
(2018) 12 RAJ CK 0302

Rajasthan High Court (Jaipur Bench)

Case No: Special Appeal Writ No. 1643 Of 2018 In Civil Writ Petition No. 21161 Of 2018

Gopal

APPELLANT

Vs

Ganesh And Ors

RESPONDENT

Date of Decision: Dec. 13, 2018

Acts Referred:

- Punjab General Sales Tax Act, 1948 - Section 14(4), 21
- Rajasthan Land Revenue (Allotment Of Land for Agriculture Purposes) Rules, 1970 - Rule 14(3), 15

Citation: (2018) 12 RAJ CK 0302

Hon'ble Judges: Mohammad Rafiq, J; Goverdhan Bardhar, J

Bench: Division Bench

Advocate: Amit Jindal

Final Decision: Dismissed

Judgement

This appeal is directed against the judgement dated 20.09.2018 passed by the learned Single Judge, whereby the writ petition filed by the appellant

against the judgement of the Board of Revenue dated 27.07.2018 has been dismissed.

Learned counsel for the appellant submitted that the allotment of the disputed land was wrongly made in favour of the private respondent. In fact, the

allotment was cancelled by the Additional Collector by order dated 28.8.1997 on arriving at the satisfaction that the respondent was not found to be

cultivating the land and thus violated the condition of allotment.

It is argued that the respondent filed appeal before the Revenue Appellate Authority, which was dismissed by order dated 18.1.2002. It was at that

stage that the appellant herein was impleaded as party to the appellate proceedings on the basis of the fact that he was in possession of the disputed

land. The Board of Revenue has wrongly set aside the order of the Additional Collector by reversing the judgement of Revenue Appellate Authority.

The respondent had violated even condition no.3 of Rule 14(3) of the Rajasthan Land Revenue (Allotment of Land for Agriculture Purposes) Rules,

1970 as he failed to bring the land under cultivation and failed to utilise the land properly. Khasra Girdawari filed by the respondent pertained to

Svt.2058-2061, which corresponds to English calendar 2001-04. It is argued that the Board of Revenue could not interfere with the concurrent

finding of the two courts below.

Perusal of the impugned order passed by the learned Single Judge indicates that as far as possession of the respondent corresponds to the year

2001-04 was considered, was shown on the basis of Khasra Girdawari of 2058-2061. The learned Board of Revenue was persuaded to set aside the

order passed by the court below on the ground that the allotment made in favour of the private respondent could not be cancelled after lapse of 21

years permissibly on the ground that the respondent failed to cultivate the land. We are not inclined to differ with that view of the Board of Revenue.

The Supreme Court in Brij Lal vs. Board of Revenue & Ors.- AIR 1994 Supreme Court 1128 although noted that at the time when allotment of land

was made in favour of petitioner, he was minor and, therefore, allotment was not proper, but considering that he was cultivating the land for about two

decades now, it was held that it would be travesty of justice to dispossess him from the land.

The division bench of this Court in Pat Ram & Ors. vs. State & Ors.-1995 DNJ (Raj.) 592 has held that as per Rule 15 of the Rules, 1970, the

khatedari rights can be conferred upon the allottee fulfilling the terms and conditions of allotment. Khatedari rights were conferred upon the petitioner

(in that case) in the year 1974 and after conferring the khatedari rights, the allotment cannot be cancelled on the ground that they violated any

condition of allotment. The facts in the case of Pat Ram, supra were somewhat similar wherein the allotment has been cancelled by the Collector. In

that case, the allotment was alleged to have been obtained by fraud and Tehsildar made such allotment without consulting the Advisory Committee.

The argument was rejected holding that there is no material on record to show that allotment was made by Tehsildar without consulting the Advisory

Committee. Cancellation in that case was made 16 years after the allotment.

In subsequent division bench judgement of this Court in Sohan Kanwar vs. Board of Revenue & Ors.-2002 (1) WLC (Raj.) 415 and Mangla Son of

Hema vs. State & Ors.-2007 (1) WLC (Raj.) 234, it has been held that if any allotment has been made on the strength of fraud or misrepresentation,

notwithstanding conferment of khatedari rights on completing ten years, the allotment can be cancelled.

The Larger Bench of this Court in a recently delivered judgement in Tara & Ors. vs. State of Raj. & Anr., D.B. Civil Special Appeal No.185/2001

and other connected matters decided on 15.07.2015, supra has expressed a similar opinion. In taking that view, the Larger Bench also referred to the

number of the Supreme Court judgements in State of Gujarat vs. Patel Raghav Natha & Ors.-AIR 1969 SC 1297, Mansa Ram vs. S.P. Pathak &

Ors.-AIR 1983 SC 1239, State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Ltd.-(2007) 11 SCC 363 wherein one to three years

have been held to be reasonable period.

The Larger Bench has also relied on Joint Collector Ranga Reddy District & Anr. vs. D. Narsing Rao & Ors.-(2015) 3 SCC 695, wherein it has been

held that when no time limit has been prescribed under the Statute for invocation of certain power, such power must be exercised within a reasonable

time. If the power is allowed to be exercised after decades, it would lead to anomalous position leading to uncertainty and complications seriously

affecting the rights of the parties over immovable properties. Absence of any period of limitation does not mean that the power can be exercised at

any time, which will make the exercise of power arbitrary and opposed to the concept of Rule of Law. What however shall be the reasonable period,

would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors. The Larger Bench even went to the extent of

holding that “even if the fraud is alleged, the power must not be exercised after unreasonable period, such as, several decades claiming rights over

the land.

The Supreme Court in *State of Punjab vs. Bhatinda District Cooperative Milk Producers Union Ltd.*-(2007) 11 SCC 363 while dealing with a question

of delay held that although no period of limitation has been prescribed by Section 21 of the Punjab General Sales Tax Act, 1948, but the same would

not mean that suo motu power can be exercised by the competent authority at any time. It is trite that if no period of limitation has been prescribed,

statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period, would depend upon the

nature of the statute, rights and liabilities thereunder and other relevant factors.

Since the allotment has been made to the allottee in the year 1971, the allottee becomes entitled to be conferred the khatedari rights under the Rules of

1970 and such allotment could not be thereafter cancelled under Section 14(4) except on the ground of fraud. In the present case, the appellant is a

stranger because the dispute is between the Tehsildar who applied for cancellation of the allotment and the respondent allottee. If the appellant claims

to be in possession, it was for him to have taken the independent remedy. As far as the impugned order passed by the Board of Revenue is

concerned, the same cannot be faulted as allotment could not have been cancelled after such an enormous delay.

No case is made out for interference in the impugned order.

The writ petition is dismissed.