
(2008) 03 RAJ CK 0131

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6873 of 2007

Mansha Ram and Another

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 230

Citation : (2008) 3 WLN 113

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Judgement

Sangeet Lodha, J.—This writ petition is directed against order dt. 03.10.2007 passed by the Board of Revenue, Rajasthan, whereby a revision petition preferred by the petitioners u/s 230 of Rajasthan Tenancy Act, 1955 (In short "the Act of 1955" hereinafter) against order dt. 03.10.2005 passed by the Allotting Authority cum Assistant Commissioner, Colonisation, Chhatargarh (Bikaner) allotting 19 bighas uncommand land comprising Murabba No. 99/61 Chak No. 10-500 D.O.D.D.R. in favour of respondent No. 4 herein, has been rejected.

2. Briefly stated the facts of the case are that the petitioners father late Shri Maloo Ram's Khatedari land was acquired by the State Government for Mahajan field Firing Range, therefore, in lieu of the land acquired, he was allotted 50 bighas land comprising Khasra No. 169 and 13 bighas 11 biswas land comprising khasra No. 186 of village Rajiasar, tehsil Loonkarsar, district Bikaner vide order dt. 31.05.1986 passed by the Allotting Authority cum Sub Divisional Officer, Bikaner. However, the land was not found worth cultivation, therefore, on application being made by the petitioners father, he was allotted 50 bighas land comprising Khasra No. 37/8 and 13 bighas and 11 biswas land comprising Khasra No. 54 vide order dt. 01.01.1992. It is stated that after the death of their father, the names of the petitioners were entered in the revenue record on 26.12.1995. According to the petitioners, in chak bandi by the Colonisation Department, the

land ad measuring 25 bighas, comprising Khasra No. 37/8 was converted in Murabba No. 119/5 and land comprising Khasra No. 54 was converted in Murabba No. 99/60 and 99/61, 25 bighas each, Chak No. 1/500 D.O.D.D.R.

3. It is submitted on behalf of the petitioner that old Khasra No. 37/8 was of 50 bighas which was allotted to the father of the petitioners but, by mistake, the said khasra number was converted in Murabba No. 119/5 with the area 25 bighas only. Thus, according to the petitioners, the land comprising Murabba No. 119/5 should be 50 bighas instead of 25 bighas only and the land comprising old Khasra No. 54 should have been 25 bighas but, inadvertently, the same was entered as 50 bighas i.e. 25 bighas comprising Murabba No. 99/60 and 25 bighas in Murabba No. 99/61. The land measuring 25 bighas comprising Murabba No. 99/61 was entered as Rakba Raj. It is claimed by the petitioners that 19 bighas land comprising Murabba No. 99/61 was allotted to one Shri Bhanwar Lal but since, the land was in possession of the petitioners, therefore, he abandoned his claim on the said land. However, the aforesaid 19 bighas land comprising Khasra No. 99/61 has now been allotted by the allotting Authority cum Assistant Commissioner, Chattargarh in Favour of the respondent Girdhari Ram vide order dt. 03.10.2005. Thus, aggrieved by the aforesaid allotment order, the petitioners preferred a revision petition before the learned Board of Revenue u/s 230 of the Act of 1955 which stands rejected vide impugned order dt. 3.10.2007.

4. A reply to the writ petition has been filed on behalf of the respondent No. 4 wherein the factual position set out in the writ petition has been disputed. It is submitted that after chak bandi, the aforesaid land of converted Murabbas was allotted to the petitioner's father and was accordingly entered in his name in the revenue record. It is further submitted on behalf of the respondent No. 4 that the petitioner's father was allotted only 6 bighas of land in Murabba No. 99/61 and therefore, the petitioners were in illegal occupation of remaining 19 bighas of land of the said Murabba, therefore, the said land being available for allotment has rightly been allotted in favour of the respondent No. 4.

5. It is contended on behalf of the petitioners that the learned Board of Revenue has seriously erred in holding that the petitioners are claiming the disputed land on the basis of illegal possession and under the law, the land in possession of the trespasser is deemed to be vacant land available for allotment. The learned counsel urged that the petitioners are claiming the right over the disputed land not as trespasser but as allottee in possession. It is contended that the allottee Shri Girdhari Ram was not a landless agriculturist, as a matter of fact, at the time of allotment, he was teacher and not eligible for allotment under the relevant Allotment Rules. The learned counsel submitted that the petitioners are in possession of the disputed land since 1992 and if they are dispossessed without process of law, then, they will suffer irreparable loss.

6. Per contra, the learned counsel appearing on behalf of the respondents submitted that the disputed land was never allotted to the petitioner's father and therefore their claim over the land in question as allottee in possession is

absolutely misconceived. The learned counsel submitted that according to the relevant and record, the petitioner's father was allottee only 6 bighas in Murbba No. 99/61, thus, the petitioners are holding the possession over the disputed land as trespasser and not as allottee, therefore, the learned Board of Revenue has committed no error in holding that the land in question was the vacant land available for allotment. The learned counsel contended that against the allotment in favour of the respondent No. 4, the remedy of appeal under Rule 23(1) of the Rajasthan Colonisation (Allotment and Sale of Government Land in IGNP Area), Rules, 1975 was available to the petitioner, therefore, the revision petition preferred before the learned Board of Revenue under the provisions of Section 230 of the Act of 1955 was not maintainable.

7. I have considered the rival submissions and perused the record.

8. It is to be noticed that in lieu of the land acquired, the petitioner's father was originally allotted 50 bighas of land comprising Khasra No. 169 and 13 bighas and 11 biswas comprising Khasra No. 186 of village Rajiasar, however, the said land being not found worth cultivation, he was allotted 50 bighas land in Khasra No. 37/8 and 13 bighas and 11 biswas land in Khasra No. 54. Thus, it is not in dispute that the total holding of the petitioner is 63 bighas and 11 biswas. As noticed by the learned Board of Revenue after chakbandi, the land comprising Khasra No. 37/8 stands converted in Murbba No. 119/11 measuring 2 bighas, 119/12 measuring 7 bighas, 119/4 measuring 21 bighas and 119/5 measuring 20 bighas and land Khasra No. 54 stands converted into Murabba No. 99/61, measuring 6 bighas and 119/5 measuring 5 bighas. Accordingly, the Board has arrived at a categorical finding that in Murabba No. 99/61, only 6 bighas land falls within the khatedari of the petitioner and the remaining 19 bighas land entered as Government land, was available for allotment in accordance with Rules. A bare perusal of the order impugned reveals that the learned Board has examined all the relevant aspects of the matter in their entirety and objectivity. The learned Board after due examination opined that the claim over the land raised by the petitioners on the basis of their possession is not justified. On the basis of material on record, the learned Board has also arrived at the conclusion that the land allotted to the petitioner's father and the respondent are different land. In my considered opinion the findings recorded by the learned Board of Revenue, as aforesaid, are essentially finding of facts based on record, which cannot be said to be perverse so as to warrant interference by this Court in exercise of its extra ordinary jurisdiction. It is settled law that the Government land in possession of a trespasser is unoccupied Government land available for allotment under the relevant allotment Rules, therefore, the petitioner's claim over the land in question on the basis of their illegal possession is not sustainable in eye of law. If demarcation of land has not been correctly made, as alleged by the petitioner then, he is free to agitate his grievance before the appropriate authority, in accordance with law.

9. A perusal of order impugned does not disclose that allotment made in favour

of the respondent No. 4 was ever assailed by the petitioner before the authorities below, on the ground that being a teacher, he was not entitled for allotment, therefore, ground sought to be raised for the first time before this Court is not entertained.

10. In view of discussion above, in my considered opinion, the order impugned passed by the learned Board of Revenue does not suffer from any infirmity or illegality.

11. In the result, the writ petition fails, it is hereby dismissed. No order as to costs.