

RAJASTHAN HIGH COURT

Ram Singh

Vs.

State of Rajasthan

Civil Writ Petn. No. 2241 of 1999
(Rajesh Balia and Himmat Ram Panwar, JJ.)

09.04.2001

JUDGEMENT

R. Balia, J.

1. Heard learned counsel for the parties.
2. This writ petition which has been referred to Division Bench as a public interest litigation is to challenge Annexure-9 dated 22nd August, 1998 by which the land allotted to School on 6-10-95 was cancelled and declared as a Government land and thereafter the said land has been allotted to respondents Nos. 6, 7 and 8. The allotment made in favor of the School was cancelled on a review petition filed by respondent No. 7, Surendra Kumar S/o Sri Udami Ram.
3. The chequered history of the case shows that the respondents Nos. 6, 7 and 8 through an indigenous device indirectly obtained the allotment of the very same land which was made in favor of the School and earlier litigation to secure that land by brother of respondents Nos. 6 and 7 and the respondent No. 8 Labh Singh himself has failed before this Court.
4. The genesis of present controversy dates back to 1974, in Chak 4 SNM, Tehsil Hanumangarh in District Sri Ganganagar, three bighas of land bearing Killa Nos. 14, 17 and 24 were allotted for a Primary School by the order of Collector, Ganganagar dated June 3, 1974. Prithvi Raj S/o Sri Udami Ram, and brother of respondents No. 6 and 7 along with Labh Singh alleging himself to be adopted son of Sri Modan Singh and real son of Pola Singh, and Pola Singh himself filed a review application against the said allotment on the ground their land was adjoining to the aforesaid land which

was allotted for the Primary School and that there was no way of approach for their land and as such the allotment made in favor of the School should be cancelled. This review application was rejected by the Collector, Ganganagar on 5th May, 1976. The Collector made it known that the petitioner has no right, title or interest in the land in dispute and even if the petitioners and cultivated the land which was adjoining his own land, it was absolutely unlawful on his part. The petitioner Labh Singh did not take any steps to challenge the decision of the Collector anywhere but he approached the then Revenue Minister, who in turn forwarded the same again to the Collector, Ganganagar for consideration. That application was rejected by the Collector vide his order dated July 1, 1976 by holding that since the review application had already been disposed by the earlier order dated 5th May, 1976 no further action could be taken in the matter. This order of the Collector dated July 1, 1976 was made subject matter of Writ Petition No. 1637/76 *inter alia* on the ground that the impugned order was without affording any opportunity of hearing.

5. Similar Writ Petition No. 1639/76 was filed jointly by Prithvi Raj S/o Shri Udami Ram, whose two brothers are respondents Nos. 6 and 7. Labh Singh adopted son of Sri Modan Singh and real son of Pola Singh, who is respondent No. 8 in this petition and Pola Singh. The Writ Petition No. 1637/76 was dismissed by a detailed order dated 27th October, 1977 by the learned single Judge of this Court. The Court held that earlier order dated 5th May, 1976 having been made after giving the petitioner full opportunity of hearing, no other review application was maintainable and therefore the Collector was right in not bowing before the then Revenue Minister and making order dated July, 1, 1976 stating that the review application filed by the petitioner had already been dismissed on 5th May, 1976 and the matter could not be re-opened.

6. He further recorded that prayer made by the petitioner that under Rule 22 of the Rajasthan Land Revenue (Allotment of land for agricultural purposes) Rules, 1970, the possession of a trespasser could be regularized in certain cases and such direction in that regard may be issued. This prayer was also rejected by holding that the contention is without any substance as no application under Rule 20 of the aforesaid Rules was filed by the petitioner. Such an application for regularization lay before the *Tehsildar* and not before the Revenue Minister. Once the review application of the petitioner in the matter of allotment of land in question for the purposes of a Primary School was dismissed, after affording him full opportunity of hearing in the matter, there could not have been a repetition of review application. The matter rested finally

with the order passed by the Collector dated 5th May, 1976. It cannot be lost sight of that the petitioner has not even a semblance of any right or title in the land in dispute and merely because the petitioner alleged that the land in question lay in the neighborhood of the land in his tenancy and the same was not approachable except through the fields of one or the other of the persons whose land surrounded his land, the petitioner cannot get any right of obtaining the possession of such land, which was lawfully allotted for the purposes of a Primary School as early as on June 3, 1974 by the order of the Collector, Ganganagar.

7. Likewise the Writ Petition No. 1369/76 filed by the three petitioners jointly was also dismissed by giving reference to and following the decision in Writ Petition No. 1637/76.

8. Aggrieved with the aforesaid decision in Writ Petition No. 1369/76 only Prithivi Raj appears to have been preferred D. B. Civil Special Appeal No. 37/78. That appeal was also dismissed on 24th August, 1978 by expressing agreement with the learned single Judge. The Court only left open for the appellant that if the allottee of the disputed land encroaches or threatens to encroach upon the appellant's khatedari land, it will be open to the appellant to take necessary action in that behalf in the competent Court.

9. Thus, allotment made in favour of School in 1974 stood final. After dismissal of review application filed by son of Udmi Ram as well as by Labh Mal. Thereafter it appears that Prithvi Raj along with his brother and some other persons sought mutation of the said land in question in favour of number of other persons by making application in that regard before the Collector. Said application was objected to by the residents of the village. Amongst the persons in whose name mutation was sought to be recorded was name of Surender Singh respondent No. 7. The mutation was sought to be secured on the premises that many constructed buildings are existing over the land in question and therefore such constructed land be recorded in the names of persons whose construction are existing on the land. It was pointed out in his report by the Dy. Collector, Hanumangarh submitted to the District Collector, that the complaint made by Prithvi Raj and his associates was wholly incorrect. The only construction which is existing on site is building construction for the residence of the teachers of the school and other allegations are not correct. In view of this report the objection raised on behalf of villagers against the mutation sought by various persons including

Surender and Prithvi Raj over the land in dispute were found to be valid and on the basis of Annexure-8 dated 6th October, 1995, the objection filed on behalf of Prithvi Singh through his Counsel K. N. Bhargava in the name of so many persons was rejected and allotment made in favour of School re-affirmed with the direction to make available a passage to the School. It was also noticed in the order that though the application for mutation purports to be made on behalf of a number of persons, it is only on behalf of Prithviraj, inasmuch as Power or Vakalatnama in favour of sole Counsel appearing in the case has been by Prithviraj alone and not by any other person.

10. This order dated 6th October, 1995 was sought to be modified by the impugned order dated 22nd August, 1998 (Annexure-9) almost three years thereafter by cancelling the allotment made in favor of School over which the respondents Nos. 6, 7 and 8 are clamouring to secure possession and regularization and pursuant thereto applications for mutation in favor of those persons were directed to be entertained vide Annexure-10.

11. From the aforesaid facts it is apparent that land stood allotted to the School way back in the year 1974. Over the land stands construction made for residence for teacher of the School. Prithviraj one of sons of Udami Ram along with Labh Singh made an abortive attempt to get that allotment of the land for the purpose of Primary School cancelled, firstly by raising claims of the said land which was adjoining to land alleged to be theirs and claiming right to said land also and also right of way through that land. Such claim was not accepted by the then Collector. In writ petition arising out of these proceedings, this Court also found that those petitioners have not even a semblance of any right, title or interest over the land in question for which that can only be considered as trespassers liable to be evicted. The subsequent proceedings produced before this Court in the form of Annexures-5, 6 and 7 go to show that mutation proceedings were sought to be initiated in respect of very same land by and at the behest of same Prithviraj son of Udami Ram which included lodging of claim on behalf of his brother Surendra Singh, respondent No. 7. Thereafter land has in fact been mutated in the name of said Surendra and Labh Singh, by reviewing the order dated 6-10-95 after about three years. This order also speaks of giving alternate land to School.

12. In these circumstances irresistible conclusion is that entire proceedings for

cancelling the allotment made in favors of School in 1974 has been undertaken by the concerned authority at the behest of the then Revenue Minister only to benefit the respondents Nos. 6, 7 and 8, notwithstanding they had successively lost in their attempt to garb the land in question for almost two decades. It does not stand to any reason why State has shown suddenly such an interest to cancel a lawful allotment made in 1974, particularly when need for such land for Primary School is existing, which is apparent from the fact that the impugned order talks of allotting alternative land to the School. This is only confirms that whole exercise has been undertaken with some motive to benefit some individuals, who were unsuccessful litigants at the cost of interest of public in getting the School functioning, which is successively thwarted by such oblique and obtrusive motives. It is worth noticing that no right to the land has been found to exist in favors of respondents Nos. 6, 7 and 8 for the protection of which, the order could be made. Apparently the cancellation of lawful allotment was made to pave the way for regularization in favors of unauthorized occupants.

13. Such a blatant subversion of rule of law and use of discretionary powers by the author of Exs. 9 and 10 cannot be countenanced, which action apparently suffers from legal malice.

14. Accordingly, this petition is allowed with costs. Annexure-9 and Annexure-10 are quashed and allotment made in favor of the School in 1974 as affirmed by the order dated 6-10-95 is held to be subsisting and operative.

Petition allowed.