

(2014) 10 RAJ CK 0090

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 370/2013 in Civil Writ Petition No. 2334/1995

Ram Bharosi Lal

APPELLANT

Vs

The Board of Revenue

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Citation : (2014) 10 RAJ CK 0090

Hon'ble Judges : Sunil Ambwani, Acting C.J.; Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : K.K. Mehrishi, Senior Counsel assisted by Sanjay Mehrishi and Timan Singh, Advocate for the Appellant; S.K. Gupta, Additional Advocate General and Manoj Bhardwaj, Advocate for the Respondent

Judgement

1. We have heard learned counsel for the parties.
2. This Special Appeal is directed against the judgment and order dated 24.01.2013, passed by learned Single Judge, confirming the order of the Board of Revenue dated 10.01.1995, by which it had allowed the reference made by the Collector, Bharatpur, for cancellation of lease of the land in Khasra No. 335, measuring 1 Bigha, 8 Biswa, situate at Anaha Gate, Bharatpur. The Board of Revenue set aside the mutation in favour of other petitioners on the basis of the sale deed, executed in their favour by late Shri Bhoori Singh, the original allottee of the land.
3. Late Shri Bhoori Singh was serving as Postmaster at Bharatpur. In the year 1958, he made a request for allotment of land for cultivating vegetables. The land was recorded as an "Abadi" land, which could not be allotted to him for cultivation, more so when he was a Government servant, serving as Postmaster. The land was allotted for a period of one year for cultivation, and was so recorded in the revenue records.
4. Late Shri Bhoori Singh sold the land, which was allotted to him for the purpose

of cultivation only for a period of one year. A suit for specific performance of contract was filed, which travelled up to the Apex Court, in which the decree passed by the trial Court was set aside. Late Shri Bhoori Singh again transferred the land unsuccessfully, to avoid the proceedings for cancellation of the allotment.

5. The proceedings, giving rise to the Special Appeal, were initiated before the Collector, Bharatpur under Section 9 read with Section 82 of the Land Revenue Act, 1956 (for short, the Act of 1956"). The Collector recorded a finding that the land could not have been allotted to late Shri Bhoori Singh, and that the entire proceedings of the suit for specific performance of contract, were based on the sale deed, which could not be executed by the allottee of the land for a period of one year only. In the application made before the Collector, Bharatpur, it was stated that the allotment was made irregularly in Samvat 2014 of the land, which was not open for allotment for agriculture purposes. It was an "Abadi" land, adjacent to Anaha Gate. Late Shri Bhoori Singh never cultivated the land, nor any cultivation was recorded in the revenue records. He was not a bona fide farmer, or a landless person, eligible for allotment. He was serving as a Postmaster and, thus, allotment could not be made in his favour. In any case, allotment was only for a period of one year, after which he became an unauthorized occupant of the land.

6. The Collector drew the proceedings and made a reference for cancellation of the allotment to the Board of Revenue. The reference was accepted by the Board of Revenue, and the allotment was cancelled on 10.01.1995, giving rise to S.B. Civil Writ Petition No. 2334/1995, which was pending in this Court for a period of 18 years.

7. Learned Single Judge has recorded a finding of fact that the land was not open for allotment. The procedure followed in making allotment in favour of late Shri Bhoori Singh, who was serving as Postmaster, was entirely illegal. He was not eligible for allotment. He tried to protect his possession over the land by transfer, twice, in which the transferees failed to succeed. They did not acquire any right over the land. Learned Single Judge observed that the land could only be allotted to a landless person, as defined in Rule 2(iii) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957. Late Shri Bhoori Singh did not fall in the category of landless person, and was thus not eligible for allotment.

8. Learned counsel appearing for the appellants submits that the allotment could only be cancelled by the Collector under Rule 14(4) of the Rules of 1957. He submits that in such case, revision was the remedy available, and since such remedy was not availed, the Collector did not have the authority to make reference, after a period of more than 30 years, for cancellation of allotment. He has relied upon a decision of the Supreme Court in Shankar Ramchandra Abhyankar Vs. Krishnaji Dattatreya Bapat, , in support of his submission that where there is no limitation prescribed, the remedy must be availed within a reasonable period of time. He has also relied upon the Full Bench decision of this

Court in *Chiman Lal Vs. State of Rajasthan and Others*, , in which it was held that in the absence of period fixed by statute, power has to be exercised within reasonable time depending on the facts of given case.

9. In the present case, we do not find that the decisions relied upon by learned counsel for the appellants have any application to the facts of the case. The allotment in the present case was not regular. It was as a result of the fraud played by late Shri Bhoori Singh on the revenue authorities. He was serving as Postmaster and was not a landless person, eligible for allotment of an "Abadi" land, lying in Anaha Gate, Bharatpur. It was never cultivated, and that the mutation was carried out in favour of late Shri Bhoori Singh, as an allottee, for a period of one year..... only. There is no limitation prescribed to cancel illegal allotment of the Government land, for which the allottee had played fraud by misrepresenting the facts and had thereafter tried to save his possession by illegal transfers. The Collector did not commit any error of law in referring the matter to the Board of Revenue for cancellation of the allotment.

10. We are informed by learned counsel appearing for the State-respondents that the land has now been allotted for construction of a Satellite Hospital at Anaha Gate, Bharatpur. The allotment order dated 03.10.2013, has been annexed to the reply, filed by the State-respondents.

11. For the aforesaid reasons, we do not find any good ground to interfere with the judgment of learned Single Judge.

12. The Special Appeal is dismissed.