
(1999) 01 RAJ CK 0034
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5/99

Vijaypal Singh and Another	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Rajasthan Colonisation (Allotment and Sale of Government Land to Pong Dam Oustees and their Transferes in the Indira Gandhi Canal Colony Areas) Rules, 1972 — Rule 6(4)
Rajasthan Colonisation Act, 1954 — Section 28

Citation : AIR 1999 Raj 131 : (1999) 1 RLW 684 : (1999) 2 WLC 600 : (1999) 1 WLN 76

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : H.S. Sidhu, for the Appellant;

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The present petitioners, who are not the original allottee of the land in question have filed this petition and challenged the impugned order dated 20-8-1998 (Annexure P/4) passed by the learned Special Judge (III), Pong Dam Oustees, Sriganganagar, whereby, the allotment made in favour of original allottee deceased Roshan Lal on 16-7-1972 has been declared as cancelled in view of the breach of conditions committed by the deceased allottee Roshan Lal and the land in question has been vested within the State Government.

2. Learned counsel Shri Sidhu for the petitioner vehemently challenged the impugned order (Annexure P/4) passed by the learned Special Judge on the ground that there was no breach of conditions of Rules, 1972 as the land in question was legally transferred by the original allottee deceased Roshan Lal in favour of present petitioners by way of will. He further submits that as per the will dated 5-5-1989 the mutation entry (Annexure P/2) was also made in the name of petitioners on 31-12-1991. He, therefore, submits that the impugned order be quashed and set aside.

3. In case of Gurdeep Singh v. Special Judge, Pong Dam Oustees Matters, Sriganganagar reported in 1998 (3) WLC 607 : 1998 AIHC 4678, the learned single Judge of this Court has clearly held that, "the petitioner, who is transferee, from the oustee allottee did not get any rights whatsoever by such transfer because of the terms of allotment and, as such, void. The possession of the petitioner on the land is nothing more than that of a trespasser." This Court has clearly held that except the original oustee allottee no one else has right to challenge the impugned order of cancellation of allotment of land passed by learned Special Judge. However, learned counsel Shri Sidhu tried to distinguish that judgment on the ground that there is no breach of Rule 6(4) of the Rules, 1972. He submitted that the transfer of land was wholly in accordance with the law as the same was transferred in the name of petitioners by the original allottee by way of "will" and in pursuance of that will the mutation entry was also made in the name of the petitioner in 1991. Rule 6(4) reads as under :--

"6.(1).....

(2)

(3).....

(4) During the period of ghair-khatedari tenure, the allottee shall not have any alienable and transferable rights in the land and shall not transfer or alienate the land to any other person in any way e.g.. sale, mortgage, gift, transfer, lease or otherwise. No transfer or alienation of land even in the form of a Nokarname, Mukhtiarname, Tebilname, Ikrarname or the like shall be permissible."

4. In the instant case, the case of the State Govt. is that the original allottee deceased Roshan Lal sold the land to the present petitioners for the sum of Rs. 3 lacs and transferred the same. Hence, such transfer was illegal. However, the submission of Mr. Sidhu was that there was nothing on the record to show that the deceased Roshan Lal sold the land to the present petitioners for the sum of Rs. 3 lacs. Even assuming for the sake of arguments that the land was not sold but transferred in favour of the petitioners by way of will then also such transfer by way of "will" is not permitted under Rule 6(4). It is true that the word "will" is not specifically mentioned in the Rule 6(4) but from the conjoint reading of Rule 6(4) it is clear that the transfer or alienation of land even in the form of Nokarname, Mukhtiarname, Tebilname, Ikrarname or the like is not permissible. The word "or the like" includes the transfer of land by "will" also. Apart from that it is clear that it was absolutely a bogus will produced by the petitioner and said will is alleged to have been executed by deceased Roshan Lal on 5-5-1989 though he had four sons and one daughter. The petitioners are not related to the deceased Roshan Lal and they are of different caste. Thus, the will is a sheer bogus one. Mere mutation entry in pursuance of that will will also not help the petitioners. In case of Pradesh Pong Bandh Visthapiti Samiti, Rajasthan and Another Vs. Union of India and Others, the apex Court has made it clear in para No. 4 of its judgment by holding as under (at page 3447) :--

"3. Initially an allotment shall be on ghair-khatedari tenure only and to the allottee no khatedari rights shall accrue in any land so allotted till the expiry of 20 years from the date of allotment and till the full price of the land together with all other dues of the State Government, if any, has been paid by him to the State Government.

4. During the period of ghair khatedari tenure, allottee shall not have any alienable and transferable rights in the land and shall not transfer or alienate the land to any other person in any way e.g. by sale, mortgage, gift, transfer, lease or otherwise. No transfer or alienation of land even in the form of Nokarnama, Muktiarnama, Tabilknama, Ikrarnama or the like shall be permissible."

5. Thus, the original allotment was of 1972 and will was executed in 1989 which was less than a period of 20 years. Hence, this submission of Mr. Sidhu has to be rejected.

6. Mr. Sidhu then contended that the order of cancellation made against the dead person is void ab initio because Roshan Lal died before the cancellation order was passed. This submission of Mr. Sidhu has to be rejected for the simple reason that the cancellation of allotment will go with the breach of conditions committed by the original allottee and not with the allottee. When it is found that the original allottee illegally transferred the land in breach of Rule 6(4) of Allotment Rules, 1972 then that allotment has to be cancelled and accordingly that allotment was rightly cancelled by the authority as it was satisfied that there was clear breach of Rule 6(4) of the Rules, 1972.

7. In view of the above discussion, this petition fails and is hereby dismissed.