

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

O R D E R

Gani Mohd. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.4172/1996
under Articles 226 and 227 of the
Constitution of India.

Date of Order : November, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. C.S.Kotwani, for the petitioner.

Mr. B.L.Tiwari, Dy.Govt.Advocate.

BY THE COURT :

An allotment committee constituted under Rajasthan Imposition of Ceiling on Agricultural Holdings Act, 1973 (hereinafter referred to as "the Act of 1973") read with Rajasthan Imposition of Ceiling on Agricultural Holdings Rules, 1973 (hereinafter referred to as "the Rules of 1973")

allotted 6 bighas 11 biswas land to the petitioner in accordance with Rule 17 of the Rules of 1973 by an order dated 14.1.1983. The allotment of aforesaid land was cancelled by Additional Collector, Bhilwara by an order dated 14.1.1994 while exercising powers under sub-rule(4) of Rule 17 of the Rules of 1973. Being aggrieved by the same the petitioner preferred an appeal before the Board of Revenue under Section 23(2) (A) of the Act of 1973 which too came to be rejected by judgment dated 13.9.1994. A review petition preferred by the petitioner before the Board of Revenue was also rejected by judgment dated 22.12.1995. The allotment made in favour of the petitioner was cancelled on the count that on 14.1.1983 when the land was allotted to the petitioner under the orders of allotment advisory committee he was not a landless person and also on the count that the petitioner was not a bonafide agriculturist as he was in employment of a cooperative society as a Manager.

The contention of counsel for the petitioner while giving challenge to the order passed by the Additional Collector, Bhilwara and the orders passed by the Board of Revenue for Rajasthan, Ajmer is that the courts below failed to appreciate that on 14.1.1983 the petitioner was not having tenancy for any land in his favour. The land treated to be in his name was in name of his father reference of which was

given by the patwari concerned while making inquiry. It is also contended by counsel for the petitioner that the courts below failed to take into consideration the evidence available on record.

According to counsel for the petitioner the affidavits sworn in by Shri Dalla son of Nathuji Kharol; Banshilal son of Hiralalji Purohit; Ramsingh son of Vijay Singh; and Raghunath son of Pratapji were not taken into consideration either by additional collector or by Board of Revenue while cancelling allotment of land made in favour of the petitioner.

Per contra, it is contended by counsel for the respondents that the petitioner was having share in the land of his father, therefore, the allotment advisory committee wrongly treated him a landless person. It is also contended that the petitioner was working as a Manager in a Cooperative Society, therefore, he could not be held a bonafide agriculturist.

Heard counsel for the parties and perused the record.

Rule 17 of the Rules of 1973 prescribes procedure for allotment of vested surplus land. Sub-rule(3) of Rule 17 of the Rules of 1973 provides order of priority required to be observed while making

allotment of land under the Rules of 1973. Sub-rule(3) of Rule 17 of the Rules of 1973 is abstracted below:-

“(3)In making allotment of land, the following order of priority shall be observed:

(a)persons who are in possession of land transferred to them by persons whose lands have vested in the State under the Act and who are residents of the village Panchayat in the jurisdiction of which the land is situated or residents of a village Panchayat which adjoins such a village Panchayat, in the following order of priority.--

(i)resident of the village Panchayat in which the land is situated and as amongst them preference will be given to persons who belong to Scheduled Castes and Scheduled Tribes:

(ii)residents of village Panchayats which adjoin the village Panchayat in which the land is situated and as amongst them, preference will be given to person who belong to Scheduled Castes and Scheduled Tribes:

Provided that such transfers have not been recognised by the Authorised Officer under the Act and such transferees were landless persons as defined in the Rajasthan Tenancy Act, 1955 Prior to the transfer of the aforementioned land to them:

Provided further that such transfers of land are genuine and are not sham, bogus or benami and are in accordance with law and were not made in favour of any member of the transferor's family.

And provided further also that the maximum area of land that can be allotted is the area prescribed in the rules indicated in sub-rule(3) hereof to landless persons but where the difference in the area of land transferred by the land holder and the extent of land to be allotted under these rules is five bighas or less such excess area may also be allotted to the transferee.

Explanation.--Transfers effected upto 31st December, 1972, only shall be taken into consideration for the purpose of this rule and transfers effected on or after 1st January, 1973 shall be not considered.

(b) Land less labourers of the village belonging to Scheduled Castes or Scheduled Tribes, released Bonded labourers and the beneficiaries of the Integrated Rural Development Programme.

(c) A landless person who is a non-commissioned member of the armed Forces or a member of the Border Security Force, and who has rendered not less than five years' service as such or who is an ex-serviceman.

Explanation.-For purposes of this clause, "ex-serviceman" means any person who has been released from the Armed Forces after having served in any rank other than that of

a Commissioned Officer (including a Junior Commissioned Officer or equivalent rank) in the Indian Armed Forces for at least five years.

(d)A landless person who does not hold any land, whether in his own name or in the name of any member of his joint family.

(e)Any other landless person residing in the village in which the vested land is situated.

(f)A tenant of contiguous plot of land holding landless than the ceiling area applicable to him.

(g)Any other landless person and persons identified as refugees and certified to be such by a competent officer designated in this behalf by the State Government and granted Indian Citizenship:

Provided that if there are more than one applicants belonging to the same category for the same land, the land shall be allotted to the applicant whose application was received first:

Provided further that no allotment of land shall be made so as to result in the allottee getting or holding land in excess of the Ceiling area applicable to him."

Clause(d) of sub-rule(3) of Rule 17 of the Rules of 1973 prescribes a priority for landless persons who does not hold any land, whether in his own

name or in the name of any member of his joint family. It is admitted position that on 14.1.1983 there was no land in name of the petitioner, even according to the respondents. The requirement of clause(d) of sub-rule (3) of Rule 17 of the Rules of 1973 is that there should be no land in the name of person concerned or in the name of his joint family. Accordingly it was obligatory for the Additional Collector to decide that whether the petitioner was part of joint family of his father. A finding only to the extent that there was land in name of father of the petitioner is not sufficient.

From reading of the order passed by Additional Collector, Bhilwara it is apparent that no finding was given by the Additional Collector as to whether the land was in the name of any member of joint family, meaning thereby that as to whether the petitioner was living with his father as a member of joint family. In absence of such finding it could not be held that there was any violation of clause(d) of sub-rule(3) of Rule 17 of the Rules of 1973. The Rules of 1973 nowhere disentitles a person from service from allotment of land if he is a bonafide agriculturist.

It is also pertinent to note that the Additional Collector while cancelling the allotment made in favour of the petitioner has not taken into

consideration the evidence available on record. As stated in preceding paras four persons viz. Dalla, Banshilal, Ramsingh and Raghunath stated on oath that petitioner Gani Mohd. is a landless person and he is a bonafide agriculturist. The Additional Collector has not taken into consideration the affidavits submitted by abovenamed persons. If an order is passed without considering the entire relevant evidence available on record then such a order is certainly perverse. The Board of Revenue also failed to appreciate this aspect of the matter.

Accordingly this petition for writ deserves acceptance. The same, therefore, is allowed. The orders passed by the Additional Collector, Bhilwara dated 14.1.1994 and the Board of Revenue dated 13.9.1994 are hereby declared illegal and the same are hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.