

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.O R D E R

Jumman Ram v. State of Raj. & Ors.

S.B.CIVIL WRIT PETITION NO.6429/1991
under Articles 226 and 227 of the
Constitution of India.

Date of order : 30th January, 2006P R E S E N THON'BLE MR.JUSTICE GOVIND MATHUR

Mr. R.K.Singhal, for the petitioner.
Mr. Vijay Kumar Agarwal, for the respondents.

BY THE COURT :

This petition for writ is directed against the order dated 5.10.1991 passed by the Divisional Commissioner, Bikaner exercising powers under Section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (hereinafter referred to as "the Act of 1954").

The factual matrix necessary for adjudication of present writ petition are as follows:-

A land measuring 25 bighas situated in chak No.3 JJ, Tehsil Padampur, District Sriganganagar was allotted to the petitioner being a displaced person

from Pakistan. While making allotment of land as displaced person Smt. Lalibai wife of petitioner, Tekaram minor son of the petitioner, Kishnoo and Kanti nephew and niece of the petitioner were included in family of the petitioner and a certificate in this regard was issued by the allotting authority on 30.5.1954. A sanad with regard to land allotted was issued in name of the petitioner by concerned rehabilitation officer on 31.3.1976. The respondents No.3 and 4 viz. Smt. Banti wife of Daularam and Vishnu son of Asharam being aggrieved by grant of sanad dated 31.3.1976 preferred a petition under Section 24 of the Act of 1954 before the Collector-cum-Chief Settlement Commissioner, Sriganganagar on 17.9.1982. The petition submitted by the respondents No.3 and 4 stood rejected by the Chief Settlement Commissioner vide judgment dated 31.1.1984. Learned Settlement Commissioner was not satisfied with the contention of the respondents No.3 and 4 that they are Kanti and Kishnoo, niece and nephew of the petitioner, who were shown as a member of the petitioner's family while making allotment of land on 30.5.1954. The Settlement Commissioner held that Kanti and Kishnoo, niece and nephew of the petitioner died long back and, therefore, sanad in the name of the petitioner was rightly issued.

The respondents No.3 and 4 being aggrieved by the order passed by the Settlement Commissioner dated 31.1.1984 preferred a revision petition under Section

33 of the Act of 1954 before the Secretary to the Government of Rajasthan, Rehabilitation Department, Jaipur. The revision petition preferred by the respondents No.3 and 4 was rejected by the authority competent by judgment dated 10.5.1984. The revisional authority while rejecting the revision petition held as under:-

“In the said certificate it has further been mentioned that Shri Kala Ram, brother of Jumma Ram had died in Pakistan and his son Kishnu (in whose name the present petitioner has come) died about 25 years back. Kanti also died about a year after the death of Kishnu. Now the present petitioner, taking advantage of the death of Kishnu, wants to agitate the issue in the names of those dead persons. It has nowhere been established by the petitioner that he is the original Kishnu or by the respondent No.6 that she is the original Kanti. In absence of the same, their claims cannot be entertained now. Eve for a moment if it is admitted for the sake of argument that they were alive, then it was their responsibility to have challenged the sanad which they did not do.”

Being aggrieved by the judgment dated 10.5.1984 the respondents No.3 and 4 preferred a writ petition before this Court (SBCWPNo.1665/84) and that too was dismissed by order dated 6.9.1984. An appeal under Section 18 of the Rajasthan High Court Ordinance giving challenge to the order dated 6.9.1984 was also

dismissed by Division Bench of this Court. After dismissal of writ petition as well as Special Appeal the respondents No.3 and 4 without disclosing the fact that the judgment passed by the competent authority under Section 33 of the Act of 1954 has already been affirmed by the High Court, submitted an application to the then Chief Minister and also to the then Revenue Minister for directing rehabilitation officer to revise the sanad granted in favour of the petitioner.

On basis of representation submitted to the Revenue Minister, Sub Divisional officer, Padampur made an inquiry afresh and created little doubt about death of Kanti and Kishnoo, the niece and nephew of the petitioner. The respondents No.3 and 4, therefore, submitted an application before the District Rehabilitation Officer, Sriganganagar to cancel the sanad granted in favour of the petitioner. The District Rehabilitation Officer, Sriganganagar by order dated 11.9.1986 rejected the application by holding that earlier too challenge was given to the order dated 24.3.1976 granting sanad in favour of the petitioner and that was rejected by the order dated 31.1.1984. A revision petition giving challenge to the order dated 31.1.1984 was also dismissed by the revisional authority exercising powers under Section 33 of the Act of 1954 by order dated 10.5.1984.

The respondents No.3 and 4 against the order

dated 11.9.1986, passed by District Rehabilitation Officer, preferred a revision petition before the Divisional Commissioner, Bikaner which came to be accepted by judgment dated 5.10.1991. It is pertinent to note that while submitting revision petition before the Divisional Commissioner, Bikaner the respondents No.3 and 4 did not choose to disclose that the order dated 10.5.1984 stood affirmed by Rajasthan High Court while rejecting SBCWP No.1665/84. The Divisional Commissioner, Bikaner while accepting the revision petition preferred by the respondents No.3 and 4 held that the powers under Section 33 of the Act of 1954 are quite wide and in interest of justice the question as to whether Kanti and Kishnoo died or not could not be refused to be looked into on the count that validity of sanad granted was affirmed by the District Rehabilitation Officer and the revisional authority exercising powers under Section 33 of the Act of 1954.

Being aggrieved by the judgment dated 5.10.1991 passed by Divisional Commissioner, Bikaner the instant petition for writ is preferred by the petitioner under Articles 226 and 227 of the Constitution of India.

While giving challenge to the order dated 5.10.1991 it is contended by counsel for the petitioner that the sanad granted in favour of the petitioner under the order dated 31.3.1976 passed by

the District Rehabilitation Officer was treated valid by the Chief Settlement Commissioner by an order dated 31.1.1984 and a revision petition under Section 33 of the Act of 1954 filed on behalf of the respondents No.3 and 4 was also rejected by order dated 10.5.1984, therefore, no fresh revision petition could have been entertained by the Divisional Commissioner, Bikaner under the provisions of Section 33 of the Act of 1954. It is also contended by counsel for the petitioner that the respondents No.3 and 4 while submitting representations to the then Chief Minister, Revenue Minister and to Sub Divisional Officer, Padampur did not disclose the fact that a writ petition giving challenge to the order dated 31.3.1976, order dated 31.1.1984 and the order dated 10.5.1984 was rejected by the Rajasthan High Court and an appeal too stood rejected by the Division Bench of this Court. If the respondents No.3 and 4 would have disclosed this fact before the Divisional Commissioner, Bikaner, he could have restrained himself from exercising powers under Section 33 of the Act of 1954. It is further contended by counsel for the petitioner that the powers under Section 33 of the Act of 1954 are always required to be exercised within a reasonable period. The power vested with the Central Government by force of Section 33 of the Act of 1954 if exercised after an inordinate delay then the same results into arbitrary and colourable exercise of powers.

Per contra, it is contended by counsel for the respondents that the sanad was obtained by the petitioner under the order dated 31.3.1976 by a fraud, therefore, the same do not create any right in favour of the petitioner. The revisional authority only with view to wipe out a fraud committed by the petitioner rightly exercised powers under Section 33 of the Act of 1954.

Heard counsel for the parties.

It is the position admitted between the parties that the District Rehabilitation Officer granted sanad in favour of the petitioner under an order dated 31.3.1976, validity of which was challenged by the respondents No.3 and 4 by way of filing a petition under Section 24 of the Act of 1954 before the Chief Settlement Commissioner. The Chief Settlement Commissioner by an order dated 31.1.1984 rejected the said petition. Being aggrieved by order dated 31.1.1984 a revision petition under Section 33 of the Act of 1954 was preferred by the respondents No.3 and 4 before the authority prescribed by the Central Government and that revision petition too was rejected by judgment dated 12.5.1984. It is also the position admitted that a writ petition giving challenge to the order dated 10.5.1984 preferred by the respondents No.3 and 4 was also rejected by this Court. It is also not in dispute that after rejection

of writ petition the respondents No.3 and 4 submitted representation to the then Chief Minister and the Revenue Minister of the State Government. The Sub Divisional Officer, Padampur conducted a preliminary inquiry by acting upon the representation submitted by the respondents to the Revenue Minister. The respondents No.3 and 4 in the representation submitted to the Chief Minister as well as to the Revenue Minister never disclosed the fact that their grievance sought to be redressed was subject matter of the proceedings under Sections 24 and 33 of the Act of 1954 and the outcome of those proceedings was subject matter of a writ petition which stood rejected by this Court. The respondents No.3 and 4 submitted a fresh application under Section 24 of the Act of 1954 after rejection of the writ petition filed by them before the Chief Settlement Commissioner. The Chief Settlement Commissioner refused to interfere with the matter on the count that the same issue was earlier agitated by the respondents No.3 and 4 and their petition was rejected and a revision petition against the order of rejection was also dismissed by the competent authority while exercising powers under Section 33 of the Act of 1954. Surprisingly enough the Divisional Commissioner, Bikaner knowing it well that a revision petition pertaining to the same question was earlier filed by the same petitioners was dismissed, entertained the fresh petition and accepted the same by directing the Sub Divisional Officer,

Padampur to make an inquiry afresh in the matter.

I do not find any merit in the contention of counsel for the respondents that the sanad was obtained by the petitioner by fraud, therefore, to unearth the fraud the revisional authority by the order impugned directed to make an inquiry only. I am of the considered opinion that the revisional authority was not having such powers after already once exercising the powers under Section 33 of the Act of 1954. The earlier proceedings too were initiated at the instance of the respondents No.3 and 4, by filing an application under Section 24 of the Act of 1954. In that application too the stand of the respondents was that the sanad was obtained by the petitioner by fraud.

It is well settled that once the revisional authority has exercised its powers then for the same issue no second revision petition could be entertained. In fact after passing the order dated 10.5.1984 under Section 33 of the Act of 1954 it was not at all open for the Divisional Commissioner, Bikaner to exercise the same powers in the same issue at the instance of the same petitioners.

It is further pertinent to note that the order dated 10.5.1984 passed by the revisional authority was also affirmed by this Court as a writ

petition giving challenge to it at the instance of the respondents No.3 and 4 was dismissed by this Court and an appeal too was rejected by the Division Bench. After affirmance of the order dated 10.5.1984 by this Court if the order passed by the revisional authority on any count be permitted to be sustained then the same shall be nothing but audacious and without any judicial discipline. The order passed by the Divisional Commissioner, therefore, cannot be permitted to have any valid sanctity. The same, therefore, deserves to be quashed.

Accordingly, the writ petition is allowed. The order dated 5.10.1991 passed by the Divisional Commissioner, Bikaner (Anx.10) is quashed.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.