
(1997) 01 RAJ CK 0075
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3441 of 1996

Rana Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 14-01-1997

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Colony Area) Rules, 1975 — Rule 13A

Citation : (1997) 1 RLW 329 : (1997) 1 WLN 97

Hon'ble Judges : P.P. Naolekar, J

Bench : Single Bench

Judgement

P.P. Naolekar, J.—As the question involved in this petition and the writ petitions mentioned in the Schedule annexed hereto is common, they are being disposed of by this common order and, accordingly, the Schedule to the Judgment shall form part of this judgment. Admittedly, the petitioners in these writ petitions are special allottees of the government-lands under Rule 13A of the Rajasthan Colonisation (Allotment & Sale of Government Land to the Indira Gandhi Canal Colony Area) Rules, 1975 (in short, referred to hereinafter as "the Rules of 1975") before the (Amendment) Rules, 1996 were brought into force.

2. The State Government in exercise of the powers conferred by Section 28 read with Section 7 of the Rajasthan Colonisation Act, 1954 (Act No. XXVII of 1954) has amended the Rules of 1975 published in the Gazette on 01.03.96. The amended Rules; are called in the Rajasthan Colonisation (Allotment & Sale of Government Land in Indira Gandhi Canal Colony Area) (Amendment) Rules, 1990. The amended Rules have come into force with immediate effect. They read as under:

After existing Clause (iii), of Sub-rule (5) of Rules 13A of the said Rules the following new proviso shall be added, namely:

Provided that if any allottee fails to deposit the instalment on due date, as prescribed in the allotment order, the allotment shall be deemed cancelled

without any notice.

After the existing Clause (vii) of Sub-rule (5) of Rule 13-A of the said rules, the following new Clause (viii) shall be added, namely:

(viii) If the allotment of land to an allottee has been cancelled for non-payment of price of land under provision of these rules and if the allottee applies within six months from the date of cancellation or the date of deemed cancellation of allotment, the allotment shall be restored on payment of unpaid price in a lump sum with 18% interest p.a.

Provided that benefits of the provision shall be available to the applicant for the maximum period of three years from the date of allotment.

3. It is contended by learned Counsel for the petitioners that the amended provisions of the Rules have no application to the special allottees who have been allotted land prior to the date of the amended Rules being brought into force. The right vested in the land could not have been taken away by the amendment of the Rules and the amended-rules cannot be given retrospective operation. On the other hand, it is the submission of the learned Counsel for the respondents that simply because the allotment-letters were issued in favour of the petitioners no tenancy-right has been created in their favour and thus the amendment of the Rules of 1975 does not take away the right vested in the land as there is none.

4. To appreciate the rival contentions it would be appropriate to understand the scheme of special allotment of the government land under the Rules of 1975. For the purpose of special allotment under Rule 13A, the Government has to notify in the official gazette the specifications of the land available for the special allotment alongwith the price fixed. The allotment shall be made to the persons who are eligible for special allotment in the order of preference given in Sub-rule (2) of Rule 7 of the Rules of 1975. Where such person is not available then to any of the persons who is a bonafide agriculturist and resident of Rajasthan for a period of not less than 20 years preceding the date of application. The extent of the land so allotted shall be subject to the ceiling-area-limit applicable to the allottee under the Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973. After the land is notified in the Official Gazette with its price for sale by special allotment, the allotting authority shall invite by public notice applications for special allotment within the time fixed which shall not be less than 30 days from the date of issuance of the public notice. The copies of the notice shall be affixed on the notice-board of the allotting-authority concerned, the notice-board of the Colonisation Tehsil/Revenue Tehsil in which the land is situated, a conspicuous place of the village in which the land is situated. After inviting the applications, the persons interested may present applications in form-19 to the allotting authority of the area or to any other officer authorised by the Colonisation Commissioner in this behalf. The applications shall be scrutinised alongwith the requisite papers required to be submitted under the Rules and after satisfaction of the correctness of the informations submitted by the

applicants, the allotting authority shall arrange the applications according to the priority for allotment under Sub-rule (1) of Rule 7 of the Rules of 1975.

5. Sub-rule (5) requires that sum of Rs. 500/- shall be deposited by the applicant as earnest-money before his application would be taken up for consideration by the allotting authority. 25 per cent of the notified price is to be paid by the allottee at the time of issuance of the allotment-order and 10 per cent of the notified price shall be paid by the allottee before taking actual possession of the land allotted to him. The remaining amount is required to be paid in three equal instalments. If the allotment order is issued before 30th of June of the year, the first instalment shall fall due on the 1st day of January of the year immediately following. If the allotment order is issued in between 1st of July and 31st of December of the year, the first-instalment shall fall due on the 1st day of July of the year immediately following. The second and third instalments shall fall due one year after the preceding instalment respectively. So, the scheme of Rule 13A for payment of price is that the person who has applied for allotment is required to deposit Rs. 500/- as earnest-money, and at the time of issuance of allotment-order 25% of the notified price and 10% of the notified price at the time of delivery of possession and, thereafter, after the allotment order is issued, deposited rest of the amount in three instalments. By amendment of Rule 13A, it is provided that if the allottee fails to deposit the instalment on due date as given in the allotment order, the allotment shall be deemed to be cancelled without any notice. Thus if the instalment are not paid as required in the allotment order, the allotment-order shall stand cancelled.

6. The question is what is an allotment-order, whether the allotment-order confers a right in the property allotted to the allottee or it is simply a right conferred on the allottee to get the tenancy-rights on payment of the allotment-price. The Rajasthan Colonisation (General Colony) Conditions, 1955 are admittedly applicable to the allotment orders issued in favour of the petitioners. The first proviso to Condition 9(1) of the Conditions governs the cases of the petitioners allotment which lays down that when the land is allotted under Rule 13A of the Rules of 1975, khatedar tenancy-right shall be conferred on the allottee on full payment of the price of the land with interest due, if any, provided that he has not breached any of the terms and conditions of the allotment. The conferral of the khatedari-right is subject to deposit of the full price for which the land has been allotted. Unless and until, the full price is deposited right of khatedari tenant would not be conferred on the petitioners. The allotment orders issued in favour of the petitioners confer the right on the petitioners to get right of khatedari-tenancy right on deposit of the full price of the land allotted. When the amendment of Rule 13A(5)(iii) was brought into force the petitioners had no khatedari right in the land allotted, it is only the right to get the khatedari on deposit of the price mentioned in the allotment-order. The effect of Amendment Rules, 1996 is that if the instalments are not deposited as required under the allotment order the right to get khatedari-tenancy right stands cancelled. If the price was not paid under the allotment-order right to get the khatedari-tenancy

right stood cancelled and not any right vested in the land. The Rule enables the respondents to declare that right to have khatedari-tenant's position conferred on the petitioner has come to an end on account of default in payment of instalments on due date. What happened in the past is the cause or reason for the making of the order of cancellation of allotment but the order itself has no retrospective operation. The amended rule simply enables passing of an order in future. There is no illegality or unconstitutionality in bringing such Rule. This Rule has not been given retrospective operation but has been brought into force from the date from which the amendment has been published in the Official Gazette. The proviso to Clause (iii) of Sub-rule (5) of Rule 13A shall apply to all the allottees under Rule 13A.

7. Rule 13A (5)(viii) provides for restoration of the allotment on an application moved to that effect within six months of the date of cancellation of the allotment order or the date of deemed cancellation of the allotment-order. The condition is, if the allottee pays the full price in lump-sum with 18% interest per annum thereon, the Rule enables the allottee to re-acquire the right to get the khatedari-tenancy right, which stood cancelled on account of the provisions of Rule 13A(5)(iii) of the Rules of 1996. As the operation of the provisions is prospective, I have no hesitation in holding that the operation of this amended-rule is also prospective and shall apply to all allottees under Rule 13A whose allotment stands cancelled under the proviso. The demand of unpaid price in lump sum cannot be termed as unreasonable as it already fell due under the allotment order itself, issued in favour of the petitioners. The requirement of payment of interest on the amount fallen due would be just and fair. A person getting land on instalments is expected to pay the amount within the time fixed under the allotment order, and in default, to pay the interest alongwith it. The choice is given to the allottees either to get the allotment or not to get it. There is no compulsion to get the restoration of the allotment. The person who has not complied with the terms of the allotment and as a result thereof whose allotment is cancelled has no justification or legal right to claim re-allotment on the similar terms and conditions. This rule gives facility to the persons of getting re-allotment and, therefore, shall apply to the allotments made even prior to the date of the amended Rule was brought into force.

8. Under the proviso to Sub-rule (5)(viii), the benefit is restricted to the applicants for the period of three years from the date of allotment. On true construction of the amended Rules of 1996, on non-payment of the instalments due on due dates the allotment shall stand cancelled from the date the amended Rules are brought into force. The persons whose allotment has been cancelled or is deemed to have been cancelled shall have six months' period for re-allotment of the land on payment of the price in lump sum with 18 per cent interest. But, by proviso, this right has been restricted for a period of three years from the date of allotment and for the allottees beyond three years, the proviso takes away the light given under main Sub-rule (5)(viii). This can be explained by the following example. A person who has been allotted land in the year 1994 and has

not paid the instalments on due dates, as per the Amendment Rules, his allotment stands cancelled. But, he shall have a right to make an application within six months for reallotment, since his allotment falls within three years. However, the person who has been allotted land in the year 1991 makes default in payment of the instalments, his allotment shall stand cancelled under the deemed cancellation-clause from the date the Amendment Rules, 1996 are enforced. He shall have no opportunity to make an application for re-allotment of the land because on the date the demanded Rules have been brought into force the period of three years has already expired. This is not permissible, as there cannot be creation of different classes, for application of subrule (5)(viii), by the proviso. The allottee prior to three years of the amended Rules of 1996 will have no opportunity to seek reallotment of the land whereas the person whose case falls within a period of three years preceding date of amendment coming into force shall have that opportunity, although in both cases the cancellation of allotment is on the same date, for the same cause. The proviso has an effect of taking away the right given under the amended Clause (viii). There is no reasonable nexus to the object sought to be achieved, namely the person whose allotment has been cancelled should get an opportunity of reallotment on fulfillment of conditions of payment of unpaid price in lump sum with 18 per cent interest. The proviso cannot create a situation which over-rides and nullifies the right given under the main sub-rule. The legislature cannot be permitted to give something by one hand and take away the same thing by another. The proviso treats equals differently. The allottees similarly circumstanced, defaulters on the date the Amendment Rules, 1996 are applied, should be treated alike. There is nothing to indicate that the classification is founded on an intelligible basis having reasonable nexus with the object to be achieved by the differentiation made by the proviso. The proviso "provided that benefits of the provision shall be available to the applicant for the maximum period of three years from the date of allotment" is unreasonable, arbitrary and discriminates between persons similarly situated and, therefore, is a bad law. The same deserves to be struck down.

9. It is further contended that Section 14 of the Rajasthan Colonisation Act, 1954 provides for penalty for breach of conditions, therefore, the State Government has no power, by amending the Rules, to provide for the cancellation of the allotment-order for breach of conditions of allotment. Section 14 applies when the Collector is satisfied that tenant in possession of the land in colony has committed a breach of the conditions of his tenancy. He can impose on the tenant a penalty not exceeding Rs. 2000/- or order a resumption of the tenancy. The proviso to the Section lays down that if the breach is capable of rectification the Collector shall not impose any penalty or order resumption of the tenancy unless he has issued a written notice requiring the tenant to rectify the breach within a reasonable time, not being less than one month and the tenant has failed to comply with such notice. Admittedly, Section 14 shall apply to a person who is tenant in possession of the land. As already held by me, the petitioners have not become tenants of the land for which the allotment-orders have been

issued. They have only the right of conferral of tenancy right on fulfilling all the conditions of allotment. But, they are not the tenants. That being the case, Section 14 has no application in the case of the petitioners and their cases shall be governed by the amended Rules of 1996, there being no conflict between Section 14 and the Amendment Rules, 1996 as they operate in different fields.

10. In some of the petitions, it is contended that the allotment-orders have been issued to the petitioners giving 16 instalments for the payment of the price of the land allotted and they have paid their instalments, in accordance with the allotment orders issued but not in accordance with the instalments due as provided under Rule 13A(5)(viii) of the Rules of 1975. On strict application of the Amendment Rules, 1996 they shall not be defaulters if the instalments have been paid as required under the allotment-orders issued to them although the allotment-orders for instalments are not in conformity with the provisions of Rule 13A(5)(viii) of the Rules of 1975, but, in such case, the deeming-clause of cancellation shall not apply to them. It would be for the State to change the conditions of special allotment orders for payment of instalments and bring them in conformity with the provisions of Rule 13A(5)(viii). The instalments shall then become due as per the allotment-orders issued and, thereafter, the proviso to Clause (viii) shall apply to those cases if the default is made in payment of instalments on due date.

11. The procedure of fairness and regularity are of the indispensable essence of the principles of natural justice. The Rule of natural justice operates as mandatory requirement the non-observation of which invalidates the exercise of power. Under the proviso to Clause (viii) of Sub-rule (5) of Rule 13A if the allottee fails to deposit the instalments on due date as prescribed in the allotment-order, the allotment shall be deemed to be cancelled without any notice. The condition-precedent for cancellation of the allotment is non-deposit of the instalments as provided in the allotment-order on due date. The cancellation of the allotment could only be made if there is non-deposit of the instalments on due date. To arrive at this conclusion the authority is required to hear the allottee who is said to be in default. There may be a case where the authority may have thought that the allottee is in default but, in fact, he is not. One can also visualise the case that the amount has been deposited but not entered into the records and this could only be verified after hearing the other side. It is well-known that a decision which is made without bias and with proper consideration of the views of those affected by it will not only be more acceptable, it will also be of better quality because justice and fair play go hand in hand. The requirement of fair play necessitates hearing before passing any adverse order. Thus it is mandatory to hear the allottee before passing any order of cancellation of allotment on the ground of allottee's failure to deposit the instalments due under the allotment order. Clause (viii) of subrule (5) of Rule 13A shall come into operation after the order of cancellation of allotment is passed against the allottee by the authority.

12. For the aforesaid reasons, the proviso to Clause (viii) of Sub-rule (5) of Rule 13A of the Rules of 1996 is struck down. The amended Rules viz. Rajasthan Colonisation (Allotment & Sale of the Government Land in the Indira Gandhi Canal Colony Area) (Amendment) Rules, 1996 shall apply to all allottees inclusive of the allottees prior to the date Amendment Rules, 1996 are brought into force. The order of cancellation of allotment under the proviso to Clause (viii) of Sub-rule (5) of Rule 13A shall be passed after giving an opportunity to the allottees of being heard. The procedure of the hearing shall be determined by the authority itself. Clause (viii) of Sub-rule (5) of Rule 13A shall come into operation from the date the order under proviso to Clause (iii) of Sub-rule (5) of Rule 13A is passed. The writ petitions stand disposed of accordingly.