RAJASTHAN HIGH COURT

State of Rajasthan

Vs.

Ramdhan

Civil Special Appeal No. 67 of 1970, and connected 267
(B.P. Beri and M.L. Joshi. JJ.)

26.09.1972

JUDGMENT

Beri, J.

1. These 268 special appeals indicated in the Annexure I to this judgment preferred by the State of Rajasthan against the judgments of the learned single Judge, of different dates though of identical contents, whereby he allowed 268 petitions under Article 226 of the Constitution of India holding that the Rajasthan Colonization (Rajasthan Canal Project Government Land Allotment and Sale) Rules 1967 (hereinafter called "the Raiasthan Canal Rules) were void being inconsistent with Article 14 of the Constitution of India. The learned single Judge further directed that the State should frame the Rajasthan Canal Rules in the light of the observations contained in his judgment.

2. Landless tenants who were In occupation of lands in the Rajasthan Canal Project Area were holding the lands on temporary basis and they challenged the validity of many of the Rajasthan Canal Rules but at the time of arguments confined their attack to Rules 9, 16 and 19 only. The learned single Judge found that Rule 9 was valid because the classification between pre-1955 and post-1955 holders of land was correlated to a reasonable nexus arising out of the date when the Rajasthan Tenancy Act came into force. He, however, held that rule 19 was invalid because the State prescribed different standards for allotting land to families in Bhakra Project and those in the Rajasthan Canal Area. The learned single Judge also found Rule 7(x) and (xi) invalid when read in conjunction with Rule 19. The latter part of Rule 16 was also declared invalid because the rule ordained that partitions effected after 15-10-1955

shall be ignored because it was arbitrary. and lastly the learned Judge held that because Rule 7 planned out reservations the functioning of the Rules 16 and 19 was dependent on it therefore he declared the entire body of the Rajasthan Canal Rules as invalid.

3. Mr. G. C. Kasliwal. former Advocate General, appearing for the State urged that the entire body of the Rajasthan Canal Rules could not be struck down because they were not challenged and he had no opportunity to meet the arguments. Moreover, he urged that the rules relating to sale under which many transactions had already taken place would be upset on account of the declaration of all the rules invalid and would work hardship. The second submission of Mr. Kasliwal was that Rule 19 (a) (i) alone was challenged and, therefore, it was erroneous for the learned single Judge to have considered the attack on Rule 19 (a) (iii) regarding the landless tenants. He further submitted that the learned single Judge incorrectly invoked Article 14 and compared Bhakra landless with other landless tenants because their conditions were different. If comparisons had to be made the temporary tenants of Bhakra alone should have been compared with the landless in Rajasthan. His next submission was that Rule 16 was valid because the date prior to which separation or partition was not recognized was relatable to the promulgation of the Rajasthan Tenancy Act. and he lastly urged that the petitioners had no locus standi to maintain the petition.

4. Mr. Mridul, learned counsel for, the respondents, stated at the Bar that he was "not interested in assailing the entirety of the Rajasthan Canal Rules" and he abandoned that attack. He further urged that the plea regarding invalidity of Rule 19 (a) (iii) was permitted to be raised by the learned single Judge notwithstanding the typographical error and it being a pure point of law could have been allowed and was rightly allowed to be contested. He submitted that Rule 19 as a whole was challenged as ground No. 1 at Page 24 of the petition and, therefore, it was open to him to challenge Rules 19 (a) (i) and 19 (a) (iii), and moreover they were Integrally connected. He supported the judgment of the learned single judge regarding Rules 16 and 19. and lastly he urged that new Rules have now been framed in 1971 changing the scheme of allotment and the contest was, therefore, largely academic.

5. The questions which emerge for consideration are :-

1. Whether the latter part of Rule 16 is void because it is hit by Article 14 of the

Constitution?

2. Whether an attack on the validity of Rule 19 (a) (iii) could be permitted in the absence of any specific pleading in that behalf?

3. and if so whether R. 19 (a) (iii) is void in the light of Rules 7(x) and 7(xi) of the Rajasthan Canal Rules?

4. If any one of the rules is found to be void, are all the rules to be struck down? and

5. Have the respondents no locus standi to challenge the rules?

Rule 16 reads.-

> "16 Allotment to Joint Families.- A Joint family shall, for the purposes of existing holdings and of allotment of land under these Rules, be deemed to be one person and dealt with accordingly. No separation or partition effected after the 15th October, 1955 will be taken into consideration". The portion underlined in the above rule has been struck down by the learned Single Judge on the ground that the date is arbitrary. The Judge quotes Mr. Kasliwal's contention in the following words: -
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> "I would say that Mr. Kasliwal very frankly admitted that in the year 1969 when the allotment is going to take place In accordance with these Rules, this provision will hit very hard and especially when the extent of allotment has not been prescribed under Rule 19 on the basis of the strength of family as was done in the Bhakra Project Rules. Mr. Kasliwal also informed at the Bar that the Minister concerned is already thinking to re-frame this portion of the rule and he has given a public statement expressing his desire to do so". and the learned single Judge proceeds to say that "15th of October, 1955 has no reasonable relationship with the object for which this provision has been enacted".

The date 15th of October, 1955 was the date when the Rajasthan Tenancy Act came into force. It appears that it brought in its wake certain benefits such as conferment of Khatedari rights and with a view to avail of these rights it is possible that some sham separations and partitions may have been effected to evade the implications of ceiling laws. This appears to be the intention behind Rule 16 that all partitions after the 15th of October 1955 shall be ignored. Mr. Kasliwal urged that if this date was good for holding Rule 9 valid this could equally apply to Rule 16. It is correct that the learned single Judge in his judgment has held Rule 9 as valid although the classification

therein was correlated to the date of the coming into force of the Rajasthan Tenancy Act. Rule 9 relates to the cancellation of leases. Leases granted prior to 1955 by the Government conferred certain rights because of the coming into force of the Rajasthan Tenancy Act and it was perfectly possible and legitimate for the Government to treat temporary leases granted after 1955 as a different class. The same cannot be said with regard to Joint Hindu families on their separations. The separation or partition of a joint Hindu family is implied in the very concept of a joint Hindu family as understood in the Hindu Law and no distinction could be made with regard to the partitions made before one date or made thereafter. Sham transactions could always be refused recognition but to divide the factum of partition by an arbitrary date is clearly unrelated to the nexus which creates the classification and is patently hit by Article 14 of the Constitution. A simple illustration will bring out the discriminatory nature of this classification. F and S and S1 constituted a joint Hindu family, who were all landless agriculturists. Due to differences or otherwise they separated from one another and constituted three different families - one of F, the second of S and the third of S1. The partition took place on the 14th of October, 1955. In that case F, S and S1 each would be eligible for allotment but if the partition had taken place on the 16th of October, 1955, then F, S and S1 could only claim as a single person for allotment because the Rajasthan Canal Rules refused to recognise the reality of partition only on the ground that it took place on the 16th of October, 1955. In our opinion this classification by reference to 15-10-1955 is clearly discriminatory and was rightly struck down by the learned single Judge.

6. Now we come to the second question. In the prayer clause the petitioners claimed that Rule 19 (a) (i) be struck down but at the time of arguments it appears that the entire contest was in regard to Rule 19 (a) (iii). The parties joined issues and the learned Judge held that the discrimination was, therefore, writ large and Rule 19 suffered from this- vice as offending Article 14 of the Constitution. In *The State of Rajasthan v. M/s. Karamchand Thapipar,* [1] it has been held that a question of law which could be decided on the material on the record of the case could be allowed to be raised at the stage of appeal, by special leave. In the case before us the point was contested, considered and decided and we cannot shut out the petitioners from challenging Rule 19 (a) (iii) merely because in the prayer clause what is mentioned is 19 (a) (i). We have already noticed that the petition challenged Rule 19 as a whole and, therefore, we see no substance in the objection raised by Mr. Kasliwal that Rule 19 (a) (iii) could not be considered.

7. The next question is whether Rule 19 (a) (iii) is void in the light of Rules 7 (x) and 7 (xi). Rule 19 reads :-

> "19. Extent of Allotment.- (a) Government lands in the Rajasthan Canal Project Colony, shll be allotted to the following different categories of tenants in the scale shown, against each of them :-

(i) Bhakra landless tenants	(i) 15 bighas in each cas
(ii) Panchayat Samitis	(ii) 75 bighas of irrigated
(iii) Landless tenants including landless tenants of Scheduled Castes and Tribes.	(iii) 15 bighas of comma

> (b) Tenure tenants who hold land less than 15 bighas in their khatas and the whole or part thereof is with a subtenant not liable to ejectment, shall be allotted so much of Government land as would render their khatas equal to 15 bighas, in each case in the same village or chak and price will be charged as prescribed under these Rules," Rules 7 (x) and 7 (xi) read :-
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> "7. Extent of Reservation of Land for allotment and sale- (1) The extent of reservation of land for allotment for different purposes and sale by auction respectively in all irrigation systems up to the end of Anoopgrah Shakha in Rajasthan Canal Project area shall be as under :-
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> . . . . . .
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> (x) For landless tenants belonging to Scheduled Castes and Scheduled Tribes up to 1 lakh acres to be allotted at the rate of 15 bighas per family.
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> (xi) For other landless tenants up to 50,000 acres to be allotted at the rate of 15 bighas Per family."

In Rule 19, clauses (a) (i) and (a) (iii) 15 bighas in each case has been mentioned and in Rule 7 (x) and (xi) 15 bighas per family has been mentioned. These two rules read together lead to an unmistakable conclusion that 15 bighas is the limit which can be allotted to a family regardless of its size. An unmarried individual having no members in his family whatever could be also allotted 15 bighas and so also a family however large. Drawing the analogy from Bhakra Rules the learned single Judge found that this was discriminatory. Mr. Kasliwal's argument is that the learned single Judge ought not to have compared Bhakra Allotment Project Rules with the Rajathan Canal Rules. The learned single Judge has himself recognised the difference between the types of lands

and the intensity of irrigation for distinguishing the allotment in Bhakra Project and in the Rajasthan Canal Area but where the learned single Judge finds that the definition of the term "family" in the Bhakra Rule 16 regulates the allotment by the size of the family, the Rajasthan Canal Rules have set out one standard for each family irrespective of its size. Both the Bhakra Canal Project Rules and the Rajasthan Canal Rules have been framed under the Rajasthan Colonization Act. 1954 and treating the unit of family differently in these two different sets of rules cannot be justified though there may be variation in the scale of allotment. At this stage for ready reference we might quote Rule 16 of the Bhakra Project Rules, 1955,-

> "R.16. Extent of Allotment:- All Government lands in the project area whether unoccupied or resumed under Rule 4 shall be allotted to the following different classes of tenants in the scales shown against them:-
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> (1) Temporary tenants who are cultivating Government lands under temporary cultivation leases irrespective of the fact that such leases have been renewed in the past from time to time and who held no tenure lands in their own name or of any member of their joint, family, if any :-

(i) Those cultivating Govt. lands since before December 31, 1947.	50 bighas (two murrabas) if the joint family consists of adult 'male' members not exceeding five who have attained the age of 18 years and if the joint family consists of more than five adult 'male' members an additional area of 15 bighas per head may be allotted to the tenant for each of additional adult male member of the family, who has attained the age of 18 years.
(ii) Those cultivating Government lands since after 31st December 1947.	25 bighas (one murrabas) if the joint family consists of adult 'male' members not exceeding 3 who have attained the age of 18 years and if the joint family consists of more than three adult 'male' members an additional area of 15 bighas per head may be allotted to the tenant for each

	of the additional adult male member of the family who has attained the age of 18 years.

(2) Tenure tenants holding Khatas under proprietary Maurroosie or Khatedari rights in their own name or of any member of their joint family:-

(i) In case of tenants whose family consists of not more than five adult male members, who have attained the age of 18 years.

(a) It the area of tenure lands held by them or by members of their joint family is 50 bighas or more.

(b) If the area of tenure lands held by them or by members of their joint family is less than 50 bighas.

No Government land shall be allotted out of the area held by them under temporary cultivation leases. So much area of Government land held by them on temporary lease only as would bring up their lands to an aggregate of 50 bighas (2 murrabbas) for both tenure as well as Government lands to be now allotted.

(ii) Where the joint family of a tenure tenant consists of more than five adult male members who have attained the age of 18 years, an additional area of 15 bighas per head may be allotted to the tenant for each of such additional members.

(iii) When the allotment is made to the father of joint family as a manager, allotment (sic) but before 31-12-1952 and have been cultivating the lease land severally since partition are eligible to allotment of land according to the following scale :-

(a) Father	50 bighas in case he is pre-1947 allottee:
(b) Sons	25 bighas each.

Provided that they shall not be allotted land in excess of the lease land actually held by them and proportionate reduction in the sons' holdings shall be made in case the father has more than 50 bighas of tenure land.

(3) Landless tenants (other than	15 Bighas.

displaced persons) who are agriculturists by profession and whose mam stay of life is agriculture but who have no agricultural tenure or temporary 15 Biehas, cultivation lands in their own name or in the name of any member of their family and are cultivating lands under tenure tenants without having acquired any rights thereon as contemplated in clause (iii) of Rule 14.	
(4) Displaced persons who are agriculturists by profession and whose main stay of life is agriculture but who have not been allotted any land out of evacuee property lands and in whose favour a non-availability certificate has been issued as contemplated in Rule 15.	15 Bighas.
(5) Sub-tenants holding less than 15 bighas of sub-tenancy lands on which they have acquired a right and from which they are not liable to ejectment as contemplated in clause (iii) of Rule 14.	So much area of Government land as would bring up the total area of their sub-tenancy lands and the Government land to be now allotted to an aggregate of 15 Bighas i. e. an area equal to the difference between 15 Bighas and the area of the sub-tenancy lands held by him.
(6) Tenure tenants holding khatas under proprietary. Mauroosie or Khatedari rights who are left with less than 50 bighas of Land of their tenure Khata for Khudkasht purpose if their subtenancy not liable to ejectment are allowed to retain, lands of their subtenancy.	So much area of Government land as would render the area of his Khudkasht land equal to 25 bighas or one murrabas i. e. an area equal to the difference between 25 bighas and the area of Khudkasht land left with the tenure tenant.

(7) Tenants of Barani lands of villages of Bikaner and Churu Districts and Tehsils Hanumangarh, Nohar, Bhadra and Suratgarh of Shri Ganganagar District adjoining the Bhakra project area lying within a depth of 15 miles from the fringe thereof provided that such villages do not fall within the expected Irrigation zone of the Rajasthan Canal and if sufficient area is available for such allotment in the border area of the project.	15 Bighas (15 Killas)

Explanation :- The areas mentioned in this rule shall be of commanded and irrigable lands. Where the area held or to be allotted is uncommanded or Birani, three bighas thereof shall be reckoned equivalent to one bighas of the commanded and irrigable area."

In our opinion the learned single Judge was correct in holding that this discrimination in the connotation of the term 'family' itself for the purposes of allotment in these two different Rules emanating from the same statute could not but be discriminatory and as Rules 19 (a) (iii) and 7 (x) and (xi) read together provide for an allotment on the basis of a family, Rule 19 (a) (iii) and the words "per family" in Section 7 (x) and (xi) are clearly discriminatory.

8. Now remains the question whether the striking down of the latter part of Rule 16 and Rule 7 (x) and (xi) and Rule 19 (a) (iii) justify the striking down of the entire body of the Rajasthan Canal Rules. It will be profitable in this context to remember what Venkatarama Ayyar J. held in *R. M. D. Chamarbaugwalla v. Union of India,* [2]

> "When a statute is in part void, it will be enforced as regards the rest. If that is severable from what is invalid. It is immaterial for the purpose of this rule whether the invalidity of the statute arises by reason of its subject-matter being outside the competence of the legislature or by reason of its provision contravening constitutional prohibitions." Their Lordships then summarized the 7 principles from the American authority and accepted them with approval. They are :
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> "1. In determining whether the valid parts of a statute are separable from the

invalid parts thereof, it is the intention of the legislature that is the determining factor. The test to be applied is whether the legislature would have enacted the valid part if it had known that the rest of the statute was invalid. Vide Corpus Juris Secundum, vol. 82, p. 156; Sutherland on Statutory Construction, vol. 2 pp. 176-177.

2. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the invalidity of the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. Vide Cooley's Constitutional Limitations, vol. 1 at pp. 360-361; Crawford on Statutory Construction, pp. 217-218.

3. Even when the provisions which are valid are distinct and separate from, those which are invalid if they all form part of a single scheme which is intended to be operative as a whole, then also the invalidity of a part will result in the failure of the whole. Vide Crawford on Statutory Construction, pp. 218-219.

4. Likewise, when the valid and invalid parts of a statute are independent and do not form part of a scheme but what is left after omitting the invalid portion is so thin and truncated as to be in substance different from what it was when it emerged out of the legislature, then also it will be rejected in its entirety.

5. The reparability of the valid and invalid provisions of a statute does not depend on whether the law is enacted in the same section or different section; (Vide Cooley's Constitutional Limitations, vol. 1, pp. 361-362); it is not the form, but the substance of the matter that is material, and that, has to be ascertained on an examination of the Act as a whole and of the setting of the relevant provision therein.

6. If after the invalid portion is expunged from the statute what remains cannot be enforced without making alterations and modifications therein, then the whole of it must be struck down as void, as otherwise it will amount to judicial legislation. Vide Sutherland on Statutory Construction, vol 2. p. 194.

7. In determining the legislative intent on the question of reparability, it will be legitimate to take into account the history of the legislation, its object the title and the preamble to it. Vide Sutherland on Statutory Construction, vol. 2, pp. 177-178.

An instructive discussion as to severability of clauses will be found in Wynes who sums up the result of the authorities in the following paragraph :-

> "In the Banking Case (1958) 76 CLR 1), Dixon. J. reviewed the position reached on this question and stated his own view at length. After dealing with the question of severance in general his Honour said: 'The effect of (severability) clauses is to reverse the presumption that a statute is to operate as a whole, so that the intention of the Legislature is to be taken prima facie to be that the enactment should be divisible and that any parts found constitutionally unobjectionable should be carried into effect independently of those which fail. To displace the application of this new presumption to any given situation arising under the statute by reason of the invalidation of part, it must sufficiently appear that the invalid provision forms part of an inseparable context.' But, added his Honour, in applying Sections 15-A and 46 (b), the Courts had insisted that once it appered that rejection of the invalid part would mean a different operation of the valid part or produce a different result, the whole must fail. This consideration supplied a strong logical ground for holding provisions to be in severable, since in such a case there was a strong inference that Parliament did not intend that anything less than the whole Act should be law. At a later stage his Honor refers to the rule 'that provisions are to be considered severable and general words distributable'." Wanchoo J. in *Karimbil Kunhikoman v. State of Kerala.* [3] speaking for the majority observed that as the provision regarding compensation is all pervasive, the entire Act must be struck down as violative of Article 14. In *A. P. Krishnaswami Naidu v. The State of Madras.* [4] the question was whether the striking down of Sections 5 and 50 would require the striking down of the entire Act and Wanchoo. J., as he then was, observed that as the sections were pivotal sections of the Act and the working of the entire Act depended on Section 5 which provided for ceiling and Section 50 which provided for compensation the whole Act must fail.

9. The learned single Judge struck down the entire Rajasthan Canal Rules, to employ his words.

> "because the entire rationale on the basis of which these Rules were framed have disappeared and, therefore, the Government will have to reframe the entire

scheme of the Act in view of what has been held by this Court."

At this stage it will be necessary to survey the Rajasthan Canal Rules. The Rajasthan Canal Rules were framed in exercise of the powers conferred by Section 28 read with Section 7 of the Rajasthan Colonization Act 1954. Rule 1 gives the short title, the extent and the commencement of the Rajasthan Canal Rules. They came into force on 18-12-1967. Rule 2 relates to interpretation dinning terms within the Rajasthan Canal Rules. Rule 2 (ix) defines "Landless Tenant" to mean a *bona fide* agriculturist by profession who is resident of Rajasthan "since before" (sic.) the 1st April 1955. and who cultivates or can reasonably be expected to cultivate land personally but who does not hold any land, whether in his own name or in the name of any member of his joint family, anywhere, and who is not a sub-tenant of any landowner or land-holder holding tenure khata under proprietary. Mourusi, or Khatedari rights and is not liable to ejectment under the provisions of the Rajasthan Tenancy Act, 1955. Rule 3 circumscribes the powers of the Colonization Officer and Rule 4 makes the general colony conditions applicable, Rule 5 requires the allotting authority to prepare a village-wise/Chack-wise list of all Government lands in Form I and the same are to be divided into (a) Command, (b) Uncommand and (c) Ghair Mumkin lands. Rule 6 authorizes reservations for the Central or State Government mechanised farms, or the farms to be established by the Agriculture Department, or the Cattle Breeding Farms to be established by the Animal Husbandry Department etc. Rule 7 deals with the extent of reservation of land for allotment and sale and the extent of allotment is indicated under the heading A. "Reservation for Allotment" and then the area has been indicated for each purpose and heading B. permits "Reservation For Sale". Different areas have been specified for different purposes under the heading "Reservation for Allotment". In clause (x) it is laid down that lands upto 1 lakh acres may be allotted to landless tenants belonging to Scheduled Castes and Scheduled Tribes "at the rate of 15 bighas per family" and clause (xi) provides for other landless tenants up to 50,000 acres to be allotted at the rate of "15 bighas per family." Terms of allotment are indicated in Rule 8, Rule 9 provides for the cancellation of old leases. It lays down that with effect from 18-12-1967 all leases of Government land in the Colony area which were given under "Grow More Food and Fodder Campaign" and all post-1955 cultivation leases shall be cancelled. We might observe that though retrospective the clause relating to all post-1955 temporary cultivation leases was added by the amendment of the rule dated 21st June. 1968. Rules 10 to 13 lay down an elaborate procedure and care is bestowed to eliminate discrimination. In the list laid down in

Rule 14 of persons eligible to allotment of Government lands including (a) landless tenants belonging to Scheduled Castes and Scheduled Tribes, (b) Bhakra landless tenants, and (c) *Panchayat Samitis*, In the matter of priorities for allotment R. 15 lays down the preferences amongst the landless tenants. Rule 16, which we shall discuss in detail later, provides that "a joint family shall for the purposes of existing holdings and of allotment of land under these Rules, be deemed to be one person and dealt with accordingly. No separation or partition effected after the 15th October, 1955 will be taken into consideration". Rule 17 provides for the computation of areas held by each co-tenant and Rule 18 speaks of persons not eligible to allotment of Government land. Rule 19 provides for the extent of allotment which is different for the three categories indicated therein. Rule 20 says that the areas mentioned in Rule 19 shall be of command land and that of the uncommand two bighas will be reckoned equivalent to 1 bigha of the command land. Rule 23 provides for the scales of rate of land under these rules. Rule 24 which begins under the heading "Sale" makes provisions for the issuance of notice by auction. Rule 25 provides as to who shall auction it. Rule 26 lays down the conditions of sale in great detail and Rule 27 provides for an appeal by a party aggrieved by an order passed on allotment and Rule 28 authorizes the Colonization Commissioner the power to issue instructions and lays down, the procedure for the preparation of records in respect of reservation of lands and their allotment and sale. Then the Rajasthan Canal Rules provide for six forms as indicated in the rules.

10. Mr. Kasliwal's first grievance is that the learned single Judge was in error when he directed the legislative policy for the State. As a matter of principle Mr. Kasliwal is right when he says that it is no part of our duty to direct any legislative policy but what to our mind the learned single Judge said was that as the entire body of the Rules were being struck down the Government may decide to frame the rules which are not discriminatory in character. No legislative policy to our mind was ever intended to be given. He merely reminded the State of the mandate against discrimination which is contained in the Constitution and which the State is in duty bound to obey.

11. The second objection of Mr. Kasliwal was that the entire body of the Rules could not be struck down. From the survey we have made of the body of the Rules it will be clear that it provides for the surveying of the entire land dividing it into three different classes of command, uncommand and Ghermumkin. Then it provides procedure for

allotment and procedure for sale. These are two distinct divisions of the rules. Perhaps what persuaded the learned single Judge to strike down the entire body of the Rules was that certain reservations in Rule 7 have been made that so much land shall be reserved for the different purposes indicated in Rule 7 and the area for sale has been also specified. The proportion between the areas for sale and allotment can still remain intact if the discriminatory part of the definition of the family and the scale of allotment is struck off. We are inclined to be of the opinion, firstly, that the rules relating to the survey of the land village-wise or chack-wise, the appointment of authorities, the procedure for allotment, the procedure for sale, the scale of prices are all valid and can stand by themselves. It would be also hard on the settled rights of the parties, which they have acquired, on account of completed transactions of sale as urged by the learned counsel for the State if the rules are struck off in entirety. The latter part of Rule 16 and Rule 19 (a) (iii) again relating to allotment read with Rule 7 (x) and 7 (xi) offend against the principle of equality and are discriminatory and are hereby struck down. The rest of the rules survive because on the principles summarised in Chamarbaugwalla's case AIR 1957 SC 628 this is clearly possible.

12. and the last argument we might notice which was advanced by Mr. Kasliwal is that the petitioners have no locus standi to maintain this. He placed reliance on *General Manager, Eastern Rly. v. Kshirode Chandra Khasmobis,* [5] where the learned Judges have said that the Court should not issue writs of consolation or writs propounding theories. We agree with the principle so propounded but it is entirely inapplicable to the circumstances of the cases before us. The petitioners were allotted land for temporary cultivation in villages which according to the State itself are a part of the colony of the Rajasthan Canal Project They were certainly affected by the rules of allotment and they were entitled to complain that the rules framed by the State under Section 28 were discriminatory. Mr. Kasliwal's argument that the petitioners-respondents had no locus standi is devoid of force.

13. The result is that the Judgment of the learned single Judge in all these 268 appeals is modified to the extent indicated above. In the circumstances of the case there will be no order as to costs.
Appeal partly allowed.

Cases Referred.

1. AIR 1965 SC 913
2. AIR 1957 SC 628
3. AIR 1962 SC 723
4. AIR 1964 SC 1515
5. AIR 1966 Cal 601