

# RAJASTHAN HIGH COURT

Jani Bai

Vs.

State (Rajasthan)

Civil Special Appeal No. 12 of 1980  
(J.S. Verma, C.J. and N.C. Kochhar, J.)

21.11.1988

## JUDGEMENT

**J.S. Verma, C.J.**

1. This appeal is against the common judgment of a learned Single Judge in a bunch of writ petitions by which the writ petitions were partly allowed. The common judgment is *Jani Bai v. State of Rajasthan*,<sup>1</sup> The State has preferred appeals against the relief granted in the writ petitions while the petitioners have preferred appeals against refusal of remaining reliefs. One similar writ petition has also been connected with these matters. All these matters are, therefore, disposed of by this common judgment.

2. At the hearing of the above matters only two points were raised. We shall mention these points before stating the material facts and the statutory provisions on which these points arise. The first point relates to the validity of the expression "since before 1st day of April, 1955 occurring in Rule 7(2) and Rule 2(xv) of the Rajasthan Colonization (Allotment and Sale of Government Land in the Rajasthan Canal Colony Area) Rules, 1975 which has been struck down as violative of Article 14 of the Constitution by the learned Single Judge. The other point relates to the construction of Rule 4(4) and Rule 13(5)(b) of the 1975 Rules relating to which petitioner's contention has been rejected. The State of Rajasthan has preferred appeals against the decision of the learned Single Judge striking down as invalid a part of Rules 7(2) and 2(xv). The petitioners have preferred appeals against rejection of their contention relating to Rules 4(4) and 13(5)(b).

3. The only material fact common to all these matters is that petitioners claim

allotment of land under the provisions of the aforesaid 1975 Rules not only for the adult son under Rule 13(5)(b) but also for the adult daughter who is otherwise equally eligible like the adult son for allotment of the land. The eligibility in Rule 7(2) and Rule 2(xv) with reference to 1st April, 1955 is challenged as arbitrary classification.

4. The background in which the Rajasthan Colonization (Allotment and Sale of Government Land in Rajasthan Canal Colony Area) Rules, 1975 (hereinafter referred to as 'the 1975 Rules') came to be made is detailed in the judgment of the learned Single Judge in Jani Bai case (ILR (1980) 30 Raj 306) (supra). We shall therefore, refer only to the salient features for ready reference. It may be mentioned that the earlier set of Rules framed on the subject were struck down by the Supreme Court in *Jaila Singh v. State of Rajasthan*,<sup>2</sup> and thereafter these 1975 Rules came to be framed. These Rules are framed under Rajasthan Colonization Act, 1954 (for brevity 'the Act') which was enacted to make better provision for the colonization and administration of lands. Section 7 of the Act enables the State Government to grant land in a colony to any person on such conditions as may be prescribed. The State Government is also empowered to issue a statement of the conditions on which it is willing to grant land in a colony to tenants. The remaining part of the section provides for allotment of land by the Collector subject to the control of the State Government and subject to the conditions contained in the statement issued by the State Government. Section 28 of the Act contains the general power of the State Government to make Rules by issue of notification for the purposes of the Act and in particular for all matters which are required by the Act to be prescribed there under. Section 29 requires every Rule made and every statement of conditions or notification issued by the State Government under any provision of this Act to be laid before the house of the State Legislature which has power to rescind or modify the same. This is how the ultimate power of control is retained with the State Legislature under Section 29 of the Act.

5. The Rajasthan Colonization (Allotment and Sale of Government Land in the Rajasthan Canal Colony Area) Rules, 1975 have been made by the State Government in exercise of the powers conferred by Section 7 read with Section 28 of the Rajasthan Colonization Act, 1954 for allotment and sale of government land in the Rajasthan Canal Colony Area after a part of the 1971 Rules were held to be discriminatory and, therefore, violative of Article 14 of the Constitution by the Supreme Court in *Jaila Singh's* case (supra). These Rules prescribe the procedure for allotment of land to eligible persons. Rule 2 contains the definitions. Rule 3 repeals the earlier 1971 Rules. Rule 4 provides for disposal of pending applications. Rule 5 enumerates the persons

eligible for allotment of government land and the extent of allotment to each of them. Rule 5A prescribes the disqualification. Rule 6 provides for reservation of land for allotment to each category of eligible persons. Rule 7 prescribes the priorities for allotment. Rule 10 provides for making an application for allotment. Rule 11 deals with enquiry and report on applications. Rules 8 and 9 relate to procedure. Rules 12 and 12-A deal with allotment to agricultural graduates and ex- servicemen. Rule 13 deals with the allotment of land to other category of persons. Rule 13A deals with special allotment. The remaining Rules deal with ancillary matters including provision for appeal and revision. It is not necessary to refer in detail to the remaining provisions contained in these Rules. We shall now quote those Rules which are relevant for decision of the point involved. These are as under :

"2(xvii) 'Temporary Cultivation lease holder' means a person who is resident of Rajasthan and who has been a *bona fide* agriculturist by profession and to whom land was granted, in the Rajasthan Canal Colony Area on a valid temporary lease under the Rajasthan Colonization (Temporary Cultivation Lease) Conditions, 1956 or to whom land is deemed to have been let out temporarily in such area by virtue of the provisions of any law for the time being in force and who is validly recorded as a Ghair Khatedar tenant or as a temporary lease holder in respect thereof in the land records including in the relevant revenue records of the former Jagirdars, in case of resumed Jagirs; and who despite the determination of his temporary lease is continuously holding over such land by payment and acceptance of rent and is cultivating it personally up to the extension of these rules to any area of the Rajasthan Canal Colony;

xxx xxx xxx

4. Disposal of pending applications :

(1) to (3) xxx xxx xxx

(4) While deciding an application in the case of a temporary cultivation leaseholder under sub-rule (3), if the allotting authority finds that an adult son of such lease-holder is otherwise eligible for allotment of land under these rules, he shall serve a notice providing an opportunity to such adult son for presenting an application for allotment of land as a landless person within a period of 30 days from the date of service of such notice and if the adult son presents an application in pursuance of such notice, the same shall be heard and decided in accordance with the provisions of these rules.

5. Eligibility and Extent of Allotment : (1) The following persons shall be eligible for allotment of Government land for agricultural purposes under these rules, namely :

- (i) Ex-servicemen,
- (ii) Temporary Cultivation lease-holders,
- (iii) Agricultural graduates,
- (iv) Landless persons, and
- (v) Bhakra Landless persons.

(2) Each such person may be allotted Government Land up to 25 bighas (6.32 hectares) :

Provided that if such person holds any land anywhere in India, he will be allotted only so much Government land as together with his existing holding does not exceed 25 bighas :

Provided further that if such person is eligible for allotment of small patch, such small patch shall be allotted to him only if it is available adjacent to his existing holding.

Xxx xxx xxx

13. Allotment of Land to other category of persons:- (1) All allotment of Government land other than those specified in Rule 12 shall be made by Allotment Authority in consultation with an advisory Committee consisting of :

xxx xxx xxx

(5) Subject to the availability of land, the allotting Authority shall, after consulting the Advisory Committee, take reservations-wise allotment of Government land to persons mentioned in the list referred to in sub-rule (4) out of the land entered in the list prepared under sub-rule (3) of Rule 8. In doing so, except where any Government land has been reserved for any specific purpose or class of persons under sub-rules (2) to (4) of Rule 6, the Allotting Authority shall act in the following manner, namely :

(a) A temporary cultivation lease-holder shall be allotted land to the extent to which he is eligible under these rules out of the land comprised in his temporary cultivation lease : Provided that if such lease-holder holds such lease-land less than 25 bighas, he will seek allotment as a landless person for the balance of land to make up the deficiency in the extent of land to which he is eligible along with other landless persons of the same priority in the manner provided in clauses (c) and (d).

(b) Where an adult son of a temporary cultivation lease-holder is eligible for

allotment of government land under these rules and if after allotment of land to his father there remains any surplus land out of the land comprised in the temporary cultivation lease of the father, such surplus land may be allotted to the adult son to the extent to which he is eligible. In case, there are more than one such adult son, such surplus land shall be equally allotted between them as co-tenants. The remaining land to which such adult son may be eligible under these rules will be allotted to him along with other eligible persons of the same priority to which he belongs and in the manner provided in clauses (c) and (d).

(c) If a landless person holds or is allotted land adjacent to the Government land available for allotment, the allotment shall be made to him out of such Government land to the extent available.

(d) In case a landless person does not hold any land as mentioned in clause (c) or after allotment of land to him under the said clause he still remains eligible for more land, the allotment of land or, more land, as the case may be, shall be made by drawing lots strictly according to the order of priority of landless persons specified in Rule 7 and the lots shall be drawn in the manner as may be directed by the Colonisation Commissioner.

Provided that allotment of any Johar Paitan land shall not be made without the prior approval of the State Government.

xxx xxx xxx

(9) If a temporary cultivation lease-holder fails to apply for allotment of land under these rules or if his application for allotment for any land or part thereof is rejected by the Allotting Authority, his temporary cultivation lease in respect of such land or part thereof shall stand terminated on the expiry of the date up to which the application for allotment could be made or on the date his application for such allotment is rejected, as the case may be, and the Government land covered by such lease shall revert to the State Government free from all encumbrances and he shall be liable to be ejected from such land in accordance with any law for the time being in force."

6. We shall first deal with the point raised in the State appeals relating to the validity of a part of Rules 7(2) and 2(xv).

7. It has been held by the learned Single Judge that this requirement of possessing necessary qualification 'since before the first day of April, 1955' to satisfy the requirement of the definition of "resident of Rajasthan" is arbitrary and, therefore,

invalid. It has also been held that this part in both these provisions wherein an arbitrary date is specified is severable from the remaining part and, therefore, words prescribing first day of April, 1955 as the qualifying date have been struck down as invalid.

8. Learned Additional Advocate General who appeared on behalf of the State in the State Appeals, was unable to show us any infirmity either in this conclusion of the learned Single Judge or the reason on which that conclusion is based. There is thus, no occasion for us to take a different view on this point. The State appeals challenging the judgment of the learned Single Judge to this extent alone, are, therefore, dismissed.

9. We shall now consider the appeals of the petitioners and the connected writ petition. Two points have been raised in these matters before us. The first point is that Section 7(2) and Section 28 of the Act amount to abdication of legislative power which renders it invalid.

10. We have already indicated salient features of the Act as well as the Rules framed there under. We may reiterate here that subsection (1) of Section 7, empowers the State Government to grant land in a colony to any person on such conditions as may be prescribed Sub-section (2) of Section 7 then says that the State Government may issue a statement of the conditions on which it is willing to grant land in a colony to the tenants. It is in exercise of the powers conferred by Section 7 read with Section 28 of the Act that the State Government made the 1975 Rules for allotment and sale of government land in the Rajasthan Canal Colony Area. Section 28 of the Act contains the general Rule making power of the State Government for the purposes of the Act. Section 29 of the Act further provides for power of the State Legislature to rescind or modify the Rules which are required to be laid before the State Legislature.

11. Apart from the indication in Section 28 that framing of Rules is for carrying into effect the provisions and purposes of the Act and the indication in Section 7 that the conditions of the grant are to be prescribed the power of the State Legislature to rescind or modify the Rules which are required to be laid before it under Section 29 of the Act is sufficient to retain control of the State Legislature over the Rules which are framed under Section 7 read with Section 28 of the Act. The control of the State Legislature available by virtue of Section 29 of the Act enables the State Legislature to ensure that the Rules which ultimately become effective are those approved by the

State Legislature. In our opinion, there is no abdication of the power of the State Legislature and there is no unfettered power given to the State Government by Section 7 or 28 of the Act, as claimed by the petitioners. The rejection of this contention of the petitioner by the learned Single Judge does not suffer from any infirmity.

12. The only surviving question now relates to the construction of Rules 4(4) and 13(5)(b) of the 1975 Rules. Rule 4 provides for the disposal of the applications which were pending for allotment when 1975 Rules came into force, having been made under the earlier Rules. Sub-rule (4) of Rule 4 provides that while deciding the application in the case of temporary cultivation lease holder under sub-rule (3) if the allotting Authority finds that an adult son of such lease holder is otherwise eligible for allotment of land under these Rules, he shall serve a notice to such adult son providing him an opportunity for presenting an application for allotment of land as a 'landless person' within the specified period. Rule 13 of the 1975 Rules deals with the allotment of land to other categories of persons not covered by the preceding Rules. Sub-rule (5) of Rule 13 requires the Allotting Authority to proceed in the manner stated in the various clauses therein. Clause (a) provides for allotment of land to a temporary cultivation leaseholder to the extent to which he is eligible under the Rule out of the land comprised in his temporary cultivation lease. The proviso therein says that if the lease holder holds such lease landless then 25 bighas, he will seek allotment as a landless person for the balance of land to make up the deficiency to the extent to which he is eligible according to the Rules in the manner provided in Clauses (c) and (d). Clause (b) of sub-rule (5) of Rule 13 says that where an adult son of a temporary cultivation lease holder is eligible for allotment of the Government land under these rules and, if after the allotment of land to his father there remains any surplus land out of the land comprised in the temporary cultivation lease of the father, such surplus may be allotted to the adult son to the extent to which he is eligible. In case there are more than one such adult son, such surplus land shall be equally allotted between them as co-tenants. The remaining land to which such adult son is eligible under these rules will be allotted to him along with other eligible persons having the same priority in the manner provided in Clauses (c) and (d). Clause (c) says that if the landless person holds or is allotted any land adjacent to the Government land available for allotment, the allotment should be made to him out of such government land to the extent available. Obviously, the provision in Clause (c) is to enable the landless person to have a compact parcel of land. Clause (d) deals with a landless person who does not hold any such land as mentioned in clause (c) or after the allotment of land under

Clause (c) still remains eligible for allotment of more land.

13. The net result of Rule 4(4) and Rule 13(5)(b) of 1975 Rules is that an adult son of a temporary cultivation lease holder is entitled to a notice providing an opportunity to apply situation mentioned in Rule 4(4) and, to allotment out of surplus land left in the land comprised in temporary cultivation lease of his father. This benefit will not extend to an adult daughter of the temporary cultivation lease holder otherwise eligible for allotment and possessing the same qualification as the adult son, if the word 'son' occurring in these provisions is construed to mean only a 'male issue' and not also 'female issue' of the temporary cultivation lease holder. However, the discrimination would be avoided if the word 'son' is read as 'issue' to include both male and female child of the temporary cultivation lease holder.

14. Initially, the argument advanced was that this would amount to discrimination on the ground of sex alone and, therefore, render Rules 4(4) and 13(5)(b) of the 1975 Rules invalid as violative of Article 15 of the Constitution of India. However, on realization that striking down these provisions would deprive the adult son also of this benefit without giving any benefit to the adult daughter, the argument was modified to contend that the context requires the words suggesting the masculine to also include feminine gender. In other words, the argument finally is that the benefit given by Rules 4(4) and 13(5)(b) is available not only to the adult 'son' but also to the adult 'daughter' or in other words to the adult 'issue' of temporary cultivation lease holder provided she is otherwise equally eligible for allotment of land like the adult son. The question is, whether this contention can be accepted?

15. The learned single Judge has rejected the above contention on the ground that the preference to a son alone and not to the daughter is justified to avoid fragmentation of the holding since the daughter after marriage goes to another family while the son remains in the same family. Having given our anxious consideration to the pros and cons of this ticklish point, we have reached the conclusion that this reason given by the learned single Judge does not exist to justify rejection of this argument. The context in which the provisions have to be construed do not involve, the factor of compactness of holdings.

16. Admittedly, the son is a distinct and separate unit from his father for the purpose of allotment under these Rules as is the case of the daughter. The allotment to the son

is independent of his father and in addition to the allotment made to his father treating each of them as distinct entity for the purpose of allotment of land under these Rules. They remain distinct units even after the allotment to them. The fact that where there are more than one adult son, surplus land is to be allotted equally between them as co-tenants and not as joint-tenants, also indicates the absence of concept of joint tenancy. The scheme of these Rules and the context do not indicate any rational basis to make a distinction between an adult son and daughter when both are equally eligible for allotment under the Rules. Since the context and the object do not indicate any rational basis to permit any classification on the basis of sex of the issue of the temporary cultivation lease holder, there does appear to be a case of discrimination on the ground of sex alone if the words importing masculine gender are not construed to include the females also. That may lead to invalidity of the provision due to violation of Article 15 of the Constitution. This situation has obviously to be avoided unless it is not possible to construe the provision in a manner to include females also to avoid the resulting invalidity.

17. Learned Additional Advocate General contended that Rules 4(4) and 13(5)(b) give a concession which is not a right and, therefore, it was open to the State to choose to give concession only to the adult son and not to the adult daughter in spite of the two being similarly placed and equally eligible. Learned Additional Advocate General also contended that the context in which the word 'son' appears, does not permit the construction to include females also. He placed reliance on *Sucha Singh v. State of Punjab*,<sup>3</sup> and *Ambika Prasad Mishra v. State of U.P.*<sup>4</sup> We are unable to accept this contention and these decisions do not support the contention. The decision in *Sucha Singh Bajwa's* case (supra) related to ceiling law and has been distinguished in *Ambika Prasad's* case (supra) by indicating that the subject of legislation therein was the land holder and not his children, and in the Supreme Court decision it was clearly held as under (at p. 1770) :-

"Legal injury can arise only if the daughter's property is taken away while the son's is retained or the daughter gets share while the son gets none. The legislation has not done either. So no tangible discrimination can be spun out."

The above extract itself shows that discrimination results where daughter gets no share in the father's land under the law. This is precisely the legal injury to the daughter in the present case if the provision is confined to the son alone as contended by the

learned Additional Advocate General.

18. Section 14 of the Rajasthan General Clauses Act, 1955 provides that in all Rajasthan laws unless a different intention appears the words importing masculine gender shall be taken to include the females and the word importing singular shall include the plural and vice versa. The question, therefore, is, whether the context is such that a different intention must be assumed to abandon the ordinary rule that words importing masculine gender include females also. We have already indicated that neither, the context nor the scheme of the Rules in the present case require a departure from the ordinary rule of construction that the words importing masculine gender also include females.

19. The father and the son are two separate and distinct units for the purpose of allotment and the distinction remains even after allotment as their holdings are separate. There is thus no occasion to treat the land allotted to the son as forming a part of the holding of the father to support the reason of compact holding. The concept of joint tenancy is not applied even to the adult sons *inter se* who take surplus land equally between them as co-tenants. There is no other factor indicated to us on behalf of the State to suggest any practical difficulty if the adult son and the daughter are treated alike, both being equally eligible for allotment under the Rules. The reason that the daughter after marriage goes to another family is not of practical significance since the son also is a distinct unit of allotment and not a part of his father's family for this purpose. Moreover, only that daughter who is otherwise equally eligible for allotment like the son will get the benefit of this provision and not a daughter who is not eligible for allotment under these rules having gone elsewhere after marriage. It is also significant that if the son alone is given this benefit and not also an equally eligible daughter then the benefit would be extended only where the temporary cultivation lease holder has a male issue and not also when the issue is only a female. Neither the scheme nor object of these Rules nor the context thereof justify classification of the 'issues' of the temporary cultivation lease holder for the purpose of allotment under these Rules only on the ground of sex. There is thus no reason for not applying the ordinary rule of construction requiring the words importing masculine gender to be taken to include females also.

20. There is yet another aspect of the matter. It is a case where permanent allotment of the surplus Government land given earlier on temporary cultivation lease has to be

made by the Government as property of the Government and not as property of the temporary cultivation lease holder. It is only when the temporary cultivation lease holder is not entitled to get such land under his temporary lease allotted to him that the question of surplus land left after making a permanent allotment to the lease holder arises. It is at this stage of allotment by the Government of Government land that this question of discrimination on the ground of sex alone arises. It is well settled that the distribution of State largesse cannot be made in violation of right to equality. The State must ensure that it gives equal opportunity to persons equally eligible for obtaining the State largesse on equal terms to avoid infringement of the right to equality guaranteed under the Constitution. Viewed at from this angle also, it is obvious that in allotment of the surplus Government land under these Rules, the State cannot confine the grant only to the male issue of the temporary cultivation lease holder denying the same to the female issue who is otherwise equally eligible and similarly placed as the male issue for getting allotment of the land under these Rules. This aspect also justifies the application of the ordinary rule of construction contained in Section 14 of the Rajasthan General Clauses Act, according to which the word importing masculine gender must be taken to include females also. The result is that the word 'son' in these provisions must be read as 'issue' to include females also.

21. Unless the above construction is made, Rule 4(4) and Rule 13(5)(b) would be rendered invalid which consequence is to be avoided for obvious reasons. The construction made by us will result in upholding these provisions as valid and this is sufficient reason for making this construction. We accordingly hold that the word 'son' importing masculine gender used in Rules 4(4) and 13(5)(b) of 1975 Rules shall be read as 'issue' to include females also i.e. also an adult daughter; and similarly the words "his/he" shall include "her/she". This is how the Rules 4(4) and 13(5)(b) shall be construed from the beginning of the enactment of these Rules.

22. Consequently, the State appeals are dismissed while the appeals of the petitioners 4(4) and 13(5)(b) of the 1975 Rules shall be construed as applicable not only to an adult son but also to an adult daughter of a temporary cultivation lease holder who is otherwise equally eligible for allotment of Government land under these Rules like an adult son. To this extent the judgment of the learned single Judge is modified. The connected writ petition is also partly allowed similarly.

23. No costs.

Order accordingly.

Cases Referred.

1. ILR (1980) 30 Raj 306
2. AIR 1975 SC 1436
3. AIR 1974 Pun and Har 162 (FB)
4. AIR 1980 SC 1762