(1988) 09 RAJ CK 0046

In the Rajasthan High Court

Case No : Civil Writ Petition No''s. 2027 etc.etc. of 1987 and 85 etc. of 1988

Banwari Lal and APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 27-09-1988

Acts Referred:

Rajasthan Colonisation (Gang Canal Lands and Permanent Allotment and Sale) Rules, 1956 — Rule 7, 9

Rajasthan Colonisation Act, 1954 — Section 28, 7

Citation : (1989) 1 WLN 364 : (1988) 2 WLN 428

Hon'ble Judges : S.M. Jain, J;Kanta Bhatnagar, J

Bench : Division Bench

Advocate : B.L. Purohit and M. Mridul, for the Appellant; B.R. Mehta, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Bhatnagar, J.—Petitioner Banwari Lal and others in the writ petitions mentioned in Schedule A are temporary cultivation lease holders (for short ''T. C. Lease Holders'' hereinafter) in Gang Canal Area. They have felt aggrieved by the Order dt. Sept. 9, 1986 to the extent it provides for charging price at the market rate for permanent allotment in favour of T. C Lease Holders of Ganganagar district.

2. At the request of the learned Counsel for the parties, all the writ petitions, at whatever stage they might be were heard for final disposal. As the point involved, grievance expressed, prayer made and the relief sought in all the writ petitions are the same. We propose to dispose them by one common order.

3. The petitioners are temporary tenants of the lands described in the Land Allotment Register. The certified copies relating to each petitioner has been annexed with the writ petitions. It is Ex. 1 in Writ Petition No. 85/88. For other exhibits also, we would refer to the number of the exhibits filed in the aforesaid Writ Petn. No. 85/88.

4. Briefly stated the facts as disclosed in the petitions are that the petitioners were not held entitled to permanent allotment because of the explanation to Rule 4 of the Rajasthan Colonisation (Gang Canal Lands and Permanent Allotment and Sale) Rules, 1956 (for short ''the Rules'' hereinafter) which, as averred by the petitioners gives an artificial definition to joint family. That caused hardship to the petitioners and the district Authorities sent the report to the State Government and the State government realising difficult position of the T. C. Lease Holders passed the Order Ex. 2 dt. Sept. 10, 1976. In the year 1985 an Order dt. May 9, 1985 was issued by the State Government giving certain directions to the Collectors for dealing with the matters of the T. C. Lease Holders who, were sufferers on account of the definition of joint and undivided family in the explanation appended to Rule 4(1) of the Rules. The Government vide Order dt. Sept, 9, 1986 (Ex. 3) amended a prior Order dt. May 9, 1985 and directions were issued for allotment of land on permanent basis to the T. C. Lease Holders at the market rate up to the ceiling limit and the excess land in, the possession of the T. C. Lease Holders to be allotted to their adult son/sons treating them as separate Units to the extent of the ceiling limit. In exercise of the powers under Rule 9 of the Rules, Collector Ganganagar issued public notice dt. Aug. 14, 1987 (Ex. 4 in Writ Petition No. 85/88). The value of the lands was made chargeable according to the current market rate. The case of the petitioners is that the special price payable was not published and the information regarding the market price of the land was given to the concerned persons but the copies of the same were not given to the cultivators. The cultivators were informed verbally by the authority that the market price of the Barani Lands for allotment under Notification (Ex. 4) was between Rs. 2,000/- to Rs. 3,000/-per bigha, whereas the price payable under the R ule in the usual course was as mentioned in the Notification dt. June 4. 1981 issued under Rule 7 of the Rules which was much less than the price sought to be recovered under the Notification Ex. 4.

5. The grievance of the petitioners is that the Order Ex. 3 and Notification Ex. 4 are not in accordance with the provisions of the Rules. In the writ petitions the validity of the explanation to Rule 4(1) of the Rules has also been challenged. The petitioners have prayed that the Order dt. Sept. 9. 1986 (Ex. 3) be struck down to the extent it provides for charging market price for permanent allotment in favour of the T. C. Lease Holders of Ganganagar district and that explanation appended to Rule 4 of the Rules be declared invalid and struck down. That, the respondents be directed to allot to the petitioners land in their temporary cultivation to the extent of 25 bighas at the price fixed under the Rules.

6. At the time of the arguments, the learned Counsel for the petitioners dropped the prayer regarding the validity of the explanation to Rule 4(1) of the Rules and confined their prayer for striking down Ex. 3 dt. Sept. 9, 1986 to the extent it provides for charging price at market rate for permanent allotment in favour of T. C. Lease Holders.

7. No reply was filed on behalf of the respondents but arguments were advanced

contesting the writ petition.

8. The land in Gang Canal Area, in the occupation of T. C. Lease Holders, who were not found entitled to permanent allotment, was temporarily allotted according to the Rules. The hardship of T. C. Lease Holders who were living separate from their fathers was realised and on the report of the Collector, the Government vide Order Ex. 2 dt. Sept. 10, 1982 issued directions to the Collector, Ganganagar not to allot to others, the land in occupation of such T. C. Lease Holders till further orders. Vide Ex. 3 dt. Sept. 9, 1986, the previous Order dt. May 9, 1985 was modified to the effect that after allotting the land on permanent basis to T. C. Lease Holders in the Gang Canal Area as per Rules not only the land up to the ceiling limit may be given on the current market rate, but if any land comprising the temporary cultivation above the ceiling limit remains then the same may be allotted to the adult sons of the temporary cultivation lease holders, treating them to be separate Units up to the ceiling limit at the market rate. It is the direction for charging the price at the market rate that has caused grievance to the petitioners.

9. The learned Counsel for the petitioners strenuously contended that the price to be recovered must be in accordance with the provisions of Section 7 (Rule 7 ?) and the Order of the Collector for charging the price at the market rate is clearly dehors the provisions of the Rules.

10. Mr. B. R. Mehta learned Additional Government Advocate submitted that the allotments were under Rule 9 and that Rule authorises the Government or the Collector subject to such terms and conditions as may be prescribed in this behalf to make allotment and, therefore, the Collector was justified to charge the price of the land at the current market rate.

11. Rule 7 of the Rules makes provision for the fixation and recovery of price. Sub-rule (1) of that Rule reads as under : --

Rule 7(1) "The Government shall fix the scales at which the price for land allotted under these Rules may be charged, and such scales may be different for different kinds of land."

12. Notification fixing the scales have been issued from time to time. The latest brought to our notice is the Notification No. F.19(7)Rev./Colo./7 dt. June4, 1981 which reads as under : --

G.S.R. 20 -- In exercise of the powers conferred by Rule 7 of the Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 and in supersession of all previous notifications issued in this behalf, the State Government hereby fixes scales of reserve price for Command and Un-command land allotted under the said Rules, in the Gang Canal area as under : --

S. No. Category of land Reserve price per bigha in Rs.

1. Nehri Perennial 1,225/-

2. Nehri non-perennial 875/-

3. Barani 437/50

13. Rule 9 provides for allotment of land in special cases and reads as under :--

"Notwithstanding anything contained in these Rules the Government may make allotment to any person as a special case.

Provided that Government may delegate the powers of allotment in any case or a class of cases under this Rule to the Colonisation Commissioner or the Collector or to any other prescribed authority, subject to such terms and conditions as may be prescribed in this behalf."

14. Mr. Mehta, learned Additional Government Advocate does not dispute that the general provision for fixation and recovery of price is laid down in Rule 7 and the scales at which the price is to be charged is fixed by the Government, but his argument is that in case of allotment as a special case under Rule 9, the Colonisation Commissioner or any other prescribed authority to whom the Government delegates the power of allotment in any case or a class of cases under Rule 9 has the power to fix special price under this Rule.

15. The argument has no force. Rule 9 begins with a non obstante clause and vests power with the Government to make allotment to any person as a special case. The proviso to the Rule authorises the Government to (delegate the, powers of allotment in any case or class of cases under this Rule to the Colonisation, Commissoner or the Collector or to any, other prescribed authority subject to such terms and conditions as may be prescribed in this behalf. It is important to note that Rule 9 provides for allotment as a special case but does not provide for special price. As such so far as recovery of the price is concerned, Rule 7 is the only Rule in the Rules.

16. Mr. Mehta submitted that Rule 9 of course does not provide for charging special price different from that fixed under Rule 7 for allotment in special cases but when the power is delegated under the proviso, the delegatee can make allotment at a special rate. Mr. Mehta argued that the words subject to such terms and conditions as may be prescribed in this behalf mean that the delegate may prescribe the terms and conditions for allotment which would also include the fixing of the price, at a rate different than that fixed under Rule 7 of the Rules.

17. The argument has no substance. If the Government itself cannot charge price different than that fixed under Rule 7 of the Rules while making allotment under Rule 9 how can it be envisaged that a thing which the Government itself is not authorised to do can be done by the authorities to whom the Government delegates the power of allotment under the proviso to Rule 9 ? A delegatee cannot exercise more power than the delegator. The proviso to Rule 9 is not at all ambiguous. The terms and conditions mentioned in the proviso relate to the terms and conditions prescribed by the Government for exercise of power by the

delegatee and not to the terms and conditions to be prescribed by the delegatee in exercise of the powers of the allotment under Rule 9, The bare readjng of the proviso makes it clear that while delegating the powers of allotment to the authorities mentioned in the proviso the Government may prescribe terms and conditions for exercise of power by those authorities. This makes it amply clear that the delegatee could make the allotment subject to theterms and conditions prescribed in that behalf by the Government. The provisio in no way can be interpreted that the delegatee will have more powers than the delegator i.e. the Government. If the Argument of the Additional Government Advocate is considered then the anamolous position would be that if the Government allots the land under Rule 9, the price would be as fixed under Rule 7 and if the Government, instead of itself exercising the powers of allotment, delegates it to the authority mentioned in the proviso to Rule 9, the delegatee would have more powers than the delegator itself. In other words the power to the delegatee would be more than the power with the delegator which in no circumstance can be envisaged

18. In view of the above discussion, the Government cannot charge for allotment under Rule 9 price different than that fixed under Rule 7. The words ''at market rate'' appearing in the Order dt. Sept. 9, 1986 (Ex. 3) are, therefore, not in accordance with the provisions of the Rules. When the Government itself was not competent to do that we fail to understand how the delegatee i.e. the Collector, Sri Ganganagar could have done so. The words at market rate appearing in the public notice dt. Aug. 14, 1987 (Ex. 4) are also, therefore, not in accordance with the Rules. This being the position regarding the fixation and recovery of the price for allotment under Rule 9. the words ''at bazar rate'' appearing in Ex. 3 and Ex. 4 deserve to be struck down and we accordingly do so. The petitioners shall be liable to pay the price for the land allotted to them under Rule 9 of the Rules according to the scales fixed in the Notification dt. June 4, 1981 referred to above. The learned Additional Government Advocate could not point out any subsequent Notification issued by the State Government for fixing the scale of reserve price for command and uncommand land allotted in Gang Canal area. We, therefore, hold that the price fixed in the Notification dt. June 4, 1981 would be chargeable for various categories of land allotted to the T. C. Lease Holders in Gang Canal area in which category the petitioners come.

19. Consequently, the writ petitions are allowed and the respondents are directed to act in accordance with the observations made above. Costs are made easy.

