

(2015) 07 RAJ CK 0076

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 5465, 5479, 5480, 5481, 5485, 5451, 5454, 5459, 5460, 5461, 5462, 5463, 5464, 5483, 5484, 5487, 5410, 5477 and 5482/15

Suki Kanwar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 10-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 07 RAJ CK 0076

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Amit Mehta, for the Appellant

Final Decision : Dismissed

Judgement

Sangeet Lodha, J—These writ petitions involving identical questions of facts and law, directed against the orders dated 24.4.15 passed by the District Collector, Jalore in various revision petitions preferred by the respondents, Iram Ram and others, assailing the validity of pattas of the disputed plots, issued by the Gram Panchayat, Bali, Panchayati Samiti, Bhinmal, District-Jalore in favour of the petitioners herein, were heard together and are being disposed of by this common order.

2. The revisional authority arrived at the finding that the proceedings were initiated by the Gram Panchayat under Rule 148 of the Rajasthan Panchayati Raj Rules, 1996 ("the Rules of 1996") for sale of the disputed plots, however, later, the proceedings were taken under Rule 157 of the Rules of 1996, which deals with regularisation of old house in abadi and ultimately, the pattas were issued in favour of the petitioners free of cost under Rule 158 of the Rules of 1996 and thus, the entire proceedings taken is not in accordance with law.

3. Learned counsel appearing for the petitioners contended that the orders

impugned have been passed by the District Collector without considering the material available on record in correct perspective. It is submitted that the petitioners being members of BPL category are covered by "weaker section" as defined under Rule 158 of the Rules of 1996 and therefore, the pattas issued in their favour cannot be faulted with. However, it is not disputed by the learned counsel that in the first instance, the applications were preferred by the petitioners for the purchase of the plots and the proceedings were initiated by the Gram Panchayat accordingly. It is also not disputed that there was no application filed by the petitioners for allotment of the plot under Rule 158 of the Rules of 1996, however, the pattas have been issued in favour of the petitioners free of cost under Rule 158 of the Rules of 1996.

4. I have considered the submissions of the learned counsel and perused the material on record.

5. It is to be noticed that the disposal of the Abadi land in the panchayat area is governed by the procedure laid down under the Rules of 1996. As per the provision of Rule 145 a person desirous of purchasing an Abadi land from panchayat shall make an application in writing to the panchayat giving such description thereof as may be sufficient to identify the land proposed to be purchased. On the application being received the same is required to be registered by the Secretary, Gram Panchayat in the register maintained for the purpose in terms of Rule 146 of the Rules of 1996. The panchayat is required to inspect the site and submit the report taking into consideration various aspects enumerated by Rule 146 (3) of the Rules of 1996. Thereafter, a provisional decision whether the proposed sale should or should not be made is required to be taken in the meeting of the Gram panchayat. Further, if the panchayat provisionally decides that the sale should be made, it shall publish a notice in the form prescribed inviting objection to the proposed sale within one month from the date of the publication in the manner laid down in sub-rule (2) of Rule 148 of the Rules of 1996 and after disposal of the objections, if any, received, the panchayat may by resolution order the auction of the land proposed to be sold on the date not earlier than one month from the date of resolution at the time and place specified. As per Rule 151, the auction committee is required to be constituted. Rule 152 mandates that it shall be the duty of the auction committee to ensure that there is free and fair competition among the bidders.

6. In the instant case, indisputably, the applications were preferred by the petitioners for purchasing the plots and therefore, the plots applied for were required to be put to auction after following the procedure laid down noticed as hereinabove, however, admittedly the plots were not put to auction and the same have been allotted in favour of the petitioners free of cost.

7. Coming to the proceedings under Rule 157 of the Rules of 1996, it is to be noticed that site inspection reports of three Panchas were obtained by the Gram Panchayat in respect of the plots in question, wherein it is stated that the petitioners are in possession of a house constructed on the land in question for

last 50 years, without there being any such claim set out in the applications made by them for allotment of plots. Further, a perusal of the inspection reports placed on record makes it abundantly clear that the same are only printed/photo stat copies containing identical details bearing signature of the three Panchas and the Sarpanch and thus, it appears that in fact, no site inspection was made by the Panchas in individual cases.

8. A bare perusal of Rule 157 of the Rules, reveals that it permits regularisation where the persons are in possession of the old house in abadi land and desire to get a patta issued. It further provides that for old houses constructed more than 50 years ago, the patta may be issued by depositing Rs. 100/- and for old house constructed during last 50 years from commencement of the Rules i.e. 30.12.96, the patta may be issued on depositing charges Rs. 200/-. As noticed hereinabove, in the applications submitted by the petitioners to the Gram Panchayat for issuing the pattas, the factum of existence of the old houses on the land in question is not mentioned. In this view of the matter, the petitioners could not have claimed the regularisation in terms of provisions of Rule 157 of the Rules of 1996. Moreover, admittedly, the pattas have been issued in favour of the petitioners under Rule 158 of the Rules of 1996 and not under Rule 157 of the Rules of 1996. Thus, pattas issued in favour of the petitioners were not sustainable under Rule 157 of the Rules of 1996 either.

9. Undoubtedly, Rule 158(1) of the Rules provides for allotment of lands up to 300 sq. yards at concessional rate to the members of weaker section i.e. members of Scheduled Caste, Scavenger, Scheduled Tribes, Backward Classes, village artisans, landless persons, dependent on wage labour, IRDP selected families, handicapped, Nomadic Tribes, Gadia Lohar, who do not own house sites or house within village abadi area and also to flood victims, whose have been washed away or house sites have been rendered unfit for future habitation due to floods. As per sub Rule (2) of Rule 158, the rates to be charged from such allottees Rs. 2/- per sq. meter in village having population less than 1000 and Rs. 5/- per sq. meter in the village having population from 1001 to 2000 and Rs. 10/- per sq. meter in villages having population more than 2000 and as per proviso to sub-rule (2) of Rule 158, the State Government may allot such lands free of charges to any such category of person who is below poverty line. Thus, for allotment of the plots of the size specified at concessional rate to the weaker section, it is condition precedent that they do not own house sites or house.

10. It is to be noticed that the application for allotment of lands under Rule 158 of the Rules of 1996 has to be made in prescribed proforma XXIII-C. It is not even the case of the petitioners that they ever made an application for allotment of the plots in terms of Rule 158 of the Rules of 1996.

11. Thus, the action of Gram Panchayat in initiating the proceedings on the basis of applications preferred by the petitioners under Rule 145 for purchase of the plots by way of auction and thereafter, considering the applications to be the applications preferred under Rule 157 of the Rules of 1996 for regularisation of

the old houses and ultimately allotting the plots to the petitioners under Rule 158 of the Rules without there being any such application filed by them and verifications of the existence of the conditions precedent for allotment of the plots under Rule 158 of the Rules, is ex facie contrary to the Rules of 1996.

12. In view of the discussion above, this court is firmly of the opinion that the orders impugned passed by the revisional authority is just and proper and does not warrant any interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

13. In the result, the writ petitions fail, the same are hereby dismissed.

14. A copy of this order may be sent to the District Collector, Jalore.