
(2010) 10 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9864 of 2010

Shivam Jan Kalyan Samiti

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 91

Citation : (2010) 10 RAJ CK 0072

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Govind Mathur, J.—The petitioner, a Society registered under the Societies Registration Act, submitted an application seeking allotment of land in Khasara No. 643, Village Kulmipura, Distt. Pratapgarh for construction of old age home. The land sought to be allotted is a part of gair mumkin pond and as such, that could have not been allotted to any person without getting nature of the land changed. As per the petitioner, the Sub-Divisional Officer, Dhariyawad, Pratapgarh and Collector, Chittorgarh recommended the State Government to change the nature of the land concerned.

2. The Deputy Secretary to the Government of Rajasthan, Department of Revenue (Group-III) by letter dated 9.12.2009 conveyed the Collector, Chittorgarh that the land desired for allotment by the petitioner cannot be allotted being a part of gair mumkin pond. The Deputy Secretary also referred directions of Rajasthan High Court given in the case of Abdul Rehman for not making allotment of such land to anybody. The Government of Rajasthan under its circular dated 23.7.2010 (Annex.-14) also instructed all the Chief Executive Officers of various Zila Parishads in the State that no part of land of any pond or its catchment area be allotted to any one and if any one had encroached therein, the same be removed at earliest. The direction aforesaid was given looking to the severe scarcity of drinking water.

3. In view of the letter dated 9.12.2009, the Collector, Chittorgarh under letter dated 9.1.2010 informed the Sub Divisional Officer, Pratapgarh about cancellation of proposal for allotment of land to the petitioner.

4. After creation of District Pratapgarh, the Collector, Pratapgarh vide communication dated 21.7.2010 instructed the Tehsildar, Pratapgarh to take proper action against the petitioner as per provisions of Section 91 of the Rajasthan Land Revenue Act for getting the encroachment on the land concerned removed. By an another communication dated 30.8.2010 the Collector sought necessary information from the Sub-Divisional Officer, Pratapgarh relating to the steps taken for removal of encroachment made by the petitioner. By this petition for writ, the petitioner is challenging the communications dated 30.8.2010, 21.7.2010 and 9.12.2009 referred above.

5. The contention of the learned Counsel for the petitioner is that as per the report of the officers of Revenue Department, the land in question is situated at a level higher than the pond, therefore, it could have been allotted to the petitioner by changing the nature recorded in the revenue records.

6. I do not find any merit in the arguments advanced.

7. It is not in dispute that the land in question is a part of gair mumkin pond, which is not open for allotment. The Division Bench of this Court in the case of Abdul Rehman v. State of Rajasthan reported in 2004 (4) WLC 435 directed the State Government in following terms:

15. The Committee has made suggestions for restoring the catchment areas to their original shape and use:

(3) Suggestions for restoring the catchment areas to their original shape and use;

Looking to the site visit by the State Level Expert Committee in September 2003 and General Survey Reports received from the District Collectors and Chairmen, District Expert Committee, following suggestions are made:

1. All land shown as drainage channels like nalla, rivers, tributaries etc. as on 15.8.1947 should be declared as Govt. land. Any conversions made after 15.8.1947 should be declared illegal. The relevant act and rules must be amended accordingly.

2. Demarcation of catchment areas should be done by construction pillars at suitable spacing depending upon size of the catchment area with the help of GT sheet of scale 1:25000 or 1:50000 and/or "Water Shed Atlas of Rajasthan" prepared by the State Remote Sensing Application Centre, Jodhpur.

3. Demarcation of drainage channels -

(i) In uninhabited areas this can be done by installing pillars at suitable spacing or by constructing side wall depending upon size of drainage channel and its importance.

(ii) In urban and rural areas, the demarcation of drainage channels must essentially be done by constructing side walls of appropriate height and thickness.

4. In the government owned lakes and other water bodies, the Khatedari rights of private persons in their submergence area should be brought under the ownership of the government.

5. The drainage channels in the catchment areas should be got inspected by engineering professionals and Patwaris. Wherever there are obstructions in nalla, it should be suitable removed by constructing culverts, deepening and widening of nallas etc.

6. Wherever there are any construction activities, which may interfere with the flow of water in drainage channels, no objection certificate must be obtained from the irrigation department.

7. The Anicuts more than 2m height above deepest nalla bed should be identified. The height more than 2m should be dismantled.

8. Wherever residential colonies have been constructed obstructing flow in drainage channels, the obstruction must be removed and nallas may be deepened/constructed.

9. On the periphery of lakes, ponds, water bodies in urban and rural areas, a pucca drain should be constructed on periphery of the water body to prevent entry of domestic, industrial and other waste in the water body.

10. For soil conservation work, suitable guidelines must be issued by the "Watershed & Soil Conservation Department" so that these works make minimum possible interference with the flow of water.

11. The district administration should specify places for dumping various types of waste material. If any body is found to dump the waste material in other places, particularly drainage channels, then suitable punishable should be provided in the law.

12. The government should use television, radio and newspapers to create awareness in this matter.

13. Possibility should be explored to use marble slurry as construction material, for filling depressions etc. as has been done for disposal of fly ash from Thermal Power Houses.

14. The water quality of water bodies should regularly be monitored.

15. Wherever over-burden or waste materials generated from mines and processing units, have been dumped obstructing flow of water in drainage channels, diversion drains and check walls must be constructed. For that purpose, special condition should be incorporated in the lease / license agreement."

16. Having given thoughtful consideration to the issue involved and the suggestions made, we direct the State Government to consider the recommendations of the Committee referred-to above and chalk out a plan to take the effective steps for restoring the catchment areas to their original shape. It is made clear that this order will not prevent the State Authorities from drawing-up or taking further steps more effectively to fulfill the objects of the directions issued by this Court. Three months" time is granted for giving positive shape to the suggestions.

8. In view of the order aforesaid, the State Government committed no wrong while rejecting the petitioner"s requests for allotment of land that is part of a pond.

9. It is stated by the learned Counsel for the petitioner that on the land in question a construction has already been raised by the petitioner. The fact so stated is quite strange. The conduct of the petitioner in raising construction without allotment of land is all the more a good reason to reject the petition for writ.

10. Accordingly, the same is dismissed.