
(1995) 02 RAJ CK 0014
In the Rajasthan High Court
Case No : .C.W.P. No. 1014 of 1984

Swaroop Singh and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land to Pong Dam Oustees and their Transferees in the Indira Gandhi Canal Colony Areas) Rules, 1972 — Rule 8

Citation : AIR 1995 Raj 211 : (1995) 2 WLC 623

Hon'ble Judges : G.C. Mittal, C.J;P.K. Palli, J

Bench : Division Bench

Advocate : S.D. Vyas, for the Appellant; C.R. Jakhar, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Palli, J.—All these five writ petitions raise common questions of law and facts, these were disposed of by the authorities below by a common order and common arguments have been addressed and, thus, these cases are proposed to be disposed of by this common order.

2. The facts are taken from D. B. Civil Writ Petition No. 1014/1984: Swaroop Singh v. Board of Revenue and others.

3. The case of the petitioner is that he owned land in Himachal Pradesh and the same was under his sole ownership and the same was acquired by the Government for Pong Dam.

4. A Committee was constituted of the Chief Ministers of Punjab, Himachal Pradesh and Rajasthan which was headed by the Central Minister of Irrigation and Power. In the IX Committee Meeting it was decided that the persons whose lands had been acquired by the States of Punjab and Himachal Pradesh for the purposes of Pong Dam would be sent to Rajasthan and on the strength, of the certificates issued in that respect the allotments were made. The name of the

petitioner figured at S. No. 11 in the list and on that basis land was allotted to him on 3-9-1966 vide Annex. 1. It is said that the petitioner continues to be in possession and has deposited the desired amount. Vide the order dated 26-7-1976 (Annex. 2) the allotment was cancelled on the strength that the conditions mentioned in the Rules of 1972 were applicable to the petitioner and under these rules he was not eligible for allotment. Appeal was taken to the Revenue Appellate Authority, which was dismissed vide the order dated 23-8-1978 (Annex. 3). A further appeal was filed before the Board of Revenue which too was dismissed vide the order Annex. 5 dated 14-8-1980 and a review petition also met the same fate vide order Annex. 7 dated 22-6-1981.

5. This writ petition, thus, challenges the proceedings initiated by the allotting authority and the orders passed subsequently by the first appellate Court and the Board of Revenue as wholly without jurisdiction.

6. It is stated that the competent authority had made the allotment on the basis of the certificate issued to the petitioner and there was a provision to get the facts stated verified from Himachal Pradesh in case these appear to be wrong or disputed. Since the petitioner was holding the land separately and his name had been sent by the authorities in the list of persons (oustees) and the authorities did not care to consider and verify the facts. It is also said that the land was acquired from him in his individual capacity and for that purpose a certificate has been obtained by him from the Land Acquisition Officer and the same has been placed as Annex. 8.

7. Learned counsel for the petitioners, opening his arguments, has urged that the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees in the Rajasthan Canal Colony) Rules, 1972 (referred to hereinafter as "the Rules of 1972") were not applicable to the case of the petitioner as the land had been allotted to him in the year 1966 and, thus, the provisions contained in Rule 9 are ultra vires of the Act since no retrospective operation to these rules can be given to the persons like the petitioner who had been allotted lands in accordance with the arrangement agreed upon by the three Governments and this provision results in the breach of the agreement and as such Rule 9 has no applicability. It is further urged that the definition of "family" is discriminatory and arbitrary and the cut-off date fixed as 31-3-1964 has nothing to do with the objects sought to be achieved. Thus, the definition as given in Rule 2(vi) is ultra vires.

8. The next argument of the learned counsel is that Rule 4 of the Rules of 1972 is also ultra vires as it imposes arbitrary restriction on the oustees, although they are on the same footing but have been discriminated against without any justification by fixing the date 31-3-1961 and Rule 4 was ultra vires and in contravention of Rule 5. It is next stated that the only provision contained in the Rules is Rule 8 where the jurisdiction has been given to the allotting authority to cancel the allotment if it is found on complaint that the allotment was made on false, incorrect and misleading statements and that there was no material on record to justify this fact and the impugned orders passed by the authorities

could not be sustained as these suffer from an error apparent on the face of the record. Learned counsel further proceeds to submit that the certificate issued to the petitioner proves beyond doubt that he was a khatedar in his own right and it was so certified and the authorities in the State of Rajasthan, made regular allotment and the allotment, thus, could not be cancelled, which is wholly arbitrary.

9. It is next contended that the allottee as an oustee is entitled for allotment under the Land Acquisition Act. Simply because the father of the petitioner died after 31-3-1961 and since the petitioner was entitled to a separate award as he held the land in his individual capacity the position cannot be changed by jumping the award into one simply because of the death of his father after 31-3-1961, which has no nexus with the objects sought/to be achieved. The Government is estopped from challenging the award and since the petitioner satisfies all the conditions and is covered under the definition of an oustee the allotment could not be cancelled.

10. The stand as projected by the respondents is that the petitioner was not having a separate land in his name and it was the land of his father that was acquired for Pong Dam and the allotment was obtained by concealing the fact that his father died after 31-3-1961. The allotment was cancelled after following the due procedure. It is next stated that the allotment at the time when it was made there were no rules framed on the subject but in the allotment order a condition was inserted that the provisions of the Colonisation Act will be applicable in respect of the allotment and thereafter the Government framed the Rules of 1972 and in these rules it is provided that the person entitled to allotment would be one whose land is acquired and the petitioner being son of an oustee cannot be allotted land separately. His father Ranjeet Singh was entitled to allotment and since he was alive on 31-3-1961 the cancellation was proper. The petitioner and other heirs of late Ranjeet Singh were entitled to allotment as successors of an oustee and not on account of the land held by them independently. The family was entitled to one murabba only and they enjoyed 5 murabba. Thus, the judgments rendered by the authorities below were correct. The case of the petitioner as stated from the side of the respondents is covered by Rule 9 and at the time of allotment it was the condition in the allotment itself that Rule 9 of the Colonisation Act would be applicable and thus, there was no discrimination.

11. In short, the argument of the learned counsel appearing for the respondents is that the members of the family as such were not entitled for separate allotment when the father was alive. Rules 4 and 5 are fully applicable and the allotment was illegal, therefore, rightly cancelled.

12. For the purposes of understanding the questions involved, it would be useful to reproduce hereunder the provisions which have been pressed from both the sides.

Under Rule 2(vi) of the Rules of 1972 the "family" is defined as under:-

"Family", in relation to a Pong Dam Oustee, in the lifetime of a father, includes his wife, his children and grand children, whether recorded as co-sharers along with him or not, and shall include the legal successors of the father in the event of his death after 31 st day of March, 1961; but does not include such of the said members who had attained the age of maturity and who were recorded as a separate land owner in a separate khewat number of the jamabandhi on or before the said date."

"2(ix) "Pong Dam Oustee", herein referred to as an oustee, means a person residing permanently within the area acquired for the construction of Pong Dam Reservoir on or earlier than the 31st March, 1961, whether as land owner, tenant, landless labourer or as an artisan."

"4. Eligibility and extent of allotment.-

(1) Subject to the provisions contained in these rules an oustee land owner, who held land up to 20 standard acres of which 30% or more has acquired or who held land more than 29 standard acres of which 50% or more has been acquired in connection with construction of Pong Dam Reservoir and the possession of the same has been taken or is likely to be taken over in consequence of such acquisition after harvesting of the crops standing at the time of the issue of certificate by the Certifying Authority under Sub-rule (2) of Rule 5, shall in relation to himself his oustee family be a person eligible for allotment of land under these rules:

Provided that if an oustee land-owner after acquisition is left with 30 standard acres or more of land, he shall not be eligible for any allotment under these rules:

Provided further that in case the land of any member of the family of an oustee has also been acquired as aforesaid, such member of the family shall not be treated as a separate oustee and shall not be entitled to any separate allotment of land under these rules:

Provided further that where an oustee land owner or a member of his family has died after 31st day of March, 1961, his successors will not be treated as separate oustees and not be entitled to any separate allotment:

Provided also that if the proprietary or morussi rights in the land, which has been acquired for the Pong Dam Reservoir have been obtained by an oustee after 31st day of March, 1961, by any means other than lawful-inheritance such oustee land-owner will neither be eligible nor entitled to any allotment of land under these rules.

(2) An oustee land-owner for himself and his oustee family shall be eligible for allotment of land under these rules provided that his name appears in relation to the acquired land as a separate land-owner in separate khewat number or numbers in the Jamabandi up to 31st March, 1961, or as co-owner or co-sharer

in the Jamabandi assessed and paying land revenue separately up to the said date and further that his name continues to appear as such till the date of acquisition.

(3) An oustee land owner fulfilling the conditions of eligibility specified in Sub-rules (1) and (2), may be allotted for himself and his family one square i.e. 15, 625 acres of land under these rules by the Allotting Authority.

(4) An oustee who is only a tenant, landless labourer or an artisan shall not be entitled to allotment of any agricultural land under these rules and he shall be entitled only to allotment of a house-site for the rehabilitation of the oustees."

4-A. Disqualification for not adopting Family Planning measures.- Notwithstanding anything contained in these rules, no land shall be allotted to a person who has more than three children on the date of application for allotment and any allotment made after the coming into force of this rule shall be liable to be cancelled if it is found that the allottee was disqualified under this rule on the date of application for allotment or he subsequently incurred the disqualification mentioned in this rule.

Provided that the disqualification in this rule shall not apply to:

(a) a person in the case of male above 55 years of age and in the case of a female above 45 years of age;

(b) a male person who is below 55 years of age and who has got himself or his spouse sterilised;

(c) a female person who is below 45 years of age and who has got herself or her spouse sterilised;

(d) a person who had no children in a period of ten preceding years.

Explanation:- For the purpose of this rule, a child shall include an adopted child or a step child.

5. Procedure of allotment.- (1)(i) The Government of Himachal Pradesh shall appoint one or more certifying authority for the purposes of these rules. The specimen signatures and other relevant particulars about such certifying authority shall be duly communicated by the Government of Himachal Pradesh to all the officers and authorities in Rajasthan, as specified by the Colonisation Commissioner.

(ii) The certifying authority shall issue to an eligible oustee a certificate in triplicate in Form II and an identity card in triplicate in Form III.

Provided that no application presented by such oustee after four months from the date of receipt of compensation of lands acquired shall be considered by the Certifying Authority.

(2) The oustee shall present an application in duplicate to the Certifying

Authority in Form II-A supported by an Affidavit in Form V for the issue of a Certificate in his favour. The Certifying Authority, if he finds the applicant eligible to allotment of land under these rules, draw and prepare a certificate in Form II and Identity Card in Form III. He shall send one copy of the application presented before him by the oustee duly verified along with one copy of the certificate and identity card directly to the Allotting Authority by registered post or through a special messenger. Two copies each of the certificate and identity card will be issued by him to the oustee.

(3) Within 3 months of the issue of the certificate and of the identity card by the certifying authority, the eligible oustee shall present in person to the allotting authority an application for allotment of land in Form IV. Every such application shall be supported by an affidavit in Form V and shall be accompanied by the certificate in triplicate and the identity card, in duplicate;

Provided that every such application presented after 2 months of the date of issuing of the certificate shall not be considered by the allotting authority and shall be treated as time barred and cancelled.

Provided further that the Colonisation Commissioner may, on sufficient cause being shown by the oustee for not presenting the application within the time specified under the sub-rule, grant extension of time for the presentation of the application up to a period not exceeding three months.

(4) Immediately on receipt of an application, the allotting authority shall register it in a register in Form VI and shall issue the applicant a receipt in Form VII.

(5) The Allotting Authority shall scrutinise the application and other connected documents presented to him and if after scrutiny he comes to the conclusion that there is a doubt in regard to the eligibility of the oustee applicant, he shall refer the matter to the Colonisation Commissioner, who in turn may further refer the matter to the Government of Himachal Pradesh for clarification of the doubt.

(6) After such scrutiny and on receipt of clarification required if any the Allotting Authority shall decide regarding the eligibility of the oustee applicant and shall communicate the same to the applicant in Form VIII.

(7) In case the application is granted and the oustee applicant is allotted land which shall be done only out of land reserved for the purpose, the oustee applicant shall deposit the prescribed instalment of price in the concerned sub-treasury and shall thereafter take possession of the allotted land within 45 days of the receipt of notice under Sub-rule (6). In case he fails to deposit the instalment of price and take possession of the land within the stipulated period, the allotment shall be deemed to have been cancelled and the land may be allotted to any other person.

(8) At the time of giving possession of allotted land to the oustee applicant the concerned Tehsildar Colonisation shall give him a certificate of possession in Form IX and shall also forward forthwith a copy of it to the allotted authority.

"8. Cancellation of allotment:- (1) Without prejudice to the provisions contained in the Act or in these rules, if at any time after an allotment, it is found by the allotting authority, either on complaint or otherwise, that an allotment under these rules was made upon a false, incorrect or misleading statement of facts or information made or given by an allottee to the allotting authority or to any officer or authority of the Himachal Pradesh Government, such allotment shall be cancelled by the allotting authority and the allotted land shall revert back to the State Government without any payment of compensation.

(2) Before passing an order of cancellation under Sub-rule (1), the allotting authority shall give to the allottee concerned, an opportunity of being heard.

(3) For the purpose of proceeding under this rule, the allotting authority may ask for any relevant information or record from any officer or authority of Himachal Pradesh Government, who shall supply it to the allotting authority within the requisite time."

"9. Applicability of rules to old allotments:- All allotments of land to the oustees in Rajasthan Canal Colony made before the commencement of these rules shall be deemed to have been made under these rules and shall be subject to all the provisions, conditions, obligations, rights, liabilities and stipulations etc. as mentioned in these rules."

13. The position as it emerges out of the pleadings and other documents placed on record is that admittedly, Ranjeet Singh father of the petitioner died on a date subsequent to 31-3-1961, leaving behind his two sons, wife and two daughters. The Board of Revenue while interpreting the abovesaid rules came to the conclusion that the petitioner and other heirs succeeded to the land of Ranjeet Singh and would be Pong Dam oustees only as heirs and successors of Ranjeet Singh and not on account of the land having been acquired by them independently and, thus, agreeing with the authorities below it was observed that the allotment made to them was liable to be cancelled under Rule 9 and Rule 4(1) as well as Rule 2(ix) of the allotment rules.

14. It has to be seen that the petitioners had been certified separately and distinctively as Pong Dam oustees in the year 1966 and it was on that basis that a certificate had been issued to them in sequence of which the land was ordered to be allotted to them permanently.

15. From the grant of the certificate issued by the Himachal Pradesh authorities the petitioner is to be held as khatedar in his own rights and, thus, he was correctly certified to be so. The Rajasthan Canal Project Authorities on the basis of the material received made the allotment to each of them individually. The position, thus, could not be reversed by the new rules published in 1972 and which were amended subsequently.

16. The only argument advanced from the side of the respondents is that the petitioner had since given an undertaking that he will abide by the rules to be

framed later and having bound himself it had become a condition of the allotment order which the petitioner accepted and in view of the provisions of Rule 4(1) reproduced above, the allotment was rightly cancelled. The counsel, thus, further proceeds to submit that the family was entitled to only one murabba and the allotment made in excess was liable to be cancelled and withdrawn. The Board further noticed that these rules even before the amendment dated 2-3-1973 were the same and Ranjeet Singh alone could be held as a Pong Dam oustee.

17. The Board of Revenue as it appears from the impugned order committed an error by making an observation that there was no evidence available on the record to check whether the petitioners had secured the land acquisition awards separately and that separate certificates were given to them by the Government of Himachal Pradesh. The authorities below relied upon the admission of the petitioners noticed above and held that cancellation was proper. Ex. 1 is the allotment letter dated 3-9-1966. The allotment was made on payment and it is stated that the entire payment stands deposited. The petitioner has placed a very important document on record which is Annex. 8. This is a certificate dated 20-5-1983 (sic) wherein the Land Acquisition Officer Beas Dam has certified that the land was owned by Naseeb Singh, Bakhshis Singh, Swaroop Singh, sons and Lila Devi widow and Santosh Devi and Neelam Devi daughters of Ranjeet Singh and their land was acquired for Pong Dam Reservoir and the amount was separately adjudged for each of these claimants and respectively paid to them on 30-1-1965. This certificate, thus, shows that the petitioners held land separately and independently in their own capacity and the land compensation was paid to them separately. Another important document has been placed and an affidavit has been filed by Swaroop Singh wherein the Naib Tehsildar, Land Acquisition, Talwara has certified the holding held by each of these petitioners independently. The same has been marked as Annex. A. In this document the amount of compensation has been calculated separately. Annex. B is the copy of the Qabzul Wasool which shows that the possession was taken from the petitioners in respect of their holdings.

18. Annexure C is the certificate wherein it has been said that thae land was acquired vide the notification dated 23-3-1963 and the award was made on 25-1-1965. Copy of the notification has also been attached to it. There is no rebuttal from the side of the State to these documents, the authenticity of which appears to be beyond any doubt.

19. What emerges out of a reading of these documents is that the land was held by each of these petitioners independently, separately as full owner, the same was acquired from them, the compensation was paid to them separately and the land has been acquired for the purposes of construction of Pong Dam from them. Apart from compensation having been paid, under the mutual agreement of the respective Governments, it was further agreed to rehabilitate these oustees in the State of Rajasthan. Procedure is prescribed for allotment and on the strength

of the certificate issued, the land was permanently allotted to each of the petitioners.

20. The matter can be viewed from another angle also. This area at the relevant time was situated in district Kangara which at that time was in the State of Punjab. The acquisition was made by the Punjab State, the compensation was paid by the Punjab State, the certificates entitling each of the petitioners for seeking allotment in the State of Rajasthan was made by the officers of the Punjab State and the allotments were made by the State of Rajasthan on 3-9-1966. Under the States Reorganisation Act district Kangara became part of the Himachal Pradesh on 1-11-1966. This would show that the entire process starting from acquisition till payment of compensation and allotment and rehabilitation was complete before the Himachal Pradesh acquired the Statehood. The Rules do not talk of the State of Punjab anywhere. It also does not stand to reason that how could the cut-off date be made applicable to the petitioners when they became owners after that date and it was on account of the acquisition, they would become Pong Dam oustees. The definition of "Pong Dam oustees" as reproduced above in the order means only a person who was permanently residing within the area acquired for construction of the Dam on or earlier than 31-3-1961. This is not denied that all the petitioners were permanent residents of that area.

21. The procedure for allotment is given in Rule 5 and therein the appointment of the Certifying Authority is vested in the Government of Himachal Pradesh and it is the eligibility of that certificate from that authority which is to be issued to an oustee and after proper verification the allotment has to be made. Sub-rule (5) of Rule 5 authorises the allotting authority to scrutinise the application and other connected documents and in case of doubt in respect of the eligibility of the oustee, the matter has to be referred to the Colonisation Commissioner who in turn would refer to the Government of Himachal Pradesh for clarification of the doubt and under Sub-rule (6) it is after the scrutiny and receipt of the clarification required if any the eligibility has to be decided. Although this rule talks of the Government of Himachal Pradesh still the entire procedure would be taken to have been complied with by the concerned authorities, unless the respondent-State could show something on the record which would create a doubt. The definition of "family" and cut-off date as prescribed, under these circumstances, would also not be applicable to the case of the petitioners taking into account the cumulative effect of the documents which we have noticed above in the order.

22. Rule 8 deals with cancellation of allotment. Under Sub-rule (1) it is only when it is found by the allotting authority either on complaint or otherwise that the allotment of land under the rules was made upon a false, incorrect or misleading statement of facts or information given by the allottee to any officer or authority of Himachal Pradesh Government, such allotments shall be cancelled by the allotting authority. No such case has been made out of either any fraud or

concealment or mis-statement of fact by the petitioners. Sub-rule (3) of Rule 8 prescribes that for the purposes of proceeding under this rule the allotting authority may ask for any relevant information or record from any officer or authority of the Himachal Pradesh Government, who shall supply it to the allotting authority within the requisite time.

23. Since the proceedings for cancellation were initiated by the allotting authority on its own motion, it was incumbent upon the authority in the absence of any material to have resorted to this process and procedure and the matter would have been cleared from the Himachal Pradesh Government. We have already noticed that, in fact, the Himachal Pradesh Government had not come into picture at all when the final allotment and the entire process was complete in respect of each of the petitioners.

24. Learned counsel for the petitioners while laying challenge to the definition of "family" and Rules 4 and 9 argued at some length on the vires of these provisions and relied upon a few decisions to support his argument.

25. Learned counsel also argued that these rules have been framed under the delegated legislation and cannot be held to be retrospective in operation. There was no authority vested with the Government to frame these rules retrospectively.

26. Since upon a harmonious construction of these provisions and for the view we have taken in the matter it is not necessary to deal with those submissions and thus, these need not be noticed.

27. It may also be noticed that when this matter was being heard by a Division Bench of this Court consisting of Hon"ble Mr. Justice J. R. Chopra and Hon"ble Mr. Justice R. P. Saxena, an order was passed on 7-5-1993 requiring the petitioner to place on record certain documents which are required for the proper decision of the writ petitions and it was under this direction that these documents Annexures A, B and C were placed on the record with an additional affidavit showing the time of acquisition, the names of the persons who were recorded at the time of acquisition and when the compensation was granted to each of the petitioners. It is further available from the record that all these petitioners were minors at the time of acquisition and the compensation was received on their behalf by their mother who is also one of the petitioners in these writ petitions.

28. We had also pointed out to the learned Government Advocate to place on record anything he desires to place to contradict the pleas raised by the petitioners and he was told to make available his written submissions or documents in case he so desires within a reasonable time and this was done when the arguments had been fully heard and the orders were reserved on 4-1-1995. No such document or written arguments have been placed on record by the State counsel till date and having sufficiently waited we have proposed to dispose of these petitions by this order.

29. The matter can also be looked into yet from another angle. The aim and object of allotment appear to be the resettlement and rehabilitation of the oustees. Since their valuable lands, homes and huts had been acquired for the purposes of construction of Pong Dam and they were on road, it was under these circumstances, under the provisions of the Land Acquisition Act they were rehabilitated in the State of Rajasthan and lands were allotted to them. How can, thus, the provisions made in these rules have the effect of nullifying the provisions of the Land Acquisition Act which is a Central legislation. The rules, thus, wherever they go inconsistent with the provisions of the Land Acquisition Act it would be the provisions contained in the Central Act which would prevail. Thus, no fault can be found in the allotments made to each of these petitioners and moreover we would not like to unsettle the things which have been settled after due deliberations as back as in 1966 and the allotment was made for consideration which according to the petitioners have been fully made up.

30. For the reasons recorded above, these writ petitions are allowed, the impugned orders are quashed and it is held that the land was rightly allotted to each of the petitioners. The proceedings initiated for cancellation of the allotment and consequential orders are hereby struck down as wholly illegal and unwarranted.

31. No orders as to costs.