

Hari Narayan Agarwal Vs. the State of Raj. and ors.

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Court : Rajasthan

Decided On : Jul-13-1978

Reported in : 1978WLN(UC)302

Judge : S.C. Agarwal, J.

Appeal No. : S.B. Civil Writ Petition No. 319 of 1972

Appellant : Hari Narayan Agarwal

Respondent : The State of Raj. and ors.

Disposition : Petition allowed

Judgement :

S.C. Agarwal, J.

1. The petitioner, who is a qualified engineer, wanted to establish an industry in the town Bhinmal and for that purpose he approached the State Government through the Collector, Jalore for allotting him the Und in the town of Bhinmal. By order dated 11th August, 1969, the petitioner was informed by the Collector, Jalore, that the State Government, vide its order dated 19th June, 1969, had accorded sanction for the allotment of 5000 Sq. Yards of land to the petitioner for industrial purposes in Khasra No. 2386 in Bhinmal town on the following terms and conditions:

1. The applicant shall not transfer or sublet the allotted land.
2. The applicant shall pay 0.50 (Fifty) paisa per Sq Yard and on payment of the full price, possession of land will be given to the allottee.
3. The land will be given to the allottee on Bhinmal Ramseen road in the east of the Government residential house at present under the occupation of Dy. Supdt. of Police, Bhinmal after leaving land for road between them.
4. The applicant will be required to execute agreement incorporating all the above conditions and get it stamped registered at his own cost.

2. In accordance with the aforesaid communication of the Additional Collector, Jalore, the petitioner on 16th August, 1969, deposited the sum of Rs. 2500/- in the treasury and thereafter the possession of the land allotted to the petitioner was delivered to him by Tehsildar, Bhinmal. The case of the petitioner is that on 7th October, 1970 he sent a draft agreement for approval to the Collector Jalore and that, inspite of several reminders, the said draft agreement was not approved by the Collector Jalore and, therefore, the agreement could not be executed. By notice issued by the Tehsildar Bhinmal dated 18-1-1972 the petitioner was informed that the allotment of land in favour of the petitioner had been cancelled under the orders of the State Government and he was required to handover the possession of the land allotted to him to the Patwari Bhinmal within three days. The petitioner thereupon filed this petition under Article 226 of the Constitution India for the issue of an appropriate writ, direction or order quashing the order of the Tehsildar, Bhinmal dated 19-1-1972 and the latter mentioned in the said notice regarding cancellation of the allotment of the land in favour of the petitioner.

3. The main ground of challenge to the aforesaid orders in the writ petition is that the orders regarding cancellation of the allotment in favour of the petitioner were passed arbitrary without giving any notice to the petitioner and without affording him an opportunity of showing cause against the proposed cancellation. The petitioner has submitted that he was always ready and willing to comply with the conditions on the basis of which allotment was made in his favour and he had also incurred some expense in the leveling of the land and in making improvement on

the same.

4. In the reply filed on behalf of the respondents, it is not asserted that any notice was given to the petitioner before the impugned order cancelling the allotment in his favour was passed. On behalf of the respondents, the cancellation of the allotment of land is sought to be justified on the following two grounds.

(i) The petitioner did not take any steps to execute the agreement in accordance with the order of allotment.

(ii) The petitioner did not take any steps to set up the industry in the land for which purpose the allotment had been made in his favour.

5. In my view there is no merit in both these contentions urged on behalf of the respondents.

6. The petitioner cannot be held responsible for the non-execution of the agreement as required by the order of allotment in such as, admittedly he had sent the draft of the argument to the Collector of Jalore on 7th October, 1970 and the respondents in their reply have also admitted that the petitioner had sent a reminder to the Collector Jalore on 5th April, 1971 for the execution of the agreement. In these circumstances it cannot be said that it was the petitioner who was responsible for non-execution of the agreement and the said ground could not be made the basis for the cancellation of the order of allotment in his favour.

7. As regards the other ground sought to be urged in support of the order of cancellation viz. that petitioner did not take any steps to set up the industry on the land allotted to him during the period from to 1972, it is to be noticed that the order of allotment did not prescribe any time period within which the petitioner was required to set up the industry. The petitioner can very well say that he could not take the necessary steps for setting up the industry on the land allotted to him till the formal agreement had been executed and that the delay in the execution of the said agreement was on the part of the respondents themselves.

8. The learned Government advocate has sought to place reliance on Rule 7 of the Rajasthan Industrial Area Allotment Rules, 1959, which lays down that the

industry shall be set up on the land for the purpose for which it is allotted within a period of two years failing which the land shall revert to the Director of Industries unless the period of two years is extended by the Government for valid reasons. The Rajasthan Industrial Areas Allotment Rules, 1959 are however applicable only to allotment of land in an industrial area as defined in Rule (1A) of the said Rules. There is nothing on the record to show that the land which was allotted to the petitioner on 11 the August, 1969, was in an industrial area as contemplated by Rule 1A of the said Rules. I am, therefore, of the view that the said Rules cannot be invoked to justify the impugned order cancelling of the allotment of the land in favour of the petitioner.

9. It has, therefore, to be held that the order passed by the State Government cancelling the allotment of land in favour of the petitioner and the notice dated January 18, 1972 given by the Tehsildar, Bhinmal, cannot be sustained. The result is that the writ petition is allowed and the notice dated 18th January, 1972, given by the Tehsildar Bhinmal and the orders of the Government regarding cancellation of the allotment of land in favour of the petitioner referred to in the said notice are quashed In the circumstances of the case I do not pass any order as to costs of this petition.