
(2001) 02 RAJ CK 0145

In the Rajasthan High Court

Case No : Revision No. 126/Colo/Bikaner of 2000

Gulam Haider

APPELLANT

Vs

Narainsingh

RESPONDENT

Date of Decision : 27-02-2001

Acts Referred:

Citation : (2001) 02 RAJ CK 0145

Hon'ble Judges : G.P. Sharma, Member

Bench : Single Bench

Judgement

1. This is revision petition filed under Rule 23(2) of the Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Project Area) Rules 1975 against the judgment of Collector Bikaner dated 8.3.2000. Brief facts of this revision are that in chak 4 BJMD murraba No. 164/14 measuring 17 bigha was allotted to present non-petitioner on 18.10.75, Khatedari was also given to him in the year 1991. After i! present applicant No.I purchased it from the present non-petitioner through registered sale deed dated 17.12.91. Mutation of which was also sanctioned on 14.2.92. Yet Collector while passing the impugned judgment cancelled it. No notice was given to the present petitioner by the Collector while passing the impugned judgment. Hence the revision.

Heard the parties and perused the record.

(2). Counsel appearing for the applicant argued that present non-applicant No.I was allotted permanent murraba No. 164/14 measuring 17 bighas on 18.10.75 and khatedari was also given to him in the year 1991 and thereupon through registered sale deed dated 17.12.91 he sold this land the present application mutation of which was also sanctioned in follow up action as mutation No.71 dated 14.2.92. Under these circumstances it was incumbent upon the Collector to give him opportunity of being heard and notice of the same. Het he has passed order though this fact was brought to his knowledge by his vendor the present non-application No.I. In fact when in the year 1975 the allotment was made in favour of the non-applicant No.I he was bonafide agriculturist and the

alleged allegation that he was holding world food depot was perse wrong and illegal because he was another Narainsingh his father's name was also different. Even otherwise report of Tehsildar shows that depot was only in the year 1978-79 but the present allotment was made in the year 1975. Another allegation which was levied against non-petitioner No. 1 that he was student in the year 1976-77 that is equally fallen on the ground because allotment was made in the year 1975 and if subsequent to allotment somebody wants to join some school that cannot be deemed to be disqualification for the allotment.

(3). On the contrary non-applicant No.1 supported the contention of counsel for the applicant. Counsel appearing for the State supported the impugned judgment but urged that reasonable opportunity should be given to the present applicant. However he also submits that instead of remanding the case the matter can be decided at this level.

(4). After thoughtful examine of the submission made by the rival parties and perusal of the record I am of the view that since in the present case certain facts which are borne out from the record are obvious that murraba No. 164/14 measuring 17 bighas was initially allotted to the present non-petitioner No.1 on 18.10.75. Khatedari of this land was conferred on him in the year 1991 and mutation was also sanctioned to this effect to his favour. Subsequently he sold this land to the present applicant through registered sale deed dated 17.12.91 and mutation in follow up action was also made in favour of present applicant on 14.2.92 that is to say that he had also given khatedari rights on the basis of sale deed. Now the question arises that whether under these circumstances can allotment made permanently in favour of non-petitioner No. 1 can be set aside or quashed on two grounds that is he was carrying world food depot in the year 1978-79 and in the year 1976-77 he began to studying in some school. According to my view both the grounds have fallen and have no legs to stand because the crucial period of allotment is to be seen not otherwise when it is admitted fact that permanent allotment was made in favour of present non-applicant No.1 in the year 1975. Under the rules we are expected to see the state of affairs on the date of allotment and not for the ensuing period. It is admitted fact that in the year 1975 he was not having for sake of arguments even the said world food depot. Firstly there is ample evidence on the record to show that this world food depot was not carried by him. In fact there was somebody else named Narainsingh and his parentage was also different. To this argument State had not controverted it by adducing precise evidence. Secondly if the present non-petitioner No. 1 after getting permanent allotment happen to stf studying in some institution that cannot be a ground for to cancel the permanent allotment. We should interpret the law in the way so that we can advance justice but we should not interpret the law just to punish the man for no fault of him. Besides this it is also evident that since after getting khatedari rights the present non-petitioner No.1 sold this land to the present applicant and this fact was brought to the knowledge of the Collector by producing mutation entry yet he did not bother to give reasonable opportunity of being heard to the present applicant. This is

also fatal to the impugned judgment. There is cardinal principle of law that no man should be hurt unheard. Even otherwise there was no jurisdiction for the authorities below to reject the permanent allotment on the ground that non-petitioner No. 1 became student after permanent allotment. There is no rule to this effect that allotment can be set aside on this count moreso it is not disputed before me that the non-petitioner was in cultivatory possession from the date of allotment and after getting khatedari rights he had sold through registered sale deed to the present applicant and the present applicant is also cultivating the same since then. It would be travesty of justice to dispossess the applicant or non-applicant from the land which they are nourishing for over a period of 2 1/2 decades as held by Hon''ble Supreme Court of India reported case namely Surenderpalsingh vs. Board of Revenue and others. (1)

(5). Consequently on the reasons indicated above the present revision is accepted, impugned judgment of Collector dated 8.3.2000 is quashed and the permanent allotment made in favour of present non-petitioner No.1 is maintained.

Pronounced in open court.