

Jagdish Vs. Collector

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Court : Rajasthan

Decided On : Aug-01-1978

Reported in : 1978WLN(UC)319

Judge : D.P. Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 332 of 1978

Appellant : Jagdish

Respondent : Collector

Advocate for Pet/Ap. : Mr. Hastimal

Disposition : Petition allowed

Judgement :

D.P. Gupta, J.

1. This writ petition was taken up today for final hearing with the consent of the learned Counsel for the parties.

2. The petitioner, in this case, has urged that the Collector, Sri Ganganagar has passed an order dated April 28, 1978 (Annexure 4) terminating the lease (Theka) of the petitioner for the year 1978-79 without giving any notice to him and that the said order should be quashed by this Court as it was passed against the principles

of natural justice.

3. The petitioner's case is that the land mentioned in schedule A, attached to the writ petition, situated in village Mainawali, was given to him on lease for a period of three years from the year 1976-77, at the rate of 500/- perbiga by a resolution of the Gram Panchayat, Mainawali dated October 1, 1976 after it was kinked down in his favour at a public auction held on August 4, 1976 and that while he was enjoying the possession of the aforesaid land, and was cultivating the same, the Collector. Sri Ganganagar passed his order dated April 28, 1978 terminating the aforesaid 'theka' of the petitioner for the year 1978-79 because according to him the theka was given to the petitioner for a period of two years only, namely for the years 1976-77 and 1977-78, and that the petitioner is a nephew of the former Sarpanch, Khyali Ram and that although the theka was given only for a period of one year, yet by making certain interpolations in the documents it was shown by the former Sarpanch as if the theka was given for a longer term of three years. According to respondents, the former Sarpanch Khyali Ram of Gram Panchayat, Mainawali in collusion with the petitioner, caused interpolations in the relevant documents for the purpose of giving undue and illegal benefit to the petitioner who was his close relative.

4. However, it was not contested before me that the order dated April 28, 1978 was passed by the C Elector, Sri Ganganagar without affording the petitioner an opportunity of hearing. At the time of hearing of the writ petition, learned Counsel appearing for respondent No. 2 admitted that the petitioner was not heard by the Collector while passing the impugned order dated April 28, 1978

5. The Collector, Sri Ganganagar while passing the impugned order dated April 28, 1978 was purporting to exercise jurisdiction under Section 27-A of the Rajasthan Panchayat Act, 1953, which runs as under:

Section 27-A Power to call for records--The State Government may for the purpose of satisfying itself as to the correctness, legality and propriety of

(a) any order passed by the Collector or the officer-in-charge of Panchayats under any provision of this Act, or,

(b) any order passed by a Panchayat Samiti in administrative matters under Section 26 A, or otherwise or

(c) any order passed under this Act in administrative matters by a panchayat from which no appeal lies under Section 26A

call for and examine the connected records and may confirm, vary or rescind such order.

6. But while passing an order to the prejudice for any party under the aforesaid provision it was obligatory upon the Collector to hear the concerned party. In the present case, it is not contested before me that a 'theka' was given to the petitioner in respect of the land specified in schedule A annexed to the writ petition. The dispute between the parties was in respect of the period of the aforesaid 'theka', According to the petitioner the 'theka' was given for a period of three years, while according to the respondents it was given only for a period of one year, but according to the Collector, the said 'theka' was given for a period of two years. If the 'theka' was given for a period of two years only, then the question of cancellation of the said 'theka' for the year 1978-79 did not arise, as it stood terminated automatically on the expiry of the term thereof. But the Collector could not come to a firm conclusion in respect of the matter as to whether the said 'theka' was given for the period of one year, two years or for three years only after hearing the concerned parties, including the petitioner. Learned Counsel for both the parties are agreed that the matter should be re-heard by the Collector in the presence of all the parties concerned, including the petitioner, as well as Gram Panchayat, Mainawali and such other persons whom the Collector may consider proper.

7. In view of the aforesaid infirmity in the order passed by the Collector on April 28, 1978 that it was passed without affording an opportunity of hearing to the petitioner, there is no alternative but to set aside the same.

8. The writ petition is accordingly allowed and the Collector, Sri Ganganagar is directed to re-hear the matter in the presence of the parties, including the petitioner and the Gram Panchayat Mainawali. The parties, whose counsel are

present today are directed to present themselves before the Collector for a fresh hearing in the matter on August 28, 1978. It would be open to the Collector, Sri Ganganagar to decide the matter either by himself or he can send the same for fresh decision to the Additional Collector, Sri Ganganagar However, the matter should be decided afresh within a period of six weeks thereafter.

9. Mr. Hastimal, appearing for the petitioner, states that the petitioner shall not extend his cultivation beyond the area which is at present under cultivation, which is nearly six bighas, until the matter is finalized by the Collector, Sri Ganaganagar afresh. The parties are left to bear their own costs.

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