
(1994) 11 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 190 of 1984

LRs. of Mst. Jangir Kaur

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 25-11-1994

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land in Rajasthan Canal Colony Area) Rules, 1975 — Rule 21
Rajasthan Colonisation Act, 1954 — Section 11, 14

Citation : (1994) 2 WLN 697

Hon'ble Judges : Rajendra Saxena, J;N.K. Jain, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.K. Jain, J.—By this writ petition, the petitioner seeks to quash the order of the Dy. Commissioner Colonisation dated 27.8.1980 (Ex.1) and the order of the Revenue Appellate Authority dated 25.1.1982 (Ex.3) and the order passed by the learned Member of the Board of Revenue dated 13.9.1993 (Ex.4). It has also been prayed that the non-petitioners may kindly be restrained from interfering in the cultivatory possession of the petitioner in the disputed land.

2. Briefly stated the facts of the case are that the petitioner was allotted 24 Bighas and 10 Biswas of land in Chak No. 3 B W.M. Square No. 294/335 on temporary cultivation in Samwant Year 2027 which was renewed year to year till Samwant Year 2030. On 25.9.1973 the petitioner applied for permanent allotment of the land in dispute before the Allotting Authority, Sri Vijaynagar, which was granted vide order dated 21.12.1973. Against the allotment of the land in favour of the the petitioner, a complaint was lodged by one Uttam Singh and others before the Assistant Commissioner Colonisation, Sri Vijaynagar to the effect that Mst. Jangeer Kaur has obtained allotment declaring herself a widow whereas her husband is alive and living in Punjab and further that the applicant's husband has land in his name in Punjab, therefore, the allotment

made in favour of the applicant may be cancelled. The Allotting Authority after making enquiry cancelled the allotment vide order dated 27.8.80. Dis-satisfied with the cancellation order, the petitioner preferred an appeal before the learned Revenue Appellate Authority, but the same was rejected vide order dated 25.1.1982 (Ex.3). A revision was also filed by the petitioner before the Board of Revenue. The learned Member of the Board of Revenue dismissed the revision by his order dated 13.9.1983. Hence, this writ petition.

3. This writ petition has been filed on 16.1.1984. This Court while admitting the petition on 30.1.1984 ordered that the petitioner shall not be dispossessed from the land in dispute. On 31.12.1984 it was ordered that the petitioner shall not be dispossessed from the land in question till the final disposal of the writ petition provided the petitioner furnishes a security to the satisfaction of the Deputy Commissioner (Colonisation) for payment of mesne profit to the State of Rajasthan in case of dismissal of the writ petition @150/- per bigha per agricultural year commencing from March 22, 1984 upto the date of decision of the writ petition. It was further ordered that the security shall be furnished within two months from today and will be for an amount of Rs. 15,000/- in the first instance. Petitioner Jangeer Kaur expired on 17.4.93 and she was represented through her legal representatives Guru Bachansingh and Balvinder.

4. The writ petition has come up before us and as agreed by the learned Counsel, for the patties, the matter is heard finally.

5. Mr. Purohit, learned Counsel for the petitioner has contended that even if the allegation of the non-petitioners that the petitioner obtained land by concealment is accepted as such still then the same does not render the petitioner ineligible for allotment of land as the husband of the petitioner had only 1/4th share in 18.5 Bighas of ancestral land in Punjab which comes to only 9/2 Bighas of land and, therefore, she is entitled for the rest of the land. He has contended that the petitioner is in cultivatory possession of the land in dispute for the last more than 20 years and on this count also the allotment of the petitioner cannot be cancelled. He has relied on Brij Lal Vs. Board of Revenue and Others, , Tej Singh Vs. State of Rajasthan and Others, and Makhan Singh v. State (RLW 1992 (1).

6. We have heard learned Counsel for the parties and perused the material on record as well as the cases cited at the Bar.

7. In Brij Lal's case (supra), their Lordships have observed that rejection of permanent allotment is without any basis and not proper on the ground that the applicant was minor on the date of temporary allotment, and refrained from dispossessing the applicant as he was cultivating the said land for the last two decades.

8. In Tej Singh's case (supra), their Lordships have observed that Tej Singh, who was Gram Sewak on the date of application on 18.11.1988 cannot be said to be a bona fide agriculturist but by concealing these facts he got assignments of 5 Bighas of land in his favour. It was held that cancellation made by the Authorities

not illegal but it was observed that as he resigned in five years and cultivated the land in dispute for 20 years and developed the land after taking loan it was directed not to dispossess him and cancellation was set aside.

9. In *Nakhan Singh v. State of Rajasthan* (supra) the applicant was holding three bighas and 1.25 Biswas of land on the date of application for permanent allotment and therefore, the allotment was cancelled as this fact was not disclosed before the Allotting Authority. The learned Judges of the Division Bench after considering Section 11 and 14 of the Rajasthan Colonisation Act, 1954 and Rule 5 & 21 of the Rajasthan Colonisation (Allotment and Sale of Government Land in Rajasthan Canal Colony Area) Rules, 1975 held that where any act or omission which does not affect the eligibility of allotment cannot result in ipso facto cancellation of entire allotment and that the land can be allotted to the extent to make the total holding to the extent of 25 bighas. The relevant observations made by the learned Judges are as under:

Having given our anxious consideration to the scheme of the Act and the Rules, we are of the opinion that where any act or omission which does not affect the eligibility of allotment, such act cannot result in ipso facto cancellation of entire allotment. The provisions under the Act which provide for cancellation of allotment for breach of condition envisaged a discretion in the Authority either to levy penalty or to cancel allotment and has also envisaged that where the breach is rectifiable, an opportunity should first be given to rectify the breach and to save the allotment rather than to straightway adopt the course of cancellation. If that be the scheme of the main Act, the rules framed under the Act have to be interpreted in consonance with the scheme of the Act. Applying the same test, if by any act or omission about the statement of fact any allotment has been obtained, it should be treated in the same manner. If it affects the eligibility, allotment as a whole may be cancelled. If it does not affect the eligibility but only affects the extent of, allotment then the extent to which allotment has been obtained incorrectly may be considered for cancellation under the rules. It can safely be said that the allotment which results in a holding of land beyond 25 bighas can be discovered to have been made against the rules and such allotment which has been discovered to have been made against the rules may be cancelled.

10. So far as the decisions rendered in *Brij Lal's* case and *Tej Singh's* case, they are not helpful as each case depends on facts of its own and any concession granted in *Tej Singh's* case (supra) cannot be a precedent. Therefore, the petitioner cannot derive any advantage of above cases. However, there cannot be any doubt that Section 11 of the Rajasthan Colonisation Act comes into operation if any person gives a false information intending or having reason to believe, the authority may be deceived regarding his qualification to become a tenant he/she shall be deemed to have committed a breach of condition of his tenancy, then, incumbent is not entitled for any indulgence under extra-ordinary jurisdiction.

11. In the instant case, the petitioner has come out with a case that she has

been deserted by her husband and residing in Rajasthan since 1955 and further in the Girdwari petitioner's personal cultivation is shown but even if the allotment obtained by her is considered to be obtained upon an incorrect statement then too does not render her ineligible for allotment of land. According to the petitioner her husband was holding only 9/2 Bighas of land in Punjab. The Revenue Appellate Authority after considering the material on record has not accepted the contention of the petitioner that she was deserted by her husband and has come to the conclusion that the petitioner has obtained allotment by misstatement of facts. Before the Board of Revenue petitioner's counsel admitted that her client concealed that her husband was alive at the time of allotment. The fact of holding of the land by the husband of the petitioner was also not disputed. Under the circumstances, the learned Member of the Board of Revenue has found that the petitioner had attempted to by pass the restrictions contained in the first proviso to rule 5 by declaring herself to be a widow. It may be stated that the petitioner has not substantiated her claim by producing material that she was deserted by her husband and her husband was holding only 9/2 Bighas of land in Punjab, therefore, was not eligible for allotment in her personal capacity, rather admitted before the Board of Revenue that allotment was obtained by concealing the fact that her husband was alive. Therefore, in our view, the petitioner is not entitled for any indulgence in the extra-ordinary jurisdiction of the Court as she has obtained allotment by concealing a material fact effecting her eligibility of allotment and not to the extent of allotment as suggested. The petitioner cannot take advantage of the decision rendered in Makhan Singh's case (supra) as in that case on the date of temporary allotment the petitioner was not holding 3 Bighas & 1.25 Biswas of land and by the time he moved application for permanent allotment he had acquired said land, therefore, the learned Judges of the Division Bench has found that due to omission, relevant information could not be given. Whereas as stated above, in the case in hand the act of the applicant of obtaining allotment by showing/declaring herself to be widow cannot be considered to be an omission particularly when she has not established before the courts below by producing sufficient material that she had been deserted by her husband and further without establishing that her husband in fact had only 9/2 bighas of land in Punjab. If the petitioner has been able to prove her claim of desertion before the courts below and the fact that her husband was holding 9/2 bighas of land, certainly she would have entitled for the allotment independently if otherwise eligible and even on the basis of Makhan Singh's case (supra) but having failed to prove her case before the courts below, the petitioner cannot be allowed to raise this point before this court that too when we have not been shown any material in support of the claim that the petitioner's husband was holding only 9/2 bighas of land in Punjab. Under these circumstances, we are not inclined to interfere in the impugned orders passed by the courts below in the exercise of extra-ordinary jurisdiction. The State shall be free to forfeit the security furnished to the satisfaction of respondent No. 3 in terms of the order dt. 13.12.1984. Accordingly, this writ petition is dismissed with no order as to costs.