PARASHRAM THAKUR DASS & OTHERS

v.

RAM CHAND S/O SHRI RADHUMAL & OTHERS

February 17, 1982

[R.S. PATHAK AND O. CHINNAPA REDDY, JJ.]

Madhya Pradesh Land Revenue Code, 1954 Ss. 149(2) and 164(3) & Madhya Pradesh Land Revenue Code Rules, 1956, Rules 2 to 26.

Allotment of nazul land to displaced persons—Applications from claimants—State Government initially deciding not to grant plots—Subsequent decision to allot plots taken—Plots allotted to some claimants—Claims of other parties not considered—Such action—Whether valid.

Grant of lease—Hold right in nazul land without auction—Reasons to be recorded in writing—Whether essential.

Respondents Nos. 1 to 16 applied for the grant of plots of land for purposes of constructing shops, alleging that they were displaced persons and entitled to the grant of plots. The appellants also made a similar application. There were applications from other claimants. The State Government acting on the report of the Commissioner rejected all the applications. Subsequently the Government at the instance of the appellants who had sought a review, reversed its earlier order and decided to grant plots on permanent lease to the appellants. The decision was conveyed in a memorandum by the State Government, who granted the plots to the appellants as shop sites in Bhumidhari rights without auction on payment of premium. The allotment was assailed by the respondents and they represented to the State Government that only after further inquiry should the land be reserved for deserving claimants.

The respondents filed a writ petition in the High Court challenging the allotment made by the Government in favour of the appellants contending that no reasonable opportunity had been given to them to press their claim for grant of plots, after reversal of the earlier decision not to grant land, that the appellants had been unduly favoured, and that the power to grant plots was vested in the Collector and not in the State Government. The appellants contested alleging that they had acquired a right to the land that they could not be divested of those rights. The High Court quashed the order granting plots to the appellants and directed the State Government to take appropriate action on the several claims for allotment of land. It held that under sub-section (2) of section 149 read with sub-section (3) of section 164 of the Madhya Pradesh Land Revenue Code, 1954, and rules 22 and 26 framed under the Code it was not open to the State Government to dispose of the plots without holding a public auction unless there were reasons recorded in writing for doing so and that after initially deciding not to

grant the plots, the subsequent decision to allot them was contrary to law as the claims of others had not been considered. A

Dismissing the appeal,

HELD : 1. The High Court was right in quashing the order granting plots to the appellants and directing the State Government to consider the several claims for allotment. [296 C-D] B

2. The grant cannot be attributed to clause (c) of sub-section (2) of section 149. The land was disposed of in Bhumidhari right. It was not given on favourable terms to the appellants, the market value of the plots was taken for fixing the premium. From the nature of the grant, it was clear that action under sub-section (1) of section 149 was intended. [293 E]

C

3. Under Rules 24 to 26 of the Land Revenue Code, lease-hold rights in nazul land are to be disposed of by public auction. If in any particular case the State Government or the Collector considers that there is good reason for granting the land without auction the reasons must be recorded in writing. The existence of good reason for departing from the general principle and the recording of the reason in writing are essential prerequisites which must be satisfied before lease hold rights are granted without auction. [295 A-C] D

In the instant case there is no evidence that the State Government has recorded any reasons in writing for prefering the mode of disposing of the land without auction. It had also no good reason for favouring that mode. In these circumstances the grant of land to the appellants was rightly quashed by the High Court. [295 E-F]

E

4. The State Government had decided earlier, as a matter of policy, not to allot nazul land to displaced persons, and pursuant to the decision all the applications for allotment were rejected. The applications were not rejected on the merits of their respective claims. Subsequently, when the State Government made an allotment of the plots to the appellants, it was consequent to a decision, which must be regarded as a composite of two decisions, one a policy decision to throw open the land to allotment in reversal of the earlier policy and, two, to allot the land to the appellants. The applications of the respondents for allotment of plots were rejected on the ground that the land was not available for allotment. That was a policy decision. When it was reversed it was incumbent on the State Government to reconsider those applications or to notify that the land was available for allotment and to invite fresh applications in that behalf. It was not open to the State Government to allot the plots to the appellants in disregard of the claims of others who had also applied for allotment.

F

[295 G-H; 296 A-B] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 440 (N) of 1970.

Appeal by special leave from the judgment and order dated the 18th June 1969 of the Bombay High Court in Misc. Civil Appln. No. 139 of 1968. H

A *Naunit Lal*, for the Appellant.

A.G., Ratnaparkhi for Respondents Nos. 1-6.

M.N. Shroff, for Respondents Nos. 17-19.

B The Judgment of the Court was delivered by

PATHAK, J. This appeal by special leave is directed against the judgment of the Nagpur Bench of the Bombay High Court quashing the grant of Nazul land to the appellants on a writ petition filed by the respondents Nos. 1 to 16.

C

The respondents Nos. 1 to 16 applied on March 15, 1963 for the grant of sixteen plots of land included in Government Nazul Plot No. 31/1 (Sheet No. 49-D) in Yeotmal Town for the purpose of constructing shops thereon. They alleged that they had not been allotted any land yet for carrying on business at Yeotmal, and inas-
D much as land sites were being released to refugees or displaced persons they claimed that having been compelled to migrate from West Pakistan to India during the partition of 1947 they were entitled to the grant of such plots. The appellants made a similar application on May 16, 1964 and it is their case that they had also applied earlier in the same behalf on February 27, 1962. There were
E applications from other claimants also. The State Government, acting on the report of the Commissioner, Nagpur Division, rejected all the applications. The appellants say that they sought a review of the order of the Government, and on June 28, 1965 the Government reversed its order and decided to grant plots on permanent lease to the appellants. The Collector, Yeotmal submitted a
F report to the Government pointing out that each plot would be 192 sq. ft. in area and having regard to its market value each allottee should be required to pay a premium of Rs. 960. The State Government granted the plots to the appellants as shop sites in Bhumidhari right without auction on payment of premium, and the decision was conveyed in a Memorandum dated March 3, 1966. The allotment
G was assailed by the respondents, and they represented to the State Government that after further inquiry the land should be reserved for deserving claimants.

H The respondents filed a writ petition before the Nagpur Bench of the Bombay High Court challenging allotment made by the Government in favour of the appellants. They urged that no reason-

able opportunity had been given to them to press their claims for grant of plots after the Government had reversed its earlier decision not to grant land, that the appellants had been unduly favoured and that the order was bad in law because the plots had been granted without holding an auction. It was also contended that the power to grant the plots was vested in the Collector and not the State Government.

During the pendency of the writ petition a statement was made on behalf of the State Government that it was prepared to consider the claims of the respondents. The appellants, however, maintained that they had acquired a right to the land in terms of the order dated March 3, 1966 and that they could not be divested of those rights.

By its judgment dated March 14, 1968 the High Court allowed the writ petition, quashed the order granting plots to the appellants and directed the State Government and its officers to take appropriate action on the several claims for allotment of land. The High Court held that in view of sub-s. (2) s. 149 read with sub-s. (3) of s. 164 of the Madhya Pradesh land Revenue Code, 1954, as applied to the Vidharba region of Maharashtra, and rules 22 and 26 framed under the Code, it was not open to the State Government to dispose of the plots without holding a public auction unless there were reasons recorded in writing for doing so, and that after initially deciding not to grant the plots the subsequent decision to allot them to the appellants was contrary to law inasmuch as the claims of others had not been considered.

In this appeal, it is urged by the appellants that the High Court erred in applying sub-s. (3) of s. 164 and rule 26, and therefore in holding that the lease of the plots without auction and without recording any reasons was invalid.

When the Government decided to grant land to the appellants, it thought that the grant should take the form of a permanent lease in their favour. The Collector was requested to frame suitable proposals and to submit them to the Govenment. The Collector submitted a report dated November 23, 1965 suggesting the allotment of plots for the construction of shops on the footing that each plot would measure 192 sq. ft. and its market value, worked out on the basis of recorded sale transactions, and taking into regard the commercial purpose for which the land was intended, indicated a premium of Rs. 960. He recommended further that the plots may

be granted without auction and in Bhumidhari right on payment of premium for constructing shops thereon for carrying on business. On March 3, 1966 the State Government made an order accordingly.

Now s. 149 of the Madhya Pradesh Land Revenue Code 1954 provides :

"149. (1) Subject to rules made under this Code, land belonging to the State Government, not being land hereinafter mentioned in sub-section (2), shall be disposed of in Bhumidhari or Bhumiswami rights by the Deputy Commissioner who may require payment of a premium for such right or sell the same by auction.

(2) The land referred to in sub-section (1) shall be the following, namely :—

(a) land situate in the bed of a river of a tank ;

(b) land reserved for communal purposes such as common grazing ground and cremation grounds;

(c) land given out on favourable terms for the promotion of religious, charitable, educational, public or social purposes;

(d) land given out to persons on the condition that it shall be used only for grazing cattle;

(e) land given out for temporary purposes or for limited periods or for mining and purposes subsidiary thereto or for industrial or commercial purposes;

(f) land given out to persons on favourable terms for rendering service as a kotwar;

(g) any other land which the State Government may, by notification issued in this behalf, specify."

Section 164 of the Code may also be set forth :

"164. (1) Every person who holds land from the State Government or to whom a right to occupy land is granted by the State Government or the Deputy Commissioner and who is not entitled to hold land as a tenure-holder shall be called a Government lessee in respect of such land.

(2) The Government lessee shall, subject to any express provision in this Code, hold his land in accordance with the terms and conditions of the grant which shall be deemed to be a grant within the meaning of the Government Grants Act, 1895.

(3) The State Government or the Deputy Commissioner may, subject to rules made under this Code, dispose of the right to occupy the land specified in sub-section (2) of section 149 on payment of a premium or by auction or on such terms and conditions as may be prescribed."

It is apparent that the grant cannot be attributed to clause (c) of sub-s. (2) of s. 149. The land was disposed of in Bhumidhari right. Moreover, it was not given on favourable terms to the appellants; the market value of the plots was taken for fixing the premium. From the nature of the grant, it is clear that action under sub-s. (1) of s. 149 was intended. Now Part III of the Notification No. 1118-1832-55-XXVIII dated May 22, 1956 sets forth the rules framed with reference to sub-section (1) of s. 149. These rules provide for the grant of Bhumiswami and Bhumidhari rights in nazul land for dwelling houses and ancillary purposes. Rule 24 defines the expression "Nazul Land" to mean land belonging to the State Government which is used for building on, or for roads, markets and other public purposes. Rule 26 applies the provisions of rules 18 to 36 contained in Part V of the Notification No. 1119-1832-55-XXVIII dated May 22, 1956 to the disposal of nazul land under Part III. The provise to rule 26 declares that where nazul land is put to auction it should normally be granted in Bhumiswami right, and where it is disposed of without auction it should normally be granted in Bhumidhari right. Rule 22 of Part V defines the power of the State Government and of the Collector to dispose of nazul plots with or without auction. Rule 22 provides :—

"22. Power to dispose of nazul plots with or without auction shall be exercised in accordance with these Rlues—

(1) by the State Government in the case of—

(i) plots of which the freehold market value is not less than Rs. 5,000;

(ii) plots within the limits of the Municipal Corporation of the City of Nagpur, whether or not included in the Schemes of Nagur Improvement Trust;

(iii) plots reserved for specific purposes under rule 20;

(iv) strips of land not being independent plots to be settled with the occupants of adjoining land where the freehold value of the strip is not less than Rs. 5,000;

(v) small strips of land adjacent to occupied plot, which cannot be disposed of as a separate site and in respect of which there is a difference of opinion between the Collector and the Officer-in-charge, Town Planning and Valuation;

(vi) independent plots not included in the approved lists where there is a difference of opinion between the Collector and the Officer-in-charge, Town Planning and Valuation;

(vii) plots granted without auction.

(2) by the Collector, in case of the other plots."

Sub-rule (1) of rule 26 in Part V declares :—

"26. (1) Leasehold rights in nazul land shall be disposed of by public auction except when in any particular case the State Government or as the case may be, the Collector thinks for reasons to be recorded in writing that there is good reason for granting the land without auction."

It seems indisputable that under the Rules as a general principle leasehold rights in nazul land are to be disposed of by public auction. If in any particular case the State Government or, as the case may be, the Collector considers that there is good reason for granting the land without auction the reasons must be recorded in writing. The existence of good reason for departing from the general principle, and the recording of the reason in writing are essential prerequisites which must be satisfied before leasehold rights are granted without auction. It is pointed out that under clause (vii) of sub-rule (1) of rule 22 the State Government is empowered to dispose of nazul plots without auction. We have no doubt it can do so, but only after full compliance with sub-rule (1) of rule 26. The sub-rule (1) controls the power of the State Government conferred by clause (vii) of sub-rule (1) of rule 22. To hold otherwise would be to confer an arbitrary power on the State Government to dispose of nazul plots. It would be in the absolute discretion of the State Government to decide whether nazul plots should be granted with auction or without auction. If that construction is accepted, it is clear that sub-rule (1) of rule 26 would be negatived. The only reasonble construction, it seems to us, is to read the two provisions together.

In the present case there is no evidence that the State Government has recorded any reasons in writing for preferring the mode of disposing of the land without auction and we are not satisfied that it had good reason for favouring that mode. In the circumstances the grant of land to the appellants has been rightly quashed by the High Court.

There is also sufficient justification in the grievance of the respondents that the State Government did not consider the claims of other persons, including the respondents, when making an allotment of the plots. The State Government had decided earlier, as a matter of policy, not to allot nazul land to displaced persons, and pursuant to that decision all the applications for allotment were rejected. The applications were not rejected on the merits of the respective claims set out therein. Subsequently when the State Government made an allotment of the plots to the appellants, it was consequent to a decision which analytically must be regarded as a composite of two decisions, one, a policy decision to throw open

A the land to allotment in reversal of the earlier policy and, two, to allot the land to the appellants. It will be remembered that the applications of the respondents for allotment of plots were rejected on the ground that the land was not available for allotment. That was a policy decision. When it was reversed, it was incumbent on B the State Government to reconsider those applications or to notify that the land was available for allotment and to invite fresh applications in that behalf. It was not open to the State Govenment to allot the plots to the appellants in disregard of the claims of others who had also applied for allotment.

C In quashing the order granting plots to the appellants and directing the State Government or its appropriate officers to consider the several claims for allotment the High Court, in our opinion, did that which was plainly right.

D The appellants say that the respondents must be taken to have accepted the rejection of their applications for allotment, and it was only the appellants who pursued the matter and obtained a reversal of the order of the Government and therefore the E appellants alone were entitled to the allotment of plots. The submission would have had force but for the circumstance that the State Government effected what was a change of general policy. The change of policy altered the situation completely, and all the claimants were entitled to the benefit of that change. By adopting the new policy, the State Government must be taken to have F declared that the land was now open to allotment to the claimants who were found most deserving. There were several applicants for allotment, and a selection had to be made. It cannot be contended, as indeed it is urged before us, that the appellants constitute a distinct and separate class from the respondents only because the appellants agitated against the rejection of their applications while G the respondents did not.

The controversy which remains is whether it is the State Government or the Collector who has power to dispose of the plots H in view of their market value. That is a matter on which we need express no opinion, having regard to the quashing of the entire allotment proceeding from its inception. It will be for the Govern-

ment or the appropriate authority to decide what should be the nature of the rights to be conferred on the allottees and, therefore, what should be the premium to be fixed. A

In the result, the appeal is dismissed with costs.

B

N.V.K. *Appeal dismissed.*