

(2009) 05 RAJ CK 0043
In the Rajasthan High Court

Col. Chandra Singh Shekhawat (Retd.)	APPELLANT
Vs	
State of Rajasthan and Another	RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 21, 226, 300A

Citation : (2009) 05 RAJ CK 0043

Hon'ble Judges : Raghvendra S. Chauhan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.S. Chauhan, J.—Having been allotted a land, having invested lacs of rupees in developing the said land, having been granted the status of a "Khatedar", and having been suddenly deprived of the said status, the petitioner has challenged the order dated 25.10.2005 before this Court.

2. The petitioner, an ex-soldier, had fought both in the 1962 Indo-China war, and in the 1965 Indo-Pak war. In order to resettle him, in November 1987, the Government had allotted, 9 Bigha, 5 Biswa of land, in khasra No. 22/541, in Village Niwaru, Tehsil Jaipur to him. The said land was allotted on lease for a period of ten years for the purpose of establishing dairy/poultry farm and piggery farms under the Rajasthan Land Revenue (Allotment of Land to Dairy, Poultry and Piggery Farms) Rules, 1958 ("the Rules of 1958", for short). In order to develop his dairy, the petitioner invested lacs of rupees: in getting the land leveled, in getting a well dug up, in getting the electricity connection, in putting pipelines, in construction of sheds for fifteen cows. However, within a period of three to four years, half of the cows died. Therefore, the petitioner submitted a report to the Collector, Jaipur pointing out the fact that his cattles were dying one after the other.

3. The Collector directed the Tehsildar to inquire into the working of the farm. The Collector also directed the District Chief Medical and Health Officer ("the

CMHO" for short) to inquire into the quality of water which was available in the well. Eventually, the CMHO discovered that the water available in the well was not drinkable; it was the cause of death of the animals. Since the petitioner could not run a dairy farm due to the bad quality of the water, he requested the State Government to convert the land for agricultural purpose. The State Government wrote to the Jaipur Development Authority ("the JDA" for short) to issue a NOC for converting the land for agricultural purpose. Vide order dated 16.12.1995, the JDA issued the said NOC. After receiving the NOC from the JDA, the State Government allotted the land to the petitioner vide order dated 04.12.1999 under the Rajasthan Land Revenue (Allotment of Land for Agriculture Purpose) Rules, 1970 ("the Rules of 1970", for short) read with Section 102 of the Land Revenue Act. The said order clearly stipulated that the land has been declared as "Sivai Chak" (Government land), and is being allotted to the petitioner for agricultural purpose. Vide order dated 24.05.2000, the Collector allotted the said land to the petitioner under the Rules of 1970. Consequently, the petitioner's name was entered as "Gair Khatedar", in mutation Nos. 457 & 458, in the "Jama Bandi" for the "Samvat Year" 2056 to 2059.

4. In the year 2004, the Jaipur Administration carried out a campaign called "Administration at your doors". During this campaign, the petitioner submitted an application for converting his "Gair Khatedari" rights into "Khatedari" ones under Sub-rule (1) of Rule 14 of the Rules of 1970. Vide letter dated 25.11.2004, the Tehsildar inquired from the JDA about the utility and the acquisition of the land. Vide letter dated 14.12.2004, the JDA informed the Tehsildar that no scheme was proposed on the land and the land was not under acquisition. Thereafter, on 16.12.2004, the Sarpanch of Gram Panchayat Niwaru, issued a NOC regarding the land. Consequently, vide order dated 24.12.2004, the Tehsildar converted the rights of the petitioner from "Gair Khatedari" to "Khatedari". Thereafter, a mutation was also entered in the name of the petitioner and the petitioner was shown as the "Khatedar" of the land. In fact, even a "Jamabandi" was issued to the petitioner clearly showing that vide mutation No. 540, he has been entered as a "Khatedar". Ever since 2004, the petitioner has been cultivating his crops of bajara, groundnut and wheat on the said land. In order to increase the agricultural yield of the land, the petitioner has again invested a large sum of money in the said land. He has been in the peaceful possession of the land since 1987 i.e. for twenty-two years now.

5. However, to the utter shock of the petitioner, one fine morning, the Patwari and the Tehsildar came to the petitioner wanting to take over the land. They informed him that vide order dated 25.10.2005, the District Collector, Jaipur had cancelled the mutation. Therefore, the land was being resumed by the Government. In order to save his land, the petitioner has sought the refuge of this Court.

6. After taking this Court through the factual matrix, as mentioned above, Ms. Shalini Sheoran, the learned Counsel for the petitioner, has raised the following

contentions before this Court: firstly, the land was allotted by the Government in order to rehabilitate an exserviceman.

7. The petitioner has invested lacs of rupees in developing the said land initially for the purpose of dairy, and subsequently for agricultural purpose.

8. Secondly, the land was mutated in the name of the petitioner by the Tehsildar and the petitioner was shown as the "Khatedar" of the land. The status of the "Khatedar" is suddenly being changed vide order dated 25.10.2005 without giving an opportunity of hearing to the petitioner.

9. Thirdly, the letter dated 25.10.2005 is not even addressed to the petitioner, but is addressed to the Tehsildar directing him to cancel "the Khatedari" rights of the petitioner and to declare the land again as "Sivai Chak" and to repossess the land.

10. Fourthly, and most importantly, the entire proceedings have been done behind the back of the petitioner. The petitioner has not been issued a single notice before directing the Tehsildar to cancel his mutation and to repossess his land. Therefore, the impugned order and the proceedings are in utter violation of the principles of natural justice.

11. Fifthly, the action of the District Collector, Jaipur, respondent No. 2 violates the petitioner's fundamental rights under Articles 14, 19, 21 and 300A of the Constitution of India. Since the action is absolutely arbitrary, it violates the very concept of equality enshrined under Article 14 of the Constitution of India. Since the impugned order has been passed without following a procedure established by law, it violates the right to livelihood contained in Article 21 and the right to carry out any trade, profession or business contained in Article 19 of the Constitution of India. Moreover, the petitioner's property is being snatched away from him without the authority of law. Therefore, the mandate of Article 300A of the Constitution of India is being violated.

12. On the other hand, Mr. Ankur Rastogi, the learned Additional Government Advocate, has argued: firstly, the Rules of 1970 were enacted for the purpose of allotting land to the landless agriculturist. Since the petitioner does not fall within the definition of the words "landless agriculturist", the land could not be allotted to him by the Collector. Secondly, in the case of Smt. Reva Choudhary v. State of Rajasthan and Anr. S.B.C.W.P No. 7947/1992 decided on 10.01.1995 this Court had held that a person who was allotted a land under the Rules of 1958, he cannot be granted "the Khatedari" rights by the Tehsildar. Thirdly, in pursuance of the said judgment, vide order dated 09.05.2005, the Deputy Secretary (Administration) had written to the District Collector, Jaipur clearly pointing out to him that the land could not have been allotted to the petitioner; the land being "Sivai Chak", automatically belongs to the JDA. Therefore, the land cannot be allotted to the petitioner without the prior permission of the JDA. Thus, the Deputy Secretary (Administration) directed the Collector to keep the petitioner's "Khatedari" rights in abeyance. On the basis of this letter, the District Collector

had sent his report to the Principal Secretary (Administration) pointing out that "the Khatedari" rights were given to the petitioner by the Tehsildar during the course of operation Called "Administration at your doors". Subsequently, vide order dated 25.10.2005, the Deputy Secretary directed the Collector to cancel the petitioner's "Khatedari" rights and to rerecord the land as "Sivai Chak" in the revenue record, and to repossess the land. In these facts the petitioner does not have the right to hold the land. Therefore, the impugned order, dated 25.01.2005, was legally issued by the Collector to the Tehsildar. Thus, the learned Counsel has supported the impugned order.

13. Heard the learned Counsel for the parties, perused the record and examined the impugned order.

14. The people of this Country are no longer subjects of a crown; they are citizens of a democratic republic. Under the Constitution of India, people have certain fundamental rights, which cannot be interfered with by the State, until and unless such a interference is permitted by the Constitution itself. Part III of the Constitution, containing the fundamental rights, has built a shield which protects the people from the onslaught of State actions and omissions. Part III is the heart and soul of a democratic constitution that "We the people" have given onto ourselves. Article 14, which enshrines the sacred concepts of reasonableness, fairness and justness, protects the people from the arbitrary, whimsical, capricious, unreasonable, irrational and illegal actions and omissions of the State. Repeatedly, it has been stated that an arbitrary action of the State is an anathema to the concept of equality enshrined in Article 14 of the Constitution of India.

15. Moreover, both Article 19 and Article 21 grant the right to a profession, trade or business; therefore, they provide a right to livelihood to the people. Such a fundamental right can be taken away only by a procedure established by law.

16. Besides, the protective shield provided by Part III of the Constitution, Natural Law also provides an armour to the people from the colossal power of the State. Principles of natural justice, (generally) being universal in nature, control the actions of the State. One of the Principles is to hear the other side- audi alteram partem- that is no adverse action can be taken against a person, until and unless, the person is given an opportunity of hearing. For, a person cannot be condemned, a person cannot have his liberty deprived, without being heard. The State, no matter how powerful it may be, is always under the Constitution. Its actions and omissions are bound by the Constitutional mandates, by the constitutional limits, and by circumferences prescribed by Natural Law. Thus, the State cannot behave like a bull in a China town.

17. The Constitution also prescribes a system of checks and balance between the Executive, the Legislature and the Judiciary. It is the fundamental role of the Judiciary to check the excess of the Executive and of the Legislature. Under the doctrine of judicial review, the High Court has ample power to examine the

action of the Executive.

18. The *raison d'être* (the reason to be) of the Judiciary is to do justice to the people. In order to carry out its role, Article 226 of the Constitution of India has armed the judiciary with writ jurisdiction. The High Court can issue different writs in order to ensure that justice is done to the people. Under Article 226 of the Constitution of India, the High Court acts as the arch-angel to protect and promote the civil and the fundamental rights of the people. It has been said that under Article 226 of the Constitution of India, the sky is the limit when injustice is being chased.

19. The three Branches of the State namely the Executive, the Legislature and the Judiciary share a common denominator in their functions: to protect and promote the interests and rights of the people. If democracy is by the people, of the people, it, necessarily, has to be for the people.

20. Therefore, the acts of the Legislature, the policies and actions of the Executive, have to be people-friendly. It is the joint responsibility of the three branches to be fair, just and reasonable to the people. Hence, to do justice to the people is not only the monopoly of the Judiciary, but is equally an obligation for the Executive to discharge. The Public Officers, who are the facets of the State, must remember that they work for the public. In a democracy, they can no longer act as feudal lords. In a democracy, they are "public servants". Therefore, they should curtail the tendency of issuing "farman", or proclamation. They should also understand that they are neither above the Constitution of India, nor above the principles of natural justice, nor above the law of the land. Hence, their action must adhere to and confirm to the constitutional mandate and the requirement of principles of natural justice.

21. Certain facts have been admitted by both the sides. Firstly, in November 1987, the petitioner was allotted 9 Bigha 5 Biswa land in khasra No. 22/541 in Village Niwaru, Tehsil, District Jaipur, by the State Government for establishing a dairy farm under the Rules of 1958. Secondly, because of the non-drinking quality of the water in the well, the petitioner lost his cattle. Therefore, it was not possible for him to develop and to continue the dairy farm. Thirdly, the petitioner sought the change in the use of the land from dairy to agricultural purpose. Fourthly, after receiving the NOC from the JDA, vide order dated 04.12.1999 and 24.05.2000, the Government allotted a land to the petitioner under the Rules of 1970 for agricultural purpose. Fifthly, the land was shown as "Sivai Chak" and the petitioner was shown as "Gair Khatedar". Sixthly, during the campaign "administration at your door steps", the petitioner applied for changing his "Gair Khatedari" rights be converted into "Khatedari" ones under the Rules of 1970. Seventhly, after receiving the report from the JDA, and after receiving a NOC from the Sarpanch of the Gram Panchyat, vide order dated 24.12.2004, the Tehsildar converted the "Gair Khatedari" rights into "Khatedari" ones and opened up mutation No. 540 and entered the name of the petitioner as the "Khatedar" of the said land. Eighthly, vide letter dated 25.10.2005, the Deputy Secretary had

directed the Collector to cancel the mutation, to reconvert the land as "Sivai Chak" and to repossess the petitioner's land and to report to the Government accordingly.

22. It is also not in dispute that the case of Rewa Choudhary (supra) was decided by this Court vide its judgment dated 10th January, 1995. On the basis of the said judgment, ten years later, i.e. on 09.05.2005, the Deputy Secretary (Administration) wrote a letter to the District Collector, Jaipur pointing out that in the said judgment, this Court had held that under the Rules of 1958, a "Khatedari" right could not be given to a person. He also pointed out that the land which has been declared as "Sivai Chak", whether falling within or without the JDA region, would automatically fall within the jurisdiction of JDA.

23. Therefore, he directed the Collector to suspend the Khatedari rights of the petitioner till further orders are received from the Government. This letter exists as Annexure-R/1 in the Court file.

24. In furtherance of the said order, vide letter dated 24.09.2005, the District Collector informed the Principal Secretary (Administration) about the conditions in which "the Khatedari rights" accrued to the petitioner. This letter clearly reveals that during the operation "Administration at your door steps", the Tehsildar had sought certain guideline from the JDA. But prior to receiving the said guidelines, the Tehsildar had recorded the petitioner as "the Khatedar".

25. Surprisingly, none of these letters, mentioned above, were ever sent to the petitioner. These letters are the internal correspondence carried out between the Deputy Secretary and the Collector on the one hand, and between the Collector and the Principal Secretary on the other hand. As far as the petitioner is concerned, he had no knowledge whatsoever of the existence of these letters. Thus, apparently the decision to deprive the petitioner of his "Khatedari rights", to repossess his land was taken without giving an opportunity of hearing to the petitioner. The letter dated 25.10.2005 is culmination of the process which commenced from letter dated 09.05.2005. However, even the letter dated 25.10.2005 has been issued to the Tehsildar, and not to the petitioner. The Patwari and Tehsildar tried to deprive the petitioner of his land, without giving him an opportunity of hearing. Obviously, the letter dated 25.10.2005 and the actions of the District Collector are in violation of principles of natural justice.

26. Moreover, since the action of respondent No. 2 deprives the petitioner of his right of hearing, it is an arbitrary unfair and unjust act.

27. Hence, it is in violation of Article 14 of Constitution of India. Similarly, since no procedure has been followed, since letters have been issued as "farmans" (proclamations), action of the respondent No. 2 is in violation of Article 19 and 21 of the Constitution of India. Furthermore, since the law nowhere authorises the Collector to deprive the petitioner of his property in an arbitrary and unfair manner, the action of respondent No. 2 is in violation of Article 300A of the Constitution of India.

28. Although the letter dated 09.05.2005 is not under challenge before this Court, but it is essential to note that the said letter is based on the judgment delivered by this Court in the case of Smt. Rewa Choudhary (supra).

29. Unfortunately, the Deputy Secretary has misread and has misapplied the judgment delivered in the said case. A bare perusal of the judgment clearly reveals that the facts of that case were certainly different from the facts of the present one. Smt. Rewa Choudhary's husband, Mr. B.K. Choudhary, was a soldier. He was allotted ten Bigha of land for ten years through lease. But during this period, Mr. B.K. Choudhary expired and was survived by his wife, Smt. Rewa Choudhary. After the expiry of period of ten years, neither fresh lease was executed in favour of Mr. B.K. Choudhary, nor in the name of Smt. Rewa Choudhary. Although it was not necessary to initiate the proceeding for cancellation of the lease, as the lease had automatically ended after the expiry of ten years, still the Collector initiated the proceeding vide letter dated 21st March, 1980. The proceeding was initiated ostensibly on the ground that Smt. Rewa Choudhary had sold the land to a Housing society.

30. Subsequently, vide letter dated 07.05.1990, the Collector cancelled the lease. Therefore, Smt. Rewa Choudhary approached this Court challenging the said order and the action of the respondent. This Court held that neither any fresh lease was granted in favour of the petitioner's husband, nor in her favour. Therefore, she had neither a civil right, nor a fundamental right to claim any interest in the land. Under these facts, the Court dismissed her petition.

31. A bare perusal of the judgment reveals that the said case is distinguishable from the present one on the basis of factual matrix. Moreover, the judgment is in persona and not in rem. Thus, the Deputy Secretary has wrongly taken the said case to be in rem. He has erred in universally applying the said judgment. Further, in the said case, this Court did not observe that a person who is allotted a land under the Rules of 1970 cannot be given "Khatedari" rights. In fact, the issue whether "Khatedari" rights could be given to a person under Rules of 1970 or not was not even raised in the said writ petition.

32. Therefore, the conclusion drawn by the Deputy Secretary that such a principle had been annunciated by this Court is clearly misplaced. On the basis of mis-interpretation of the judgment, the Deputy Secretary had written the letter dated 09.05.2005. Therefore, Deputy Secretary had wrongly directed the District Collector to cancel the Khatedari rights, to convert the land into the "Sivai Chak" and to repossess the petitioner's land.

33. It is highly unfortunate that the public officers namely the Deputy Secretary, the Collector and the Tehsildar have carried out the entire show behind the back of the petitioner. As responsible public officers, they are constitutionally bound to issue a notice to the petitioner, to explain the case of the State against him, if any, and to receive his reply thereto.

34. The petitioner has challenged merely the letter dated 25.10.2005 as that was

the only letter which was shown to him. But considering the fact that even the letters dated 09.05.2005 and 20.10.2005 are legally unsustainable, this Court has no hesitation in quashing and setting aside the letters dated 09.05.2005 & 20.10.2005.

35. Further, this Court quashes and sets aside the letter dated 25.10.2005. Of course, the respondents are free to re-initiate the entire proceeding, provided they give ample opportunity of hearing to the petitioner before passing any adverse order with regard to his "Khatedari" rights in khasra No. 22/541 situated in Village Niwaru, Tehsil Jaipur. In case, the petitioner is aggrieved by the adverse order, if any, against him, he shall be free to challenge the same before this Court.

36. With these observations, this writ petition is allowed. No costs.