

(1995) 03 RAJ CK 0060

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 173, 174, 175, 212, 222, 224, 225, 227, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 269, 270, 272, 290, 302, 303, 304, 305, 306, 322, 324, 325, 327, 328, 329, 337, 349, 350, 390, 409, 455, 456, 457, 725, 726, 727

Lal Chand and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-03-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 2 RLW 136 : (1996) 1 WLC 331 : (1995) 1 WLN 649

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The Instant writ petition and other writ petitions have been filed seeking reliefs to quash the demand for the price of the lands allotted to them at four times rate of "reserve price" as contemplated in the notification dated 4.6.81 (Annex. 1) and further prayed to restrain the respondents from charging the said price from them under the proviso to the said notification Anx. 1 to the writ petitions. Since in all these writ petitions, common questions of law and facts are involved, hence these petitions are being decided on merits by a common judgment treating S.B. Civil Writ Petition No. 830 of 1994 as a leading case in which reply to the writ petition has been filed on behalf of the respondents.

2. Brief facts necessary for deciding these writ petitions are to be noticed that Bada Hardwari Nath Dharmarth Trust and Bada Mawasi Nath Dharmarth Trust were land-owners of agricultural lands situated in Gang Canal Area of Tehsil Sri Ganganagar. The lands in dispute have been acquired under Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "Act No. 11 of 1973") within the meaning of Section 16 of the said Act, which provides that the surplus lands held by the land-holders and shown in the final settlement shall be

deemed to have been acquired by the State Government and the same shall from the date of service of the final statement on a person, vest absolutely in the State Government free from all incumbrances.

3. After coming into force of Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) (Amendment) Rules, 1990 with effect from 26.12.1990, the persons in whose favour the allotment was made by order dated 11.7.1974 were advised to apply for allotment under the Gang Canal Permanent Allotment Rules. As the earlier allotment made by the Sub-Divisional Officer on the basis of the order dated 11.7.74 was not found according to law, therefore, all these petitioners were directed to apply for fresh allotment under the Gang Canal Permanent Allotment Rules.

4. It is also alleged in para 12 of the writ petition that the Sub-Divisional Officer made permanent allotment in favour of the petitioners at the reserve price, which was fixed at the rate of Rs. 1.225/- and Rs. 875/- per bigha in respect of the petitioners' lands, which are perennial and non-perennial irrigated lands respectively. It is also stated in paragraph 13 of the writ petition that all the lands which were formerly the Trusts lands including the lands allotted to the petitions, are within the radius of 12 Kms. from the periphery of the city of Sri Ganganagar.

5. After service of notices, the answering respondents have filed a detailed return denying the averments made in the writ petition. It is stated in the reply by the answering-respondents that after coming into force the provision of ceiling under the Rajasthan Tenancy Act, proceedings were initiated and accordingly, orders were passed with respect to two Trusts named-above by the Sub-Divisional Officer on 8.12.70. According to the answering-respondents, even after decision of the Sub-Divisional Officer dated 8.12.70, the matter was re-opened by the Sub-Divisional Officer and he illegally and arbitrarily without any sanction of law passed the order dated 11.7.94 making certain allotments of the lands in dispute to the petitioners. However, when the matter came to the notice of the State Government with regard to the order of the Sub-Divisional Officer dated 11.7.94, the same was processed and re-opened by the State Government under the non-obstinate Section 15 of Act No. 11 of 1973 by passing two orders dated 16.8.82 and 6.9.82, which are filed along with the reply and marked as Ex. R/1 and Ex. R/2 respectively.

6. It is also stated in the reply to the writ petition that in terms of the aforesaid orders Ex. R/1 and Ex. R/2, the matter was referred to the Additional Collector, Sri Ganganagar, which was ultimately dealt with in accordance with law.

7. The answering-respondents have specifically stated in paragraph 5 of the reply that the State Government on 26.12.1990 in exercise of the powers conferred by Section 28 read with Section 7 of the Rajasthan Colonisation Act, 1954 amended the Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956. A cyclostyle copy of the said notification dated 26.12.90 is filed as

Ex. R/3 to the reply.

8. I have heard Mr. B.L. Purohit, learned Counsel for the petitioners as well as Mr. M.R. Singhvi, learned Counsel appearing on behalf of the answering-respondents at length and critically gone through the material available on record.

9. During the course of argument learned Counsel appearing on behalf of petitioner Mr. B.L. Purohit admitted that the lands in dispute have been allotted to all these petitioners under the Amended Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 vide notification dated 26.12.90 Ex. R/3 to the reply, issued by the State Government in exercise of the powers conferred by Section 28 read with Sec 7 of the Rajasthan Colonisation Act 1954. It is not disputed before me by the learned Counsel for the petitioner that the very first time, these petitioners before this Court got entitlement for permanent allotment of the lands in dispute by virtue of notification dated 26.12.90 being in continuous cultivatory/possession of the lands not exceeding 25 Bighas of irrigated lands or equivalent thereof at "reserve price" within the meaning of notification dated 4.6.81 Annx. 1 to the writ petition issued by the State Government in exercise of the powers conferred by Rule 7 of the Rajasthan Colonisation(Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 In supersession of all the notifications issued in this behalf.

10. The main thrust of argument of Mr. B.L. Purohit, learned Counsel for the petitioner is that in the present set of circumstances, the proviso of the aforesaid notification dated 4.6.81 Annx. 1 to the writ petition cannot be pressed into service for creating demands by the answering-respondents for the lands allotted to these petitioners at four times the rate of "reserve price."

11. Learned counsel appearing on behalf of answering-respondents Mr. M.R. Singhvi refuted the aforesaid argument advanced on behalf of the petitioners" counsel Mrs. B.L. Purohit and urged before me that once it is admitted by the petitioners that the lands in dispute are allotted to these petitioners under the Amended Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 vide notification dated 26.12.90 Ex. R/3 to the reply then the petitioners have no option but to pay "reserve price" as defined under notification dated 4.6.81 which has been filed by the petitioners themselves as Annx. 1 along with the writ petition. It is further submitted by Mr. M.R. Singhvi, learned Counsel for the respondents that the petitioners in these petitions have neither challenged the validity of the notification dated 4.6.81 Annx. 1 to the writ petition nor they have challenged the validity of notification dated 26.12.90 Ex. R/3 to the reply therefore they are liable to pay the "reserve price" as contemplated under proviso to the notification dated 4.6.81.

12. I have given my thoughtful consideration to the rival contention raised at the Bar. In my humble opinion, in these petitions, this Court is called upon to adjudicate the two following short questions:

(i) What is meaning of "reserve price" as contemplated under notification dated

26.12.90 Ex. R/3 to the reply?

(ii) Whether proviso to notification dated 4.6.81 Annx. 1 to the writ petition can be pressed into service in these cases?

Since both these questions formulated above are interlinked, hence, I propose to discuss these two questions together.

13. It is not disputed that the words "reserve price" have not been defined under the Amended Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1990, therefore, according to both the learned Counsel for the parties, the definition of "reserve price" given in the notification dated 4.6.81 Annx. 1 to the writ petition, are applicable in these case. According to the learned Counsel for the petitioner "reserve price" means in case of Nahri Perennial category of land at Section No. 1 at the rate of Rs. 1,225/-per bigha, in case of Nehri Non-perennial category of land at Section No. 2 at the rate of Rs. 875/-per bigha and in case of Barani category of land at Section No. 3 at the rate of Rs. 437.50 per bigha as indicated in the notification dated 4.6.81 Annx. 1 to the writ petition, therefore, according to him, proviso of notification dated 4.6.81 cannot be pressed into service in these cases:

14. In my considered opinion, the first part of the aforesaid argument is correct but so far as later part of his argument about applicability of proviso of notification dated 4.6.81 Annx. 1 to the writ petition has obviously been raised merely to be rejected in view of the petitioners own admission made in paragraph 13 of the writ petition, which is quoted below:

13. That all the lands which were formerly the trusts lands, including the lands allotted to the petitioners, are within a radius of 12 kms. from the periphery of the city of Sri Ganganagar.

15. In my humble opinion, the "reserve price" of category of lands mentioned at Section No. 1, 2 and 3 in the notification dated 4.6.81 Annx. 1 to the writ petition would be Rs. 1,225/-, Rs. 875/-and Rs. 437.50 per bigha respectively. But if the aforesaid three categories of lands are situated within the radius of 12 Kms. from the petiphery of the City having population of 1 lac persons or more or within the radius of 8 Kms. from the periphery of the town having population of 50,000 or more but less than 1 lac persons or within the radius of 3 Kms. from the periphery of the town having population of 25,000 or more but less than 50,000 persons then the "reserve price" of each aforesaid three categories of lands are required to be multiplied by four and amounts so calculated would be its "reserve price" and an argument contrary to it, is not acceptable to me.

16. In order to examine the second question formulated above, whether the proviso of notification dated 4.6.81 Annx. 1 to the writ petition can be pressed into service it would be suffice to hold that if the following conditions are satisfied then proviso can be pressed into service;-

(1) If nature of the land "Johar Paitan land" which is situated anywhere in Gang

Canal Area, the proviso will be attracted. The facts of the case as stated by both the learned Counsel for the parties, this kind of land is not in dispute, therefore, this condition is not required to be fulfilled.

(2) If the three categories of lands shown at Section No. 1, 2 and 3 i.e. Nehri Perennial land, Nehri Non-perennial lands and Barani lands are situated within the radius of 12 kms. from the periphery of the city having population of 1 lac persons or more, or within the radius of 8 Kms from the periphery of a town having population of 50,000 or more but less than one lakh persons, or within a radius of 3 Kms. from the periphery of a town having population of 25,000 persons or more but less than 50,000 persons, the "reserve price" of each aforementioned categories are required to be multiplied by four and the price so calculated would be its "reserve price". This condition is fulfilled in view of the admission made by the petitioners in paragraph 13 of their writ petition, therefore, the proviso of notification dated 4.6.81 Annx. 1 to the writ petition is attracted and can be pressed into service to the lands allotted to the petitioners and an argument contrary to it is to be repelled. No foundation is led in the writ petitions that the population of the city of Sri Ganganagar is less than 1 Lakh and learned Counsel appearing on behalf of the petitioners did not raise the question about the population as contemplated in the notification, therefore, it must be presumed that the lands in dispute allotted to the petitioners are situated within the radius of 12 Kms. from the periphery of the city of Sri Ganganagar having the requisite population as contemplated in the notification dated 4.6.81 Annx. 1 to the writ petition.

(3) The nature of lands enumerated in the second condition aforesaid, must be a Government land. The third condition for attracting the applicability of proviso of notification dated. 4.6.81 requires a little probe as to whether the lands in dispute allotted to the petitioners, are Government lands. In this respect, it is suffice to observe that the answering-respondents have made detailed averments in paragraph 5 of their reply to the effect that when the matter came to the notice of the State Government with regard to illegal order dated 11.7.1974 passed by the Sub-Divisional Officer then the same was processed and was re-opened by the State Government by invoking non-obstinate Section 15 of Act No. 11 of 1973 vide orders dated 16.8.82 and 6.9.82 Ex. R/1 and Ex. R/2 respectively filed along with reply by the answering-respondents. It is further categorically stated that in terms of the orders Ex. R/1 and Ex. R/2, the matter was referred to the Additional Collector, Sri Ganganagar to be dealt with in accordance with law which ultimately dealt with the same. In view of the aforesaid averments made in the reply by necessary implications the lands in dispute allotted to the petitioners will be deemed to have vested in the Government of Rajasthan free from all encumbrances u/s 16 of Act No. 11 of 1973, therefore, in the present case, the lands in dispute allotted to the petitioners are Government lands, hence, third condition is also fulfilled to attract the applicability of proviso of notification Annx. 1 to the writ petition and as such, the proviso can be pressed into service and an argument contrary to it raised on

behalf of the petitioners, is hereby repelled.

(4) According to Mr. B.L. Purohit, learned Counsel for the petitioner in order to attract the applicability of the proviso of notification dated 4.6.81 Annx. 1 to the writ petition, the persons to whom the lands are allotted must be landless persons. The aforesaid argument of the learned Counsel for the petitioner is attractive but devoid of merit in view of the mandatory provisions as contemplated u/s 21 of Act No. 11 of 1973 which provides that the surplus land vested in the State of Rajasthan u/s 16 shall after reserving such extent of surplus land as may be considered necessary by it for purposes directed towards the promotion of agriculture welfare of agricultural population and economic development of the area be allotted on priority basis amongst landless labourers of the village particularly to the members of Scheduled Castes and Scheduled Tribes by such authority in such manner to such extent and subject to such terms and conditions as may be prescribed.

17. It is not disputed before me that the lands in dispute after having declared surplus land under Act No 11 of 1973 have vested in the State Government free from all encumbrances u/s 16 of the Act and such lands vested in the State Government required to be allotted as contemplated u/s 21 of the Act to landless labourers on priority basis. The disposal of vested surplus lands u/s 21 of Act No. 11 of 1973 has been further extended in the Gang Canal Area by virtue of Notification dated 26.12.90 Ex. R/3 to the reply issued by the State Government in exercise of its powers conferred by Section 28 read with Section 7 of the Rajasthan Colonisation Act, 1954 by means of which the Rajasthan Colonisation (Gang Canal Lands Permanent Allotment and Sale) Rules, 1956 have been amended giving the benefit of allotment of surplus lands to the categories of persons enumerated in the said notification for the first time. This is beneficial amendment which required to be liberally construed and the class of persons enumerated in the notification dated 26.12.90 Ex. R/3 to the reply, are required to be deemed to constitute a class analogous to "landless persons" mentioned in the notification dated 4.6.81 Annx. 1 to the writ petition.

18. I am of the opinion that a court of law must make an effort to give some meaning to the proviso and to justify its necessity with sense of justice avoiding uncertainty and friction with the object for which the rule making authority intends to regulate the allotment of surplus lands vested in the State Government u/s 16 of Act No. 11 of 1973 under amended Rajasthan Colonisation (Gang Canal Lands Allotment and Sale) Rules, 1990 vide Notification dated 26.12.90 issued by the State Government in exercise of the powers conferred by Section 28 read with Section 7 of the Rajasthan Colonisation Act, 1954 by virtue of which these petitioners before me being in continuous cultivatory possession of the lands in dispute are entitled to be allotted lands not exceeding 25 bighas irrigated lands or equivalent thereof at the "reserve price" in Gang Canal Area may not be defeated.

19. All these petitions being identical were admitted and connected at the time of

admission. Learned Single Judge of this Court has passed the following ad interim order which is operative until date;-

Issue notice of the stay application returnable within four weeks to be given "dasti".

Meanwhile, the petitioner shall not be dispossessed from the land in question provided the petitioner furnishes a solvent security four times of the allotment price of those lands to the satisfaction of S.D.O. Sri Ganganagar within two weeks along with an undertaking that in case the writ petition fails each of them wilt pay interest @ 12% per annum on the amount.

It will be the responsibility of the petitioner to get the notices served within four weeks failing which the stay order shall come to an end automatically without reference to the Bench. N.K. Jain, J.

20. It is pertinent to mention that in pursuance of the illegal order dated 11.7.74 passed by the Sub Divisional Officer directing the petitioners to pay Rs. 25,000/- per Murbba of two Trusts, named-above, have been declared void ab initio by the State Government by reopening the said order under non-obstinate Section 15 of Act No. 11 of 1973 but it is clearly stated in the end of paragraph 10 to the reply filed by the answering respondents supported with Ex. R/4 to the said reply that the State Government has taken a lenient view and by virtue of Ex. R/4 dated 30.3.91 the amount paid in pursuance of illegal order dated 11.7.74 by the petitioners is directed to be adjusted towards the "reserve price" which the petitioners are liable to pay in pursuance of the interpretation of the notification dated 4.6.81 Annx. 1 to the writ petition in the earlier part of this judgment.

21. As a result of the aforesaid discussion all these writ petitions are dismissed with costs assessed to be Rs. 500/-in each petition and the petitioners are directed to pay "reserve price" as demanded by the answering-respondents together with interest at the rate of 12% per annum on such amount in view of the order passed by the learned Single Judge of this Court on 18.2.1994. However, whatever amount has already been paid in pursuance of illegal order dated 11.7.1974 passed by the Sub-Divisional Officer by any of the petitioner will be adjusted towards the "reserve price" in pursuance of the order passed by the State Government on 30.3.91 Ex. R/4 to the reply filed by the answering respondents.

22. Before parting with the judgment I would like to observe with anguish that the petitioners had not invoked the equitable extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India with clean hands. The petitioners have deliberately and wilfully concealed the fact about declaration of order dated 11.7.74 passed by the Sub-Divisional Officer to be null and void by the State Government in exercise of its power under non-obstinate Section 15 of the Act No. 11 of 1973 by reopening the case. The benevolent decision of the State Government to adjust the amount paid in pursuance of illegal order dated 11.7.74 passed by the Sub-Divisional Officer by any of the petitioner towards the

"reserve price" vide order dated 30.3.91 Ex. R/4 deserves appreciation.