(2002) 01 RAJ CK 0100

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1939 of 1997

Patwari and Another — APPELLANT

Vs

Board of Revenue and Others — RESPONDENT

Date of Decision : 04-01-2002

Acts Referred:

Rajasthan Land Revenue (Allotment of Land for Agriculture Purpose) Rules, 1970 — Rule 14(4)
Rajasthan Land Revenue Act, 1956 — Section 14(4), 76, 83

Citation : (2002) 3 RLW 1716 : (2002) 1 WLC 780

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Ganesh Meena, for the Appellant; S.C. Gupta, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—Agricultural land which is subject matter of dispute, was allotted in favour of sixth respondent (for short the allottee) by Sub District Collector Gangapur City on January 31, 1992. The petitioners assailed the order of allotment by making application under Rule 14(4) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules 1970 (for short 1970 Rules). The Additional District Collector Sawai Madhopur allowed the application and set aside the allotment vide order dated December 22, 1993. Appeal preferred by the allottee against the order of Additional District Collector was accepted by the Revenue Appellate Authority Sawai Madhopur vide judgment dated July 14, 1995 and the allotment of land was held valid. The petitioners assailed the order of the revenue appellate authority before the Board of Revenue Ajmer (for short the Board) by filing revision under Sec. 83 of the Rajasthan Land Revenue Act 1956 (for short 1956 Act). The Board dismissed the revision petition as not maintainable vide order dated Feb. 28, 1.996. Against this order of the Board that the present action for filing the writ petition has been resorted to by the petitioners.

2. 1 have heard the rival submissions and scanned the material on record.

3. A look at the impugned order of the Board demonstrates that the learned Member after placing reliance on the ratio of Hanuman Singh v. Jagdish Singh (1), observed that the revision preferred by the petitioners whose status was that of complainant, was not maintainable u/s 83 of the 1956 Act. In Hanuman Singh v. Jagdish Singh (supra) it was indicated by the Larger Bench of the Board that a cancellation of allotment under Rule 14 (4) of 1970 Rules is a matter between the allottee and the State and the status of an applicant who seeks cancellation of allotment is that of informer or complainant and not a party to the proceedings, he may be heard by the Collector but only for the limited purpose of effective disposal of his application and in the event of cancellation of the allotment, the only aggrieved party is the allottee who can seek redress by way of appeal. The complainant is not a necessary party to the appeal is no relief is sought against him but if he is joined as a respondent in the appeal by way of abundant caution it does not confer him any right to continue the litigation in second appeal, if the allotment is restored in the appeal the State Government alone will be the aggrieved party which may if it so desires, go in second appeal. Therefore where the order of cancellation of allotment passed by the Collector is reversed" in an appeal filed by the allottee, the complainant in no case file a second appeal.

4. Subsection (d) of Section 76 of 1956 Act provides that an appeal shall lie from an order passed in appeal by the revenue appellate authority to the Board. Section 76 of 1956 Act is a creature of the State Legislature, where as Section 100 of the CPC was enacted by the Parliament. Section 100 CPC expressly mandates for second appeals save as otherwise expressly provided in the body of Code or by any other law for the time being in force. In Milap Chand v. Dwarka Das (2), this court indicated that under item 3 of second list of the Constitution of India, the State Legislature can organise courts and provide for machinery except the High Court or Supreme Court. In view of this, Section 76 of 1956 Act is not hit by Article 254(1) of the Constitution as the provisions contained in Section 76 of 1956 Act are not repugnant to Section 100 CPC. The scope of Section 76 is wider than Section 100 CPC. u/s 76 of 1956 Act second appeal shall lie even on facts. It is not necessary to formulate substantial question of law involved in the appeal as is necessary u/s 100 CPC. Second appeal u/s 76(d) of 1956 Act lies from an order passed in appeal by the revenue appellate authority to the Board of Revenue.

5. It is well settled that a right of appeal is not a natural or inherent right attaching to litigation, and does not exist and cannot be assumed unless expressly given by statute. The right of appeal being a substantial right is to be regulated by the law in force and it can not be taken away except by express enactment or necessary intendment.

6. Sub-rule (4) of Rule 14 of 1970 Rules provided that the Collector shall have the power to cancel any allotment made by the Sub Divisional Officer either suo

moto or on the application of any person if allotment has been secured through fraud or misrepresentation or against the rules or the conditions of the allotment have been violated by the allottee after providing an opportunity of hearing to the allottee. The order passed under Rule 14(4) of 1970 Rules cancelling the allotment is an original order and an appeal lies against the said order to the revenue appellate authority u/s 75(b) of 1956 Act. The expression ''original order'' has no where been defined under 1956 Act.

7. The term ''original order'' connotes first, the earliest or an initial order not derivative or dependent on some other order. The term ''original order'' means an order of the trial court in exercise of its original jurisdiction against which a right to first appeal u/s 75 of 1956 Act, a right to revision or review under Sections 82, 84A and Section 85A and 86 respectively is available and not exhausted. In Blacks Law Dictionary ''order'' means "a mandate precept; a command or direction authoritatively given". In CPC the term "order" has been defined in Sub-section (14) of Section 2 as ''formal expression of any decision of a civil court which is not a decree.'' The word ''order'' is a well known legal expression and is generally understood as a command or a direction by a court or an authority intended to affect the rights of the parties.

8. A close look at the judgment rendered in Hanuman Singh v. Jagdish Chandra and another (supra) goes to show that the learned Larger Bench of the Board did not at all consider the provisions contained in Section 76 of the 1956 Act. The provisions of Rule 14(4) of 1970 Rules were only examined and it was held that the complainant on whose initiation the Collector cancels the allotment, is a formal party and if any appeal is preferred by the allottee against the order of Collector u/s 75 of 1956 Act before the Revenue Appellate Authority impleading the complainant as respondent in the appeal it does not confer any right to the complainant to continue the litigation in second appeal, if the allotment is restored in first appeal and the State Government alone will be the aggrieved party which may if it so desires prefer the second appeal. It appears that the learned Members of the Board before making this observation did not properly examine the provisions contained in Section 76 of 1956 Act according to which the appeal shall lie from an order passed in appeal by the Revenue Appellate Authority to the Board. Section 76 of 1956 Act does not limit the rights of the party who intends to prefer the second appeal before the Board. Whether a party is aggrieved or not is a question which can only be decided by the Board at the time of admission of the second appeal preferred u/s 76 of 1956 Act. It cannot be said that the complainant who initiated proceedings under Rule 14(4) of 1970 Rules is 1956 Act. The right of appeal provided u/s 76 of 1956 Act is a substantial right and it cannot be taken away except by express enactment or necessary intendment. The Board has no power to redraft Section 76 of 1956 Act depriving an unsuccessful complainant who initiated proceedings under Rule 14(4) of 1970 Rules from filing the second appeal. In my considered opinion the observations made by the learned Larger Bench of the Board in Hanuman Singh and Anr. v. Jagdish Chandra and another (supra) are against the provisions

contained in Section 76 of the 1956 Act and I hold that second appeal u/s 76 of the 1956 Act by a complainant, who initiated proceedings under Rule 14(4) of 1970 Rules and who was a party before the Revenue Appellate Authority, is maintainable.

9. I, therefore allow the writ petition and set aside the impugned order dated Feb. 28, 1996 of the learned Board of Revenue. 1 remit the case to the learned Board of Revenue to register and treat the revision filed u/s 83 as second appeal u/s 76 of the 1956 Act and decide it is accordance with law after providing opportunity of hearing to the parties concerned. The parties are directed to appear before the learned Board of Revenue Ajmer on January 28, 2002 for seeking further instructions.

