

(2009) 12 RAJ CK 0021
In the Rajasthan High Court

Bhopal Singh

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 08-12-2009

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Colony Area) Rules, 1975 — Rule 13A, 22(3)

Citation : (2010) 1 WLN 302

Hon'ble Judges : Jagdish Bhalla, C.J.;P.C. Tatia, J

Bench : Division Bench

Judgement

Jagdish Bhalla, C.J.—The petitioner challenged the order dated 10.4.1995 (Annex. 8) and order dated 27.4.2001 (Annex. 9) by filing S.B. Civil Writ Petition No. 2364/2001, which has been dismissed in limine by the learned Single Judge vide judgment dated 11.7.2001. Hence this special appeal has been preferred by the appellant to challenge the judgment of the learned Single Judge dated 11.7.2001.

2. The writ petitioner's contention is that he initially submitted an application for allotment of land in Chak No. 18 BLD under the provisions of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975 (for short "the Rules of 1975") and he also deposited Rs. 500/- as earnest money on 30.11.1988. There were total five applicants for this land and the petitioner was not found eligible for allotment of this land, therefore, his application for allotment of land of Chak No. 18 BLD was rejecting by the allotting authority vide order dated 8.3.1989. The writ petitioner then prayed for allotment of Chak No. 19 BLD, Murabba No. 15/19, 15/45, 15/36. The petitioner's this application was allowed and then the land was allotted to him by the land allotting authority vide order dated 26.4.1989. In pursuance of said allotment order, a cash deposit challan was given to him, upon which the petitioner deposited Rs. 25,457/- on 26.4.1989 as required under the Rules and that was 35% of total cost of the land allotted to the petitioner. Then the allotment letter for the land in question was issued to the petitioner on 1.5.1989.

The petitioner developed the land and started cultivating and then deposited Rs. 18,000/- on 9.11.1990, Rs. 19836/- on 7.3.1991 and Rs. 22, 381/- on 2.2.1994, thereby, the petitioner paid the total cost of the land by February, 1994 and according to the petitioner since then the petitioner is in possession of the property in dispute.

3. However, a case was registered before the Deputy Commissioner, Colonisation, Bikaner against the petitioner under Rule 22(3) of the Rules of 1975 on the basis of the report of the Deputy Commissioner, Colonisation (Vigilance), Bikaner. The Deputy Commissioner, Colonisation(vigilance), Bikaner pointed out that in the land allotment file, the order-sheet dated 30.11.1998 and 30.12.1988 were not signed by the allotting authority. However, the order of allotment dated 26.4.1989 was duly signed by the allotting authority. It was also pointed out that the petitioner applied for the land of Chak No. 18 BLD, Murabba No. 35/1, whereas he has been allotted altogether different land which is of Chak No. 19 BLD, Murbba No. 15/36, 15/45 and 15/19 and, therefore, the allotment of land in favour of the petitioner is illegal and, therefore, was liable to be set aside.

4. Before the Deputy Commissioner, Colonisation, Bikaner, it was argued that the petitioner's application for allotment of land was rejected by the allotting authority on 8.3.1989 and it was ordered that advance deposit be refunded to the petitioner and then on 26.4.1989, another application was obtained from the petitioner and he was allotted the land referred above. It was submitted that the last date for submitting the application for allotment of land was 24.12.1988, whereas the petitioner submitted the application for allotment of land on 26.4.1989, therefore, the petitioner's application was beyond time and, therefore, the allotment of land by order dated 26.4.1989 and consequential allotment letter dated 1.5.1989 may be cancelled.

5. The Deputy Commissioner, Colonisation, rejected the objections raised by the State that the allotment is bad in law because the order-sheet dated 30.11.1988 was not signed by the allotting authority, obviously, that was because, that order was not the effective order and the effective order of allotment of land was dated 26.4.1989. The Deputy Commissioner, Colonisation observed that the petitioner's application for allotment of land was already rejected by order dated 8.3.1989 and the order was passed for refund of the money deposited by the petitioner, then allotment of the land of Chak No. 19 BLD, Murabba No. 15/36, 15/45 and 15/36 is illegal. The Deputy Commissioner, Colonisation, Bikaner further observed that in fact, no applications were invited for allotment of land of Chak No. 19 BLD and, therefore, also the allotment order was illegal.

6. The petitioner challenged the order of the Deputy Commissioner, Colonisation, Bikaner dated 10.4.1995 by preferring revision petition before the Board of Revenue, Ajmer which was dismissed by the Board of Revenue vide order dated 27.4.2001. Therefore, the petitioner preferred writ petition before this Court, which was dismissed by the learned Single Judge vide judgment dated 11.7.2001.

7. The learned Counsel for the appellant submitted that the petitioner's writ petition was dismissed without notice to, the other party and after accepting the finding of fact recorded to be correct. According to the learned Counsel for the appellant, main reason for setting aside of allotment of land of petitioner appellant, as observed by the three courts, was that the land was not notified by the State Government for allotment and no application for allotment of land was invited and the petitioner applied for different land and has been illegally allotted the land in question, whereas in fact the petitioner-appellant initially applied for the land of Chak No. 18 BLD and he was not found eligible for allotment of that land and thereafter, his application was duly rejected on 8.3.1989, which is apparent from the order-sheet, copy of which has been placed on record of the D.B. Special Appeal of the petitioner. All the three courts proceeded on assumption that no land of Chak No. 19 BLD was notified for allotment to public, whereas the petitioner placed on record the copy of the Gazette in the appeal as Annex. 1, from which it is clear that the land of Chak No. 19 BLD was duly notified for allotment to the public under Rule 13A of Rules of 1975 by publication of notice in the Gazette followed by the public notice inviting applications dated 26.4.1989 (Annex. 10). The land was duly notified, has been recorded in the order dated 26.4.1989 passed by the allotting authority. The allotting authority also observed that no other person has applied for this land. It is submitted that the petitioner thereafter took possession of the land and developed it and deposited the entire cost of the land.

8. The learned Counsel for the State tried to justify the orders but could not seriously dispute the Gazette Notification Annex. 11 conveying State Government's decision to make available the land of Chak No. 19 BLD for allotment to the public. The learned Counsel for the respondents then submitted that in notice dated 26.4.1989 inviting applications, there is no details of the land for which applications have been invited. However, these objections have been raised without filing any counter to the documents referred above in spite of the fact that the reply to the writ petition was filed at the appellate stage (since the writ petition of the petitioner was dismissed without notice to the respondents).

9. We considered the submissions of the learned Counsel for the parties and perused the impugned orders Annex. 10 and 11.

10. In view of Annex. 11 dated 14.10.1988, it is clear that all the courts below proceeded on wrong assumption that the land of Chak No. 19 BLD and particularly Murabba No. 15/19, 15/45 and 15/36 were not notified u/s 13A. Annex. 1 clearly reveals that said land was duly notified for allotment under the Rules of 1975. The public notice is also dated 25/26.4.1989 and it is not the case of the respondents that notice was issued for allotment of any other land. It appears from Annex. 10 that in the public notice inviting applications for allotment of land, there is clear mention that for land of Pungal, the applications have been invited for allotment of land and details of land can be looked in the office of both the places, that is, in the Tehsil office of the Deputy Commissioner,

Colonisation, Chhatargarh as well as in Pungal. In view of the above fact position, it is clear that the land in question was duly notified in the gazette notification dated 14.10.1988 (Annex. 11) and applications were invited by the Deputy Commissioner, Colonisation, vide Annex. 10 and the petitioner-appellant's application was duly considered for allotment of said land. At this juncture, it will be relevant to mention here that the petitioner's allotment of land has not been cancelled on the ground that the petitioner was not eligible for allotment. It appears that that fact error, which goes to the root, resulted in the cancellation of allotment of land, made in favour of the petitioner vide order dated 26.4.1989 for which consequential orders have been passed and the petitioner was allowed to deposit all the three installments of the land cost.

11. In view of the above discussion the appeal of the appellant is allowed. The order passed by the learned Single Judge dated 11.7.2001, the order of the Board of Revenue dated 27.4.2001 and the order of the Deputy Commissioner, Colonisation dated 10.4.1995 are set aside. The allotment order of the land in question in favour of the appellant is restored.