consent of the State Government was necessary, this Court is of the view that for such a trivial lapse on the part of the seller, the entire sale transaction cannot be annulled, more particularly, when there is no other ground for which the sale can be said to be invalid or irregular.

18. There is yet another angle to the case in hands. Even if it is held that the agreement executed on 27.03.1986 was in violation of section 13 of the Act of 1954, then as per section 13-A of the Act of 1954, all the transfers made in contravention of section 13(1) of the Act of 1954 could be validated on payment of applicable compound fee.

19. As a consequence of discussion foregoing, the present writ petition is allowed and the order dated 06.10.2005, passed by Sub Divisional Officer, Gharsana, District Sriganganagar, is hereby quashed and set aside.

20. The stay application also stands disposed of, accordingly.

(DINESH MEHTA),J

52-akansha/-