

(1999) 03 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No"s. 21, 82, 83, 86, 89, 91, 96 and 98 of 1999

State of Rajasthan and Others

APPELLANT

Vs

Subhash Ram and Others

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Raj 289

Hon'ble Judges : V.S. Kokje, J;A.S. Godara, J

Bench : Division Bench

Advocate : Hemant Choudhary, for the Appellant; A.K. Singh, for the Respondent

Final Decision : Dismissed

Judgement

V.S. Kokje, J.—These are all connected appeals arising out of similar matters, therefore, heard together and are being decided by this common judgment.

2. The respondents in these cases were holding lands which were acquired by the State Govt. for the purpose of Indian Army establishing a Field Firing Range called Mahajan Field Firing Range. Apart from the compensation paid for the acquisition of land, the Govt. also promised allotment of Barani land @ Rs. 300/- per Bigha to these persons anywhere in the Bikaner district. Accordingly, the respondents deposited the requisite amount as the price for the Barani land and were also allotted lands. However, the respondents could not get possession of the land as the lands allotted to them turned out to be lands vested in "Bhudan Board." Ultimately the allotment was cancelled and it was decided by the Govt. to allot some other Barani land in the District of Bikaner to the respondents. Commissioner colonization. Indira Gandhi Nahar Pariyojana, Bikaner took up the work of allotment and Tehsildar. Kolayat submitted a report to him. However, when no progress was made, respondents filed a petition in this Court, in which the Commissioner colonization, Indira Gandhi Nahar Pariyojana, Bikaner was directed to decide the question of allotment within a period of two months from

the date of the order.

3. When even this order was not complied with, the respondents filed fresh petitions, which were decided by the impugned order issuing the following directions :--

"Accordingly, all these writ petitions are allowed and the respondents are directed to allot Barani land to all the petitioners as per the report of the Tehsildar at the prevailing rate within three months from today. However, there shall be no order as to costs in all these writ petitions."

4. The appellants have filed these appeals aggrieved by the directions mainly because according to them the direction is for allotment of Barani land whereas no Barani land is available with them.

5. We have heard the learned counsel for the parties and have perused the record. Actually, the problem is of appellants own creation. After having promised to allot Barani lands at a fixed rate and after having taken the price of such lands way back in the year 1986 the appellants allotted Barani land belonging to Bhudan Board to the respondents. They persisted in maintaining that the land belonged to Govt. till 1997. Ultimately, they cancelled the allotment admitting that the lands did not belong to them. They proceeded to allot fresh Barani land but so sluggishly that the respondents again had to approach this Court with a petition. When in that petition an order was made to allot the land within two months even that time limit was not adhered to and when a fresh petition was filed the appellants took a stand that no Barani land was available and land which was recommended by the Tehsildar. Kolayat for allotment to the respondents had also in the meanwhile been converted into command land. The appellants are willing to allot the command land to the respondents but at the current price. The respondents are not ready to pay the current price because according to them if me allotment had been made in time even after the result of the first petition they would have got the land as a Barani land and had to pay only the price of Barani land. It is also contended by the respondents that the appellants having taken the price of Barani land in the year 1986 itself are liable to allot them Barani land and if such land is not available they have to allot command land but at the same price applicable to Barani land.

6. In the aforesaid circumstances the learned single Judge has directed the appellants to allot Barani land to all the petitioners as per the report of the Tehsildar at the prevailing rate within three months. The appellants are taking advantage of the general language used by the learned single Judge and they are contending that the direction to allot the Barani land is incapable of compliance as the land mentioned in the report of the Tehsildar has not remained Barani land today but is command land now. They are also trying to interpret "prevailing rate" to be the current rate. It appears that the learned single Judge intended to direct that the land specified in the report of the Tehsildar to be allotted to the respondents at the rate of Barani land irrespective of whether the land has

remained Barani land or has been converted into command land. Such an interpretation of the direction would be in consonance with the reasoning given by the learned single Judge and in our opinion also would be just and fair order. After all, the respondents are not at fault if Govt. has not fulfilled its promise of allotting Barani land at the stipulated rate within reasonable time to the respondents. When the land was allotted to them in the year 1986 against payment, the respondents naturally and legitimately expected that the Govt. was the owner of the land. Unfortunately, the land allotted turned out to be belonging to Bhudan Board. When it turned out that the Govt. was not the owner of the land allotted, it was the duty of the Govt. to allot alternate land to the respondents. Even that was not done and after two rounds of litigation in this Court, the respondents were made to run from pillar to post. In such circumstances, the respondents have to be compensated for the loss caused to them because of the delay in allotment caused not because of any failure on their part but because of the failure on the part of the Govt. If in the year 1986 itself the land had been allotted, it would have been Barani land available to the respondents at Rs. 300/- per Bigha. If because of the delay the land which was earlier Barani has also become command land, the appellants cannot be asked to pay price of command land. After all, the entire benefit right from 1986 till the possession of alternate land is given to the respondents which the respondents would have derived by carrying on agricultural operations on the lands, has been taken away from them. Deprivation of this benefit can very well be set at naught by allotting them command land today at the price of Barani land. It cannot also therefore, be said that the respondents are unjustly enriched by getting command land in place of Barani land.

7. In view of the aforesaid discussion. We do not find that the appellants have any case. The order passed by the learned single Judge deserves to be upheld dispelling the misgivings of the appellants about the incapability of implementation of the impugned order. The appeals are dismissed. It is clarified that the respondents shall be entitled to allotment of lands specified in the Tehsildar's report at the rate at which the Barani land was promised in the year 1986. In view of the pendency of this appeal we grant three months time from today to implement the impugned order as interpreted by this order.