
(1999) 08 RAJ CK 0024

In the Rajasthan High Court

Case No : Civil Writ Petition No. 329 of 1998

Ghasi Ram and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-08-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Land Revenue (Allotment of Land for Agriculture Purpose) Rules, 1970 — Rule 14(4)

Citation : AIR 2000 Raj 22 : (2000) 2 WLC 286

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Rekha Borana, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner No. 1 Ghashi Ram was the Sarpanch and father of petitioner No. 2. Petitioner No. 2 has married to Ganga Ram. Petitioner No. 2 Smt. Sotar Bai allotted land of 10 Bighas and 9 Biswas in Khasra No. 1036/58 of village Ghati on 30-5-1968, Petitioner No. 1 was allotted land of 16 Biswas in Khasra No. 1468/1286 of village Gram Sadri on 6-1-1975 and Ganga Ram, husband of the petitioner No. 2 and son-in-law of petitioner No. 1. Sarpanch was allotted 7 Biswas land in Khasra No. 129 of village Madri on 20-9-1976. The allotment made to all these three persons belonging to one family on different dates in different villages and for different land, was cancelled by the District Collector. Raj Samand by his order dated 28-6-1995 (An-nexure 5) in exercise of his powers under Rule 14(4) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (for short, The Rules") on the ground that Ghshi Ram, petitioner No. 1 in his capacity as a Sarpanch, not only got the allotment of land in his favour but also in favour of his daughter and his son-in-law by taking part in the Advisory Committee for the allotment of land on all three different occasions.

2. It appears from the Impugned order of cancellation dated 28-6-1995 passed by the learned District Collector, Raj Samand (Annex. 3) that this came to the notice of Beri Commission headed by Hon"ble retired Chief Justice Shri B.P. Beri of this Court. Against he impugned order of cancellation of Annex. 3, all the three persons Ghasi Ram, Ganga Ram and Smt. Sosar Bai filed a joint appeal No. 166/95 before the R.A.A. Udaipur, which was dismissed on 19-3-1996 (Annexure 4) on the ground that all the three appeals ought to have filed separate appeals against the order of cancellation, though the order of cancellation was the common out it was passed in relation to the different lands allotted to all the three appellants. On merits also, the appeal was dismissed by the Appellate Authority on the ground that under Rule 13 of Rules of 1970, the petitioner was not entitled to participate in the Advisory Committee for the allotment. It is also found that the appellant No. 1 Sarpanch had already lot of land and he was not a landless person. It also found that appellant No. 2 Ganga Ram son-in-law of Sarpanch present petitioner No. 1, was residing at some other village and without, disclosing all these facts, the Sarpanch got the land allotted to his son-in-law. Similarly , appellant No. 3 Sosar Bai, who was the daughter of appellant No. 1 Sarpanch and wife of Ganga Ram, appellant No. 2, cannot be said to be landless because her father had already lot of land. Thus, all the three appellants belonging to one family got the land allotted at different places in different years under the class of the then Sarpanch, Gashi Ram present petitioner No. 1, which is illegal and against the Rules.

3. Aggrieved of the order of at Annex. 4 passed by R.A.A. dismissing the common appeal filed by the appellants, all the three appellants filed second appeal before the Board of Revenue, which was also came to be dismissed on 9-6-1997 (Annex. 6) by the Board of Revenue. In para 6 of its judgment, the Board of Revenue has clearly observed that Ghashi Ram, the Sarpanch of Gram Panehayat, who was present in all the three meetings and got the land allotted for himself, for his daughter and for son-in-law, which is not befitting a person who was Sarpanch. Report of Beri Commission also shows that such allotment was against the Rules and ought not to have been made. Board of Revenue also rejected the submission that within 2-1/2 years, Lagan was also deposited at 2-/12 times on which they got the Khatedara rights. Therefore, their allotment cannot be cancelled. Such argument cannot be accepted because when Sarpanch himself does like this then what a common man will expect? The Board of Revenue has gone to that extent by saying that if such error apparent was brought to its notice then the Board of Revenue itself would have exercised its powers u/s 9 of the Land Revenue Act and cancel such allotment. The Board of Revenue also rejected the contention that the cancellation order was passed in absence of the appellants because they deliberately did not remain present at the time of cancellation. These orders at Annexures 3, 4 and 6 passed by the Collector, Rajasmand. R.A.A. and Board of Revenue respectively have been challenged by the petitioner in this present petition, which is filed under Article 226/227 of the Constitution of India.

Learned counsel Ms. Borana for the petitioners vehemently submitted that before passing the impugned order (Annex. 3) dated 28-6-1995, the petitioners were not heard by the District Collector. Rajsamand, therefore, the impugned order is liable to be set aside. It may be stated that out of three only present two petitioners viz., Ghashi Ram petitioner No. 1, who was Sarpanch and his daughter Smt. Sosar Bai petitioner No. 2, only have filed this petition whereas Ganga Ram, husband of petitioner No. 2 is son-in-law of petitioner No. 1 has not filed any petition against the impugned orders Annexures 3, 4 and 6 passed by the District Collector, R.A.A. and Board of Revenue respectively. From para No. 6 of the order of the Board of Revenue, it is clear that though served with the notice, deliberately, they have not remained present before the Collector therefore, the ex parte order was passed. Hence, this submission of Ms. Boarana deserves to be rejected and it is rejected.

4. Ms. Boarana then contended that after conferment of Khatedari rights in favour of the petitioners, the Collector had no powers to cancel the Patta under Rule 14(4) of the Rules, 1970. In support of her submission, she has relied upon Division Bench judgment of this Court in case of Pat Ram v. State of Rajasthan 1995 DNJ 592. It is true that in case of Pat Ram (supra), the Division Bench of this Court has held that after the conferment of Khatedari rights upon the tenant the allotment of the land cannot be cancelled by the Collector under Rule 14(4) of the Rules, 1970 as the Collector has no power under Rule 14(4) of the Rules and conferment of Khatedari rights can only be withdrawn under the provisions of the Rajasthan Tenancy Act, 1955.

5. In Pat Ram's case (supra), petitioners Pat Ram and Bhagwana Ram were allotted Barani land of village Jhajhu by the Tehsildar on 7-3-1963 under the old Rules to 1957. On 15-5-1974, the Khatedari rights with respect to the said land were conferred upon them and they became the Khatedar tenants of the land in question. Thereafter, once Har Lal filed a complaint before the Collector under Rule 14(4) of the Rules, 1970 to cancel the allotment on the ground that they have wrongly shown their residents at village vijaysinghapura whereas they were actually residing at village Rasisar and the allotment was made by the Tehsildar without consultation of the Advisory Committee and the land was not cultivated by them for a long period. On such grievance, the allotment of land in question was cancelled by the Collector in exercise of powers under Rule 14(4) of the Rules of 1970. The said order was confirmed in appeal by R.A.A. and in second appeal by the Board of Revenue. Against that orders, the petitioners filed writ petition before this Court.

6. It may be stated that in Pat Ram's case (1995 DNJ 592) the Division Bench in para 5 of its judgment has clearly observed that Rule 14(4) of the Rules, 1970 specifically authorises the Collector to pass an order for cancellation of the allotment if the allotment has been obtained by fraud or misrepresentation or it has been made against the Rules or the allottee has committed any breach of conditions of allotment. The Division Bench has also clearly held that the

Collector is, therefore, authorised under the Act to pass an order for cancellation of allotment. However, the question, which was considered by the Division Bench in Pat Ram" case was; "Whether any of the Conditions mentioned in Sub-rule (4) of Rule 14 was available to the Collector for cancellation of the allotment made in favour of the petitioners or whether the allotment of the land, in the present case, was obtained by the petitioner on the basis of any fraud or misrepresentation made by the them or the allotment was made against any of the Rules ?"

7. In Pat Ram's case (1998 DNJ 592) (supra), the petitioners being landless persons applied for the allotment of the land in Form III appended to the Rules under Rule 7 of the Rules of 1957. The initial allotment under the Rules was made in their favour on the ground of their being Gair Khatedar tenants with a right to allotment by conferment of the Khatedari rights after the expiry of the period often years provided the allottee fulfils the requisite terms and conditions for allotment of the land. After the completion of period of ten years the Khatedari rights were conferred on the petitioner on 15-5-972. Thus, in that case the Division Bench found that any of the conditions of the allotment were not violated. Form III in which the application was made, contain only three conditions viz. (1) the applicant should be landless person within the meaning of Clause (iii) of Rule 2 of the Rules, 1957, (ii) the applicants do not possess any agricultural land for cultivation either in their own names or in the name of the any of the members, of their family; and (iii) that the applicant requires the land for personal cultivation. Except these three conditions, there was no such other condition of residence provided under the Rules of 1957 for allotment of the land, therefore, it was held that neither there was a misrepresentation nor fraud was committed by the petitioners in getting the allotment made in their favour.

8. In Pat Ram's case (1995 DNJ (Raj) 592) the allotment was cancelled by the Collector on the ground that they were not cultivating the land for sometime. The argument of the petitioner in Pat Ram's case was that due to draught for some years the land was not cultivated. In this background of the case, the Division Bench held in Pat Ram's case that the Collector had no power under Rule 14(4) of the Rules to cancel the allotment made in favour of the petitioners with respect of the land in which the Khatedari rights were already conferred upon them.

9. Coming to the facts of this case, it is clear that the petitioner No. 1 being Sarpanch, was not entitled to participate in the three members Advisory Committee for the purpose of allotting the land to himself, his daughter and his son-in-law as provided under Rule 13(3) of the Allotment Rules, 1970. It is also not in dispute that petitioner No. 1 Ghasi Ram Sarpanch had already 86.17 bighas land at the time of allotment of another land on 20-9-1976. Thus, he was not a landless person, therefore, not entitled for the allotment. Report shows that he was a resident of village Baman Tukra whereas the land was allotted in village Madri. Similarly, the petitioner No. 2 Sosar Bai was resident of village

Madri but she was allotted the land in village Ghati when his father had land of 86.17 Bighas. Ganga Ram, son-in-law of petitioner No. 1 and husband of petitioner No. 2 has not filed petition before this Court against the impugned orders at Annexs. 3, 4 and 6, therefore, there is no need for me to deal his case and qua him the impugned orders at Annexures 3, 4, and 6 have become final,

10. Thus, on facts of the present case, the judgment of Division Bench of this Court in Pat Ram's case (1995 DNJ 592) (supra) will not be of any help to the petitioners. Hence, the second submission of Ms. Borana is also rejected.

11. Miss Borana then contended that there was a gross delay on the part of the Collector in exercising his powers under Rule 14(4) of the Rules, 1970 in cancelling the allotment of land which the petitioners have developed, nourished and cultivated for all these years. She submitted that though there is no limitation provided for exercising such powers as held by the Supreme Court in case of Mansaram Vs. S.P. Pathak and Others, and in case of Mahendra Singh v. State of Rajasthan (1989) 1 Raj LR 221 by the Division Bench of this Court, the statutory powers should have been exercised within a reasonable time. It is true that there is no period of limitation provided in exercising the powers under Rule 14(4) of the Rules of 1970. Therefore, the powers should be exercised in a reasonable time, However, it depends upon the facts of each case. In this case, scandal of Sarpanch in allotting land to himself, his daughter and his son-in-law making it a fully family business came to the notice of the Collector on the report of the Beri Commission headed by the then Chief Justice Hon'ble Mr. Justice B.P. Beri of this Court. As soon as it came to the notice of the Collector, the powers were exercised and it was found that the allotment was made in favour of the Sarpanch, his daughter and his son-in-law, was wholly in violation of the Rules. Thus, the allotment made in favour of the petitioners and Shri Ganga Ram was void ab initio, therefore, the delay in such cases would never be the matter for the Collector to exercise his powers.

12. Lastly, Ms. Borana relied upon a judgment of the Supreme Court in case of Brij Lal Vs. Board of Revenue and Others, . It is true that in Brij Lal's case the Hon'ble Supreme Court observed that it would be a travesty of Justice to dispossess the appellant from the land which he has nourished for over a period of two decades. But, in that case facts were totally different. On the date on which appellant Brij Lal applied for the permanent allotment, he was already holding the temporary allotment. The allegation against him was that he had procured the alleged allotment by giving wrong statement regarding his age because at that time he was minor. In peculiar facts of that case, the Hon'ble Supreme Court has made such observations.

13. I have already narrated the facts of this case, therefore, it is not required to be repeated. The facts of this case were so much glaring that the Board of Revenue has also observed in para No. 6 of its judgment that if such errors were brought to its notice then it would have exercised its powers u/s 9 of the Act and would have cancelled the allotment.

14. Before parting, I must state that the R.A.A. dismissed the joint appeal filed by three appellants. Ghasi Ram, Ganga Ram and Sosar Bai on the ground that three separate appeals were required to be filed. When there were three separate allotments for different land then, in my opinion, the R.A.A. was fully justified in dismissing the joint appeal on this count alone. Similarly, this writ petition was also required to be dismissed because these two petitioners would not have filed joint writ petition and ought to have filed separate petitions.

15. In view of the above discussions, I do not find any substance and merit in this petition. Accordingly it fails and is dismissed.