
(2019) 07 RAJ CK 0098
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9975 Of 2018

Richhpal And Ors	Vs	APPELLANT
State Of Rajasthan And Ors		RESPONDENT

Date of Decision : 29-07-2019

Acts Referred:

Jaipur Development Authority Act, 1982 — Section 54
Rajasthan Land Revenue (Allotment Of Land for The Agricultural Purposes) Rules,
1970 — Rule 12, 20(3)
Constitution Of India, 1950 — Article 226(3)

Citation : (2019) 07 RAJ CK 0098

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Lokesh Kumar Sharma, Amit Kuri

Final Decision : Disposed Off

Judgement

The matter comes up on an application under Article 226 (3) of the Constitution of India for vacation of ex-parte ad interim order dated 9.5.2018.

With the consent of counsel for the petitioners and the JDA, the petition is taken up for final disposal.

Mr.Amit Kuri counsel appearing for the respondentâ?" JDA submitted that the petitioners now have no right as claimed to any land in Khasra Nos.76,

77, 78, 80, 81 & 82 in Village Kukas, Tehsil Amer inasmuch as they are the successors of one Kana Ram who was an allottee of the Kupanya Badh

Sanyukt Krishi Sahkari Samiti Ltd. Kukas (hereinafter â??Samitiâ??) which itself on 10.6.1959 had been allotted 400 bighas by the State Government

under the Rajasthan Land Revenue (Allotment of Land to Co-Operative Societies) Rules, 1959 (hereafter â??the Rules of 1959â??) but was

subsequently liquidated on 23.12.2005 and the land allotted to it resumed on

7.11.2014 under the Collector's order. The liquidation of the Samiti and resumption of land earlier allotted to it has attained finality. No member/allottee of the Samiti or any successor of such member can claim any legal right in the land initially allotted to the Samiti and thereafter by it to its members and its protection by this Court. Mr.Amit Kuri submitted that following the resumption dated 7.11.2014 the Samiti and its members and their successors, would be for all purposes, mere trespassers. But in fact the petitioners are not even in that situation as they have been amongst others evicted and dispossessed from time to time as on 21.4.2018 and 4.10.2018. Even mutation of the land in dispute presently stands with the JDA under mutation no.790 dated 19.11.2014. Mr.Amit Kuri submitted that in the circumstance the petitioners have no right under Rule 20 (3) of the Rajasthan Land Revenue (Allotment of Land for the Agricultural Purposes) Rules, 1970 (hereinafter "Rules of 1970") which they now belatedly seek to agitate after filing of the petition. Mr.Amit Kuri submitted that as a result the petitioners' purported application under Rule 20 (3) of the Rules of 1970 belatedly filed on 11.7.2018 subsequent to the filing of the petition on 30.4.2018 is an abuse of the process, a mere fig leaf in a crass attempt to appropriate public property and hence is of no event. The petitioners cannot maintain this petition on such a bogus application.

Mr.Lokesh Sharma, at the outset, submitted that the petitioners do not wish to press the challenge to the resumption order dated 7.11.2014. He however submitted that pursuant to the Rule 20 (3) of the Rules of 1970 brought in by the amendment on 17.9.2007, the petitioners in continuous cultivatory possession of the land in issue as successors of the original allottee of the society, one Kana Ram, moved an application for allotment on 11.7.2018. Mr.Lokesh Sharma submitted that the lawful consideration of the said application is a valuable right and till it is taken to its logical conclusion and finally adjudicated, in the interregnum the petitioners be protected and not be dispossessed from the land in issue in this petition.

Mr.Amit Kuri in rejoinder submitted that subsequent to the promulgation of the Jaipur Development Authority Act, 1982 (hereafter "the Act of 1982") in view of Section 54 thereof all sewai chak land vests absolutely with the JDA. He submitted that following the liquidation of the Samiti which was originally allotted 400 bighas including the land in issue and the

resumption of the land allotted to it under the Rules of 1959 on 7.11.2014, the petitioners as the legal heirs of the allottee of the Samiti have no right whatsoever even with reference to Rule 20 (3) of the Rules of 1970. He submitted that following the resumption, the land bore the character of sawai chak and its vests under Section 54 of the Act of 1982 with the JDA.

Mr.Amit Kuri drew the attention of this Court to the judgment passed in the case of Archana Kashyap & Others vs. State of Rajasthan & Others SBCWP No.20130/2017 and other connected matters decided on 23.2.2018. In the said petition the order of resumption of the land of the Samiti passed by the Collector on 7.11.2014 was challenged and allotment sought under the Rule 20(3) of the Rules of 1970. He submitted that the said writ petition was disposed of, and the order of resumption on 7.11.2014 of land allotted to the Samiti on 10.6.1959 was upheld. Further the Court held that Rule 20 (3) of the Rules of 1970 would attract only to those specifically entitled to avail the provision and to none other. Mr.Amit Kuri then submitted that the Division Bench of this Court in the case of Budh Singh vs. State of Rajasthan & Others DBCWP No.6468/2005 decided on 11.3.2015 has also upheld the order of resumption dated 7.11.2014 and held that where an allotment had been cancelled and land thereunder resumed by the State under the Rules of 1959 no right to regularization of land for those even in cultivatory possession as members/ successors of members of the Samiti obtained in view of the fact that the resumption of the land allotted entailed all allottees as mere trespassers. Mr.Amit Kuri further submitted that in any event the petitioners do not satisfy the requisites of Rule 20 (3) of the Rules of 1970 inasmuch as they have been dispossessed from the land in issue on 21.4.2018 and 4.10.2018 and the subject land also mutated in the name of JDA vide mutation number 790 dated 19.11.2014 (Annexure R/2).

Mr.Amit Kuri also asserted that the possession of the land allotted to the erstwhile allottee Kana Ram has been parted with to Housing Cooperatives Societies and plotting for residential use thereon been done, roads laid and even constructions for non- agricultural purposes made. An application at the instance of the petitioners purportedly filed on 11.7.2018 under Rule 20 (3) of the Rules of 1970 is thus not even maintainable. Mr.Amit Kuri pointed out that the application under Rule 20 (3) of the Rules of 1970 has in fact been filed on 11.7.2018, four years subsequent to the order of

resumption dated 7.11.2014 and is a gross abuse of the legal processes.

Heard. Considered.

That allotment of 400 bighas of land was made for 25 years to the Samiti on 10.6.1959 under the Rules of 1959 is not in dispute. And it is also not in

dispute that the father/ husband of the petitioners one Kana Ram was an allottee of the Samiti or that he died on 28.5.1977. Since then the petitioners

as his legal heirs claim to be in cultivatory possession of the land allotted to him and claim mutation in their names. It however also appears that

subsequent to the expiry of the 25 years lease period under the allotment dated 10.6.1959 no application for renewal thereof under the Rules of 1959

was moved, no order of renewal issued or lease renewed. Be as it may, for reason of breach of conditions for the allotment in issue under the Rules

of 1959 the Samiti itself was liquidated on 23.12.2005 and the land resumed vide Collector's order dated 7.11.2014.

Rule 20 (3) of the Rules of 1970 as amended on 17.9.2007 read as under :-

“Notwithstanding anything contained in these rules, the cooperative society to whom land was allotted and the said society provided that land to its

member for cultivation and the said land has been resumed under the Rajasthan (Allotment of Land to Cooperative Societies) Rules, 1959. If the said

member or his successor is landless and continuously in possession and cultivating the said land personally, the allotting authority may on advice of the

Advisory Committee instead of ejecting him, allot the whole or part of such land subject to limit provided in rule 12 on payment of five percent of the

market value of the land determined by district Level Committee. In case of persons belonging to Scheduled Castes, Scheduled Tribes, Other

Backward Classes and B.P.L. families no price shall be charged:

Provided that if such land was not within the urbanisable limit of peripheral belt of the urban area as mentioned in section [90-A] of the Act at the time

of allotment and subsequently included in urbanisable limit of peripheral belt of urban area of Jaipur Development Authority, [Jodhpur Development

Authority, Ajmer Development Authority] Urban Improvement Trust of Municipal Corporation or Municipal council, Khatedari right shall be conferred

only with the prior approval of [Collector] and on payment of 20% of market value of land as determined for the area by the District Level Committee

and in case of land subsequently included in the urbanisable limit or peripheral

belt of Municipal Board, khatedari right shall be conferred only with the prior approval of [Collector] and on payment of 10% of market value of land determined for the area by the District Level committee.]â??

Whether the petitioners have a right to allotment under Rule 20(3) of the Rules of 1970 on an application belatedly filed on 11.7.2018 is not a matter

for this Court to address as it lies after following the prescribed proceeding wholly within the jurisdiction of the statutorily constituted District Level

Committee under the Rules of 1970. The right to consideration for allotment under the said rules will be premised on the factual situation obtaining as

found in a proper enquiry under the Rules of 1970 inter alia on the question as to whether the petitioners are legal heirs of Kana Ram, whether they

were/ are in continuous cultivatory possession of the land allotted to Kana Ram and whether there has been any breach of the condition of the

allotment at any time during its currency, etc. The District Level Committee under the Rules of 1970 will be required to consider all the above

questions and any other relevant one for the exercise of its discretion under Rule 20 (3) of the Rules of 1970.

I am of the considered view that the judgment dated 23.2.2018 passed by this Court in the case of Archana Kashyap & Others vs. State of Rajasthan

& Others (supra) does not hold that an application under Rule 20 (3) of the Rules of 1970 at the instance of an allottee of a Samiti/ Cooperative Society

or his successor/s in continuous cultivatory possession not maintainable. Contrarily the judgment states that such an application would only not be

maintainable at the instance of any not covered by the Rule in issue. The judgment passed by the Division Bench of this Court in the case of Budh

Singh (supra) appears to have been based on the state Rules of 1970 obtaining prior to the amendment of 2007 which brought on to the statute Rule 20

(3) of the Rules of 1970. Nothing in the said judgment can persuade this Court as Mr. Amit Kuri admirably tried, to hold that an application under Rule

20(3) of the Rules of 1970 at the instance of an allottee of a Cooperative Society allotted land under the Rules of 1959 or his successor in continuous

cultivatory possession without any breach of the terms of allotment is not maintainable after resumption of the land allotted. In fact no such conclusion

would at all have been arrived at on the plain language of Rule 20 (3) of the Rules of 1970 in issue nor in fact was if the said provision was brought to

the Court's notice. As far as the issues of continuous cultivatory possession of the original allottee of the Samiti" Kana Ram and after his death

in 1977 his LRs and breach of condition of allotment are concerned, I am of the considered view that such disputed questions of fact are the matters

for the District Level Committee which considers the petitioner's application to adjudicate. This Court cannot and should not usurp that

jurisdiction. The District Level Committee under the Rules of 1970 would also be free to interpret the effect of Section 54 of the Act of 1982 on the

right to apply for allotment under Rule 20(3) of the Rules of 1970.

Resultantly, I would dispose of this petition and require the petitioners to pursue their application stated to have been filed on 11.7.2018 under Rule 20

(3) of the Rules of 1970. The District Level Committee or any other authority under the Rules of 1970 seized of the application is directed to without

fail, dispose it of within a period of six weeks from the date of the presentation of a certified copy of this order"even if the certified copy is filed by

JDA. Petitioners to present themselves before the District Level Committee on 8th August, 2019. The date so fixed will constitute notice to them

through counsel. The District Level Committee, if not constituted, be constituted within three working days from submission of certified copy of this

order. The enquiry/ hearing on the petitioners' application under Rule 20 (3) of the Rules of 1970 be held, as far as possible, day to day. No

adjournments unless inevitable for very good reason be granted. And when granted be only for a day or two at the most. Non cooperation of the

petitioners should entail ex-parte proceedings/ decision.

As far as the present status of the land in question with regard to possession is concerned, both the petitioners and the respondents have asserted that

the said land is in their possession. I would be disinclined to address this disputed question of fact in this petition but direct that for six weeks from

today during which the petitioners application under Rule 20 (3) of the Rules of 1970 before the District Level Committee has been directed to be

disposed of, the parties would maintain status-quo with regard to the land in issue. The petitioners are specifically directed not to take any steps which

would be in breach of law and/ or create a law and order situation.

Petition accordingly disposed of.