
(2015) 08 RAJ CK 0102
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6733 of 2003

Radha Kishan

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 26-08-2015

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 16

Citation : (2015) 08 RAJ CK 0102

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Praveen Jain, for the Appellant; G.P. Sharma and M.C. Gupta, Advocates for the Respondent

Final Decision : Allowed

Judgement

Mohammad Rafiq, J.

1. This writ petition has been filed by petitioner-Radha Kishan challenging the order dated 6.9.2000 passed by District Collector, Tonk, order dated 27.2.2001 passed by the Revenue Appellate Authority and the judgement dated 23.6.2003 passed by the Board of Revenue.

2. Facts of the case briefly stated are that Tehsildar recommended the case of the petitioner for allotment of land in khasra No. 1872 (old khasra No. 1721) measuring 7 bighas situated in village Bagdi Tehsil Peeplu, District Tonk under Rule 20 of the Rajasthan Land Revenue (Allotment of Agriculture Land) Rules, 1970 (for short-"the Allotment Rules of 1970") by order dated 5.9.1973 by way of regularisation. Considering the petitioner as land less person, the allotment of the land was made in his favour by order dated 15.11.1975 on recommendation of the Allotment Committee. The respondent No. 2 filed an application under Rule 14(4) of Rules of 1970 on 22.9.1999 with the prayer that the order of allotment by way of regularisation dated 15.11.1975 be cancelled. The District Collector by order dated 6.9.2000 allowed the application and cancelled the allotment. The

petitioner unsuccessfully filed appeals before the Revenue Appellate Authority and the Board of Revenue, both of which dismissed the appeals.

3. Shri Praveen Jain, learned counsel for the petitioner has argued that the courts below have in the impugned orders wrongly held that Tehsildar has no jurisdiction to regularise the land in dispute. In fact, the Tehsildar on 5.9.1973 recommended the case of the petitioner for regularisation and file was submitted to the SDO, Tonk. Thereafter, the case of the petitioner was placed before the Land Allotment Committee and the order of regularisation dated 15.11.1975 in the name of petitioner was issued. As per Rule 13 and 20 of the Allotment Rules of 1970 only consultation of the Allotment Committee was required. Bare perusal of the regularisation order dated 15.11.1975 would show that it was passed with consultation of Land Allotment Committee and there is no requirement under the Rules that order of regularisation should be issued by the SDO himself and further that Tehsildar had no jurisdiction to pass the order. The application for cancellation of allotment has been moved 24 years after the allotment by respondent No. 2. It is settled law that even under Rule 14(4), the khatedari rights, when conferred after ten years of allotment, cannot be cancelled. Reliance in this connection is placed to the division bench judgement of this Court in Pat Ram & Ors. v. State & Ors.-1995 DNJ (Raj.) 592.

4. Shri Praveen Jain, learned counsel for the petitioner has argued that the courts below failed to consider that the land in dispute was in possession of the petitioner since Sv. 2026. It is argued that Supreme Court in various matters have held that even if the allotment was made in law, still the person cannot be dispossessed from the land after a very long time. In the present case, the application has been filed after 24 years of the allotment. Reliance in this connection is placed on the judgement of Supreme Court in Brij Lal Vs. Board of Revenue and Others, AIR 1994 SC 1128 : (1993) 3 JT 639 : (1993) 2 SCALE 155 : (1993) 2 SCC 544 .

5. Shri Praveen Jain, learned counsel for the petitioner further argued that the allotment has been cancelled on the premise that land in dispute was recorded as "Nadi" (pond), whereas actually there exist no such "Nadi" and that the Tehsildar has inspected the site and that he has made observation in the report dated 5.9.1973 (Annexure-1) that on ground there does not exist any "Nadi" or pond. It is argued that even the land of "Nadi" can be allotted after changing its nature. In the present case, the nature of land was changed and then it was allotted to petitioner. Reliance in this connection is placed on the judgement of this Court in Ramdayal Kushwaha & Ors. v. State & Ors.-2013 (2) RRT 778.

6. Learned counsel for the petitioner further argued that the allotment of the land in the present case was made in favour of the petitioner, who is a member of Scheduled Tribe as far as back on 14.11.1975. The basis of this allotment was recommendation of Tehsildar dated 5.9.1973 (Annexure-1) that the petitioner was a landless person and that he was in cultivatory possession of the land for last seven to eight years and that he was regularly paying charges for such

cultivation. Reference was made to "khasra parivartansheel" for the period from Svt. 2026 to 2029, wherein the lands of khasra No. 1721 measuring 51 rakba was shown in the cultivation of Lala S/o. Jagannath and for the period from Svt. 2027 to 2029 in the cultivation of Radha Kishan S/o. Lala Meena. Tehsildar inspected the site and found that it was a plain land and there was no "Nadi" existing on the ground. Tehsildar also requisitioned the record from the Patwari, which shows that petitioner was in cultivatory possession of the land since 2026. Tehsildar recommended the case to the SDO for allotment of land in favour of petitioner by changing its nature. The Land Allotment Committee recommended allotment of the land in favour of petitioner considering that he was in possession of the disputed land 1872/7 (7 bigha) since 2027 and that he had no other land in her possession as per the government Circular dated 13.7.1971. Thus he was entitled to gair khatedari rights.

7. Lastly, it is argued by learned counsel for the petitioner that application filed by respondent for cancellation of allotment cannot be entertained after such an enormous delay of 24 years. In fact, the allotment order has been cancelled by the District Collector 25 years after the allotment. Reliance in this connection is placed to the judgement in Larger Bench of this Court in a recently delivered judgement in Tara & Ors. v. State of Raj. & Anr., D.B. Civil Special Appeal No. 185/2001 and other connected matters decided on 15.07.2015.

8. Shri G.P. Sharma, learned counsel for the respondents opposed the writ petition and argued that the land in question was recorded as land of "Nadi" in the revenue records and, therefore, even if the petitioner was claiming to be in possession of this land, it could not be regularised in his favour. The District Collector has rightly cancelled the allotment and Revenue Appellate Authority and the Board of Revenue were perfectly justified in upholding that judgement. Reliance has been placed on the judgement in Abdul Rahman v. State of Rajasthan & Ors.-2004 (4) WLC (Raj.) 435 wherein it was held by this Court that steps taken by the Government to restore catchment areas to the original shape and all lands shown as drainage channels like nalla, rivers, tributaries etc. as on 15.8.1947, should be declared as government land and restored to the same status.

9. Shri G.P. Sharma, learned counsel for the respondents has argued that Tehsildar did not have any authority to change the nature of land or to make allotment. Even the SDO did not have any authority to make such change. The order of regularisation is void ab initio, being without jurisdiction and can be set aside at any point of time, regardless of delay. In the jamabandi of Svt. 2059-62, the land is entered as sivaichak gairmumkin "Nadi". The District Collector, therefore, was perfectly justified in cancelling the allotment, which was obtained by concealing the fact about the nature of land.

10. Learned counsel for the respondents submits that the land of "Nadi" cannot be allowed to be regularised by way of allotment in view of bar contained in Section 16 of the Rajasthan Tenancy Act and Rule 4 of the Allotment Rules of

1970.

11. I have given my thoughtful consideration to the rival submissions and perused the material on record.

12. The District Collector in its order dated 6.9.2000 has held that the SDO had no authority to make allotment on recommendation by the Allotment Committee and, therefore, his order was without jurisdiction and was liable to be cancelled. The Revenue Appellate Authority in its order taken note of the fact that under the Allotment Rules of 1970, SDO is the head of the Allotment Committee. Neither Tehsildar or SDO has authority to change the nature of the land. The Board of Revenue has also concurred with the view of the SDO.

13. The Supreme Court in Brij Lal, supra although noted that at the time when allotment of land was made in favour of petitioner, he was minor and, therefore, allotment was not proper, but considering that he was cultivating the land for about two decades now, it was held that it would be travesty of justice to dispossess him from the land.

14. The division bench in Pat Ram, supra has relied on the aforesaid judgement of Brij Lal, supra. The facts in the case of Pat Ram, supra were somewhat similar wherein the allotment has been cancelled by the Collector. In that case, the allotment was alleged to have been obtained by fraud and Tehsildar made such allotment without consulting the Advisory Committee. The argument was rejected holding that there is no material on record to show that allotment was made by Tehsildar without consulting the Advisory Committee. Cancellation in that case was made 16 years after the allotment. The division bench has held that as per Rule 15 of the Rules, 1970, the khatedari rights can be conferred upon the allottee fulfilling the terms and conditions of allotment. Khatedari rights were conferred upon the petitioner (in that case) in the year 1974 and after conferring the khatedari rights, the allotment cannot be cancelled on the ground that they violated any condition of allotment.

15. Although it is true that in subsequent division bench judgement of this Court in Sohan Kanwar Vs. Board of Revenue and Others, (2002) 1 WLC 415 : (2001) 4 WLN 698 and Mangla Son of Hema v. State & Ors.-2007 (1) WLC (Raj.) 234, it has been held that if any allotment has been made on the strength of fraud or misrepresentation, notwithstanding conferment of khatedari rights on completing ten years, the allotment can be cancelled, but here in the present case, it has not been shown as to what fraud was played by the petitioner in securing the allotment. It is not in dispute that the allotment has been made on the recommendation of the Land Advisory Committee, which is headed by SDO and consequential order has been passed by the Tehsildar. The Tehsildar and the Land Advisory Committee were satisfied that land in dispute was in cultivatory possession of the petitioner for almost eight years prior to the date of allotment. They also concluded that on ground no "Nadi" was present and it was a plain land, which was being cultivated by the petitioner. In these facts, this Court does

not find any justification for the Collector to entertain the application of cancellation of allotment at the instance of strangers i.e. respondent Nos. 4 to 6, filed 24 years after the allotment.

16. The Larger Bench of this Court in a recently delivered judgement in Tara & Ors., supra has expressed a similar opinion. In taking that view, the Larger Bench also referred to the number of the Supreme Court judgements in The State of Gujarat Vs. Patil Raghav Natha and Others, AIR 1969 SC 1297 : (1969) 2 SCC 187 : (1970) 1 SCR 335 , Mansaram Vs. S.P. Pathak and Others, AIR 1983 SC 1239 : (1983) 2 SCALE 1027 : (1984) 1 SCC 125 : (1984) 1 SCR 139 , State of Punjab and Others Vs. Bhatinda District Coop. Milk P. Union Ltd., (2007) 217 ELT 325 : (2007) 12 JT 314 : (2007) 12 SCALE 135 : (2007) 11 SCC 363 : (2007) 11 SCR 14 : (2007) 10 VST 173 wherein one to three years have been held to be reasonable period.

17. The Larger Bench has also relied on Jt. Collector Ranga Reddy Vs. D. Narsing Rao AIR 2015 SC 1021 : (2015) 1 SCALE 274 : (2015) 3 SCC 695 : (2015) 1 SCJ 311 wherein it has been held that when no time limit has been prescribed under the Statute for invocation of certain power, such power must be exercised within a reasonable time. If the power is allowed to be exercised after decades, it would lead to anomalous position leading to uncertainty and complications seriously affecting the rights of the parties over immovable properties. Absence of any period of limitation does not mean that the power can be exercised at any time, which will make the exercise of power arbitrary and opposed to the concept of Rule of Law. What however shall be the reasonable period, would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. The Larger Bench even went to the extent of holding that "even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, several decades claiming rights over the land."

18. The Supreme Court in State of Punjab & Ors. v. Bhatinda District Cooperative Milk Producers Union Ltd., supra dealing with a question of delay held that although no period of limitation has been prescribed by Section 21 of the Punjab General Sales Tax Act, 1948, but the same would not mean that suo motu power can be exercised by the competent authority at any time. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period, would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

19. In the facts of the present case, the period of delay of 24 years, with which the application for cancellation of allotment has been filed by the respondent No. 2 and has been accepted by Collector, cannot be regarded as reasonable delay. And counting from the date of allotment, the order of cancellation of allotment has been passed after unreasonable delay of 25 years, which period in itself is highly unreasonable. Petitioner was in cultivatory possession much prior to date of allotment and also during the aforesaid period of 25 years and thereafter

continuously for last 15 years including the period of 12 years of pendency of this petition before this Court.

20. In view of above, the impugned orders passed by the Board of Revenue, Revenue Appellate Authority and District Collector cannot be sustained and are accordingly set aside. Petitioner is held entitled to retain the land in dispute.

21. The writ petition is accordingly allowed.