
(2013) 05 RAJ CK 0192

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 286 of 2013 in Civil Writ Petition No. 3298 of 2012

Kailash Chand Jaat

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Citation : (2013) 4 WLN 396

Hon'ble Judges : Narendra Kumar Jain, J; Meena V. Gomber, J

Bench : Division Bench

Advocate : M.S. Raghav, for the Appellant; K. Verma, Additional Government Counsel for Respondent Nos. 1 to 3, Mr. Ajay Rajawat, Advocate for Respondent No. 4 and Mr. Brijesh Yadav, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Narendra Kumar Jain, J

1. Since Mr. Ajay Rajawat, Counsel appears on behalf of respondent No. 4, therefore, service of respondent No. 4 is complete. Heard finally with the consent of the learned counsel for the parties.

2. Learned counsel for appellant has filed an application (I.A. No. 175/2013) under Sec. 5 of the Limitation Act for condonation of delay in filing the appeal. Since appeal was filed in time, therefore, no order is required to be passed on the said application and the same stands disposed of.

3. This intra-Court appeal is directed against the order of the Single Bench dt. 11.01.2013, whereby application filed by Mr. Kailash Chand Jaat, the present appellant (who was respondent No. 4 in the writ petition), under Article 226(3) of the Constitution of India, to vacate an ad interim ex-parte stay order dt. 14.03.2012, has been dismissed.

4. From the submissions of the learned counsel for the parties and the material

available on record, it appears that a fair price shop was allotted to the appellant vide order dt 02.03.2012 in village Panchayat Mothuka. The shop was to be opened at Fatehpur, District Alwar. The writ petition was filed to quash the order dt. 02.03.2012. The writ petitioner further prayed that respondents may be directed to allot a fair price shop to him. The learned Single Judge, vide its order dt. 14.03.2012, passed an ex-parte interim stay order staying the operation of order dt. 02.03.2012, pertaining to allotment of a fair price shop in favour of respondent No. 4 (the present appellant). Respondent No. 4 filed an application under Article 226(3) of the Constitution of India for vacation of ex-parte stay order dt. 14.03.2012, but his application has been dismissed by the Single Bench vide order dt. 11.01.2013, which is impugned in this intra-Court appeal.

5. Submission of the learned counsel for appellant is that the learned Single Judge was influenced with the fact that in the allotment committee, wife of appellant was one of the members, whereas real fact is that wife of appellant did not participate in the meeting when the case of appellant was taken up.

6. Learned counsel for respondents supported the impugned order and prayed for dismissal of the intra-Court appeal.

7. Mr. K. Verma, learned Additional Government Counsel, submitted that it was specifically pleaded before the Single Bench that wife of present appellant filed a specific affidavit informing the Board that as her husband is one of the applicants for allotment of a fair price shop, she will not participate in the proceedings. The said affidavit is also placed on record. Mr. Verma, therefore, submitted that there was no illegality in allotting the shop in favour of the present appellant and the learned Single Judge was not right in rejecting the application under Article 226(3) of the Constitution of India.

8. We have considered the submissions of the learned counsel for the parties and examined the impugned order dt. 11.01.2013 as well as ex-parte stay order dt. 14.03.2012 passed by the Single Bench.

9. The learned Additional Government Counsel has specifically pleaded that wife of appellant did not participate in the proceedings relating to allotment of a fair price shop in favour of the present appellant. He further submitted that wife of appellant filed an affidavit stating therein that since her husband is one of the applicants, therefore, she will not participate in the proceedings. He also submitted that there was a circular of the State Government to the effect that in case, any relative of member of Board is interested in allotment of a shop, then the particular member of Board will not participate in the allotment proceedings. Mr. Verma, therefore, supported the stand of the State Government and submitted that allotment proceedings, were absolutely legal and justified and in accordance with the circular of the State Government as well as law.

10. Apart from merits of the case, we further find that ex-parte stay order dt. 14.03.2012, in fact, amounts to allowing the writ petition itself finally, whereas it is a settled law that interim order should not be passed in such a manner, so as

to allow the writ petition finally. In these circumstances, instead of rejecting the application under Article 226(3) of the Constitution of India, the writ petition itself should have been disposed of, finally.

11. In view of above discussion, we allow this intra-Court appeal and set aside the impugned order dt. 11.01.2013 as well as interim stay order dt. 14.03.2012, passed by the Single Bench and requests the Single Bench to decide the writ petition finally. We further direct that parties shall maintain status-quo, as it exists today, during pendency of the writ petition before the Single Bench. However, it will be open for the appellant to move an application before the Single Bench to allow him to operate the fair price shop allotted in his favour, on provisional basis, in case the writ petition is not heard and disposed of finally at an early date.

12. Stay Application No. 2565/2013 also stands disposed of. Registry is directed to list S.B. Civil Writ Petition No. 3298/2012 before the Single Bench for final disposal on 11.07.2013, as prayed.