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**(1995) 03 SC CK 0098**

**In the Supreme Court Of India**

**Case No :** Civil Appeal No's. 4727-28 of 1995 (Arising out of SLP No's. 4828-29/89) and 4729, 4730-55, 4756, 4757, 4758-84, 4785-4808, 4809, 4810-35/95 (Arising out of SLP No's. 4301-27, 4538-63, 4709-32, 4798, 4819, 4843-68 and 7241-A/89)

State of Rajasthan and Another

APPELLANT

Vs

Tarsem Singh and Another

RESPONDENT

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**Date of Decision :** 23-03-1995

**Acts Referred:**

**Citation :** (1995) 3 SCALE 17 : (1995) 2 SCC 709 Supp : (1995) 2 UJ 334

**Hon'ble Judges :** K. Ramaswamy, J;B. L. Hansaria, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## **Judgement**

1. Leave granted.

2. We have heard Counsel on both sides. The facts lie in a short compass for deciding the question of law raised in these appeals. The respondents are temporary cultivators to whom Government land was assigned on temporary lease-hold basis in Gang Canal area. The Government decided to allot the lands on permanent basis to those temporary cultivators under Rajasthan Colonisation (Permanent Allotment and Sale of Land in Gang Canal Area) Rules, 1956, for short the Rules. The ceiling area of agricultural lands was 25 bighas of irrigated lands and 50 bighas of unirrigated lands. Such of those cultivators who have been in possession between the period from 1953 to 1960 became eligible for allotment of lands on permanent basis on paying the prices determined under Rule 7 thereof. It would appear that some of the temporary cultivators were found in possession of the lands in excess of the ceiling area. Therefore in respect of them, the Government decided to allot the excess land again within the ceiling limit to their major son treating the major son as a separate unit, subject to such terms and conditions as may be prescribed in that behalf. The Government exercising the power under Rule 9 determined to sell such lands on

the market price. The Collector or the Colonisation Commissioner was authorised to allot, on inviting applications, subject to their payment of the prevailing market price. The Collector notified to the cultivators of these conditions and invited them to submit the applications for permanent allotment.

3. At that juncture, the respondents filed writ petitions in the High Court questioning' the power of the Collector to fix the market price. The learned Counsel for the respondents contended in the High Court that having fixed the scales of price under Rule 7, at which the land allotted would be charged under the rules through G.S.R. 20 dated June 4, 1981, the Government had no further power under Rule 9 to fix the market value once again. The Collector was, therefore, devoid of power to fix the revised prices at the prevailing market rate. That contention found favour with the High Court of Rajasthan and the Division Bench in W.P. No. 85/88 and batch dated September 27, 1988 held that the Collector has no power to fix the revised market rate, de hors Rule 7. Therefore, the action of the Collector was held to be without authority of law and the Collector's notice was, therefore, quashed. Thus these appeals by special leave.

4. The only question is whether the Government is empowered to fix the market price of the lands in excess of the ceiling limit for allotment to the major son, in the light of their policy envisaged in Order No. F. 4(6) Raj./Col./82 dated May 9, 1985. To appreciate the correctness of the contention, it would be appropriate to extract the relevant rules. Rule 7 gives power to the Government to fix scales of the prices of the land to be allotted, thus:

S.No. Category of Land 1. Nehri Perennial 2. Nehri non-perennial 3. Barani

Rule 9 provides for allotment of land in special cases and reads:

Notwithstanding anything contained in these rules the Government may make allotment to any person as a special case.

Provided that Government may delegate the powers of allotment in any case for a class of cases under this rule to the Colonisation Commissioner or the Collector or to any other prescribed authority, subject to such terms and conditions as may be prescribed in this behalf."

(Emphasis supplied)

5. In exercise of that power, the Government issued Order No. F.4(6) Raj./Col./92 dated 9.5.85 reading as under:

Subject : Regulation of the possession of the land in excess of the allotment ceiling under Rajasthan Colonisation (Permanent Allotment and Sale of Land in Gang Canal Area) Rules, 1956.

...

On the subject mentioned above, in accordance with the directions I am to say that the possession of the land in excess of the allotment ceiling under the

Rajasthan Colonisation (Permanent Allotment and Sale of Land in Gang Canal Area) Rules, 1956, which is in possession of the temporary cultivators, "The Government shall fix the scales at which the price for land allotted under these rules may be charged, and such scales may be different for different kinds of land.

6. A notification in that behalf was issued, as stated earlier, in G.S.R. 20 dated June 4, 1981 fixing the price for the different categories of the lands as under:

Reserve price per bigha in Rs. 1,225/- 875/- 437.50/-

the State Government for their allotment/regulation under Rule 9 of the said rules, authorises the Collector to allot the land on the undermentioned terms:

(1) Such temporary cultivation lease holders, in whose possession there is surplus land in excess of the land allotted in accordance with rules, should be given an opportunity to have that additional land allotted to the extent of ceiling limit on permanent basis on the terms and conditions mentioned in this order.

(2) For the allotment of the additional land to the extent of ceiling limit prevalent market value would be payable.

(Emphasis supplied)

Conditions 3 and 4 are not material for the purpose of these cases since they relate to the mode of payment Pursuant thereto, the Collector had issued the notification calling for applications. He stated therein that the Government in the aforesaid order have decided for allotment and regularisation of the land, in excess of the allotment limit on the terms and conditions enumerated thereunder, relevant term is as under:

#### ALLOTMENT LIMIT

Under the aforementioned 1956 Rules, after the permanent allotment has been made, the surplus land would be allotted to the temporary cultivation lease holders to the extent of ceiling limit at the market rate and after such allotment has been made and the land is surplus, then that land would be allotted to his major sons deeming them as a separate unit to the extent of ceiling limit at the market rate.

Other terms and conditions are not relevant for the purpose of these cases and hence omitted.

7. It is true, as contended by the learned Counsel for the respondents, that the Government have been empowered by Rule 7 to fix the scales at which the price for allotted land under the rules may be charged and different rates for different kinds of lands are also envisaged under Rule 7. Rule 9 is one of the rules and, therefore, any allotment to be made under that rule also would attract the scale of prices fixed under Rule 7. However, by applying non-obstinate Clause, the operation of Rule 7 has been excluded. Rule 9 gives power to the Government to

make allotment to any person including temporary lessees or his major son as a special case, subject to such terms and conditions as may be prescribed in that behalf. It is seen that in the order issued by the Government on May 9, 1985, one of the conditions is that the allottee of the additional land in excess of the ceiling limit, shall pay the prevailing market value.

8. Learned Counsel for the respondents contends that this fixation of the prevailing market value is de hors the power given to the Collector. The contention is not well founded. As seen, the Government itself issued the aforesaid order for allotment of excess land to major son imposing one of the conditions, i.e. payment of market value subject to which the allotment of the additional land that too within ceiling limit would be made to the Collector or Colonisation Commission. Payment of prevailing market value is, therefore, one of the conditions for allotment. The Collector had not prescribed any price by himself. The Government, instead of quantifying the market value itself delegated the function to quantify the prevailing market price of the local area to the Collector. It would appear that the Collector constituted a Committee which fixed prevailing market value in that behalf and got it published along with the notification inviting applications for allotment.

9. It is seen that the learned Counsel who appeared for the State in the High Court contended that the Collector had fixed the price as the Government had delayed that power to the Collector. The High Court has negated that contention on the ground that Rule 7 is the only source of power under which the Government has reserved the power to fix the prices of the land to be allotted, and having exercised that power, it cannot delegate the power for fixation of the prices to the Collector under Rule 9.

10. A reading of the aforesaid Rules would clearly indicate that the view expressed by the High Court is not correct. By operation of a non-obstante Clause, Rule 9 excluded the operation of Rule 7 and the Government are empowered to allot the land as a special case or special Clauses of cases. The proviso gives the power to the Government to make such allotment subject to such terms and conditions. One of the conditions mentioned in the aforesaid order was payment of the prevailing market value as a condition for allotment. What the Collector had got done was only a ministerial act of getting the prevailing market price in that particular locality quantified. He did not independently exercise the power. Considered from that perspective, we are of the view that the High Court was wrong in its holding that the Government have no power under Rule 9 to fix the price.

11. It is next contended that in State of Rajasthan and others Vs. Kishan Singh, , this Court had interpreted similar power in Rule 23 of the rules therein and that ratio would apply to the facts in these cases. There is no force in the contention. In that case, the Government had already fixed the prices under Rule 23 and directed its payment but sought to revise the same afterwards. This Court held that since the Government had already fixed the prices and received the amount

from cultivators, it had no power to further revise the prices. The ratio is, therefore, clearly distinguishable and has no application to the facts in these cases.

12. The appeals are accordingly allowed. The judgment of the High Court is reversed and the writ petitions stand dismissed. In the circumstances, the parties are directed to bear their own costs.