
(1990) 02 RAJ CK 0026
In the Rajasthan High Court
Case No : Civil Writ Petition No. 944/80

Surja Ram

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-02-1990

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Colony Area) Rules, 1975 — Rule 17(5), 4(3)

Citation : AIR 1992 Raj 35 : (1990) 1 RLW 524 : (1990) 1 WLN 289

Hon'ble Judges : Milap Chand Jain, Acting C.J.; R.S. Verma, J

Bench : Division Bench

Advocate : Guru Prakash, for the Appellant; Gopi Kishan Yyas, Deputy Government Advocate, for the Respondent

Judgement

M.C. Jain, Actg. C.J.

1. This petition is directed against the order of the Deputy Commissioner Colonisation, Rajasthan Canal Project dated 7-5-76 (Ext. 2), of the order of the Additional Commissioner Colonisation dated 19-2-1977 (Ex. 3) and of the order of the Board of Revenue dated 27-12-1979 (Ex. 4).

2. The petitioner was allotted 25 Bighas command land by the Assistant Commissioner Colonisation, Raisinghnagar vide order dated 26-9-72. Thereafter, according to the petitioner 5 Bighas 18 Biswas land ceased to be command land and became Baraini, so he submitted that he may be allotted 3 Bighas 7 Biswas command land in place of the land, which has ceased to be command land. This, prayer of the petitioner was rejected by all the three Revenue Authorities. The petitioner's claim, according to the authorities, was a belated one.

3. Learned counsel for the petitioner submitted that under Rule 4 of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Rajasthan Canal Colony Area) Rules, 1975, the petitioner's original application for allotment shall be deemed to be pending and is required to be heard and decided

under and in accordance with the aforesaid 1975 Rules and as such the petitioner is entitled to allotment of 3 Bighas 7 Biswas command land.

4. The stand of the Government is that the petitioner is only entitled to adjustment of price under Rule 17(5).

5. For the proper appreciation of the controversy in question, it is essential to read the relevant part of Rule 4 and Sub-rule (5) of Rule 17 :--

"R. 4. Disposal of pending applications:

(1) Applications for allotment of land presented under the Pre-1955 conditions and the Post-1955 Rules shall be deemed to have been presented under these Rules.

(i) Out of the applications mentioned in Sub-rule (1); applications pending at the commencement of these rules shall be heard and decided under and in accordance with the provisions of these rules.

(3) Where an application as is referred in Sub-rule (1) has already been decided by any competent authority and the allotting authority finds that the allotment order passed on such application is inconsistent with the provisions of these rules, it shall, of its own motion, review the order and shall, after giving the affected persons an opportunity of being heard, decide the application under and in accordance with the provisions of these rules.

(4)

"R. 17. Scale of price and mode of payment :--

(1) to (4)

(5) If at any subsequent time any land allotted as command land is declared by the competent authority as uncommand land before its price has been fully paid up, the amount paid towards its price as command land will be adjusted towards the price of instalment payable for it as uncommand land and any amount already paid in excess thereof shall be refunded to the allottee."

6. Sub-rule (1) of Rule 4 of the Rules introduces a fiction according to which all applications for allotment of land presented under the Pre-1956 Conditions and the Post-1955 Rules shall be deemed to have been presented under the aforesaid 1975 Rules. Sub-rule (2) provides that when the applications are pending and have not been disposed of, then they will be heard and decided under and in accordance with the provisions of 1975 Rules. Sub-rule (3) deals with the applications, which have already been decided by any competent authority prior to the coming into force of 1975 Rules. Orders on such application can be reviewed by the allotting authority, if the allotting authority finds that the allotment orders passed on such applications are inconsistent with the provisions of 1975 Rules. When the allotting authority so finds then after reviewing the order, the application would be decided in accordance with the 1975 Rules after

giving affected person an opportunity of being heard. It would appear from Sub-rule (3) of Rule 4, that the power of review of the order passed on applications can , be exercised by the allotting authority only when it finds that the allotment order passed on the application is inconsistent with the provisions of 1975 Rules. It may be stated that the order passed on 26-9-72 the original application regarding allotment cannot be said to be inconsistent with the provisions of 1975 Rules as 25 Bighas command land was allotted to the petitioner so the application was decided by the competent authority and the order passed on that application cannot be said to be inconsistent with the provisions of 1975 Rules and, so there can be no occasion for reviewing the order passed on the petitioner's application on 26-9-1972.

7. To our mind, the relevant rule, which can be attracted to the present situation is Rule 17(5). If the rule making authority contemplated that if after passing an allotment order allotting 25 Bighas land, part of the land is rendered uncommand, then, to that extent on the earlier application further allotment of command land should be made, the Rule making authority would have made such a provision but we have not been referred to any such provision. On the contrary, under Sub-rule (5) of Rule 17, what is provided is that if at any subsequent time, any land allotted as command land is declared by the competent authority uncommand land before its price has been fully paid up, the amount paid towards its price as command land will be adjusted towards the price or instalment payable for it as uncommand land and any amount already paid in excess thereof shall be refunded to the allottee. Thus, under Sub-rule (5) of Rule 17, the petitioner is only entitled to adjustment of price if after allotment of command land any such land is declared as uncommand. So far as the petitioner's prayer for further allotment of deficit command land is concerned, under the Rules the petitioner has no such right. However, he is entitled to adjustment of price as envisaged under Sub-rule (5) of Rule 17.

8. The writ petition is disposed of with the above observations.