

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR.

J U D G M E N T

D.B. CIVIL SPECIAL APPEAL (WRIT) NO. 1046/2008.

In

S.B. CIVIL WRIT PETITION NO. 2206/2001.

Balkishan S/o Devilal since deceased.

Suresh Chand Bohra

Vs.

State of Rajasthan and others

Date of Judgment: - 30 May 2008.

HON'BLE THE CHIEF JUSTICE MR. NARAYAN ROY

HON'BLE MR. JUSTICE MOHAMMAD RAFIQ

Shri K.C. Sharma for the appellant.

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BY THE COURT: - (Per Hon'ble Mr. Mohammad Rafiq, J.)

Reportable

Heard Learned counsel for the appellant.

2) This appeal is directed against the judgment of the Learned Single Judge dated 30/10/2007 whereby the writ petition of the appellant challenging the judgment of the Board of Revenue dated 11/10/2000, Revenue Appellate Authority dated 26/7/2000 and the Sub Divisional Officer dated 16/12/1999 was dismissed. All the aforementioned three courts below concurrently decided against the appellant writ-petitioner that allotment of land of Khasra No.686 measuring 22 bigha 10 biswa to him by the SD0 vide

his order dated 5/1/1972 was contrary to the provisions of Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970 (in short, the "Rules of 1970") because land was situated within the area of Municipal Board and that petitioner being an employee of the Municipal Board Pushkar was not a bonafide agriculturist. The writ petition filed thereagainst by the appellant was dismissed by the learned Single Judge upholding the orders passed by the aforesaid three courts.

3) Learned counsel for the appellant has argued that the learned courts below have misread and misinterpreted the provisions of Rules of 1970 inasmuch as, it has wrongly been held by the courts below that the appellant was not a landless agriculturist and that the land was situated within the municipal limits. It was submitted that provisions of Rule 4(v)(d) of the Rules of 1970 which provides that lands situated in the municipal limits would not be available for allotment, have wrongly been applied because sub-clause (c) of clause (v) of Rule 4 of the Rules of 1970 provides that the lands within the limit of one mile from the boundary of the municipal town with the population of one lac and above but below two lacs would be available for allotment. It was argued that the courts below have wrongly held the appellant to be a government servant because proviso (a) to Rule 2[(iii-B) which defines "landless agriculturist" excludes only an employee of

the Government and appellant was employee of the Municipal Board and not a Government employee. Learned counsel further argued that the allotment in the present case was made in the year 1972 and it could not be cancelled at such belated stage as was done by the SDO vide its order dated 16/12/1999. Referring to Rule 14 of the Rules of 1970, learned counsel argued that once the khatedari rights are conferred on the allottee upon expiry of 10 years as per sub-rule (1) thereof, it could not be cancelled. Learned counsel in this connection relied on the judgment of Supreme Court in **Brij Lal Vs. Board of Revenue and others : AIR 1994 SC 1128** and this Court in **Jas Raj Vs. Board of Revenue & Ors. : RLR 1999(2) 687.**

4) We have given our thoughtful consideration to the submissions advanced by the parties and perused the impugned-orders and also the case law cited.

5) The contention that an employee of the Municipal Board cannot be considered to be a government servant cannot be accepted because the definition of 'landless agriculturist' as given in Rule 2[(iii)-B) provides that landless agriculturist means a resident of Rajasthan who is either a *bonafide* agriculturist or an agricultural labourer, and is cultivating or is likely to cultivate land personally, and whose main source of livelihood is agriculture or any occupation which is subsidiary or subservient to agriculture. Proviso thereof provides

that an employee of Government, or of a commercial or industrial establishment or concern, his wife and children dependant on him shall not be considered to be landless agriculturist. Besides the fact that appellant being an employee of the Municipal Board was not a bonafide agriculturist and was not cultivating or was not likely to cultivate the land personally and his main source of livelihood was not agriculture, clause (a) of the proviso, clarifies it further by saying that an employee of Government, or of a commercial or industrial establishment or concern, would not be considered as landless agriculturist. The proviso which is sweepingly worded not only takes into account an employee of the Government but also employees of a commercial or industrial establishment or concern. When employees of a commercial or industrial establishment or concern or of any private concern are not being excluded from the purview of landless agriculturist, how possibly the employees of the Municipal Board can claim themselves to be as landless agriculturists? Even otherwise, employees of the Municipal Board are essentially serving in connection with the affairs of the State and, therefore, they cannot be in any manner treated distinct from the government employee.

6) We are not inclined to uphold the argument that since the land in dispute was falling within one mile from the Municipal limits of Pushkar, which was having population of one lac or more but less

than two lacs therefore, such land would be available for allotment. Apart from the fact that appellant was held to be not a bonafide agriculturist, we cannot at this stage entertain that argument on a question of fact by way of reappraisal of evidence so as to examine the correctness of the findings on this question of fact concurrently recorded by all the courts below against the appellant.

7) Mere delay in cancellation of allotment even after conferment of khatedari rights as per Rule 14 (1) of the Rules of 1970 would not be an impediment for cancellation of such allotment if the same has been obtained by exercising fraud or by concealment of fact. The judgments on which reliance has been placed by the learned counsel for the appellant, besides being distinguishable, cannot in any manner improve his case.

8) The Division Bench of this Court in **Mangla son of Hema Vs. State of Rajasthan & Ors. : W.L.C. 2007 (1) 234** considered the view taken in earlier judgment of this Court in **Pat Ram and Others Vs. State of Rajasthan and Others : 1995(2) RBJ 781** wherein, it was held that when khatedari rights are acquired by allottee under Rule 14(1) of the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1957, which rules are in *paramateria* with the Rajasthan Land Revenue (Allotment of Land for Agricultural Purposes) Rules, 1970, after expiry of period of 10 years, such khatedari rights cannot be

cancelled on any grounds whatsoever. In **Mangla son of Hema supra**, the Division Bench observed as under: -

"Although, we have carefully examined the ratio of the judgment in the case of Pat Ram but we entertain serious doubts about correctness of the law laid down that just because khatedari rights have come to accrue to the allottees on expiry of 10 years, cancellation of allotment cannot be made under the provisions of Rule 14 (4) of the Rules, 1970. We entertain such doubt because if the Collector is satisfied that the original allotment was secured on the basis of fraud or misrepresentation of facts, then that question would go to the root of the case. In a given case, a situation may arise where someone claiming himself to be a landless person is able to secure the allotment under Rule of 1970 even though he may be having a big chunk of land many times larger in size than the maximum limit prescribed for being a landless person. The Collector in that case cannot be taken to have divested of his authority under Sub Rule (4) of Rule 14 of the Rules, 1970, just because khatedari stood conferred upon such person after expiry of 10 years by virtue of sub rule (1) of Rule 14 of the Rules of 1970. Rule 14 has given a composite scheme and interpretation of sub rule (1) cannot be made in isolation of sub Rule (4) when both of them form integral part of the same scheme of the rules and in fact, the same rule. Sub Rule (1) of Rule 14 cannot be therefore interpreted to the exclusion of other sub Rules specially sub rule (4) of the same rule. We have to therefore make a harmonious interpretation of the said two sub rules keeping in view the over all purpose with which the Rules of 1970 have been framed i.e to make allotment of agricultural land to landless as a measure of land and economic reforms."

9) Since the appellant secured the allotment of land projecting himself as a bonafide agriculturist, thus making misrepresentation and exercising fraud, conferment of khatedari rights and delay would not come in the way of the respondents to cancel such allotment.

10) In view of the discussions made above, we do not find any merit in this appeal.

The appeal is accordingly dismissed.

(MOHAMMAD RAFIQ), J.

(NARAYAN ROY), CJ.

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