
(2015) 08 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2969/99

Arjun Ram

APPELLANT

Vs

Board of Revenue Rajasthan, Ajmer and Others

RESPONDENT

Date of Decision : 06-08-2015

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 5, 53, 53(1)

Citation : (2015) 08 RAJ CK 0059

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : C.R. Jakhar, for the Appellant; O.P. Boob, Government Counsel, Advocates for the Respondent

Final Decision : Allowed

Judgement

Sangeet Lodha, J—This petition is directed against the order dated 2.5.95 of the Board of Revenue, Rajasthan, Ajmer, dismissing the appeal preferred by the petitioner against the order dated 22.12.89 of Revenue Appellate Authority ("RAA"), Jodhpur, affirming the order dated 25.3.85 of the District Collector, Nagaur, cancelling the allotment of land made in favour of the petitioner.

2. The petitioner applied for allotment of land in Village Panchla Siddha, Tehsil and District-Nagaur to the Sub-Divisional Officer ("SDO"), Nagaur under the provisions of Rajasthan Land Revenue (Allotment of Land for Agriculture Purpose) Rules, 1970 ("the Rules of 1970"). The SDO, Nagaur, after consultation with the Advisory Committee allotted 20 bighas of land in Khasra No. 671 in favour of the petitioner vide order dated 18.9.72. The possession of the land was handed over to the petitioner and the petitioner started cultivating the land. Later, it was revealed that the petitioner is not a landless agriculturist entitled for allotment and therefore, the proceedings were initiated against him by the District Collector, Nagaur, for cancellation of allotment in exercise of power conferred under Rule 14(4) of the Rules of 1970. The allotment made was cancelled by the District Collector, after giving an opportunity of hearing to the

petitioner vide order dated 20.1.81. The order was appealed against by the petitioner before the RAA, which was allowed vide order dated 27.2.82 and the matter was remanded to the District Collector for consideration afresh, after giving an opportunity of hearing to the petitioner.

3. After due consideration, the District Collector arrived at the finding that the petitioner was holding the khatedari land measuring 23 bighas and 12 biswas of Khata No. 143 and therefore, he was not a landless agriculturist, entitled for allotment under the Rules of 1970. The District Collector observed that the petitioner is also in possession of 40 bighas and 15 biswas khatedari land of his brother Bagadia who has died and his wife and two minor daughters are residing with the petitioner. The District Collector found that the petitioner was having land more than 10 acres in his possession and therefore, the allotment made in his favour, is in violation of Rule 12 of the Rules of 1970 and accordingly, the allotment made was ordered to be cancelled.

4. Aggrieved thereby, the petitioner preferred an appeal before the RAA, Jodhpur, which stood dismissed vide order dated 22.12.89. The second appeal preferred by the petitioner aggrieved by the appellate order dated 22.12.89, also stands dismissed by the Board of Revenue by the order impugned. Hence, this petition.

5. Learned counsel for the petitioner contended that in the land measuring 47.04 bighas of Khata No. 143 in village-Aachina, the petitioner, his brother and mother each were having 1/3rd notional share and thus, the Board of Revenue has seriously erred in affirming the findings arrived at by the District Collector and the RAA in terms that the petitioner was holding 23 bighas and 12 biswas khatedari land of Khata No. 143. Learned counsel submitted that the petitioner's brother had a separate family and therefore, after his death, the land held by him, cannot be treated to be the land held by the petitioner's family. Learned counsel submitted that the finding arrived at that the petitioner is holding land more than 10 acres and therefore, he is not a landless agriculturist, is ex facie erroneous inasmuch as per Rule 66 of the Rajasthan Tenancy (Government) Rules, 1955 ("the Rules of 1955") in Tehsil-Nagaur, a person having less than 32 bighas land, is treated to be a landless person and thus, the allotment made in favour of the petitioner as landless person, cannot be faulted with. Learned counsel submitted that the petitioner is in continuous cultivatory possession of the land for last 42 years and therefore, there is no justification for divesting the petitioner from the khatedari right over the land in question at this stage. In support of the contention, learned counsel has relied upon the Bench decisions of this Court in the matters of "Mangla vs. State of Rajasthan & Ors." 2007 (1) RRT 397 and "State of Rajasthan & Anr. Vs. Ahsan" 2009 RRD 651. Learned counsel would submit that the District Collector having failed to take into consideration the position of law in correct perspective, the matter deserves to be remanded to the District Collector for consideration afresh.

6. On the other hand, Mr. O.P. Boob, learned Government Counsel submitted that the concurrent findings arrived at by the District Collector and RAA, affirmed by

the Board of Revenue, does not suffer from any infirmity, illegality or jurisdictional error so as to warrant interference by this Court in exercise of its supervisory jurisdiction and therefore, the petition deserves to be dismissed on this count alone. Learned counsel submitted that apparently, the petitioner has obtained the allotment by way of misrepresentation/fraud inasmuch as he did not disclose the particulars of his holdings in the application seeking allotment. Learned counsel submitted that had the petitioner disclosed the relevant facts, the allotment would not have been made in his favour. Relying upon Rule 12 of the Rules of 1970, learned Government Counsel submitted that as per Rule 12 of the Rules of 1970, the land to be allotted cannot exceed 10 acres including the land already held by the allottee or his notional share if the land is held by other member of joint family and therefore, the petitioner who was already holding the land measuring 23 bighas and 12 biswas of Khata No. 143, was not entitled for any further allotment. Learned counsel submitted that the contention raised by the petitioner on the strength of Rules of 1955, was never raised before the Revenue Courts at any stage and does not have any bearing so far as the controversy involved in the matter is concerned. Learned counsel would submit that apart from the land measuring 23 bighas 12 biswas of Khata No. 143, the widow of petitioner's brother, Smt. Rimajh having taken up bangles of petitioner, the petitioner had acquired right over the land of his brother measuring 40 bighas and 15 biswas of Khata No. 170 of village-Bishnoion Ki Dhani as well and therefore, the concurrent finding arrived at by the District Collector, RAA and Board of Revenue regarding the land in the hands of the petitioner being in excess of the ceiling provided under the Rule 12 of the Rules of 1970, is absolutely justified. Learned Government Counsel submitted that the allotment obtained by fraud/misrepresentation does not create any right in favour of the petitioner and therefore, the cancellation of allotment cannot be faulted with.

7. I have considered the rival submissions and perused the material on record.

8. Indisputably, the petitioner applied for allotment of the land under the Rules of 1970 as landless agriculturist. Rule 11 of the Rules of 1970, which deals with the "Eligibility and order of priority for allotment", specifically provides that the land shall be allowed only to a landless agriculturist as defined in the Tenancy Act.

9. Clause 26A of Section 5 of Rajasthan Tenancy Act, 1955 (for short "the Act of 1955"), defines the "landless person" as under:

""landless person" means an agriculturist by profession who cultivates or can reasonably be expected to cultivate land personally but who does not hold any land whether in his own name or in the name of any member of his joint family or holds a fragment."

10. Clause 11B of Section 5 of the Act of 1955 defines "fragment" as it was existing as on the date of allotment made in favour of the petitioner, as under:

""fragment" means a piece of land less in area than minimum prescribed by the State Government for the purpose of sub-section (1) of Section 53 of the Act of

1955."

11. Section 53(1) of the Act of 1955 which stands deleted vide Section 8 of Act No. 22 of 1992 w.e.f. 11.11.92, reads as under:

"53. Division of holding-(1) No holding shall be divided so as to result in a holding of less than the minimum prescribed by the State Government for each district, or part of a district:

Provided that where a holding is or has been divided so as a result in a holding of less than the minimum prescribed area under this sub-section, it may, on an application being made to an officer authorised by the State in this behalf, by the persons who holds the holding of less area than the minimum prescribed, be regularised subject to his making payment by way of penalty to the State Government of a sum equivalent to five times the land revenue payable on the sought to be regularised."

12. A conjoint reading of the provisions of Clause 26A of Section 5, read with clause 11B of Section 5 and Section 53 of the Act of 1955, makes it abundantly clear that even a person holding the agriculture land in fragment i.e. less than the minimum area prescribed for the district concerned or part thereof, is treated to be a landless person.

13. But then, Rule 12 of the Rules of 1970, provides that the extent of the land to be allotted shall not be more than 10 acres subject to the condition that in no case, the total area to be allotted under the Rules of 1970, together with the area already held by the allottee or his notional share if the land is held by other member of joint family shall exceed 10 acres. Thus obviously, if the petitioner was holding the land more than 10 acres, he was not entitled for allotment of the land under Rule 11 of the Rules of 1970.

14. In other words, under Rule 11 of the Rules of 1970, a person holding the land less than 10 acres is entitled to apply for the allotment of the land as landless agriculturist to the extent that the total land in his hands including the land already held by him either individually or his notional share if the land held by other member of joint family, does not exceed 10 acres.

15. It is not in dispute that as per the revenue record at the relevant time, the petitioner was holding joint khatedari land with his brother ad measuring 47.04 bighas land of Khata No. 147. According to the petitioner, in the said land inherited from his father Bhagchand, he was having only 1/3rd notional share inasmuch as, his mother Cheni was also having 1/3rd share therein. However, without taking into consideration the stand taken by the petitioner as aforesaid, the District Collector straight away proceeded to record the finding that the petitioner was having 23 bighas and 10 biswas land in his share out of 47.04 bighas land of Khata No. 143. The RAA and the Board of Revenue have also not considered this aspect of the matter in correct perspective.

16. Coming to 40 bighas and 15 biswas land held by the petitioner's brother

Bagadia (since deceased) cannot be treated to be the land held by the petitioner merely because, his brother's wife alongwith her children started living with him and therefore, the District Collector as also the RAA has erred in treating the said land to be the land held by the petitioner without there being any evidence suggesting that the said land stood vested in the petitioner.

17. There is yet another aspect of the matter. There is nothing on record to suggest that the petitioner had not disclosed the land held by him while applying for the allotment of the land as landless agriculturist under the Rules of 1970. Whether the petitioner had disclosed the land held by him while applying for the allotment under Rules of 1970 is a matter of record and could have been ascertained by the District Collector, by requisitioning the relevant record, before recording the finding that the petitioner has obtained the allotment as landless agriculturist by misrepresentation/fraud.

18. In view of discussion above, undoubtedly, in terms of Rule 11 read with Rule 12 of the Rules of 1970, the petitioner was not entitled for allotment of the land beyond 10 acres including his share in the aforesaid land jointly held by him with his brother, but then, the petitioner could have been allotted the land to the extent that the total land held by him including his share in the land of Khata No. 147 does not exceed 10 acres. Thus, the petitioner's entitlement for allotment needs to be examined taking into consideration all relevant facts and provisions of the Rules of 1970 in correct perspective.

19. For the aforementioned reasons, in the considered opinion of this court, the matter deserves to be remanded to the District Collector, Nagaur for decision afresh, after due inquiry and giving an opportunity of hearing to the petitioner, in accordance with law.

20. In the result, the petition is allowed. The order impugned dated 2.5.95 passed by the Board of Revenue, upholding the order dated 22.12.89 passed by the RAA (First), Jodhpur, affirming the order dated 25.3.85 passed by the District Collector, Nagaur is set aside. The matter is remanded to the District Collector, Nagaur for decision afresh, after due inquiry and giving an opportunity of hearing to the petitioner, in accordance with law. The District Collector shall complete the inquiry and pass the appropriate order expeditiously, preferably within a period of six months from the date of receipt of certified copy of this order. The petitioner shall appear before the District Collector, Nagaur on 1.9.15. Till the disposal of the matter by the District Collector, the status quo as it exists today shall be maintained in respect of the disputed land. No order as to costs.