
(1988) 08 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Writ Petition No. 221/78/LR/Jaipur

Kajod

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision : 18-08-1988

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 1 WLN 368

Hon'ble Judges : J.S. Verma, C.J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The petition is directed against the order (Annexure-M) dated 14-12-1976 passed by the Board of Revenue. The impugned order is a common order in three proceedings which arose substantially in the same set of facts. The petitioner Kajod was in unauthorised occupation of Khasra No. 938 in village Kachroli measuring 10 Bighas 2 Biswas, which was recorded as "Gair Mumkin Pokhar" (Talai). Proceedings u/s 91 of the Land Revenue Act were initiated by the Tehsildar for his eviction. More ever, the petitioner approached the SDO, who passed an order altering the soil classification from "Gair Mumkin" to "Barani". As a result of this change, the land was allotted to the petitioner. Members of the public, being aggrieved by this act of conversion of a land meant for public, preferred an appeal, which was allowed In the mean time, mutation having been made in favour of the petitioner Kajod, that too was challenged It is these proceedings which came to be finally decided by the impugned order (Annexure-M) dated 14-12-1976 passed by the Board of Revenue.

2. Learned counsel for the petitioner in fairness pointed out the decision of this Court in Jai Narain Vs. The Board of Revenue and Others, in which it is already held that conversion of the land recorded in the record of rights as "Gair Mumkin Talai" into "Barani" and its allotment thereafter by, the SDO is contrary to law. The situation in the present case being similar, it must be held that conversion of

the land in this manner and thereafter its allotment to petitioner Kajod was clearly in contravention of the relevant statutory provisions. The question, therefore, is whether in these circumstances there is any ground to interfere in petitioner's favour with the Board's order, which has set aside this illegality.

3. Learned counsel for the petitioner contended that the challenge made by member of the public was to the conversion of the land in the above manner and not thereafter to its allotment in favour of the petitioner. In our opinion, this contention cannot be accepted. The allotment in petitioner's favour could be sustained only if the prior conversion of the land was in accordance with law. Admittedly, the conversion of the land from "Gair Mumkin" to "Barani" was contrary to the statutory provisions and therefore, the allotment thereafter, to the petitioner was clearly illegal. In such a situation, there is no occasion to exercise the extra-ordinary and discretionary power under Article 226 of the Constitution in petitioner's favour on mere technicality, which ultimately on close scrutiny has no substance. This writ petition, therefore, must fail.

4. Consequently, the writ petition is dismissed. However, if the State Government decides to convert the land into cultivable land in accordance with law, and then decides to allot the same, the petitioner's prayer for allotment may also be considered and decided on merits on a proper application made for that purpose by the petitioner to the competent authority.

No costs.