
(2009) 05 RAJ CK 0047
In the Rajasthan High Court

Fauja Singh

APPELLANT

Vs

LRs of Bishan Singh and Others

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2009) 3 WLN 103

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.—This writ petition is directed against the order dt. 07.07.1997 passed by the Board of Revenue, Rajasthan, whereby the revision petition preferred by the petitioner against the order dt. 06.05.1992 of Revenue Appellate Authority (in short "RAA"), Sri Ganganagar setting aside the allotment of the land made in favour of the petitioner vide order dt. 03.12.1990 by the Sub-Divisional Officer (in short "SDO"), Raisinghnagar, has been affirmed.

2. The petitioner was allotted barani land measuring 49.10 bighas comprising Murabba Nos. 238 and 203 in Chak Ramsara Kumaharan, District Sri Ganganagar on temporary cultivation lease in Samvat 2012 i.e. in the year 1955. He applied for the allotment of land on permanent basis. The application was dismissed on 05.06.1976 by the Competent Authority inasmuch as, the petitioner did not appear and produce any evidence in support of his claim. According to the petitioner, he preferred a fresh application for permanent allotment which was accepted by the Allotting Authority i.e. SDO, Raisinghnagar vide order dt. 02.12.1990.

3. Aggrieved by the allotment order dt. 02.12.1990, the respondents No. 1 to 4 preferred an appeal before the Revenue Appellate Authority which was allowed vide order dt. 06.05.1992 and the allotment made in favour of the petitioner was cancelled. The allotment was cancelled by the RAA on the ground that earlier on

inquiry being made, it was revealed that the petitioner is not a bona fide resident of Chak No. 43 PS and for this reason, his application for permanent allotment was rejected by the Allotting Authority vide order dt. 05.07.1976. Relying upon the inquiry report by the Naib Tehsildar and order dt. 19.11.1990 passed by the Tehsildar, the RAA arrived at the finding that the cancellation of allotment made in favour of the petitioner cannot be faulted with.

4. The revision petition preferred by the petitioner has been dismissed by the Board of Revenue by the order impugned and the order passed by the RAA cancelling the permanent allotment made in favour of the petitioner has been affirmed. The Board of Revenue opined that the land in question already stands allotted to Shri Bishan Singh and Others and their allotment has not been cancelled by the competent authority, therefore, the same land could not have been allotted to the petitioner herein.

5. It is submitted by the learned Counsel for the petitioner that the petitioner was a temporary cultivation lease holder of the year 1955 and he was cultivating the land for last 42 years, therefore, the Allotting Authority was justified in making permanent allotment of the land in question in favour of the petitioner. The learned Counsel submitted that the RAA has cancelled the allotment made in favour of the petitioner relying upon the report of the Tehsildar which is not relevant at all because neither the report was prepared in presence of the petitioner nor it was proved before the Allotting Authority by taking evidence of patwari concerned. The learned Counsel submitted that the temporary cultivation lease holder stands first in the priority of allotment and further more if the temporary cultivation lease is not cancelled, the permanent allotment cannot be denied to holder of temporary cultivation lease. The learned Counsel submitted that the cancellation of the petitioner's temporary cultivation lease by the Tehsildar, Raisinghnagar vide order dt. 19.11.1990 during the pendency of his application for permanent allotment is ex facie illegal.

6. Per contra, it is submitted by the learned Counsel appearing on behalf of the respondents No. 1 to 4 that the petitioner has not approached this Court with clean hands. It is submitted by the learned Counsel that in the writ petition, the petitioner has stated that an application made by him for permanent allotment on 05.06.1976 was dismissed because he did not appear before the trial Court and did not produce the evidence and since the decision was not given on merits, the same does not debar him for filing a fresh application. The learned Counsel submitted that as a matter of fact, the application preferred by the petitioner was rejected by the Allotting Authority vide order dt. 05.07.1976 on merits, after due consideration of the report of the Tehsildar and other material on record. It is submitted that the order dt. 05.06.1976 passed by the Allotting Authority refusing the permanent allotment having attained finality, the subsequent application preferred by the petitioner for permanent allotment could not have been entertained by the Allotting Authority. The learned Counsel submitted that the matter does not end at this, yet another application preferred by the

petitioner on 05.07.1976 was also rejected by the Allotting Authority vide order dt. 08.11.1978. That apart, it is submitted by the learned Counsel that an application for review of order impugned in the present writ petition was also preferred by the petitioner before the Board of Revenue, Rajasthan which has also been dismissed vide order dt. 31.01.2002 (Annexure R/1) by the Board of Revenue holding that the allotment order dt. 03.12.1990 was obtained by the petitioner concealing the earlier order dt. 05.07.1976 whereby the application preferred for permanent allotment was rejected by the Allotting Authority. It is submitted by the learned Counsel that in the said order, the Board has further observed that the land which had already been allotted in favour of the respondents herein could not have been allotted to the petitioner. Accordingly, it is submitted by the learned Counsel that the writ petition preferred by the petitioner concealing all these material facts deserves to be dismissed on this count alone. It is submitted by the learned Counsel that the allotment of the land in favour of the petitioner on temporary cultivation lease was also cancelled by the competent authority vide order dt. 19.11.1990, therefore, the question of permanent allotment of the land in question in favour of the petitioner on the basis of the temporary cultivation lease existing in his favour does not arise. Lastly, it is submitted by the learned Counsel that after due examination of the material on record, the RAA has arrived at a categorical finding that the petitioner was not entitled for allotment of the land which is essentially a finding of fact, which stands affirmed by the Board of Revenue, therefore, the order impugned does not warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

7. I have considered the rival submissions and perused the record.

8. A perusal of the order dt. 06.05.1992 goes to show that in the first instance, on an application being preferred by the petitioner for permanent allotment, the matter was fixed by the Allotting Authority for the petitioner's evidence on 03.05.1976. However, the petitioner did not produce any evidence and preferred yet another application on 21.06.1976 which was rejected vide order dt. 05.07.1976. However, he was given liberty to prefer a fresh application. A fresh application preferred by the petitioner on 28.08.1976 was also rejected vide order dt. 08.11.1978. It is not disputed before this Court that the application dt. 05.07.1976 preferred by the petitioner for permanent allotment was rejected by the Allotting Authority inasmuch as, after due consideration of the material on record, the petitioner was not found eligible for allotment. Instead of assailing the validity of the order passed by the Allotting Authority rejecting his application on merits after a lapse of about 14 years, the petitioner preferred yet another application before the Allotting Authority for permanent allotment of the land in question concealing the fact that his earlier application for permanent allotment already stands rejected by the Allotting Authority. Moreover, admittedly, before the allotment of the land in favour of the petitioner, vide order dt. 03.12.1992, the temporary cultivation lease existing in his favour had already been cancelled and the land stood allotted to the respondents on temporary cultivation lease

basis. Thus, even otherwise, in view of the cancellation of temporary cultivation lease of the petitioner and allotment of the land in favour of the respondent the land was not available for permanent allotment to be made in favour of the petitioner.

9. The order dt. 19.11.1990 cancelling the temporary cultivation leave of the petitioner has also not assailed by the petitioner by taking resort to the appropriate remedy available under the relevant Statute and the same has attained finality. For this reason also, the petitioner cannot claim permanent allotment of the land in his favour.

10. The finding arrived at by the Courts below that the petitioner is not eligible for allotment is based on material on record and cannot be said to be perverse so as to warrant interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

11. From perusal of the material on record, it is manifestly clear that the petitioner has deliberately concealed all the material facts as pointed out by the Counsel for the respondents noticed above from this Court while filing the writ petition assailing the orders impugned passed by the RAA and the Board of Revenue. Thus, as a matter of fact, the writ petition deserves to be dismissed on this count alone.

12. In the result, the writ petition fails, it is hereby dismissed.