

(2015) 01 RAJ CK 0215
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7227 of 2014

Abdul Aziz and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 5

Citation : (2015) 2 WLN 313

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : J.L. Purohit, Senior Advocate assisted by N.R. Budania, for the Appellant

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.

1. This writ petition is directed against notification dt. 7.6.96 issued by the State Government, whereby in exercise of the power conferred under the Rajasthan Colonisation (Sale and Allotment of Land in Mandis in Bhakhra and Indira Gandhi Canal Project Colony Area) Conditions 1973 (for short "Conditions 1973"), the land ad measuring 550 bighas comprising various murabbas including murabba No. 92/47 in Chak DLMS and Chak RM, stands allotted to Mandi RD465. The facts relevant are that the State Government issued notification dt. 24.11.90, which was published in the official Gazette on 5.1.91, whereby the lands of Colonisation Tehsil- Chhatargarh No. 1 were reserved for special allotment. Jannat w/o Abdul Aziz alongwith two other applicants namely, Lakhvinder Singh and Jannat w/o Mohd. Hanif applied for allotment of the land comprising murabba No. 92/47 in chak 1 DLMS. All the three applicants were found eligible for allotment and accordingly, on the recommendation of the Advisory Committee, the land was put to auction. Lakhvinder Singh gave his bid for Rs. 40,000/-. Smt. Jannat though deposited 35% of the value of the land as earnest money, refused to give

her bid and therefore, the bid offered by Lakhvinder Singh being highest, the land was allotted in his favour. The application preferred by Smt. Jannat was rejected. The amount of Rs. 500/- deposited by Smt. Jannat was directed to be refunded. It is stated that aggrieved by the order dt. 16.3.93, Smt. Jannat w/o Abdul Aziz filed two appeals and one appeal was filed by Smt. Jannat w/o Mohd. Hanif before the Revenue Appellate Authority (RAA), Bikaner, It is stated that vide order dt. 15.9.94, the RAA set aside the order dt. 16.3.93 passed by the Allotting Authority, allotting the land in favour of Lakhvinder Singh and the matter was remanded to the Allotting Authority to reconsider the applications after examining the priority under Rule 7 and 13 A of Rajasthan (Allotment and Sale of Government Land in Indira Gandhi Canal Colony Area) Rules, 1975 (for short "the Rules"). It is alleged that pursuant to the remand order passed by the RAA, vide order dt. 29.10.99, the Sub Divisional Officer, Chhatargarh, found Smt. Jannat eligible for allotment of 13 bighas uncommand land comprising kila No. 13 to 25 of murabba No. 92/47 in chak 1 DLSP. The applicant-Smt. Jannat was directed to produce her bona fide resident certificate and the matter was directed to be placed before Allotment Advisory Committee. According to the petitioners, the matter was not required to be placed before the Allotment Authority in view of the recommendations already made by the Advisory Committee by its meeting held on 4.3.93 and thus, realising the mistake, the Allotting Authority did not place the file before the Advisory Committee, Smt. Jannat was accepted as allottee and was put into possession of 13 bighas of land comprising murabba No. 92/47. It is averred that on 3.6.13, Smt. Jannat made an application before the Sub Divisional Officer, Chhatargarh and prayed that after remand order passed by the RAA, she is entitled to get the allotment order of the land issued in her favour. The application preferred by Smt. Jannat was rejected by the Sub Divisional Officer, Chhatargarh vide order dt. 3.6.13 observing that vide order dt. 29.10.99 the matter was required to be placed before the Advisory Committee and only after verification of the documents to be produced by the applicant-Smt. Jannat, the land was to be allotted in her favour, after determination of the value of the land. The Allotting Authority further observed that the applicant-Smt. Jannat having failed to deposit 35% of the value of the land and produce the documents for verification, her application for allotment automatically stands rejected.

2. Aggrieved by the order dt. 3.6.13, the legal representatives of Smt. Jannat who expired on 2.7.13 filed an appeal before the RAA, Bikaner accompanied by an application under Sec. 5 of the Limitation Act, which is pending consideration. It is submitted that during the pendency of the appeal before the RAA, the petitioners came to know from Patwari that the land claimed by the petitioners alongwith other lands, stand mutated in the name of Mandi Vikas Samiti, Bikaner vide mutation No. 81 dt. 2.4.08. As a matter of fact, the land in question alongwith other lands was allotted to the Mandi RD 465 by the State Government vide notification dt. 7.6.96. In these circumstances, while making an application before RAA for impleading Krishi Upaj Mandi Samiti/Krishi Vipnan Board, Bikaner

through Secretary/Executive Engineer as respondent in the appeal, the petitioners have questioned legality of notification dt. 7.6.96 by way of this writ petition.

3. Learned counsel for the petitioners contended that the allotment made in favour of Lakhvinder Singh having been set aside by the RAA and the matter having been remanded to the Allotting Authority vide order dt. 15.4.94, the land in question could not have been declared by the State Government as Mandi Area. Learned counsel submitted that after the remand, the land having been allotted in favour of Smt. Jannat, the allotment made will relate back to the year 1993 and therefore, the notification issued by the State Government notifying the land in question as Mandi Area, is not sustainable in the eyes of law, Learned counsel submitted that the land in question having been notified as the land available for special allotment under the Rules of 1975, the same could not have been declared as Mandi Area.

4. I have considered the submissions of the learned counsel and perused the material on record.

5. It is to be noticed that order dt. 15.9.94 passed by the RAA, Bikaner setting aside the allotment made in favour of Lakhvinder Singh and remanding the matter to the Allotting Authority is not placed on record by the petitioners. The order dt. 29.10.99 placed on record also does not reveal that the same is passed pursuant to remand order passed by the RAA. Even according to the petitioners, pursuant to the remand order, the Allotting Authority was required to consider the applications after examining the priority under Rule 7 and 13A of the Rules of 1975. However, a perusal of the order dt. 29.10.99 does not reveal that any such consideration was made by the Allotting Authority. Be that as it may, as per the order dt. 29.10.99, Smt. Jannat was found eligible for allotment of 13 bighas uncommand land comprising murabba No. 92/47 and she was directed to produce the bona fide resident certificate. That apart, the matter was directed to be placed for consideration of Allotment Advisory Committee. Admittedly, the matter was never placed before the Allotment Advisory Committee for consideration. According to the petitioners, the Allotting Authority later realised that the matter is not required to be placed before the Advisory Committee but then, there is nothing on record to suggest that the land was ever allotted to the petitioners by the Allotting Authority by passing an appropriate order. It is pertinent to note that after passing of the order dt. 29.10.99, the petitioners did not make any efforts to obtain the allotment order and after a lapse of about 14 years, made an application to the Allotting Authority for issuing the allotment order. Indisputably, the application made by Smt. Jannat for allotment of the land stands rejected by the Allotting Authority and aggrieved thereby, an appeal preferred is pending consideration before the RAA. Suffice it to say that as on the date, the petitioners cannot claim any right over the land in question and therefore, cannot be permitted to question the legality of the notification dt. 7.6.96 issued by the State Government declaring inter alia the land in question

as Mandi Area. Obviously;. after the decision of the appeal preferred by the petitioners before the RAA, if aggrieved, it will be open for the petitioners to avail the appropriate remedy available under the law.

6. No case for interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India is made out at this stage. The writ petition is therefore, dismissed in limine. It is made clear that the appeal preferred by the petitioners shall be decided by the RAA uninfluenced by any finding recorded by the Court in this order.