
(1987) 07 RAJ CK 0040
In the Rajasthan High Court
Case No : Special Appeal No. 259 of 1980

Shyam Sunder Agarwal

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 30-07-1987

Acts Referred:

Constitution of India, 1950 — Article 14
Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959 — Rule 2
Rajasthan Land Revenue Act, 1956 — Section 100, 92

Citation : AIR 1988 Raj 145 : (1987) RLW 669 : (1988) 1 WLN 24 : (1988) 1 WLN 131

Hon'ble Judges : J.S. Verma, C.J;Milap Chandra, J

Bench : Division Bench

Advocate : S.D. Rajpurohit, for the Appellant; B. Mehta, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This special appeal u/s 18 of the Rajasthan High Court Ordinance 1949 is against dismissal of a writ petition by learned single Judge of this Court. By the writ petition challenge was made to allotment of (sic) Bighas 1 Biswa of Khasra No. 410 out of 4 total area of 9 Bighas 8 Biswas in village Jakoda, Tehsil Bali, District Pali to respondent 4, Shree Sumerpur Cotton Ginning and Pressing Factory by the Collector, Pali at the behest of the State Government. The allotment of this land was made to the respondent No. 4 under the Rajasthan Land Revenue (Industrial Areas Allotment) Rule 1959 made in exercise of the powers conferred by Section 100 of the Rajasthan Land Revenue Act, 1956 after the said Khasra No. 410 has been set apart for industrial purpose u/s 92 of the Rajasthan Land Revenue Act 1956. The appellant carried on business a Sumerpur in District Pali and also at Udaipur He too was a claimant for allotment of this land, but the same was denied to him. The writ petition was then filed to challenge the allotment made in favour of respondent 4.

2. In substance the grievance made in the writ petition and reiterated in this appeal is that the allotment of the above land in favour of respondent No. 4 is discriminatory inasmuch as the allotment was made without giving any opportunity to the appellant and the others interested in getting the land allotted. In other words, the grievance made is of denial of equal opportunity to the appellant and other claimants for allotment of the land and arbitrarily choosing respondent 4 for making this grant. "The learned single Judge took the view that there was no defect in the allotment made to respondent No. 4 and accordingly he dismissed the writ petition. Hence this appeal by the petitioner.

3. The material facts are these : --It appears that the appellant as well as the respondent 4 were both interested in allotment of this land to them for industrial purpose and had applied to the concerned authorities. This led to an order of the State Government dt. Sept. 30, 1978, which has not been produced, but is referred in the consequential order Annexure-R/2 dt. Oct. 27, 1978 passed by the Collector, Pali setting apart Khasra No. 410 area 9 Bighas 8 Biswas for industrial purpose u/s 92 of the Rajasthan Land Revenue Act, 1956. Having come to know of the State Government's direction for setting apart this land for industrial use, respondent No. 4 made an application Annexure R/3 dt. Oct. 6, 1978 to the Collector, Pali requesting that the appellant be given the offer to deposit the money for the land within a short period failing which the land be allotted to respondent 4. The Collector, Pali then issued letter dt. Oct. 7, 1978 Ex. 14 to the appellant requiring him to deposit Rs. 75,200/- at the rate of Rs. 8,000/- per Bigha for the entire area of Khasra No. 410 up to Oct. 17, 1978 stating therein that failure to deposit the amount within this period would result in automatic rejection of the appellant's application. This letter was sent by registered post in the cover Ex. 14A and was admittedly despatched from the Collector's office on Oct. 16, 1978 and was delivered to the appellant only on Oct. 19, 1978 after expiry of the period specified in the letter for deposit of money by the appellant. This offer was made to the appellant in view of his offer to pay for the land at the rate of Rs. 8,000/- per Bigha mentioned in his application Annexure R/1 dt. Sept. 5, 1978. On receipt of the Collector's letter after expiry of the period mentioned therein the appellant sent a reply Ex. 17 dt. Oct. 22, 1978 to the Collector mentioning these facts and also requesting that the land be disposed of by public auction so as to give equal opportunity to all claimants for allotment of the land. Obviously this was ignored and the order Annexure R72 dated Oct. 27, 1978 was passed by the Collector setting apart the land for industrial use u/s 92 of the Rajasthan Land Revenue Act, 1956. Simultaneously steps were taken for allotment of the land to respondent No. 4 rejecting the appellant's application. A note also appears saying that the appellant may be informed that some other land is available nearby for industrial purpose and he may apply for the same. The Collector then made the order dt. Jan. 3, 1979 granting lease to respondent No. 4 of this land for a period of 99 years on the terms and conditions mentioned in that order. The respondent No. 4 was required to pay Rs. 27- per sq. metre as development charges and annual

rent at the rate of Rs. 30/- per acre only. The Tehsildar then made an order dated Jan. 7, 1979 to the Patwari directing him to deliver possession of the land to respondent 4,

4. Aggrieved by the allotment of this land to the respondent 4 in this manner the writ petition was filed in May, 1979 to challenge the allotment. By virtue of a stay order in the writ petition and therefore in this appeal, no further action has been taken thereafter to permit use of the land by the respondent 4. The question is whether the view of the learned single Judge that no interference is called for with the allotment made in favour of respondent 4 is justified.

5. At this stage it would be appropriate to refer to the principle applicable for deciding the question in controversy while also referring the relevant statutory provisions relating to allotment of Government land in such a situation. The statutory provisions are only a few. Section 92 of the Rajasthan Land Revenue Act, 1956 empowers the Collector, subject to the general orders of the State Government, to set apart land for any special purpose or for any public or municipal purpose. The land so set apart is then to be used for that purpose only. It is in the exercise of this power that the Collector had set apart the aforesaid Khasra No. 410, area 9 Bighas 8 Biswas in village Jakoda, Tehsil Bali, District Pali for industrial purpose. This land is in close vicinity of Sumerpur town. The relevant rules for allotment of Government land set apart for industrial purpose are framed in exercise of the powers conferred by Section 100 of the Rajasthan Land Revenue Act, 1956 and these rules are called the Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959. Rule 1A defines "industrial area" to mean an area of land reserved and set apart u/s 92 of the Act for the purpose of setting up industry. Rule 2 provides for allotment of such land for setting up an industry on lease for a period of 99 years. Rule 3 prescribes the premium to be charged by way of development charges from the lessee. Rule 4 provides for renewal of the lease for a further period of 99 years at the option of the lessee. Rule 5 prescribes the annual rent to be charged for such land and R. 6 provides for revision of the rent after every 30 years. Rule 7 requires the setting up of the industry within a period of two years on the land allotted for the purpose, failing which the land is to revert to the Government unless that period is extended. The remaining rules make ancillary provisions.

6. It is, therefore, clear from the above statutory provisions that they regulate the grant of lease of Government land set apart for industrial purpose; the lease is for a period of 99 years which is renewable at the option of the lessee; and the development charges and the rent are to be paid by the lessee at the rates prescribed. The question really is whether it is permissible to exercise this power of allotment of land set apart for industrial purpose in a manner which denies equal opportunity to all eligible claimants similarly placed and prepared to abide by the same terms and conditions. In other words, is it open to the authority to pick and choose the lessee without giving an opportunity to all intending claimants to apply and be considered for the grant?

7. The precise method to be adopted for allotment of such land under the above Rules has not been specifically laid down. It is obvious that a procedure or method of allotment which gives equal opportunity to all eligible intending claimants must be adopted by the authority while making the allotment to avoid any hostile discrimination violating Article 14 of the Constitution. It is well settled that Article 14 governs all forms of State action irrespective of the field of its activity. The underlying principle of absence of arbitrariness and fairness in action inextricably interwoven in Article 14 applies equally to the procedure adopted for distribution of government largess. We have no hesitation in holding that the allotment of land reserved and set apart for industrial purpose u/s 92 of the Rajasthan Land Revenue Act, 1956 has to be made in accordance with these Rules by adopting a procedure which would give equal opportunity to all eligible intending claimants to be considered for allotment of the land for setting up an industry in accordance with the specified conditions. It would be open to the State Government to prescribe conditions of eligibility on the basis of factors relevant for achieving the purpose for which the land is set apart. Any procedure of allotment which does not satisfy this requirement being discriminatory and arbitrary would be liable to be struck down for this reason alone.

8. A brief reference may now be made to the settled principle of law which supports the above view. It is sufficient to refer to the decision in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, wherein the true legal position with regard to applicability of Article 14 in such situations has been summarised and which has been followed consistently thereafter. Some useful extracts from Ramana's decision (*supra*) are as follows : --

"Today the Government, in a welfare State is the regulator and dispenser of special services and provider of a large number of benefits, including jobs, contracts, licences, quotas, mineral rights etc. The Government pours forth wealth, money, benefits, services, contracts, quotas and licences. The valuables dispensed by Government take many forms, but they all share one characteristic. They are steadily taking the place of traditional forms of wealth. These valuables which derive from relationships to Government are of many kinds..... Government owns and controls hundreds of acres of public land valuable for mining and other purposes. These resources are available for utilisation by private corporations and individuals by way of lease or licence. All these mean growth in the Government largess and with the increasing magnitude and range of governmental functions as we move a closer to a welfare State, more and more of our wealth consists of these new forms. Some of these forms of wealth may be in the nature of legal rights but the large majority of them are in the nature of privileges. But on that account, can it be said that they do not enjoy any legal protection? Can they be regarded as gratuity furnished by the State so that the State may withhold, grant or revoke it at its pleasure? Is the position of the Government in this respect the same as that of a private giver? We do not think so. The law has not been slow to recognise the importance of this new kind of wealth and the need to protect individual interest in it and with that end in

view, it has developed new forms of protection. Some interests in Government largess, formerly regarded as privileges, have been recognised as rights while others have been given legal protection not only by forging procedural safeguards but also by confining/structuring and checking Government discretion in the matter of grant of such largess. The discretion of the Government has been held to be not unlimited in that the Government cannot give or withhold largess in its arbitrary discretion or at its sweet willThe Government is still the Government when it acts in the matter of granting largess and it cannot act arbitrarily. It does not stand in the same position as a private individual. It must therefore, be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual deal with any person it pleases, but its action must be in conformity with standard or norms which is not arbitrary, irrational or irrelevant. The power or discretion of the Government in the matter of grant of largess including award of jobs, contracts, quota, licences etc., must be confined and structured by rational, relevant and non-discriminatory standard or norm and if the government departs from such standard or norm in any particular case or cases, the action of the Government would be liable to be struck down, unless it can be shown by the Government that the departure was not arbitrary, but was based on some valid principle which in itself was not irrational, unreasonable or discriminatory."

9. The question before us has to be answered in accordance with the above settled principle of law and the statutory rules relating to allotment of the land understood and construed as above. As earlier indicated, the Rules of allotment must be construed to mean that the procedure for allotment has to satisfy the above requirement in order to avoid any conflict with Article 14 of the Constitution. So construed these Rules mean that the land reserved and set apart for allotment for industrial purpose must be given on lease in the prescribed manner by adopting a procedure which gives equal opportunity to all eligible intending claimants to be considered for allotment. It is no doubt open to the State Government to decide the kind of industry required to be set upon the land set apart by taking into account the needs and other relevant factors. This would determine the zone of consideration of the applicants. All this must be disclosed by the State Government while notifying the land for allotment so that the intending claimants know the conditions of eligibility for the grant before the stage of allotment of the land Every person desirous of getting the land on lease in the prescribed manner and satisfying the conditions of eligibility should have equal opportunity of being considered. The equality of opportunity means equality in all respects including the terms and conditions of the grants, in order that the opportunity may be meaningful.

10. It is well known that the mode of inviting offers within the specified time by issuing public notice or holding a public auction are accepted methods of disposal of property in a fair manner giving equal opportunity to all interested persons. It

is equally clear that making an offer of allotment to one only behind the back of others and without notifying the fact of availability of the largess amounts to discrimination and denial of equal opportunity to the others. Such a method is clearly impermissible while distributing government largess. In our opinion, the procedure for allotment adopted in the present case suffers from the obvious defect of discrimination.

11. The fact that the appellant was one | of the interested persons is evident. He applied in writing for allotment and offered a much higher price than that for which the land was later allotted to respondent No. 4. The admitted facts clearly show that the appellant was not given any real opportunity to avail the offer of allotment of land to him contained in letter delivered to him on Oct. 19, 1978, which required deposit of money by him up to Oct. 17, 1978. Obviously the condition was incapable of performance. Even after this fact was brought to the notice of the authorities, no attempt was made to repeat the offer and steps were taken for making the allotment in favour of respondent No. 4. It is also significant that even though the appellant was required to deposit the amount of Rs. 75,200/-, no such condition was imposed while making the allotment in favour of respondent 4. The learned Deputy Government Advocate contended that the grant can be made only for the prescribed consideration and no more. If that be so, demand of larger amount from the appellant alone is clear discrimination and contrary to the Rules. No attempt has been made by the State Government to justify the preferential treatment given to respondent 4 by indicating any rational basis for treating respondent 4 alone differently. Unequal treatment for this reason also invalidates the grant of lease in favour of respondent No. 4.

12. Apart from the above defect in the allotment made in favour of respondent 4, the other obvious defect is that there is nothing to show that no other person was eligible to apply for the grant or that none else was interested in spite of knowledge of availability of the land. In such a situation exclusion from consideration of other eligible claimants is a plausible inference. Thus, the defect is of unequal treatment meted out to the appellant who had applied and exclusion of other eligible claimants from consideration before granting the lease to respondent 4. These defects are alone sufficient to invalidate the grant made in favour of respondent 4.

13. As a result of the aforesaid discussion it follows that the grant of lease of the above land in favour of respondent 4 is invalid being hit by Article 14 of the Constitution. Accordingly, that grant is set aside. The State Government, Collector of the district and other concerned authorities are directed to make fresh allotment of the above land in accordance with law with advertence to the above observations after giving public notice of its availability in a suitable manner and equal opportunity to all eligible intending claimants. The appeal is allowed, accordingly. No Costs.