
(2013) 12 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2216 of 2011

Rajasthan Brahim Maha Sabha Khand Osian

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 12-12-2013

Acts Referred:

Citation : (2014) 2 CDR 615 : (2014) 2 RLW 1693

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—Instant writ petition has been filed by the registered society "Brahmin Maha Sabha Khand Osian" to quash order dt. 25.02.2011 (Annex.-9) issued by the Collector, Jodhpur on the ground that it has been passed without jurisdiction, therefore, the same is void ab initio and, further, prayed that the respondents may be restrained from interfering in the peaceful enjoyment of the allotted land to the petitioner-society. As per facts of the case, upon application filed by the petitioner-society through its president Moti Lal Saraswat the State Government issued sanction for allotment of land measuring 3 bigha in khasra No. 1575, rakaba 12.05 bigha, for the purpose of construction of hostel for the students on 14.07.2008. For the purpose of sanction, proposals were made by the Sub Divisional Officer, Osian to the District Collector vide communication dt. 28.07.2007 and the District Collector forwarded the same to the Government on 25.07.2008 and, thereafter, the State Government issued sanction on 14.07.2008 in favour of the petitioner-society whereby the aforesaid allotment was made.

2. The District Collector, Jodhpur issued allotment order in pursuance of the sanction issued by the State Government vide Annex.-4 dt. 20.08.2008 in accordance with the Rajasthan Land Revenue (Allotment of Unoccupied Government Agriculture Land for Construction of Schools, Colleges, Dharmshala & Other Public Utility Buildings) Rules, 1963. In the allotment order, the District Collector determined the cost of land at the rate of 40,900/- per bigha and

issued direction to the petitioner-society to deposit Rs. 1,22,700/- for allotment of 3 bigha land. The petitioner-society deposited the cost determined by the Collector and commenced construction after taking possession of the land in question.

3. In the writ petition, it is stated by the petitioner-society that all of a sudden, the District Collector, Jodhpur issued cancellation order on 25.02.2011 after three years of allotment whereby the allotment made in favour of the petitioner after due sanction by the State Government on 20.08.2008 was cancelled without providing any opportunity of hearing to the petitioner-society.

4. Learned counsel for the petitioner while challenging the said order submits that the reason which is mentioned in the order of cancellation is totally untenable because in view of the judgment rendered by the Hon'ble Supreme Court in the case of State of Tamil Nadu and Others Vs. K. Shyam Sunder and Others, , in which, Hon'ble Supreme Court held that an instrumentality of the State cannot have a case to plead contrary from that to the State and policy in respect of particular project adopted by the State Government should not be changed with the change of the Government.

5. While inviting attention towards the aforesaid judgment, learned counsel for the petitioner invited attention of this Court towards para 2 of the order passed by the District Collector, Jodhpur dt. 25.02.2011 in which it is observed by the District Collector that after allotment the Government has changed and, after change of the Government, the Cabinet took decision to cancel all those decisions made within six months by the previous Government for allotment of the land, therefore, the order impugned is not sustainable in law; more so, it is in violation of the adjudication made by the Hon'ble Supreme Court in the afore cited judgment.

6. Per contra, learned counsel appearing for the respondents submits that the District Collector issued the order of cancellation of allotment in view of the letter sent by the Deputy Secretary, Revenue (Gr.-III) Department, Jaipur on 20.12.2010 giving reference of the letter dt. 3.9.2009 written by the Principal Secretary, Revenue Department, Government of Rajasthan, Jaipur wherein for the compliance of the decisions of the Cabinet Committee it was directed to revoke all the orders of the previous BJP Government taken within six months and the District Collector, Jodhpur in compliance of the above order cancelled the allotment made in favour of the petitioner, therefore, there is no illegality in the order impugned.

7. After hearing learned counsel for the parties, I have perused the order impugned.

8. Admittedly, the allotment was made after due proposal in accordance with the Rules of 1963 with due sanction of the State Government but in the cancellation order following reasons are given by the District Collector for cancellation of the order of allotment, that too, without providing opportunity of hearing:

9. In the reply, the respondents pleaded that the cancellation has been made in pursuance of the decision taken by the Cabinet Committee dt. 02.07.2009 but there is no assertion or ground in existence with regard to any violation of the rules in the allotment made in favour of the petitioner-society; meaning thereby, the decision upon which the order of cancellation is issued is totally arbitrary and unconstitutional.

10. It is worthwhile to hold that in democracy if a decision is taken by the elected government in its tenure that cannot be cancelled on the ground that subsequent government is not agreeing with the decision of allotment made in pursuance of the decision taken by the previous government. Of course, if any violation or illegality is committed, then, it can be interfered with but, upon perusal of the order impugned, so also, reply filed by the respondents, no violation of rule is pointed out upon which cancellation was required. There is no provision in law which gives any power to cancel all the decisions taken by the previous government within six months from the date of change of the government.

11. In the judgment rendered by the Hon''ble Supreme Court in the case of State of Tamil Nadu and Others Vs. K. Shyam Sunder and Others, , following adjudication is made in para 20 of the judgment which reads as under:--

20. Thus, it is clear from the above, that unless it is found that act done by the authority earlier in existence is either contrary to statutory provisions, is unreasonable, or is against public interest, the State should not change its stand merely because the other political party has come into power. Political agenda of an individual or a political party should not be subversive of rule of law.

12. In view of above, the reason for cancellation of allotment is totally contrary to law, arbitrary and unconstitutional. Therefore, this writ petition is allowed. Impugned order of cancellation dt. 25.02.2011 (Annex.-9) passed by the District Collector, Jodhpur and the decision given by the Cabinet Committee upon which order of cancellation of allotment has been issued are hereby quashed and set aside qua the petitioner-society.

No order as to costs.