

(2000) 09 RAJ CK 0068

In the Rajasthan High Court

Case No : Civil Special Appeal No. 431 of 2000

The State of Rajasthan

APPELLANT

Vs

Mahesha and Others

RESPONDENT

Date of Decision : 13-09-2000

Acts Referred:

Constitution of India, 1950 — Article 142, 226, 227

Citation : (2000) 4 RLW 415 : (2001) 1 WLC 432 : (2001) 1 WLN 527

Hon'ble Judges : Sunil Kumar Garg, J;B.J. Shethna, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The original petitioners migrated from Pakistan in the year 1965 being refugee. Initially they were granted permission for temporary cultivation of land in question. The same was extended from time to time upto 1969. Somehow or other, renewal of those leases were not made after 1969. In the year 1970, the land in question was allotted to the original- respondents No. 7 to 15 (present respondents No. 31 to 39).

2. There is chequered history of this case. The matter was remanded to SDM by higher up authority and ultimately, the writ petition was filed before this Court way back in the year 1988 by the original petitioners, which came to be disposed of by the learned Single Judge on 4.5.1999 with a direction to the respondent-present appellant to consider the case of the original petitioners for regularisation of land in their favour which was in their possession for last more than 34 years and also to consider the case of original respondents No. 7 to 15 for allotment of alternative land in accordance with law.

3. The aforesaid judgment came to be passed by the learned Single Judge in view of the judgment of Hon"ble Supreme Court reported in Brij Lal Vs. Board of Revenue and Others, It was a case of minor who was allotted land in the year 1970 on temporary basis. In the year 1974, he applied for permanent allotment.

This application was rejected on the ground that he was minor. The matter went right up to Supreme Court and the same was decided in March, 1993. The Hon"ble Supreme Court was of the opinion that the appellant (Brijlal) was in cultivatory possession of the land since 1970, therefore, it would be travesty of justice to dispossess him from the land in question which he had nourishes for over a period of two decades. Accordingly, the appeal was allowed and authorities were directed to make permanent allotment of land in favour of the appellant.

4. However, learned Counsel Shri Khatri, for the appellant submits that only Hon"ble Supreme Court in exercise of its power under Article 142 can pass such orders, but not the High Court in its jurisdiction under Article 226/227 of the Constitution of India. In support of his submission he has placed reliance upon judgment of Hon"ble Supreme Court in the case of State of Punjab and others Vs. Surinder Kumar and others, There cannot be any quarrel with the principle laid down by the Hon"ble Supreme Court in the case of State of Punjab v. Surendra Kumar (supra). However, the aforesaid judgment of the Hon"ble Supreme Court has no application whatsoever to the facts of this case. In the instant case, the original petitioners were victim of 1965 war between India and Pakistan. They had to migrate from Pakistan to India in the year 1965.

5. For the purpose of establishing them if small pieces of land were allotted to them on temporary basis and the same was extended from time to time, which they nourished for all these years, then in our considered opinion, no error was committed by the learned Single Judge while allowing their writ petition with a direction to present appellant to consider the case for regularisation of land in their favour which they are nourishing for last more than 31 years. Similarly, the original respondents No. 7 to 15 in whose favour order of allotment of alternative land was passed, they should also be provided alternative land. Now, the appellant shall comply with the direction issued by the learned Single Judge in its letter and spirit within a period of two months from today.

6. With these observations, the present appeal is dismissed. There is no order as to costs.