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**(1998) 09 RAJ CK 0005**

**In the Rajasthan High Court**

**Case No : Special Appeal No's. 114, 115 and 117 of 1996**

Ram Dhan

APPELLANT

Vs

State of Raj. and Others

RESPONDENT

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**Date of Decision : 04-09-1998**

**Acts Referred:**

Rajasthan Panchayat (General) Rules, 1961 — Rule 266

**Citation :** (1999) 2 RLW 1034 : (1999) 1 WLN 226

**Hon'ble Judges :** Pana Chand Jain, J;P.P. Naolekar, J

**Bench :** Division Bench

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## **Judgement**

P.P. Naolekar, J.—All these special appeals emanate from the order of the learned Single Judge dated 4.10.1995 where by 5 writ petitions were dismissed. Since identical questions of fact and law arise, we propose to dispose of these special appeals by this composite judgment.

2. The appellants are residents of village Baget, Gram Panchayat Khudiyala, Panchayat Samiti Dudu, District Jaipur. These 4 appellants and one other person moved applications for grant of Patta of the disputed land in terms of Rule 266 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter, referred as the Rules") before the Gram Panchayat Khudiyala. While processing the above applications, the Gram Panchayat Khudiyala appointed a committee consisting of some Panchas to inspect the site and submit a report for allotment of the said land. Accordingly, the committee inspected the site and submitted its report on 27.1.1982. The committee stated in the report that auction sale of the proposed land was not possible because the land was uneven and suffered from water logging also. The committee, therefore, clearly opined that instead of auction sale, negotiated allotment would be preferable. The report of the committee has been filed with the appeals and is Ex. 1. The Gram Panchayat Khudiyala accepting the report of the committee and following the entire procedure envisaged in Rule 266 of the said Rules allotted the land as mentioned in para 4 of the appeal to the appellants and each of them was issued a Patta. In

accordance with Rule 265 of the said Rules, the aforesaid allotment was sent for confirmation to the Panchayat Samiti. Dudu and the same was granted vide Ex. 2. In the appeal it was stated that there is a provision contained in Rule 270 of the said Rules for preferring an appeal against the allotment made either under Rule 265 or 266 of the said Rules. However, no appeal was filed against the allotment made by the said Gram Panchayat. After allotment the appellants made huge expenditure in improving the land. However, respondent No. 1 invoking provisions of Rule 272 of the said Rules filed a revision petition before the Additional Collector, Jaipur, on 21.7.1992 praying for cancellation of the plots allotted to the appellants. By this revision petition, the Government through the officer-in-charge, Panchayat Collector, Jaipur, challenged inter alia the resolutions passed by the Panchayat on 9.4.82, 9.1.83, 9.4.87, 9.5.87 & 23.5.87 by which the plots were allotted to the appellants as also the cancellation of the above plots. This revision petition was filed some 8 years after the allotment of the plots to the appellants. A perusal of the revision petition shows that the allotment of plots was challenged on three grounds viz.. (1) no approval of the Panchayat Samiti was obtained : (2) Rule 265(2) of the said Rules was not complied with : and (3) that the land in question was not Abadi land and the Gram Panchayat had no authority to alienate the same. It may be mentioned that the Gram Panchayat made allotment in favour of 5 persons and the total land allotted was 5330 sq. yards. It is also important to note that entire Khasra No. 426 is about 3025 sq. yards and half of which is Garmumkin Kharda and half is Garmumkin Abadi. However, the Additional Collector allowed the revision petition and cancelled the allotment made by the Gram Panchayat in favour of the 5 allottees including the appellants.

3. The appellants have also stated that earlier the said land which comprised in Khasra No. 426 was divided into two parts i.e. 426/1 and 426/2 in the year 1974. However, no tarmim of the aforesaid change was made in the revenue record upto 1991. However, on 25.9.1991, the Tehsildar directed the Patwari concerned to make necessary correction in the revenue record. The concerned Patwari accordingly affected entry and marked Khasra No. 426/1 as Garmumkin Abadi and Khasra No. 426/2 as Garmumkin Kharda vide his report dated 3.11.1995. It is further important to mention that before the said entry made by the concerned Patwari, another Patwari Halka on 23.10.1991 submitted its report about khasra No. 426 wherein it was stated that the area of khasra No. 426 is 1 Bigha and half of which is Garmumkin Kharda and half is Garmumkin Abadi and that no demarcation has been made oh the above land.

4. The contention of the appellants is that the allotment was made in the year 1987 and there was only one map showing Khasra No. 426 and its land as Abadi, hence the Gram Panchayat was perfectly justified in making the above allotment to the appellants.

5. The appellants felt aggrieved by the report of the Patwari dated 25.9.1991 and the modification made by him in accordance with his report wrongly showing the

Khorda in the traced map and preferred an appeal before the concerned appellate authority (Additional Collector, Jaipur). The Additional Collector, Jaipur vide its order dated 14.9.1992 allowed the appeal and set aside the letter dated 25.9.1991 and directed the Tehsildar, Dudu, to give his report to S.D.O. Sambhar Lake so that the latter may pass appropriate further order. The appellants filed copy of the above order dated 14.9.1992. Accordingly, the Tehsildar, in pursuance of the order dated 14.9.1992 submitted its report on 15.6.1995 wherein it was stated that the tarmim of khasra No. 426/2 was not done as per the site and hence it could not be said whether khasra No. 426/2 is Germumkin Khorda or Abadi. The report is Ex. 2. The appellants have challenged the order dated 11.8.1995 on the ground that while passing the above order, the learned Additional Collector, Jaipur did not take into consideration the report of the Tehsildar dated 15.6.1995 (Ex. 9). It was, therefore, prayed that the appeals be allowed and the order dated 4.10.1995 passed by the learned Single Judge as also the order dated 11.8.1995 passed by the Additional Collector-II, Jaipur (Ann. 4) be set aside.

6. We have heard learned Counsel for either party. Learned Counsel for the appellants referred to the documents filed along with the writ petitions as well as the special appeals and submitted that a perusal of the above documents unerringly point out that the land comprising khasra No. 426 is Abadi land or at any any rate there is no explicit record available that the land is not Abadi land. That is why, the learned Additional Collector (Judicial). Jaipur was confronted with this problem while entertaining appeal filed by the appellant against the order of the Tehsildar dated 25.9.1991. The Additional Collector was of the opinion that the present dispute ought to have been dealt with in accordance with Section 128 of the Rajasthan Land Revenue Act but the same was not done. He therefore, accepted the appeal, set aside the order dated 25.9.1991 and directed the Tehsildar to inspect the site and make a factual report to the S.D.O. Sambhar Lake and the latter would dispose of the matter after hearing both the parties. Learned Counsel also invited our attention to the report submitted by the Tehsildar in compliance of the above order but unfortunately the same escaped the notice of the Additional Collector, Jaipur who disposed of the various petitions filed against the above allotments. He therefore, prayed that the matter may be remanded to the Additional Collector, Jaipur to decide the four matters afresh after taking into consideration the report submitted by the Tehsildar in pursuance of the order passed by the Additional Collector, Jaipur dated 14.9.1995.

7. Learned Counsel for the respondents, on the other hand, supported the order of the Additional Collector, Jaipur dated 11.8.1995 as also the order of the learned Single Judge on the ground that the land that was allotted to the appellants was not Abadi land. The Gram Panchayat, therefore, had absolutely no right whatsoever to make allotment of the above land to the appellants. He further submitted that while allotting the land to the appellants, the Gram Panchayat totally ignored the said Rules. He, therefore, prayed that the appeals are liable to be dismissed.

8. We have considered the rival considerations carefully. We have also gone through the relevant documents. Even a perusal of the order passed by the learned Additional Collector, Jaipur dated 14.9.1992 would show that the nature of the land comprised in khasra No. 426 was not unambiguous. The Additional Collector, therefore, felt persuaded to remand the matter to the Tehsildar to make a factual report regarding this matter to the S.D.O. Sambhar Lake. He further directed that the learned S.D.O., Sambhar Lake, would dispose of the matter in accordance with the report of the Tehsildar. The Tehsildar submitted his report but the same was not considered by the learned Additional Collector while passing the order dated 11.8.1995. It has, therefore, resulted in miscarriage of justice and the appellants got prejudiced on account of non-consideration of the report of the Tehsildar.

9. We may, however, make it clear that the allotment can now be challenged only on the ground whether the land in question was not Abadi land. The other two grounds as referred to in para 2 of this judgment, after lapse of so many years, do not survive for judicial scrutiny. If the allotment is challenged on such grounds after such inordinate delay of many years, the courts are reluctant to entertain the same. We are, therefore, not inclined to consider the other two grounds for assailing the allotment of land to the petitioners. However, the question of competency to allot the land to the petitioners goes to the root of the case and must, therefore, be adjudicated.

10. We, therefore, accept the appeals, set aside the order of the learned Single Judge dated 4.10.1995 as also the order of the learned Additional Collector, Jaipur dated 11.8.1995 and direct the learned Additional Collector, Jaipur to reconsider the matters afresh only on the ground indicated above after taking into consideration the report submitted by the Tehsildar, Dudu to the S.D.O. Sambhar Lake dated 15.6.1995 after notice to the parties as expeditiously as possible.