

(2001) 10 RAJ CK 0046
In the Rajasthan High Court
Case No : Civil Writ Petition No. 849 of 1990

Agarsen Navyuvak Sevalal, Ramgarh	APPELLANT
Vs	
District Collector, Alwar and Another	RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayat (General) Rules, 1961 — Rule 266(2)

Citation : (2002) 3 RLW 1490

Hon'ble Judges : S.K. Keshote, J

Bench : Single Bench

Advocate : R.K. Mathur, for the Appellant; Sumitra Goyal, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Keshote, J.—Heard learned counsel for the petitioner, perused the petition, its enclosures, reply to the writ petition and the additional affidavit filed by Miss Sheela Madan daughter of Shri Ram Chandra Madan.

2. By this petition under Article 226 of the Constitution the petitioner is praying for quashing and setting aside of the orders dated 20.3.89 (Annexure-5), 24.3.89 (Annexure.6), 29.3.89 (Annexure-7), dated 18.10.89 (Annexure-8) and judgment dated 27.9.89 (Annexure-9).

3. The main and substantial order is Annexure-9 dated 27.9.89 of the District Collector, Alwar.

4. For the decision of this case the facts are to be taken in brief which are that the petitioner found that some land near Panchayat Bhawan and hospital is lying vacant and for the purpose of construction of Dharamshala it applied to the Gram Panchayat for the grant of the same to it. It is stated that the petitioner was having knowledge that earlier Gram Panchayat had allotted the land free of cost to various institutions, details of those institutions have been given by the

petitioner in para No.4 of the writ petition. The application filed by the petitioner has been registered by the Gram Panchayat and it has issued notices for calling the objections from the public but it is stated that nobody has objected against the application of the petitioner.

5. The Gram Panchayat under its resolution dated 18.2.89 resolved to allot the land in dispute to the petitioner and further ordered for issuance of a patta. The allotment has been made of the land in dispute in favour of the petitioner by the Gram Panchayat on certain conditions as enumerated in the resolution itself. It is stated that the land allotted to the petitioner was a waste land for all practical purposes and it has no market value and under Rule 266(2) of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter, referred as "the Rules, 1961") the land was transferred to the petitioner under that resolution. It is submitted that the petitioner made some improvement in the land after investing huge amount. It is to be mentioned here that the details of those investment alleged to have been made by the petitioner have not been given.

6. The Tehsildar, Ramgarh under its order dated 20.3.89 informed to the petitioner that an enquiry is going to be convened regarding transfer of the land to the petitioner and construction is not to be put on the land in dispute.

7. The Vikas Adhikari vide his letter dated 24.3.89 directed the Gram Panchayat not to issue the patta of the said plot to the petitioner. Copy of this letter has also been sent by the Vikas Adhikari to the petitioner also. The letter has also been received by the petitioner from the Gram Panchayat. The reference has been made by the petitioner to the letter of the Sarpanch of the Gram Panchayat dated 18.10.89 thereunder it is informed that the resolution dated 18.2.89 has been cancelled by the Collector, Alwar vide its order dated 27.9.89. The petitioner has been directed to remove Malva existing on the plot. Hence this petition.

8. Reply to the writ petition has been filed by respondent Nos. 1 & 2. In the reply it is stated that the Gram Panchayat has made the allotment of this land contrary to the provisions of Rule 266 of the Rules, 1961. The value of the land was much more than Rs. 200/-. As per the report of the Sub Registrar, Ramgarh the value of the land was Rs. 69,200/- at the relevant time. The power to interfere in the matter by the Collector is there under the Panchayat Act. It is stated that this allotment has been procured for the petitioner by the MLA of the area and the Sarpanch of the Gram Panchayat.

9. This matter has come up for hearing in the Court from time to time earlier. During the course of the arguments it is noticed that the land in dispute appears to be used as a play ground for the girls of the nearby senior secondary school,

10. To ascertain the correctness of this fact Court directed the respondents to file the affidavit of the school authority. In pursuance of the direction of the Court affidavit of Miss Sheela Madan daughter of Shri Ram Chandra Madan has been filed. The copy of the same has been given to the petitioner on 8.10.2001. The

petitioner has not filed reply controverting the fact stated in the affidavit though more than sufficient time was available to do so. Non filing of the reply to the additional affidavit by the petitioner goes to show that it accepted the correctness of the contents of the affidavit or the same have not been denied by the petitioner.

11. Learned counsel for the petitioner submitted that the order of the Collector dated 27.9.89 is void ab initio as the same has been passed without notice and opportunity of hearing to the petitioner. It has next been contended that even in the proceedings before the Collector the petitioner was not impleaded as a party. The resolution of the Gram Panchayat has been set aside under which the land in dispute has been allotted to the petitioner and the petitioner and the petitioner was a necessary party to those proceedings.

12. It has next been contended that the Collector has proceeded under the assumption and presumption that in pursuance of this resolution the patta of the land has not been granted. The patta of the land in dispute has already been granted to the petitioner and the reference has been made to the document Annexure-3 filed by the petitioner enclosed to the writ petition. Lastly it is urged that the land has been allotted for the public purpose i.e. for construction of the Dharamshala to provide boarding facility to the persons who are coming from the villages for the purpose of treatment of their relations. Looking to this public purpose for which this land has been allotted to the petitioner Mr. Mathur, learned counsel for the petitioner submitted that the Collector should not have made any interference in the matter. It is urged that the allotment has also been made subject to the many fold conditions in the public interest and it is not a case where the Collector should have made any interference.

13. Learned counsel for the petitioner in reference to the additional affidavit filed by respondent Nos. 1 & 2 submitted that it is absolutely a false affidavit. The land in dispute is not adjacent to the school nor it is used as a play ground for the girls of the school.

14. Miss sumitra Goyal, learned Deputy Government Advocate contended that the resolution of the Gram Panchayat is void ab initio and rightly the Collector has interfered in the matter and set aside the same. Miss Goyal submitted that this land could not have been allotted to the petitioner by resorting to the provisions of rule 266 of the Rules, 1961. The case does not fall under any of the clauses of Rule 266 of the Rules, 1961. It is contended that this resolution is procured by the MLA and the Sarpanch. It is urged that if any other allotments are made in the same manner and fashion by the Gram Panchayat, those are all illegal and on that ground no relief whatsoever can be given to the petitioner.

15. I have given my thoughtful consideration to the rival submissions made by the learned counsel for the parties.

16. The additional affidavit filed by respondent Nos. 1 & 2 and more particularly the contents thereof stand uncontroverted as the petitioner has not filed any

reply to the same. From this affidavit of the Head Mistress of the Girls Senior Secondary School I find that the land in dispute is being used as play ground for the girls. The education by the large in the State is becoming a profit making industry. The education is going in the hands of the private sector and it is a profitable industry those persons take little care to provide any play ground for the students. The school in this case may be Government school. It is the duty and obligation of the State to provide adequate land to be used as a play ground by the school for the students.

17. On being put by the Court Mr. R.K. Mathur, learned counsel for the petitioner submitted that the land in dispute is at a distance of about half km. from the school. For this the petitioner has not produced any documentary evidence. Even if it is taken that the land is not adjacent to the school and it may be at a reasonable distance it is hardly any ground to ignore this claim of the school re-the play ground for the girls.

18. In the schools facilities for different activities are to be provided. Far most important thing is to provide a play ground so the sports events may be there is the school itself and that way the girls of the school may be prepared themselves for the District or State or National competitions. Otherwise also for fitness of the students in every school play ground is must. The petitioner may be correct that against the allotment of this land in dispute to the petitioner nobody has raised objection. Nobody may include the school, in question. But while making this contention learned counsel for the petitioner has failed to notice important distinction amongst a private litigant and the Government. The State of Rajasthan being the impersonal machinery the matter on its behalf is to be taken care of and contested in the Court by its officers. Having no personal interest in the matter and naturally as a result of which that defence or action as it is to be raised or made cannot be expected from the officers. Here also the school officers are being Government servants they would have seldom bothered for raising any objection against the action of the Gram Panchayat to allot this land to the petitioner.

19. The officer would not have raised this objection and we are not concerned with the ground of not raising the objection against the application filed by the petitioner. It is not the end of the matter. The Gram Panchayat as it appears from its resolution has resolved to allot this land to the petitioner in the public interest. The public interest does not mean to understand and accept with reference to the petitioner only. Public interest means the Gram Panchayat has to look, consider and observe for all. The public interest means also to make provision by the Gram Panchayat for land to be used as play ground by the institution. It is its duty to see that adequate play ground facility is available with the concerned school. From the facts of this case I find that the Gram Panchayat has not considered this aspect of the matter and appears to have been adamant to allot this land to the petitioner.

20. The possibility of the allotment of this land by the Gram Panchayat in the

facts of this to the petitioner under the influence of the MLA and Sarpanch cannot be overruled. I find sufficient merits in the contention of Miss Sumitra Goyal, learned Deputy Govt. Advocate that the MLA and Sarpanch would have procured this land for the petitioner.

21. In the facts of this case it is to be accepted that the land in dispute is being used by the girls of the school as a play ground. When the land was already under the public use that is a play ground for the girls of the Government school this aspect of the matter should have been given effect to and consideration by the Gram Panchayat so the girls of the school would have got the recognised play ground. If we go by the parties in the matter of the allotment of the land I am satisfied that the requirement of the play ground for girls of senior school stands at much higher pedestal than the requirement of the land for construction of the Dharamshala. .

22. It is not in dispute that the Collector, Alwar has passed this impugned order without notice and opportunity of hearing to the petitioner. The petitioner was also not impleaded a party in the proceedings before the Collector, Alwar. In the facts of this case I am satisfied that the petitioner may be a necessary party in the proceedings before the Collector, Alwar which ultimately culminated in the setting aside of the resolution of the Gram Panchayat under which the land in dispute has been allotted to the petitioner but only on this ground a question does arise whether relief is to be granted to the petitioner.

23. Learned counsel for the petitioner on being put by the Court has fail to state what other objection against the order of the Collector, Alwar the petitioner has other than what have been raised in the writ petition. Learned counsel for the petitioner has failed to show and satisfy this Court how this land could have been allotted to the petitioner under Rule 266 of the Rules, 1961. From the record of this petition I find that the petitioner has not filed rejoinder to the reply filed by respondent Nos. 1 & 2. It is not the statement of the learned counsel for the petitioner that they any rejoinder to the reply has been filed by the petitioner. In the absence of rejoinder to the reply this fact stands uncontroverted that the cost of this land at the relevant time was Rs. 69,200/-. This is the cost of the land as what it is found on the basis of the report of Sub-Registrar, Ramgarh. In view of this undisputed fact I do not find any merit in this approach of the Gram Panchayat that this land has no value. Looking to the location where this land is situated it has sufficient potentiality. It is not a strip of land. It is not the land where the petitioner has a plausible claim or title.

24. Rule 266 of the Rules, 1961 is not applicable to the present case. Rule 266 of the Rules, 1961 reads as under:-

"266. Transfer of abadi land by private negotiation.-(1) The Panchayat may transfer any abadi land by way of sale by private negotiation in the following cases:-

(a) Where any person has a plausible claim of title to the land and an auction

may not fetch reasonable price;

(b) where for reasons to be recorded in writing the Panchayat thinks that an auction would not be a convenient mode of disposal of the land;

(c) where such course is regarded by the Panchayat necessary for the advancement of Scheduled castes and Scheduled tribes or other backward classes.

(d) where the persons are in possession of the abadi land for 20 years or more but less than 42 years, one-third of the prevailing market price and in case of possession of over 40 years, one sixth of the prevailing market price shall be charged.

(2) The Panchayat may, by resolution, transfer by way of sale without charging any price therefore, any abadi land of which the probable value does not exceed Rs. 200/- in favour of any institution for a public purpose."

The case of the petitioner does not fall under any of the Clauses (a), (b), (c) and (d) of this Rule.

25. Sub-rule (2) is also not applicable to the facts of this case. This land has been transferred by way of allotment to the petitioner by the Panchayat resorting to this sub-rule (2) of Rule 266 of the Rules, 1961. It is an arbitrarily assessment of the value of the land by the Panchayat. The Panchayat has not given out any material or evidence in support of its conclusion that the cost of the land was not more than Rs. 200/-. The manner in which the land has been allotted under this clause in favour of the petitioner it may be correct that it is a procurement thereof by the MLA and the Sarpanch for a person of their own caste or favourite. The Collector has taken all the care in the matter and from different officers he got the enquiry conducted and then this decision has been given. This plea has been specifically taken before the Collector, Alwar which is clearly borne out from Annexure-9.

26. The Gram Panchayat has not taken any interest in the matter before the Collector also. Nobody was remained present on its behalf before that authority.

27. Taking into consideration the totality of the facts of this case the resolution passed by the Gram Panchayat is void ab initio. In view of this fact in case only on the ground what contended that without notice and opportunity of hearing this order has been passed against the petitioner the order impugned in this petition is set aside, it will result in restoration of a decision which is void ab initio. This Court sitting under Article 226 of the Constitution will not issue a writ of certiorari or mandamus the result of which is of restoration of an illegal order or to perpetuate illegality. It is a well settled proposition of law and if any decision is to be referred fruitfully the reference may have to the following decisions:-

1. Gadde Venkaleswara Rao v. Government of Andhra Pradesh and Ors. (1)

2. (2)

3. Himmat Jain v. The State of Rajasthan and Ors. (3)

4. A.M. Mani v. Kerala State Electricity Board represented by its Secretary, Trivandrum and Ors. (4)

5. Devendra Prasad Gupta v. The State of Bihar and Ors. (5)

6. Chintamani Sharan Nath Sahadeo v. State of Bihar and Ors. (6)

28. It is also a well settled preposition of law that merely on the breach of the principles of natural justice in passing the impugned order it is not rule that invariably relief is to be granted to the aggrieved party. In such case the aggrieved party has to establish to the satisfaction of the Court that it has a plausible and justified defence against the action. If the Court is satisfied that there could not have been any defence whatsoever against impugned order other than the breach of the principles of natural justice made in passing thereof no relief can be granted by this Court. Here fruitfully the reference may have to the decision of the Apex Court in the case of Aligarh Muslim University and Ors v. Mansoor Ali Khan (7.

29. The contention raised by the learned counsel for the petitioner that the Collector has passed this order on the ground that the patta of the land has not been issued to the petitioner is of no substance and merits. Even if the patta is issue and where the resolution in pursuance thereof it is issued is void ab initio only on this ground no relief can be granted to the petitioner.

30. In the result this petition fails and the same is dismissed with costs to the State of Rajasthan which is quantified to Rs. 1100/-.