
(2000) 11 RAJ CK 0055

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4213 of 1996

Naga Ram and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-11-2000

Acts Referred:

Evidence Act, 1872 — Section 35

Citation : (2007) 2 WLN 348

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. A request has been made by the learned counsel for the petitioners that the name of respondent No. 5 be deleted as he is not necessary party to which learned counsel for the respondent Mr. C.L. Jain has no objection to it.

3. The petitioners were allotted land in question on 28.12.1975 under the Rajasthan Land Revenue (Allotment of the Land for Agriculture Purposes) Rules, 1970 (for short "The Rules of 1970") in Khasra No. 454, 10 Bighas each.

4. On a complaint being received by the respondent No. 4 i.e. Collector, Sirohi, that the petitioners were minor at the time of allotment, the proceedings were initiated under Rule 14(4) of the Rules of 1970 and show cause was issued why the allotment made on 28.12.1975 may not be cancelled. It was cancelled by the Collector vide his order dt. 7.8.1978.

5. The part of the complaint was also that the petitioners have committed breach of the terms of allotment inasmuch as they have not cultivated 50% of the land in question in the first year after allotment.

6. The petitioners contested that their age as on the date of allotment was above 18 yrs. and any of them were not minor.

7. According to the contention of the petitioners the petitioner No. 1 was born on 3.10.1954 and the petitioner No. 2 was born on 17.5.1957, therefore, both of them were above 18 yrs. on 28.12.1975. In support of their contentions horoscopes were produced.

8. The Collector, Sirohi appointed S.D.O. to conduct an enquiry into the date of birth. The S.D.O. submitted his report along with certified copies of the Certificate issued by the School where the petitioners had been admitted. According to entries in the School Certificate recorded in respect of date of birth the two petitioners were born on 12.7.1959 and 20.10.1960 respectively. According to this report date of birth recorded in scholar's register of school, both were not major even on the date report was submitted in 1977.

9. In these circumstances the Collector finding that the horoscopes produced by the petitioners contained no signatures of any one, nor the name of the person who has prepared those horoscopes, did not put credence on evidentiary value of such horoscopes.

10. The Collector reached his conclusion pursuant to conducting an enquiry regarding the age of the petitioners and relying upon an entries in the school register which was made on the basis of information given by the petitioners' father. With this finding, he further found that the petitioners have committed breach of allotment conditions inasmuch as they did not cultivate atleast 50% of land in the first year of allotment. The allotment of land dt. 28.12.1975 was set aside by order dt. 7.8.1978. The order was successively affirmed firstly by the Revenue Appellate Authority and thereafter by Board of Revenue vide Ex. 5 which is subject matter of challenge in this petition.

11. Learned counsel for the petitioners contends that the petitioners have been in possession of land in question after allotment for almost two decades it would be travesty of justice on account of technical breach of rules of allotment.

12. Learned counsel for the petitioners places reliance on the decision of Supreme Court in Brij Lal Vs. Board of Revenue and Others, He also places reliance on the decision of Rajasthan High Court in Amor Singh v. State of Rajasthan 1997 W.L.R. 342 wherein the Court held that in the facts and circumstances of that case the fact that the appellant before the Court was minor at the time of temporary allotment of lease cannot affect the merit of his application for permanent allotment.

13. Learned counsel for the petitioner also urged that school leaving certificate is not substantive piece of evidence which can be relied on in the face of horoscopes produced by the petitioners. In this connection learned counsel for the petitioners places reliance on the decision of Supreme Court in Birad Mal Singhvi Vs. Anand Purohit,

14. Learned counsel for the respondents has supported the orders under challenge inter alia on the ground that the Appellate Authorities have affirmed

the finding of fact given by the lower court which is not liable to be interfered with in this petition and relied on the reasons mentioned in the orders.

15. Having carefully considered the rival contentions and having perused the record, I am of the opinion that the petition has no merit.

16. Undoubtedly the school certificate is relevant evidence and admissible u/s 35 of the Evidence Act. So as far as the recording the date of birth is concerned the contention raised by the learned counsel for the petitioners is not supported even by the decision relied on by him.

17. The Birad Mal Singhvi's case (supra) was a case arising under the Representation of the People Act. The Court said:

An entry relating to date of birth made in the school register is relevant and admissible u/s 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of material on which the age was recorded.

18. The Court further said:

If the entry in the scholar's register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.

19. In the present case it is admitted through the affidavits of the petitioners' father himself that the date of birth in the scholar's register at in his insistence therefore, the contention of the learned counsel for the petitioners that information given in the scholar's register has no evidentiary value on the basis of Birad Mal's case (supra) has no assistance to him. As the entry recorded in scholar's register regarding date of birth is relevant and is admissible. It could not be discarded on the basis of documents produced by the petitioner which were unsigned and their author was also not disclosed. Therefore finding cannot be said to be vitiated on any ground.

20. Once this conclusion is reached it follows under Rule 17 of the Rule 1970, no allotment could be made to the minor on the basis of date of birth recorded in scholar's register. Both the petitioners were minor on the date of allotment dt. 28.10.1975. The decision relied on the learned counsel for the petitioners in this connection is of little assistance to him.

21. In Amar Singh's case (supra) the facts were that the petitioners had been allotted land lease on temporary basis and while they were cultivating the land under temporary lease, they made an application for permanent allotment. That application was rejected on the ground that temporary lease has been allotted to them while they were minors.

22. It was in these circumstances the Court stated that merely because temporary allotment has been made during the minority of the documents which

could deprive them of rights to make a permanent allotment and there was no lack of eligibility in making an application for permanent allotment of land. Hence the application for permanent allotment could not be rejected inasmuch as the temporary allotment, was continuing and was never under challenge.

23. In coming to this conclusion the decision of Supreme Court in Brij Lal Vs. Board of Revenue and Others, was relied on in which it was clearly stated:

On the date when the appellant applied for permanent allotment he was holding the temporary allotment. If the appellant had procured temporary allotment by giving false declaration regarding age then proceedings for cancelling temporary lease of the appellant was never cancelled. The appellant being "temporary cultivation lease-holder", permanent allotment could not be denied to him under the Rules.

24. The Supreme Court clearly held that in case the allotment of temporary lease was by wrongly disclosing the date of birth such temporary lease was liable to be cancelled. But without cancelling temporary lease, application for permanent allotment could not be held to be incompetent. This decision rather helps the respondents than the petitioners.

25. Thus on facts it was found that the petitioners were granted allotment by making wrong statement of particulars of age in the application and the action taken is cancellation of allotment made pursuant to such incorrect declaration, which was a permissible ground for cancellation of allotment under Rule 14(4) of the Rules of 1970. No interference is called for in the impugned order 3 passed by the Revenue Authorities.

26. The contention of the learned counsel for the petitioners that he is in possession of land allotted for more than two decades that allotment may not be cancelled as envisaged under principles of equal fair. This plea cannot be sustained. Petitioners are in possession since 1978 not under the order of allotment but by the orders of Court during the pendency of proceedings after order of cancellation was made.

27. Accordingly this petition fails and is hereby dismissed with no order as to costs.