

(2012) 01 RAJ CK 0043
In the Rajasthan High Court
Case No : Civil Writ Petition No. 263 of 2012

Kanaram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 06-01-2012

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2012) 1 WLN 497

Hon'ble Judges : Ajay Rastogi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant petition is directed against the order passed by the JDA Tribunal dt. 11.11.2011.

2. From the material which has come on record, it appears that Award came to be passed by the authority on 31.07.1978 and it was decided to allot a plot a(sic)measuring 250 sq. yds. to the original recorded tenant and it goes without saying that once the land stood acquired and in lieu thereof plot admeasuring 250 sq. yds. was to be allotted to the recorded tenant the rest of the land was to be surrendered by him after being finally acquired and vested with the State Government free from all encumbrances. When the authority initiated action for dispossession from the subject land over and above 250 sq. yds which was allotted to the recorded tenant a reference came to be filed by the legal heirs of recorded tenant before the JDA Tribunal.

3. The Tribunal after hearing the parties observed that recorded tenant/legal heirs may be allotted a plot of 250 sq. yds in terms of the Award dt.31.07.1978 which attained finality and the authority will be free to dispossess from rest of the land if anyone is in possession thereof.

4. The main thrust of submission of counsel is that such of the Awardees who were similarly situated and the lands were acquired by the Appropriate

Government the plot which was allotted to them was in addition to the allotment which was referred to in the Award and document to this effect has been placed on record to justify and despite the petitioner being similarly situated is entitled for allotment of rest of the land may be at the reserve price or the rates which the Government may considers appropriate but in such circumstances dispossession of the petitioners from the land even if acquired and vested in the State Government free from all encumbrances was not permitted under law and this what the Tribunal has failed to consider while passing the order impugned dt.11.11.2011.

5. The submission made is wholly bereft of merit for the reason that once the Award came to be passed way back on 31.07.1978 and it was decided to allot plot to the recorded tenant of 250 sq. yds. obviously in conformity and in furtherance of land which was acquired by the Appropriate Government and that being so the recorded tenant was entitled to allotment of plot ad-measuring 250 sq. yds in terms of the Award which was not subject matter of challenge and if the recorded tenant or his legal heirs/representatives are in possession of land in excess of what was allotted to them in terms of the Award they are indisputably the encroachers and the authority is within its jurisdiction to take decision for their dispossession obviously after adopting due process of law.

6. As regards the submission made regarding allotment of plot in addition to what was referred to in the Award no inference can be drawn by this Court as to what was the material and consideration prevailed upon the authority in granting/ making allotment of plot to respective recorded tenants but even if that being so there could always be a positive discrimination which could be looked into by this Court under its limited scope of judicial review and if any alleged allotment made was not in conformity with the Award at least no benefit could be derived by the petitioner.

7. The Tribunal also examined in detail and found no infirmity in the decision making process adopted by the respondent in removing the encroachment if any over and above allotment made to the recorded tenant and that being so this Court does not find any manifest error being committed by the Tribunal in passing of the order impugned which may require interference under Arts. 226 & 227 of the Constitution.

8. Consequently, the petition fails and is hereby dismissed.