
(2015) 03 RAJ CK 0193

In the Rajasthan High Court

Case No : CWP Nos. 6468/2005 and 13881 of 2008

Budh Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-03-2015

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 101, 101(4), 102, 16, 17(2)
Rajasthan Tenancy Act, 1955 — Section 16, 188, 88, 89

Citation : (2015) 4 CDR 1681

Hon'ble Judges : Sunil Ambwani, A.C.J;Prakash Gupta, J

Bench : Division Bench

Advocate : Vimal Choudhary, for the Appellant; K.K. Mehrishi, Senior Counsel assisted by Sanjay Mehrishi, Anil Kumar Garg, Dharamveer Tholia, Additional Advocate General and Varun Choudhary, Rajan Prajapati, Sumit Taterwal and Himanshu Tholia, Advocates for the Resp

Final Decision : Dismissed

Judgement

Sunil Ambwani, Acting C.J—We have heard learned counsel appearing for the parties.

2. By D.B. Civil Writ Petition No. 6468/2005, filed in public interest, the petitioner, resident of Kasba Pahadi, Teshsil Pahadi, District Bharatpur, an ex-Sarpanch, has prayed for a direction to restrain the State-respondents Nos. 1 to 6 from allotment of Arajhi Khasra Nos. 3/.80 hectare, 4/1.55 hectare, 5/4.46 hectare, 6/1/3.72 hectare, 7/1/5.15 hectare, total 5 Rakba, area 15 hectare, 68 aier of land in village Mandal Patwari, Area Dheemari, Tehsil Pahadi, District Bharatpur, to the respondent Nos. 7 to 13, or any other person, who is not residing in the area, or any institution. He has also prayed for a direction to the State-respondents Nos. 1 to 6, to immediately take possession of the Government land, and to make its allotment to the needy persons of village Dheemari, Tehsil Pahadi, District Bharatpur, under the provisions of Rule 4 of the Rajasthan Agriculture Land Utilization Rules, 1958. The petitioner has also

prayed for a direction to quash the order dated 11.10.2000(Annexure-3), passed by the then Revenue Minister, Government of Rajasthan, in a revision under Section 83 of the Land Revenue Act, 1956 (for short, "the Act of 1956") and the consequential order dated 04.03.2005, passed by the Deputy Secretary, Revenue(Group-3) Department, Government of Rajasthan, by which in compliance of the Government Order dated 08.11.2000 and the letter of the District Collector, Bharatpur, dated 15.02.2005, orders were passed for regularization of possession of Shri Omprakash, Shakuntala Devi, Devendra Singh, Bala Devi, Satish Kumar, Manjeet Singh and Rajendra Singh under Rule 12, 17, 20 of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes,) Rules, 1970 (for short, "the Rules of 1970").

3. By D.B. Civil Writ Petition No. 13881/2008, Shri Devendra Singh S/o. Shri Omprakash, has prayed for directions to set aside the order passed by the Nayab Tehsildar, Pahadi, District Bharatpur, dated 02.04.2008, by which he has directed Shri Devendra Singh, the petitioner, and Shri Satish Kumar, both sons of late Shri Omprakash, to be evicted under Section 91 of the Act of 1956, from Arazi Khasra Nos. 3/0.80, 4/1.55, 5/1/1.65, 6/1/3.40 and 7/1/4.34, total five plots, with an area of 11.74 hectare, and imposed a penalty of fifty times of the land revenue of Rs. 17/-, which has been calculated at Rs. 41,350/-, and has been paid by Shri Devendra Singh, for unauthorized possession of the plots. He has prayed for the refund of Rs. 41,350/- with interest. The reliefs have been sought on the ground that possession of Shri Omprakash and his family members was regularized by the then Revenue Minister by her order dated 11.10.2000.

4. A reply has been filed by the State-respondents and the private respondents, in whose favour allotment of the land has been regularized.

5. Brief facts giving rise to the writ petition, are that the land, detailed as above, area 15 hectare, 68 aier, is a land belonging to the State Government, recorded as agriculture land, to be used for the purposes of agriculture in the "Jamabandi" of Samvat 2059 to 2062. The land was continuously used for agricultural purposes, in which crops of wheat and mustard were grown. On 19.06.1963, the entire land, measuring 96.17 Bigha, entered as "Siwai Chak" (Government land) for agricultural purposes, was allotted to a Agriculture Cooperative Society, Gopalgarh, Tehsil Pahadi, District Bharatpur. The Cooperative Society had 22 members, out of which 15 members left the Cooperative Society, and that only 7 members, who are the respondents in the writ petition, belonging to one family, were left. They continued to cultivate the land as individuals. The term of allotment for 25 years, came to an end on 18.06.1988. The land was never cultivated by the Cooperative Society, nor its accounts were maintained, or any statutory requirement of a Cooperative Society was complied with, and on which, the State Government passed an order, directing the land to be recorded as Government land. The private respondents continued to cultivate the land as individual allottees and made a representation for its allotment to them. The State Government, by its order dated 13.05.1992, after taking into consideration

the violation of the terms of the allotment to the Cooperative Society, against which only one person and his family was trying to use the land for agricultural purposes, and further taking into consideration that the term of lease deed, executed in favour of the Cooperative Society for 25 years had come to an end, cancelled the allotment and resumed the entire land under Rule 5(4) of the Rajasthan Land Revenue (Allotment of Land to Co-operative Societies) Rules, 1959 (for short, "the Rules of 1959"). The District Collector, Bharatpur, by his order dated 27.07.1992, after taking into consideration the orders passed by the State Government on 13.05.1992, cancelled the allotment and directed the Tehsildar to take possession of the land, and to make arrangements for next one year, in accordance with the Rules, and to submit the compliance report.

6. The family of late Shri Omprakash, namely his widow Shakuntala Devi, his sons, Devendra, Satish Kumar and Rajendra Singh, Smt. Bala Devi and Manjeet Singh, respondent Nos. 7 to 13 respectively, continued to occupy the land despite cancellation of the allotment by the State Government on 13.05.1992, and its communication by the District Collector, Bharatpur vide order dated 27.07.1992. The proceedings were initiated against them under Section 91 of the Land Revenue Act in Case No. 54/2007 on the report of the Patwari of the area Dheemri about unauthorized occupation of the land and for cultivating it. The notices were issued to Shri Rajendra Singh, which were not served on him, and on which, the notices were pasted on the door of his house, and after which, ex parte proceedings were taken for resumption of the possession of three plots/khasra, area 3.94 hectares, and for imposition of penalty of Rs. 284/-. Further orders were passed by the Tehsildar, Pahadi(Bharatpur) on 15.05.2007, that the crop on the land in pursuance to his order dated 28.02.2007 in the proceedings, was auctioned, in which Smt. Vimla W/o. Rajendra Singh, had offered a sum of Rs. 10,200/- as her bid. Shri Rajendra Singh S/o. late Shri Omprakash (respondent No. 7), his wife Smt. Vimla and one Shri Shreechand had also participated in the auction, in which Smt. Vimla was declared as highest bidder.

7. In the year 2008, proceedings were initiated again under Section 91 of the Act of 1956, by the Nayab Tehsildar, Pahadi, District Bharatpur, for eviction of Devendra Singh and Satish Kumar, both sons of late Shri Omprakash and Shakuntala Devi, widow of late Shri Omprakash Jat, resident of village Dheemari(Mandal), for unauthorizedly occupying Khasra Nos. 3/0.80 hectare, 4/1.55 hectare, 5/1/1.65 hectare, 6/1/3.40 hectare and 7/1/4.34 hectare, total area 11.74 hectares. The notices were issued in the proceedings under Section 91 of the Act of 1956 for dispossession of the unauthorized occupants, on which Devendra Singh submitted his reply on 12.02.2008. The Tehsildar found that the land has been unauthorizedly occupied by the noticees, who are also cultivating the land against the Rules, and that at present, the matter is pending in the High Court, but there is no interim order, and on which, he passed an order imposing a penalty of Rs. 850/-, and to auction the crop. The order-sheet shows passing of the judgment on 02.04.2008 in open Court. The order-sheet dated 16.04.2008, shows that the crop was sold to Shri Devendra Singh S/o. late Shri Omprakash,

being highest bidder, on Rs. 40,500/-. The proceedings for eviction against Shri Rajendra Singh, as unauthorized occupant over Khasra No. 5/1 area 1.60 hectare, 5/1 area 1.21 hectare, 6/1 area 0.32 hectare, and 7/1 area 0.81 hectare, were again initiated on the report of the Patwari Halka, and a case was registered being Case No. 29/2009, in which notices were directed to be issued on 16.01.2009. The noticees appeared on 30.01.2009, and requested to give time to file reply.

8. On 12.02.2009, the matter was adjourned to 18.02.2009, and on 19.11.2009, once again, an order was passed for eviction of the unauthorized occupants and for auction of the crop, which was once again purchased by Rajendra Singh in auction for Rs. 6,800/-.

9. In the circumstances, detailed as above, late Shri Omprakash and members of his family were continuously occupying the land, which was allotted to the Cooperative Society on 19.06.1963, and of which, term had also expired, and the allotment was cancelled and possession was resumed, and in which every year proceeding for their dispossession being unauthorized occupants, was initiated and their crops were auctioned. They filed a revision under Section 83 of the Act of 1956 against the order dated 27.07.1992, passed by the District Collector, Bharatpur. The revision was entertained by Smt. Kamla Beniwal, the then Revenue Minister, Government of Rajasthan, directly in a proceeding, of which the title was given as "In the Court of Revenue Minister, Rajasthan, Jaipur, between Omprakash S/o. Govind and Others v. State of Rajasthan through Collector, Bharatpur". She issued notice to the Collector and after hearing him, in which Tehsildar Pahadi submitted his reply that the land, after the term of the allotment of the Cooperative Society was over, was illegally occupied by the family members of late Shri Omprakash, who are illegally occupying the land of the appellants, and belong to one family and are related to each other. They are continuing in occupation of the land illegally, for which steps were taken every year, to evict them. He also stated that the order dated 27.07.1992 passed by the Collector, Bharatpur, for dispossession of the family of late Shri Omprakash and resumption of the land, was passed after hearing the parties. He made objection that the revision application has been filed after a period of five years, and is thus, beyond limitation. A writ petition was also filed by the unauthorized occupants in the High Court, and thus, the revision cannot be heard until the matter is decided. The unauthorized occupants are originally the residents of Haryana and are not entitled for allotment of the land. The application for stay of the proceedings, filed by the applicants, was received by the Tehsildar, Pahadi, which was at 23-24/C in the proceedings.

10. Smt. Kamla Beniwal, the then Revenue Minister, observed in her order dated 09.06.1999, that the applicants have prayed for allotment of the land, which is in their continuous possession since 1963; they are landless agriculturist and, thus, entitled for allotment of the land under Rule 12 of the Rules of 1970. A landless person can be allotted 10 acres of land. In District Bharatpur 2.10 bigha of land

is equal to 1 acre, and thus, 10 acres of land, namely 25 bighas, could be allotted to a landless person. According to the applicants Nos. 1 to 7, not more than 25 bigha of the land is in the name of any applicant. The applicants referred to a decision of the State Government in the case of Aadam Khan and 23 others, who were the residents of village Bhithari, Tehsil Phalodi, District Jodhpur, in which under Rule 17 read with Rule 20 of the Rules of 1970, orders were passed for regularization of the land in their favour. They stated that they will have also deposited the required fee in the Office of the District Collector, Bharatpur under Rule 20-A of the Rules of 1970 for regularization/allotment of the land in their favour. She found that since the applicants are in continuous possession of the land, the matter may be treated as special case for allotment under Section 102 of the Act of 1956 read with Rule 17 of the Rules of 1970.

11. Smt. Kamla Beniwal, the then Revenue Minister, vide order dated 09.06.1999, kept the order reserved, and delivered her order on 11.10.2000, after noticing the aforesaid facts and entertaining an amendment application, in which reference was made of Case No. 376/86, wherein the Assistant Collector, Deeg, Headquarter Kaman, Bharatpur, vide his order dated 25.06.1987, under Sections 88, 89 and 188 of the Rajasthan Tenance Act, declared the land to be Khatedari land. In the appeal, the Sub Divisional Officer, Deeg, had appointed the Tehsildar, Kaman as "Receiver" vide his judgment dated 25.11.1987, and on which the State Government had, by an order dated 13.05.1992, cancelled the allotment on the ground that the members of the Cooperative Society had not complied with the terms and conditions of the allotment, and further noticing that earlier there were 22 members in the Cooperative Society, but that at present there are only 7 members occupying 96 Bigha, 17 Biswa of land, relying on the precedent of Aadam Khan S/o. Amir Khan and Ors. v. District Collector, Jodhpur, in which the State of Rajasthan had passed orders on 04.12.1996, and after perusal of the "Jamabandi" of Samvat 2051, 2054 and 2055 to 2058, in which five plots/khasra, measuring 96.17 Bigha, are entered as allotted to the Cooperative Society Gopalgarh, Tehsil Pahadi through Shri Omprakash, Chairman and six others, and observing that the order passed by the District Collector, Bharatpur, dated 27.07.1992, is correct, according to which, the applicants are the trespassers, considering the orders passed by the State Government in which "Siwai Chaks"(Government land) has been regularised from time to time, and the statement of facts in the application made during the arguments that the applicants are landless agriculturists, which has not been controverted, and are in possession of the land since 1963, facing the proceedings of eviction in pursuance to the orders of the District Collector, and further considering the fact that according to the Rules, their possession is of the date prior to 15.07.1984, she found them to be entitled for regularization of their possession over the entire land. By her order dated 11.10.2000, under Rule 17 read with Rule 20(1) of the Rules of 1970, providing for regularization of the land under Rule 12 of the Rules of 1970, she regularized the possession of Shri Omprakash, Shakuntala Devi, Devendra Singh, Bala Devi, Satish Kumar, Manjeet Singh and Rajendra

Singh under Rule 17 read with Rule 20, 12 of the Rules of 1970, and directed the Collector, Bharatpur to take action in the matter, in accordance with law.

12. The petitioner, in the writ petition, alleged that the orders have been passed grossly illegally and arbitrarily, regularizing the possession of the unauthorized occupants, who are the members of the Cooperative Society, and in whose favour, the term of allotment to Cooperative Society had come to an end in the year 1988. They were rendered unauthorized occupants of the land, and were not the residents of the village, nor were the landless agriculturists. They were originally the residents of Haryana and belong to community of "Jat". Smt. Kamla Beniwal, the then Revenue Minister also belong to same community of Jats. They were declared to be unauthorized occupants and were directed to be evicted in the proceedings under Section 91 of the Act of 1956, every year beginning from 2007 to 2009, and their crops were auctioned. They filed a revision application/petition under Section 83 of the Act of 1956, which gives power to the State Government to call for the records and revise the order directly before the Minister concerned. She entertained the application treating herself to be the Court of Revenue Minister in violation of the Rules of Business and acting illegally, arbitrarily and in an autocratic manner, exercised the powers of the State Government contrary to the procedure prescribed. She not only entertain the revision, but passed a completely an illegal order regularizing the possession of the unauthorized occupants belonging to her caste. It is submitted that as a Revenue Minister, she had passed special orders favouring many persons belonging to her caste. She is known to have utilized her powers for oblique purpose.

13. In Secretary, Jaipur Development Authority, Jaipur Vs. Daulat Mal Jain and Others, (1996) 7 AD 550 : (1996) 8 JT 387 : (1996) 7 SCALE 135 : (1997) 1 SCC 35 : (1996) 6 SCR 584 Supp , the Supreme Court had passed strictures against Smt. Kamla Beniwal for proceeding to allot the lands to the respondents and others by declaring the award given by the LAO as void and giving land to the erstwhile owners, sub-awardees or nominees, apart from compensation. It was held in paragraphs 11 to 18 as follows:--

"11. The Minister holds public office though he gets constitutional status and performs functions under constitution, law or executive policy. The acts done and duties performed are public acts or duties as holder of the public office. Therefore, he owes certain accountability for the acts done or duties performed. In a democratic society governed by rule of law, power is conferred on the holder of the public office or the concerned authority by the Constitution by virtue of appointment. The holder of the office, therefore, gets opportunity to abuse or misuse of the office. The politician who holds public office must perform public duties with the sense of purpose, and a sense of direction, under rules or sense of priorities. The purpose must be genuine in a free democratic society governed by the rule of law to further socio-economic democracy. The executive Government should frame its policies to maintain the social order, stability,

progress and morality. All actions of the Government are performed through/by individual persons in collective or joint or individual capacity. Therefore, they should morally be responsible for their actions.

12. When a Government in office misuses its powers figuratively, we refer to the individual Minister/council of Ministers who are constituents of the Government. The Government acts through its bureaucrats, who shapes its social, economic and administrative policies to further the social stability and progress socially, economically and politically. Actions of the Government, should be accounted for social morality. Therefore, the actions of the individuals would reflect on the actions of the Government. The actions are intended to further the goals set down in the Constitution, the laws or administrative policy. The action would, therefore, bear necessary integral connection between the "purpose" and the end object of public welfare and not personal gain. The action cannot be divorced from that of the individual actor. The end is something aimed at and only individuals can have and shape the aims to further the social, economic and political goals. The ministerial responsibility thereat comes into consideration. The Minister is responsible not only for his actions but also for the job of the bureaucrats who work or have worked under him. He owes the responsibility to the electors for all his actions taken in the name of the Governor in relation to the Department of which he is the head. If the Minister, in fact, is responsible for all the detailed workings of his Department, then clearly ministerial responsibility must cover a wider spectrum than mere moral responsibility : for no minister can possibly get acquainted with all the detailed decisions involved in the working of his Department. The Ministerial responsibility, therefore, would be that the Minister must be prepared to answer questions in the House about the actions of his department and the resultant enforcement of the policies. He owes then moral responsibility. But for actions performed without his concurrence also, he will be required to provide explanations and also bear responsibility for the actions of the bureaucrats who work under him. Therefore, he bears not only moral responsibility but also in relation to all the actions of the bureaucrats who work under him bearing actual responsibility in the working of the Department under his ministerial responsibility.

13. All purpose or actions for which moral responsibility can be attached are actions performed by individual persons composing the Department. All Government actions, therefore, mean actions performed by individual persons to further the objectives set down in the Constitution, the laws and the administrative policies to develop democratic traditions. Social and economic democracy set down in the Preamble, Part III and Part IV of the Constitution. The intention behind the Government actions and purposes is to further the public welfare and the national interest. Public good is synonymous to protection of the interests of the citizens as a territorial unit or nation as a whole. It also aims to further the public policies. The limitations of the policies are kept along with the public interest to prevent the exploitation or misuse or abuse of the office or the executive actions for personal gain or for illegal gratification.

14. The so-called public policy cannot be a camouflage for abuse of the power and trust entrusted with a public authority or public servant for the performance of public duties. Misuse implies doing of something improper. The essence of impropriety is replacement of a public motive for a private one. When satisfaction sought in the performance of duties is for mutual personal gain, the misuse is usually termed as corruption. The holder a public office is said to have misused his position when in pursuit of a private satisfaction, as distinguished from public interest, he has done something which he ought not to have done. The most elementary qualification demanded of a Minister is honesty and incorruptibility. He should not only possess these qualifications but should also appear to possess the same.

15. In the Encyclopedia of Democracy by Seymour Martin Lipset, Vol. 1, page 310, in the Chapter "Corruption", it is stated that corruption is an abuse of public resources for private gain. The occasions for political corruption increases when control on the activity of public administrators are fragile and the division of power between political actors and the public bureaucrats, as well as between the Government and the middle man, is unclear. It is difficult to discover and punish cases of corruption. Research has shown that political corruption tends to be more widespread in authoritarian or totalitarian regimes and when public opinion and the press are unable to denounce corruption. Corruption develops because of confusion about the borders between State and society and between traditional and modern values. It can be expected to grow during phases of transition. Corruption should disappear in modern stable democratic societies. Instead, it is growing, since State intervention in economic and social life has increased the occasion for political corruption, new technologies have increased the cost of electoral campaigns and the professionalisation of political careers has increased the number of those who have to make a living from politics rather than living for politics. Corruption has not disappeared. Corruption has dangerous consequences for politics. Although political corruption is more widespread in non-democratic regimes, it is particularly dangerous for democracy because it undermines two of the major principles on which democracies are based; the equality of citizens' rights and the transparency of the political decision-making process. Bribes open the way for access to the State for those who are willing to pay and can afford the price. The situation may leave non-corrupt citizens with the belief that one "counts" only if one has the right personal contacts with those who hold power. Because of its illegal nature, corruption increases the range of public decisions that are made in secrecy. It was suggested that internal controls on public bureaucracies through administrative controls and accounting procedures as well as ombudsman systems for public complaints, are remedies to control political corruption. The rules of Code of Conduct for political executives, public servants and private entrepreneurs, emphasising merit and regulated system of appointment in state bureaucracy and stimulating pride in public service, would generate remedies for political corruption.

16. In Director of Public Prosecutions v. Holly Director of Public Prosecutions v.

Manners (1977) 1 All ER 316(House of Lords) , the expression "public body" came up for consideration. The applicability of Prevention of Corruption Act was not restricted to local authorities but referred to any public body having public or statutory duties to perform and which carried on activities of public interest. In that behalf, House of Lords had held that the Prevention of Corruption Act was not restricted to local authorities; it was applicable to any body which has public and statutory duties to perform and bodies which perform those duties and carry out their transactions for the benefit of the public and not for private profit. Accordingly, it was held that the persons who perform public functions are liable to prosecution for corruption. Similar views were expressed in R v Andrews Weatherfoil Ltd. and Ors. (1972) 1 All ER 65 ; Rother Valley Railway Co. Ltd. v. Ministry of Transport (1972) 2 W.L.R. 1041(Chancery Division); Regina v. Smith (1960) 2 W.L.R. 164 (Court of Criminal Appeal) ; and R v. Braithwaite R v. Girdham (1983) 2 All ER 87 (Criminal Division) .

17. The court, therefore, would be required to consider whether the policy sought to be relied on and directed by the Minister was to further public good or was a means to fritter away the public property for personal gain or to misuse public power. The object of publication of the notification under Section 4(1) in the Official Gazette is to give notice to the owner that the land is needed for public purpose and he is prevented to create any sort of encumbrance on the land with effect from that date etc. The land, if ultimately acquired, vests in the State under Section 16 or 17(2) of the Act free from all encumbrances. The public policy of the Government should only be to further the public purpose and issue of declaration is the conclusive proof of public purpose under Section 6(1) or any other similar public purpose. Limited public purpose given under Section 31 (3), by operation of which, the LAO/Collector is empowered, after the sanction is accorded by the appropriate Government, with the liberation of non obstante clause, is to allot any other land, in lieu of money compensation only, to such persons having a limited interest in such land, either by the grant of some other lands in exchange or remission of land revenue on other lands held under the same title, or in such other way as may be equitable "having regard to the interest" of the persons having limited interest in the land.

18. In other words, the public policy under the Act is that the acquired land should be used only for public purpose declared under Section 6(1) of the Act or any other public purpose and, under no circumstances, for any private purpose. The limited relaxation of public power entrusted with the LAO is to allot any other land, if available to the owner with limited interest or remission of land revenue when limited interest is acquired for public purpose."

14. It is submitted that in the present case Smt. Kamla Beniwal had acted wholly without authority and with oblique purpose. When she was the Revenue Minister in the Government of Rajasthan, a large number of orders were passed by her, usurping the powers which were not vested in her, and against the Rules. The present case is also one of those, in which she had entertained the revision

beyond limitation, clothing unto herself the powers as a Court of Minister, violating the Rules of Business, in which the Government is required to function through the Executive Officers, and having reserved the order on the objections that the revision was barred by limitations by five years against the order of the District Collector, Bharatpur, dated 27.07.1992, delivered an order after a period of 1-1/2 years, in which relying solely upon the decision of the Government of Rajasthan in the case of Aadam Khan S/o. Amir Khan and Ors. v. District Collector, Jodhpur(supra), in which allotments were made in favour of Shri Aadam Khan, regularized the possession of the unauthorized occupants, who were evicted in the land acquisition proceedings under Section 91 of the Act of 1956, in exercise of powers under Rule 17 read with Rule 20-A of the Rules of 1970.

15. It is submitted that Section 101 of the Act of 1956, providing for allotment of land for agricultural purposes, can be made by the State Government only in accordance with the manner, as may be prescribed by the Rules, and that the allotment of land is subject to the payment of rent fixed at such rates as may be fixed according to custom or by usage or any law on the subject. Sub-rule (4) provides for allotment to more than one person, requiring the same land.

16. It is submitted that Rule 12 of the Rules of 1970, provides for the extent of allotment; Rule 13 provides for allotment to be in consultation with Advisory Committee; Rule 14 provides for condition of allotment; Rule 17 provides for allotment of Government land; Rule 20 provides for allotment of land to trespassers; and Rule 20-A provides for extent of allotment to disable ex-servicemen, or dependent of deceased defense personnel.

17. It is submitted that Rule 17 of the Rules of 1970, provides for allotment of Government land, subject to the provision of Section 101 of the Act of 1956, and the conditions of allotment in Rule 14. Section 101 provides for allotment of land in accordance with the Rules, to the extent of allotment under Rule 12, and in consultation with Advisory Committee under Rule 13, which includes the member of the Rajasthan Legislative Assembly, in whose constituency the land is situated; the Pradhan of the Panchayat Samiti having jurisdiction; the Sarpanch of the Panchayat having jurisdiction; the Vikas Adhikari of the Panchayat Samiti having jurisdiction; the Tehsildar of the Tehsil having jurisdiction; a person belonging to a Scheduled Caste or Scheduled Tribe, to be nominated by the Panchayat Samiti, from amongst its members; and a person, to be nominated by the State Government in areas in which such nomination is considered necessary in public interest. The Sub Divisional Officer, under sub-rule(2) of Rule 13, has to give notice of at least one week, with date, time and place of the meeting, to the members of the Advisory Committee. The quorum shall be of at least three members, of whom one shall be from clauses (i), (ii) or (iii) of sub-rule (1), namely the member of the Rajasthan Legislative Assembly, the Pradhan of the Panchayat Samiti, and the Sarpanch of the Panchayat having jurisdiction. The allotment provided to be made under sub-rule (4) of Rule 13, shall be in the

village in which the land proposed to be allotted is situate, and for which the Sub Divisional Officer and the members of the Advisory Committee shall visit each such village for allotment of land. The date, time and place of the meeting, for the purpose of allotment, shall be intimated to the village Panchayat concerned at least one week in advance. A copy of the list of unoccupied Government lands, proposed to be allotted at the meeting, shall also be sent to the village Panchayat concerned. The minutes of the meeting will be written and signed by the Sub Divisional Officer and the members of the Advisory Committee. In case of difference of opinion amongst the members of the Committee, the opinion of dissenting members will be recorded.

18. Rule 14 of the Rules of 1970, provides for condition of allotment, and Rule 15 for order of allotment, to be passed by the Sub Divisional Officer.

19. Rule 17 is a residuary Rule, providing that notwithstanding anything contained in these Rules, the Government in the Revenue Department shall have the power to allot land to any person subject to the provision of Section 101 of the Act, and the conditions of allotment contained in Rule 14. The reference to the Rules in such allotment is Rules 12 to 16 of the Rules of 1970.

20. Rule 20 of the Rules of 1970, provides for allotment of land to the trespassers, subject to the specific or general direction of the State Government, on the advise of the Advisory Committee. Instead of ejecting a trespasser, the State Government can allow him to retain such land, if the person is a landless agriculturist and the total area of land held by such person including the land so allotted does not exceed 4 hectares, and the land so allotted, does not fall within the categories in Rule 4 of these Rules, which include the lands mentioned in Section 16 of the of the Rajasthan Tenancy Act; land demarketed as landing for aircrafts; lands reserved for village forests, small baras of lands reserved for thrashing grounds; and the lands within, as per sub-rule (v), the specified municipal limits of cities, railway fencing, and national highways, the lands declared as saline areas under the Rajasthan Land Revenue (Salines Areas Allotment) Rules, 1962, of lands reserved for allotment under any special Rules for the allotment of land.

21. Learned counsel appearing for the respondents submit that the land was allotted to a Cooperative Society, of which the private respondents were the members. After the term of their allotment had expired, the members of the family of late Shri Omprakash, who were also the members of the Cooperative Society, tried to obtain the allotment of land. The order cancelling their allotment was passed, illegally, as their applications for allotment, as individual members, were pending. They contested the proceedings for eviction and in order to save their crops, purchased it in an auction from the SDO. Rule 17 of the Rules of 1970, provides for allotment of Government land read with Rule 20 for allotment of land to the trespassers, and that the then Revenue Minister, having all the powers of the State Government, entertained the revision and regularized their possession. It is submitted that the Revenue Minister relied on an order passed

in similar situation, in favour of Shri Aadam Khan, in which by an order dated 04.12.1996, relating to District Jodhpur, the State Government had allotted land to Shri Aadam Khan. He submits that the then Revenue Minister was not made party to the proceedings, and that the proceedings for regularization of allotment in favour of the applicants, who are living in the State of Rajasthan for last more than 30 years, and were the residents of the village and were rendered landless agriculturists, was valid and did not suffer from any illegality. It is submitted that unnecessarily allegations have been made against the then Revenue Minister, who had exercised the powers of the State Government, vested in her.

22. Apart from defending the order on merit, it is stated by learned Senior Counsel appearing for the private-respondents, that this matter challenging the order of the Revenue Minister, could not be entertained as a public interest litigation. The petitioner is not the resident of the same village, and that according to *Balkishan Paliwal v. State and Ors.*, 2006(1) DNJ(Raj.) 363, the challenge to allotment of land for agricultural purposes under Rules 17 and 20 of the Rules of 1959, in which the Revenue Minister had found that the respondents are in possession and regularized their possession, the petitioner had no locus standi to challenge the order as he was not the resident of the same village.

23. A reply has been filed on behalf of the State Government, along with an affidavit of Dr. Veerendra Singh, Sub Divisional Officer, Kaman, in which he has not defended the order passed by the then Revenue Minister. He has assailed the order, alleging that the order was passed in violation of the eligibility for allotment under Rule 11 of the Rules of 1970. He has stated in para 2 of the affidavit, that the allotment was made in favour of Joint Agriculture Cooperative Society, Gopalgarh, Tehsil Pahadi, of the plots/Khasras, with total area 96 Bigha 17 Biswa, on 16.06.1963, for a period of 25 years. There were total 22 members of the Cooperative Society. The Cooperative Society had violated the terms and conditions of the allotment. The Chairman of the Society tried to get the allotment made in his favour, and that considering that only one person was using the land, which was allotted to the Cooperative Society, and that the term of allotment to the Cooperative Society had come to an end, the State Government after considering the facts, which were brought to its notice, vide order dated 13.05.1992, which was complied with by the District Collector, Bharatpur on 27.07.1992, cancelled the allotment and resumed the entire land in exercise of powers under Rule 5(4) of the Rules of 1959, and issued direction to the Tehsildar concerned to take over the possession of the land. The Revenue Minister entertained the revision petition under Section 83 of the Act of 1956 after seven years of the orders of the State Government and passed an order under Rule 12, for regularizing the possession of private-respondent Nos. 7 to 13, on which a meeting of the Allotment Committee was convened, but that in the absence of quorum, the meeting was postponed.

24. The SDO has further stated in the affidavit filed on behalf of the State Government, that the extent of allotment of land under Rule 12 of the Rules of

1970, of maximum 10 acres in favour of a person, which will include the members of his family, has not been complied with, and whenever the order is to be complied with, the facts are to be ascertained. The subject land is recorded as "Siwai Chak" (Government land). The respondent Nos. 7 to 13 had illegally occupied the land and started cultivation, on which proceedings were initiated against them under Section 91, and the penalty amount was recovered from them, after which there could be no question of any regularization or allotment to the same persons.

25. In paragraph 5 of the affidavit, the SDO has stated that the writ petition is premature inasmuch as in view of the impugned order, until the extent of allotment of land is decided, the land cannot be allotted to anyone, and in any case, the land is to be allotted in accordance with the priority given in Rule 11 of the Rules of 1970.

26. We have considered the respective submissions, perused the records, and have also gone through the provisions of the Act of 1956, as well as the provisions of the Rules of 1970, and find that in the facts and circumstances of the case, the Revenue Minister had usurped the power vested in the Executive Officers of the State Government, to be exercised in accordance with the Rules of 1970. She acted in defiance of the Rules of Business in entertaining a revision under Section 83 of the Act of 1956, which was barred by limitation by five years, and without condoning the delay, or ascertaining the eligibility of the persons for allotment under Rule 11 of the Rules of 1970, and the extent of allotment under Rule 12, without consulting the Advisory Committee under Rule 13, and in complete ignorance of the statutory conditions for allotment under Rule 14, and the authority given to the SDO to allot the land, acted grossly illegally and arbitrarily in exercise of the powers under Rule 17 of the Rules of 1970, which must be exercised in accordance with the provisions of Section 101 of the Act of 1956, providing for allotment to be made under the Rules and the conditions of allotment contained in Rule 14, and in exercise of powers under Rule 20 of the Rules of 1970, regularized the possession of the private-respondents, who were illegally and unauthorizedly occupying the lands, after the term of lease deed of the Cooperative Society had expired, and the proceedings for their eviction were initiated and finalised under Section 91 of the Act of 1956. The eviction orders and sale of crop were never challenged, and had become final. The exercise of power under Rule 20 was wrongly assumed inasmuch as powers under Rule 20 could only be exercised on the advise of the Advisory Committee, and under the specific or general direction of the State Government, the SDO could, on the advise of the Advisory Committee, instead of ejecting the trespassers from any land occupied by him without any lawful authority, allowed to retain such land, if he is a landless agriculturist, and the total area of the land does not exceed four hectares.

27. The provisions of Section 101 of the Act of 1956 for allotment of land for agricultural purposes, and the provisions of Rules 11, 12, 14(1), 17, 20(1) and

20-A of the Rules of 1970, are quoted as below:--

"101. Allotment of land for agricultural purposes. [(1) Save as otherwise provided elsewhere by this Act, lands for agricultural purposes shall be allotted by such authority and in such manner as may be prescribed by rules made by the State Government in this behalf].

(2) All allotment of land under this section shall be subject to the payment of rent fixed at such rates as may be fixed according to custom or by usage or any law on the subject.

[(3)xxx deleted xxxxx

(4) If there be more than one person requiring the same land, the allotment shall be made in the following order-

(i) to co-sharer of the holding if it forms part of a compact block or is irrigated from the same source, preference amongst such co-sharers being given to one having land less than the area prescribed by rules made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955).

(ii) to persons residing in the village in which land be situated, preference amongst such persons being given to persons having no land or less than the area prescribed by the said rules;

(iii) by drawing lots:]

Provided that the area so taken together with the area held by him does not exceed the area prescribed by the said rules."

Rule 11. Eligibility and order of priority for allotment. - (1) The land shall be allotted only to a 4 [landless agriculturist] 5[x x x] 6 [x x x].

[Provided that where an allottee after conferment of khatedari right under these rules transfers such land he shall not be treated as landless agriculturist for the purpose of allotment.]

(2) If there is only one applicant for a particular plot of land, it shall be allotted to him.

(3) If there are more than one applicants requiring the same plot of land, it shall be allotted to him/them according to the priorities fixed in Section 101(4) of Rajasthan Land Revenue Act, but inter-se priority between the applicants of the same category, as per Section 101(4) of the said Act, shall be in the following order-

(a) Legal heir of a member of the Armed Forces of the Union killed in action or a disabled soldier 1[or a disabled ex-servicemen or dependent of deceased defence personnel] [or Beneficiary of the integrated Rural Development Programme;].

[(aa) a [landless agriculturist] who is released sagri as certified by the Sub-

Divisional Officer;]

(b) member of the Scheduled Caste or Scheduled Tribe who is a 4[landless agriculturist;]

[(bb) member of the other Backward Class who is a landless agriculturist;]

(c) Un-employed Landless Agriculture Graduate;

(d) Agricultural Labourer, who is a 4[landless agriculturist;]

(e) Non-Commissioned Ex-servicemen 6[who has been released from the Armed Forces after having served in any rank for atleast five years.;

(f) Other 4 [landless agriculturist] preference being given to those with lesser income;

(g) A non-commissioned member of the armed forces 7[or the Boarder Security Force] who has rendered not less than 5 years service: 4[Provided that the State Government may determine the category of persons to whom alone allotment shall be made in any area of the State to be specified].

Rule 12. Extent of Allotment. - 8[Except as otherwise provided in these rules the extent of the land to be allotted] shall not be more than 9 [4 hectares] subject to the condition that, in no case, the total area to be allotted under these rules, together with the area already held by the allottee or his notional share if the land is held by other members of the joint family, shall exceed 9[4 hectares]. No allotment in favour of a minor shall be made except in cases covered by R. 11 (a). As far as possible the land to be allotted will not be less than 9[2 hectares] of unirrigated land:

[Provided that-

(i) [Deleted]

(ii) [Deleted]

[xxx].

[Provided also that in the areas of Barmer, Jodhpur, Churu, Pali, Jaisalmer, Nagaur, Bikaner and Jalore districts not covered by any irrigation Project the maximum area of agricultural land to be allotted under these rules shall not exceed 6 hectares.]

[Explanation. - For the purpose of this rule on 1 [hectares] of irrigated land will be treated as equal to two 1[hectares] of unirrigated land].

Rule 14. Condition of Allotment. - (i) The allotment of land under these rules shall be on a Gair Khatedari tenancy with a right to ultimate conferment of Khatedari rights after the expiry of 1[3years] provided the allottee fulfill during this period the terms and conditions of allotment until Khatedari rights are conferred. The allottee shall have all the rights and be subjected to all liabilities

of a Gair Khatedar tenant under the Tenancy Act:

[Provided also that the allotment of land may be cancelled at any stage by the Collector before the expiry of a period 1 [3 years], if the land is required for public purpose:

Provided further that no such order to the prejudice of such person shall be passed without giving him an opportunity of being heard.]

3[xxx]

4[(1-a) In case where allotment of land is made to a married agriculturist, the allotment shall be made in the joint names of husband and wife and the allottees, in such case, shall be deemed to be joint allottees.]

Rule 17. Allotment of Government Land. -Notwithstanding anything contained in these rules the Government in the Revenue Department shall have the power to allot land to any person subject to the provision of Section 101 of the Act and the conditions of allotment contained in Rule 14.

Rule 20. Allotment of land to trespassers. - [(1) Notwithstanding anything contained in these rules, subject to the specific or general direction of the State Government, the Sub-Divisional Officer may on the advice of the Advisory Committee, instead of ejecting a trespasser from any land occupied by him without any lawful authority, allow him to retain such land if he is a landless agriculturist and the total area of land held by such person including the land so allotted does not exceed 3[4 hectares] and that the land, so allotted does not fall within the categories specified in Rule 4 of these rules:

Provided that in eight desert Districts i.e. Barmer, Jodhpur, Churu, Pali, Jaisalmer, Nagaur, Bikaner and jalore, where the area of trespassed land exceeds 3[4 hectares] instead of ejecting a trespasser from such excess land, he may be allowed to retain such excess land upto maximum area of 3[2.5 hectares] subject to the following conditions -

(i) the total area of land held by such person including the land allotted does not exceed 1[6 hectares].

(ii) for the area exceeding 1[4 hectares] 50% of prevailing market price of neighbouring agriculture land shall be charged from the trespasser belonging to General Category and 215% of the prevailing market price of neighbouring agriculture land shall be charged from the trespasser belonging to Scheduled Caste/Scheduled Tribe/Backward Classes/ Below Poverty Line Category.]

[(1-A) Notwithstanding anything contained in these rules, the cultivators who were conferred khatedari rights during the process of "Bhoo Abhilekh Sansodhan" in Ajmer district in the period of 1970 to 1972 and subsequently whose khatedari were cancelled and land was recorded as Siwai Chak in revenue record, the Sub-Divisional Officer on the advice of the advisory committee may regularise such land in favour of such cultivators upto 15 bighas. But in case

where the land exceeds 15 bighas, the excess land may be regularized in favour of their adult son 1-1-2000 and such land shall be entered in their joint tenancy:

Provided that total area of land already held by such tenant and land so regularised shall not exceed ceiling area applicable to them under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973]

[(1-AA) notwithstanding anything contained in these rules the person who was in possession of land as temporary cultivation lease holder in colony area and in whose favour permanent allotment of part of such land was made before such area was excluded from colony area and he is still in continuous possession of such part of remaining land, such remaining part of land may be regularized in his favour up to the ceiling limit applicable under the Rajasthan Imposition of Ceiling on Agricultural Holding Act, 1973.]

Rule 20-A. Extent of allotment to disable ex-servicemen or dependent of deceased defense personnel. - A disabled ex-servicemen or dependent of a deceased defense personnel may be allotted land upto 3 hectare of irrigated land or 6 hectare of unirrigated land."

28. Late Shri Omprakash and his family members including his widow and sons, impleaded as respondent Nos. 7 to 11 in the writ petition, were the members of the Cooperative Society, which had contravened the terms of allotment inasmuch as the land was being cultivated after all other members of the Cooperative Society had left by late Shri Omprakash and his family, as individuals. The State Government, having noticed that the period of allotment to Cooperative Society had come to an end, and considering that the terms and conditions of the allotment were violated, cancelled the allotment to the Cooperative Society, and directed the land to be resumed. The order cancelling allotment and resumption of the land, was not challenged by the private-respondents and had become final. The private-respondents thereafter continued as unauthorized occupants of the land, against which proceedings under Section 91 of the Act of 1956 were initiated in the year 2007, 2008 and 2009, and on which on all the occasions, notices were served upon them, and they were heard, declared unauthorized occupants of the land, and were directed to be evicted. Their crops were also auctioned, in which they purchased the crops being highest bidder in the proceedings. They, therefore, had absolutely no right to be considered for regularization, or for fresh allotment of the land under the Rules of 1970. They also could not be treated as trespassers, as the provisions of Rule 20 of the Rules of 1970, are applicable to the trespasser, who has occupied the land without any lawful authority and who may be allowed to retain such land, if he is a landless agriculturist, subject to total area, so allotted, does not exceed four hectares.

29. It is not a case where the landless agriculturists had occupied the land without lawful authority, and which was in their possession, for considering the land to be allotted to them on the advise of the Advisory Committee, subject to limitation of four hectares. The respondents were the members of the

Cooperative Society, who had contravened the terms of the allotment, and after the period of allotment had come to an end, their allotment was cancelled, after which they had no right, to be considered for regularization or allotment. Any person, who has contravened the terms of the allotment, and on which the allotment has been cancelled, and who thereafter continues as unauthorized occupant of the land, cannot be treated to be the trespasser, who has occupied the land without lawful authority. A person, to be treated as trespasser, is a landless agriculturist, who occupies the land without any lawful authority. It will necessarily mean and include a bonafide landless agriculturist, who occupies the land without lawful authority, and not a person who continues to occupy the land despite cancellation of allotment to Cooperative Society, of which he was a member and has been ejected in the proceedings undertaken in accordance with law by the Revenue Officers on more than one occasion with imposition of fine and direction to auction the crops. The family of late Shri Omprakash was, thus, not eligible, and did not fall in the order of priority for allotment under Rule 11 of the Rules of 1970, nor they were entitled for regularization or allotment of land under Rule 20. In any case, if any allotment was to be given after regularizing the possession, it could only be given in accordance with the provisions of Rule 20, which not only required eligibility under Rule 11, but also the following of the procedure, in which the Advisory Committee had to be consulted under Rule 13 of the Rules of 1970, and the allotment to be made under the conditions of allotment under Rule 14, and in such case, an order of allotment under Rule 15, was to be issued by the SDO, on a prescribed Form V, with a copy to be given to the allottee.

30. In the present case, Smt. Kamla Beniwal, the then Revenue Minister, acted wholly illegally and arbitrarily, and acting as a Court, not only entertained the revision under Section 83 of the Act of 1956, after a period of five years against the order of the District Collector, Bharatpur dated 27.07.1992, but that she, after noticing the cancellation of allotment on breach of the terms of the allotment to the Cooperative Society, of which the term had also expired, and after observing that the applicants had become unauthorized occupants of the land, against whom proceedings under Section 91 of the Act of 1956, were concluded, she illegally exercised the powers for regularization of the possession, passed the orders in absence of any authority vested in her under Rules 12, 17, 20 and 20-A of the Rules of 1970, which had no application to the present case, in directing the allotment orders to be issued, on deposit of the required fee. The order is wholly illegal, arbitrary and has been passed beyond authority vested in Smt. Kamla Beniwal, the then Revenue Minister of the State of Rajasthan for oblique purpose to benefit the members of her caste.

31. We do not find any substance in the objection that the petitioner is not entitled to file the public interest litigation, inasmuch as the petitioner was an ex-Sarpanch of Gram Panchayat, belongs to Scheduled Caste of village Dheemari, Bada Mohalla, Tehsil Pahadi, District Bharatpur, in which the concerned village falls. In our view, he is a competent person to file the present writ petition,

bringing to the notice of the High Court, the blatant misuse of the powers by then Revenue Minister, Government of Rajasthan, in which, in complete ignorance of law and without any authority vested in her under Rules, 12, 17 and 20 of the Rules of 1970, which do not confer any such power to her, not only regularized the possession of the unauthorized occupants on the agricultural land of the State Government, but also directed the District Collector, Bharatpur, to issue allotment orders, in complete disregard to the procedure for allotment under the Rules of 1970.

32. For the aforesaid reasons, D.B. Civil Writ Petition No. 6468/2005, is allowed. The order passed by Smt. Kamla Beniwal, the then Revenue Minister, Government of Rajasthan, dated 11.10.2000 (Annexure-A/3 to the writ petition), in a revision under Section 83 of the Act of 1956, is quashed. The private-respondent Nos. 7 to 13, are declared to be illegal and unauthorized occupants of the land. They were directed to be evicted from the land by the orders passed by the Revenue Authorities, which have become final, and thus, a direction is issued to the District Collector, Bharatpur, to evict them, without any delay, and to resume the possession of the land. It will be open to the District Collector, Bharatpur, to determine the penalty for wrongful occupation of the Government land, after the orders of eviction, and to recover it, in accordance with law.

33. D.B. Civil Writ Petition No. 13881/2008, filed by Shri Devendra Singh S/o. Shri Omprakash, with prayers to set aside the order dated 02.04.2008, by which he along with his brother, Shri Satish Kumar, both sons of Shri Omprakash, were held to be unauthorized occupants and directed to be dispossessed, and a penalty of Rs. 41,350/- was imposed, and has been deposited, is dismissed, on the ground that Shri Devendra Singh does not have any rights independent of the rights of his father Shri Omprakash and other family members. The order passed by Smt. Kamla Beniwal, the then Revenue Minister, Government of Rajasthan, dated 11.10.2000 in their favour, has been set aside by us in this judgment rendering the entire family as unauthorized occupants of the land.

34. A copy of the order be placed in the connected file.