
(2002) 05 RAJ CK 0113
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1548 of 2001

Sampat Lal Sethia

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Rajasthan Panchayat (General) Rules, 1961 — Rule 256, 266
Rajasthan Panchayati Raj Act, 1994 — Section 61, 97

Citation : (2003) 3 RLW 1423 : (2002) 4 WLN 492

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : R.S. Saluja, for the Appellant; L.R. Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

Prasad, J.—The petitioner in the present writ petition has impugned the order of Revisional Authority. In revision, the Revisional Authority has quashed a grant made in favour of the petitioner had his near relatives. The petitioner was at the relevant lime, Up-Sarpanch of the Gram Panchayat, Udasar. Even, recently he continues to be Up-Sarpanch.

2. An application was field by the petitioner for the purchase of land in view of Rule 256 and 266 of the Rajasthan Panchayat (General) Rules, 1961 (hereinafter referred to as the Rules of 1961"). While the application was processed, site was inspected as required by Rule 258 of the Rules of 1961. A Committee of three members for inspection of site was constituted by Panchayat including the petitioner. Since, the Committee of Members for inspection of site included the petitioner, he did not participate in the inspection. The inspection was carried out only by two members namely Shri Sukh Singh and Shri Mohbtaram. After inspection, a notice under Rule 260 of the Rules of 1961 was published. The petitioner has submitted that even if it is assumed that notice did not fulfill the requirement of Rule 260, yet till date no objection was raised in relation to the allotment, further, such objections have not even been made, when the

construction was raised at the site. There had been a prejudice going on against the petitioner due to political rivalry. Some criminal complaints have even been lodged alleging false reports against him. Such reports have resulted which had resulted into filing of final report by the Investigation Agency.

3. After processing of the application of the petitioner a resolution was drawn by the Panchayat being Resolution No. 3 dt. 20.7.1989. By this resolution, allotments were made to as many as 119 persons. Out of these 119 persons, 1.0 persons belonged to the family of the petitioner. For all these allotments, same procedure was adopted. The petitioner claims that consequent to the aforesaid resolution, a patta was issued in his favour vide order dt. 5.6.1990. The patta has been produced and marked as Annex.2. It has been claimed by the petitioner that patta has also been signed by the person who prepared the map at site.

4. In the meanwhile, a complaint filed against the allotment made to the petitioner was processed. Preliminary enquiry in this regard was conducted by Panchayat Prasar Adhikari. After submission of the report of this preliminary enquiry, a revision came to be filed before the District Collector as per provisions of Sec. 97 of the Rajasthan Panchayat Raj Act, 1994 (hereinafter referred to as the Act of 1994"). The petitioner claims that though this revision was filed, but there is remedy of appeal available under sec. 61 of the Act of 1994. A notice of revision was issued to the petitioner. The petitioner filed reply to the revision petition and submitted his oral submissions against the maintainability and merits of the revision petition. Ultimately, the revision petition was allowed by the Collector vide order dt. 30.12.2000, The said order dt. 30.12.2000 has been challenged by the petitioner.

5. The petitioner claims that basic allegation against him was that the land was purchased at a throw away price. This allegation has not been gone into. The revision has only been decided only on the question of infraction of various Rules. The Revisional Authority has also not considered the fact that petitioner was in old possession of land. The petitioner has also denied that he had purchased the land at throw away price. The petitioner impugns the order under challenge by claiming that a revision petition filed after a long lapse of time should not have been entertained. The maintainability of such revision could only be there if a fraud is involved. In the instant, case, no fraud can be seen. Further, when there is a remedy of appeal available and long time has elapsed, such exercise of revisional jurisdiction is unauthorised.

6. The findings of the revisional authority that a vague description of land has been given is ex-facie contrary to the provisions of Rule 256 of the Rules of 1961. The Rule only requires that identity of land is only required to be fixed. The infraction alleged against the petitioner that the inspection was not made by, three members is also not correct in the manner alleged. Enquiry is required to be made by a Committee, of three member. Since, one of the members of the Committee who was required to inspect the site was petitioner himself, it was in this background that the petitioner has to opt out, therefore inspection was made

by two members only. Issuance of notice under Sec. 262 have been claimed to be rightly done by the petitioner. The petitioner has also claimed the finding of the Revisional Authority that "Naksha" has not been signed by the person making Naksha is factually incorrect. In fact, patta was issued to the petitioner after approval of the Pradhan of Panchayat Samiti through there was no requirement of taking such prior permission. The whole exercise of entertaining the revision and filing of complaint is actuated by political rivalry and malafides. The revisional powers could only be exercised after calling of records. Such application of the petitioner was rejected by the Collector and therefore, it was not bonafide exercise of powers.

7. Notices were issued to the respondents. The respondents joined the issue and a reply has been filed on behalf of respondent No. 2. The respondent No. 2 contested the stand of the petitioner and submitted that petitioner was never in possession of the land in question. No proof has been filed in support of the claim petition that he is in possession of the land, the land are at about 1 1/2 kms. away form the area of Bikaner City and National Highway. It is a very costly piece of land which has been taken away by the petitioner without following law. The petitioner's application was not entered in Register Form No. 49 as required under Rule 257(1) of the Rules of 1961. Curiously, while the petitioner was member of the Committee, the proceedings were taken regarding issuance of patta. While his case was being processed, he could not have participated in the proceedings regarding issuance of patta in his own favour and also in favour of his relations.

8. The answering respondent has alleged that it has come to the notice of present Sarpanch and other members of Panchayat the petitioner had signed a good number of pattas and they are blank otherwise. Copies have been shown to the Court at the time of hearing. Having done such acts, if the petitioner raised bogey of political rivalry, then he is not responding correctly. The petitioner having known that register has been misplaced and, the same was not available to be produced claimed its production. It was clearly recorded that the application and proceedings in relation to grant of patta in favour of the petitioner were available and such original record was produced before the revisional court and has also been produced before this Court. It cannot be said that revision has been decided without going through the record. The respondent has stated that entire proceedings have been recorded in the hand-writing of the petitioner, whereas, it was mandatory that he should not have participated in the proceedings in question because they were in relation to his own claim.

9. The petitioner in the rejoinder has slated that it is incorrect to say that lands are at a distance of about 1 1/2 kms. away from the City of Bikaner. At the time of allotment, the distance from Bikaner City was 4 kms. and 2 1/2 kms. from National Highway, The petitioner has reiterated his stand in the writ petition.

10. The Revisional Authority while accepting the revision has observed that rule 266 relating to allotment of land by private negotiations requires that condition

as required under Rule 256 should be satisfied. Satisfaction of such conditions were missing. The Revisional Authority has also found that it is wrong to say that there was no original record available to decide the revision petition. The Revisional Authority has also found that in the application, it is not mentioned as to what is extent of land, he wants to purchase alid area has also not been defined and there is no identification. The inspection was made by two members which is against the Rules. The inspection was required to be made by three members which was not fulfilled. The notice issued was against Rule 260 of the Rules of 1961. The proceedings have been completed in hand-writing of one person in one day. The column of rate of selling and is blank. There is over-writing at various place and on the erasers, no initials of the Sarpanch are there. There had been a number of irregularities and rules have not been followed. The allotment has been made by Up-Sarpanch in his favour and in favour of his relations which is a case of misuse of his authority.

11. I have considered the rival submissions and perused the record of writ petition and also the original record submitted by Panchayat wherein proceedings have been drawn on the application moved by the petitioner for allotting him patta.

12. The case of allotment in favour of the petitioner is to be seen in the light of Rule 226 of the Rules of 1961. Rule 266 of the Rules of 1961 is quoted hereinbelow for ready reference:-

"266. Transfer of abadi land by private negotiation- (1) Panchayat may transfer any abadi land by way of sale by private negotiation in the following cases:

- (a) Where any person has a plausible claim of reasonable prices;
 - (b) where for reasons to be recorded in writing the Panchayat thinks that an auction would not be a convenient mode of disposal of the land;
 - (c) where such course is regarded by the Panchayat necessary for the advancement of Scheduled castes and Scheduled tribes or other backward classes.
 - (d) where the persons are in possession of the abadi land for 20 years or more but less than 42 years, one-third of the prevailing market price and in case of possession of over 40 years, one sixth of the prevailing market price shall be charged.
- (2) The Panchayat may by resolution, transfer by way of sale without charging any price therefor, any abadi land of which the probable, value does not exceed Rs. 200/- in favour of any institution for a public purpose."

13. A reading of the Rule 266 of the Rules of 1961 shows that before any land is transferred by Panchayat in Abadi Area by private negotiations, certain conditions are required to be fulfilled. First requirement is that there has to be a person with the plausible claim of title on the land and if such land is to be sold by

auction, then it would not fetch a reasonable price. If allotment in favour of the petitioner is seen in the light of these requirements, then records do not show that the petitioner had any plausible claim of title, No proof of old possession is available on record except that the petitioner has claimed that there is a "Bada" and the land be allotted to him. At the back of this application, scatch map has been drawn. In this application, there is no assertion of the fact that his possession is a long standing possession. Extent of possession has also not been indicated. No proof has been submitted by the petitioner bringing has case himself in the definition of a "plausible claim".

14. The proceedings also do not show that Panchayat had ever considered the case in the light of the requirement that in case, lands are put to auction, then they will not fetch reasonable price. Rather, there is a total absence of the consideration of the fact. The question of reasonable price was ever gone into be the Panchayat. Thus, requirement of Rule 266(1)(a) is not satisfied.

15. Sub-section 1(b) of Section 266 prescribes that if Panchayat feels that auction would not be convenient mode of disposal of the land, then the same can be disposed of by private negotiations. There is not a whisper of this contingency being present in the allotment in question. Thus, Panchayat was not alive of this condition. Sub-section 1(c) relates to allotment to scheduled castes and scheduled tribes or other backward classes which is also not the case in hand. Thus, the allotment was not warranted by Rule 266 of the Rules of 1961. If allotment has been made under Rule 266 and none of the conditions as prescribed in Rule 266 are met out, then it is obviously a matter where it can safely be said that Panchayat had acted in colourable exercise of jurisdiction at the instance of Up-Sarpanch, petitioner who was the main beneficiary.

16. The first requirement was the eligibility of the petitioner under Rule 266 of the Rules of 1961. As things stand, he was not eligible to be allotted as claimed. Therefore, it was a case of transgressing the authority of rules. The allotment in favour of the petitioner can said to be dehors the rules, since very entitlement of the petitioner in terms of Rule 266 of the Rules of 1961 is missing, the allotment made to the petitioner is an infringement of Rule 266. Any such allotment would thus amount to misuse of powers which would come within the definition of legal malafides. In this background, if case of the petitioner is judged, then what stands out prominently is the fact that an illegal exercise of jurisdiction by the Panchayat was corrected by the Revisional Authority. No doubt after a delay but what cannot be forgotten is the fact that petitioner is and was Up-Sarpanch of the Gram Panchayat and had the capacity of influencing the treatment of case. An illegal order has been set aside by the Revisional Authority. If the order of the Revisional Authority is interfered with, then the same will result into restoration of an illegality. In this connection, a reference may be made to the decision of Full Bench in the case of Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another,

17. In view of the above, no interference is called for in the order impugned. The

writ petition having no force is dismissed.