
(2019) 01 RAJ CK 0105
In the Rajasthan High Court
Case No : Civil Writ No. 1420 Of 2018

Rajendra Kumar S/o Shri Ram Gopal	APPELLANT
Vs	
Board Of Revenue And Orsc	RESPONDENT

Date of Decision : 11-01-2019

Acts Referred:

Rajasthan Colonisation (Allotment And Sale Of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975 — Rule 14A
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 RAJ CK 0105

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Dron Kaushik

Final Decision : Dismissed

Judgement

1. By way of this writ petition, the petitioner has questioned legality of order dated 7.12.17 passed by the Board of Revenue, Rajasthan, whereby a revision petition preferred by the petitioner against the order dated 28.7.16 passed by the Revenue Appellate Authority ('RAA'), Sri Ganganagar, setting aside the orders dated 13.4.15 and 27.4.15 passed by the Sub Divisional Officer (SDO) (Revenue), Gharsana, has been dismissed and consequently, the order passed by the RAA, Sri Ganganagar, quashing the allotment of medium patch land made in favour of the petitioner by the SDO, Gharsana and remanding the matter for fresh consideration stands upheld.

2. The facts relevant are that the petitioner made an application for allotment of 6 bigha uncommand land comprising Murabba No.16/56 Kila No.13 to 18 in Chak 6KHM as medium patch of Government land under Rule 14A of Rajasthan Colonisation (Allotment and Sale of Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975 ('the Rules'). The petitioner was holding 4 bighas land in adjoining Murabba of the same Chak i.e. Murabba No.16/48 Kila No.22 to 25. The SDO, Gharsana, vide order dated 13.4.15 allotted to the petitioner 1.15

hectare Government land comprising Murabba No.16/56 Kila No.13 to 18 at the DLC rate Rs.2,97,500/- per hectare for Rs.4,11,700/-. As per the order dated 13.4.15, the notices were issued to the tenants holding the land in Murabba No.16/56 as also the tenants holding the land in adjoining murabba, however, nobody having preferential right of allotment appeared pursuant thereto. Pursuant to the order dated 13.4.15 the allotment order was issued by the SDO, Gharsana in favour of the petitioner on 27.4.15.

3. Aggrieved by the aforesaid orders dated 13.4.15 and 27.4.15, the respondent Tek Chand holding the land comprising Murabba No.16/56 preferred an appeal before the RAA, Sri Ganganagar, while impleading other tenants, who had preferential right for allotment of the disputed land as party respondents.

4. After due consideration of the rival submissions, the RAA arrived at the finding that notices issued by the SDO, Gharsana, on 26.9.14 to the tenants Darshan Singh, Karm Singh and Chunni Ram were not served upon them personally and the notices issued to the rest of the tenants on 20.10.14, were not sent for service rather the same were kept on the file, for 6 months no proceedings were taken and thereafter straightaway the land was allotted in favour of the petitioner herein. The RAA observed that the tenants having preferential right of allotment have been deliberately deprived from allotment and the land has been allotted in favour of the petitioner in arbitrary manner. Accordingly, while setting aside the aforesaid orders issued by the SDO, Gharsana, the RAA, Sri Ganganagar remanded the matter to the Allotting Authority for consideration afresh after giving an opportunity of hearing to the tenants holding the lands adjoining to the disputed land.

5. Aggrieved by the order passed by the RAA dated 28.7.16, the petitioner preferred revision petition before the Board of Revenue, Rajasthan, which stands dismissed by the order impugned order. Hence, this petition.

6. Learned counsel appearing for the petitioner contended that the provisions of Rule 14A of the Rules, have not been appreciated by the RAA and Board of Revenue in correct perspective. Learned counsel submitted that none of the tenants of the Murabba No.16/56 having applied for allotment, the petitioner being sole applicant, holding the land in adjoining murabba, was rightly allotted the land by the Allotting Authority. Learned counsel submitted that pursuant to the notices issued none of the tenants appeared asserting their preferential right for allotment and therefore, the Allotting Authority got the notice published in the daily newspaper "Seema Sandesh" and thus, the Board of Revenue has seriously erred in affirming the order passed by the RAA holding that no opportunity of hearing was afforded to the tenants having land in the same murabba and other adjoining murabbas.

7. I have considered the submissions of the learned counsel for the petitioner and perused the material on record.

8. Indisputably, the land in question was not notified for allotment by issuing any

notification, rather proceedings were initiated for allotment on the application preferred by the petitioner herein. It is not in dispute that as per proviso to Rule 14A, the tenant of the adjoining land have preferential right of allotment of medium patch of Government land and such land may be allotted to the tenure tenants of the same Chak or of the adjoining Chak only if the tenant of the adjoining land fails to apply. It is true that the notices were issued by the Allotting Authority to the tenants of the adjoining lands as also to the tenants of the adjoining murabba, but it is matter of record that notices were not duly served upon them. As observed by the RAA, the notices issued to some of the tenants were kept on the file and were never dispatched for service upon them.

9. It is contended by the petitioner that the notice was published in the daily newspaper as well but then a perusal thereof reveals that it was not the notice issued to the tenants affected rather by way of the said notice the factum of petitioner herein applying for allotment of the land in question was notified. As noticed above, the notices issued were not actually dispatched for service upon affected tenants rather the same were kept on file and thus, there was no occasion for the Allotting Authority to resort to alternative mode of service i.e. substituted service.

10. It is settled law that the mode of substituted service can be resorted to only when the court is satisfied that there is reason to believe that the defendant is keeping out of way for the purpose of avoiding service or that for any other reason, the summons cannot be served in ordinary way. To put it in other words, the personal service of summons in ordinary way is a rule and the substituted service is an exception. Therefore, before passing any order for substituted service on the basis of the material on record, the court must be satisfied that the service of notice in ordinary course is not possible. As noticed above, no such procedure was adopted by the SDO, Gharsana in the instant case.

11. In this view of the matter, the order passed by the Allotting Authority straightaway allotting the medium patch of Government land in favour of the petitioner without giving an opportunity to apply to the tenants having preferential right under Rule 14A of the Rules, has rightly been set aside by the RAA, Sri Ganganagar and thus the order passed by the Board of Revenue declining to interfere with the order passed by the RAA and directing to make allotment after inviting applications under Rule 14A of the Rules, does not warrant any interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India.

12. The writ petition is accordingly dismissed. No order as to costs.