
(2001) 11 RAJ CK 0040
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1417 of 1998

Bhakar Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-11-2001

Acts Referred:

Grant of House Building Advance to Government Servants Rules — Rule 12

Citation : (2003) 3 RLW 1870 : (2002) 5 WLC 187 : (2002) 2 WLN 92

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : V.D. Vyas, for the Appellant; Hemant Choudhary, for the Respondent

Judgement

Prasad, J.—The petitioner, who is a Government servant, applied for grant of house building advance to the Collector, Jodhpur in the year 1983. The claim of the petitioner is that he waited for sanction of the house building advance for years together but the house building advance was not sanctioned to him. However, a letter dated 6.7.1996 was received from the Collectorate, Jodhpur asking him to complete certain formalities. He was informed that unless he fulfils all the requirement as required vide the aforesaid letter, he will loose his seniority, which is maintained for grant of house building advance.

2. The Municipal Board, Phalodi had issued a Public Notice for sale of various abadi plots at Adarsh Nagar, Phalodi. As per the requirement of the letter issued by the Collector (Awas), Jodhpur the petitioner had to enter into an agreement for purchase of plot. As per requirement of letter dated 6.7.1996 the petitioner purchased Plot No. 133 in Sector 2, Adarsh Nagar, Phalodi for a sum of Rs. 77,000/- on 24.7.1996. As per terms of sale of the municipal plot, the petitioner had to deposit earnest money of Rs. 1,000/- and 1/4th amount of cost of the plot amounting to Rs. 19,250/-.

3. The requirement of the Municipal Board, Phalodi was that remaining 3/4th amount of cost was to be deposited within one month from the date of purchase

i.e. 24.7.1996. The petitioner claims that after completing all the requirements, he approached the Collector for disbursement of the loan for purchase of the plot. Petitioner was waiting for reply. Unfortunately he did not receive any response from the Collector, Jodhpur. He had to deposit the remaining 3/4th amount of cost of the plot after arranging it from private persons with great difficulty. If this amount had not been deposited within time i.e. before 24.8.1996 the petitioner would have lost the plot and the earnest money and other deposits made by him would have also been forfeited.

4. It was within the notice of the respondents that the petitioner was required to deposit the remaining 3/4th amount within one month i.e. upto 24.8.1996. The loan was not disbursed to petitioner in time. The Collector, Jodhpur ordered for disbursement of house loan amount by the order dt.28.1.1997. A copy of the order of disbursement has been produced on the record as Annex. 7. According to this order the petitioner was sanctioned a total house building advance of Rs. 1,06,875 out of which an amount of Rs. 33,200/- was disbursed to the petitioner for purchase of the plot.

5. After deposit of the full price of the plot, a registered sale-deed was executed by the Municipal Board, Phalodi in favour of the petitioner. The petitioner deposited the original sale-deed with the respondent and created equitable mortgage by depositing the original title in security of the house building advance sanctioned in favour of the petitioner.

6. While the petitioner was waiting to receive the other instalment of loan amount he received a letter dated 22.8.1997 from the Collector, Jodhpur informing him that he had not given intimation regarding the deposit of Rs. 57,750/- made by him. Since the full amount has been deposited by the petitioner before sanction of the loan, the loan for purchase of the plot is not liable to be disbursed to the petitioner. The petitioner was informed that he is required to repay the amount of loan paid for purchase of the plot alongwith penal interest.

7. The petitioner replied to the said notice on 19.9.1997 and explained that loan was disbursed after six months and he had to compulsorily deposit the remaining 3/4th amount within one month. He has not intentionally committed any default. A communication was again received by the petitioner on 6.10.1997 to the effect that he has to return the loan amount with interest.

8. The petitioner has given a legal notice and thereafter filed the present writ petition claiming that the petitioner had to spend the amount on purchase of the plot and deposit the same within time so as to save the allotment of plot from being cancelled. Since the sanctioning of the loan to the petitioner has been done after inordinate delay, the petitioner was to go for private loans. The default which has been committed by the petitioner is a technical default and on this score the petitioner cannot be asked to return the disbursed loan with interest. Further the petitioner is entitled to loan with interest. Further the petitioner is

entitled to receive the remaining amount of loan ordered to be disbursed to the petitioner.

9. The respondents have joined the issue and have claimed that the petitioner was not entitled to receive the amount disbursed to him for purchase of the plot. He had never informed the office of the answering respondents that the petitioner was required to deposit the remaining 3/4th amount on a particular date being the last date for depositing the amount. The petitioner could have applied for extension of time for depositing the amount and could have accordingly informed the respondents. Since the petitioner has done every thing without informing the respondents he is not entitled to any leniency and the amount having been arranged by the petitioner on his own accord, the petitioner is not entitled to loan facility.

10. The sanctioning of a loan is based on a procedure prescribed and it involves many employees. Therefore, there can be some procedural delay in the matter and nothing can be made out in this regard on delay alone.

11. The sanction of loan to the Government employee is subject to the condition that the same shall be used for the purpose it is sanctioned. The petitioner had already purchased the plot. Such purchasing was done without informing the respondents. Now, the loan sanctioned could not have been used for the purpose of purchasing the plot. This loan could not be used for any other purpose, including the repayment of the amount of loan raised by the petitioner. Thus, the disbursement was against the scheme and provisions of the regulations of the State Government. Therefore, the sanction was required to be recalled. The plot having been purchase and full amount has been paid before the disbursement the withdrawal of the loan by the petitioner was not in accordance with the regulations of the State Government. The petitioner while withdrawing the amount has also not informed the answering respondents that such contingency has occurred. In this manner, the petitioner had committed a breach and, therefore, he is not entitle to invoke the extraordinary jurisdiction of this Court.

12. The Rules for Grant of House Building Advances to Government servants, which governs the grant of house building advance to the Government employees make a provision in Rule 12 provides that in case of contravention of the provisions of these rules and default in payment of principal and interest accrued thereon, the whole amount of advance so sanctioned shall be recovered from a Government servant in one instalment with interest. The plot having been purchased the amount could not have been utilized for purchase of the plot. Therefore, there is an infringement of the rules and in terms of Rule 12 of the Rules he is liable to refund the whole amount in one instalment with interest. A clarification has been issued by the State Government on 6.7.1981 in the following terms :

^^Hkou vfxze jkf"k Lohd`r fd;s tkus gsrq ekxZn"kZu

?AA?

mijksDr fo"k; esa funs"kkuqlkj ys[k gSa fd dksbZ ljdkjh deZpkjh izkbZosV ikVhZ ls Hkou ?; ,oa vkoklu e.My esa iath;u jkf"ka iwoZ xzg.k jkf"ka tek djkus gsrq rFkk vkoklu e.My ls udn fo?; i?fr ij vkoafVr edku [kjhnu gsrq __.k Lohd`r fd;s tkus ds fy, vkosnu i= izLrqr fd;s tkus ds i"pkr~ fuf"pr vof/k rd \_\_.k eatwj ugha gksus dh n"kk ;fn vius Lrj ij vU; L=ksarksa ls okafNr ns; jkf"ka dh O;oLFkk dj Hkqxrku dj nsrk gS rks Hkou vfxze fu;eksa ds vUrxZr vius Lrj izcU/k fd;s x;s \_\_.k dks pqdkus gsrq vfxze Lohd`r fd;k tkuk IEHko ugha gSA

?v- "kk- i- la[;k i- 11?1? fo?k ?xqi&2?@81 t;iqj fnukad 6-7-91?

13. In view of the clarification, if an employee had raised funds for purchase of plot and for payment of the registration amount/payment prior to possession to the Housing Board from his own sources then he is not entitled to any grant in his favour under the rules. Thus, in view of the rules and the clarification, the petitioner is not entitled to receive the amount and was required to return the same to the State Government as demanded.

14. The argument raised by the learned counsel for the petitioner in his petition was that the default was of a technical nature. Had he not raised the amount and paid it to the Municipal Board the allotment of plot made in his favour would have been cancelled. In this back-ground the petitioner is not required to refund the amount as demanded by the respondents and in this back-ground the order impugned in the writ petition may be set aside and the respondents may be directed to release the remaining house building advance sanctioned to him.

15. Per contra, the State Government has contested that in financial matters, if the rules are not followed, then there will be a chaos. May be that some delay was occasioned but such delay is not one which could entitle the petitioner to seek a waiver of the rules. No such power of waiver is provided. The rules had to be adhered strictly. Under Rule 12 of the Rules, the petitioner is liable to refund the loan amount.

16. I have considered the rival submissions advanced by the learned counsel for the parties before me and have also gone through the record.

17. The State Government employees are disbursed house building advance by the State Government to construct the houses. Such advances are governed by the rules framed by the State Government in this regard. Rule 12 provides that in case of contravention the employee is required to return the amount with interest. In the instant case, this is an admitted position that the amount which was disbursed for purchase of plot was received by the employee after he had already made payments for the purposes of the plot. In terms of the rules, he could not have been disbursed this amount because once the plot has been purchased by the employee after raising funds from his own sources, the State Government loan is not liable to be disbursed to such employee. Thus, there is a clear violation of the rules.

18. The clarification, as quoted hereinabove, issued by the State Government is unambiguous and clear. No other interpretation is requirement to be given then the one contained in the clarification. The message in the clarification is loud and clear. The petitioner should have taken care of receiving the loan for purchase of the plot. Further the respondents have claimed that they were never informed of the purchase in time and, therefore, there was a deceit played by the petitioner with the respondent. Be that, as it may, there is a violation of the rules and by the interpretation given to the clarification issued by the State Government, the petitioner is not entitled to invoke the extraordinary jurisdiction of this Court and, therefore, he is liable to refund the amount of loan received by him as directed.

19. The petitioner in his writ petition has said that so far the sanctioned amount has not been disbursed to him. He has also not constructed the house on the plot purchased by him so far! In this back-ground, it is made clear that if the petitioner approaches the respondents then respondent will consider the case of the petitioner and in case it is found that he is still entitled to receive the construction loan then the amount of loan sanctioned to him for construction of the house, which has so far not been disbursed may now be disbursed. The respondents will decide the case of the petitioner on merits in this regard.

20. With these observations, the impugned order is not interfered with and the writ petition is disposed of accordingly.