

Jhumar Mal and ors. Vs. State and ors.

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Court : Rajasthan

Decided On : Feb-03-1981

Reported in : 1981WLN(UC)542

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Writ Petition No. 610/79 and 16 Ors.

Appellant : Jhumar Mal and ors.

Respondent : State and ors.

Advocate for Def. : Mr. H.M. Lodha

Advocate for Pet/Ap. : Mr. Parekh

Disposition : Petition allowed

Judgement :

G.M. Lodha, J.

1. Different plots of land which are in dispute in these cases were allotted to the petitioners by the Municipal Board, Nokha. These allotments were made in 1975-76. The petitioners have claimed that they were in old possession of these lands but that particular fact is disputed in many of the cases. The sale deeds were executed in favour of the petitioners. The petitioners' case is that they have also

raised construction over these plots.

2. Notices were sent to the petitioners by the Rajasthan State. Notices are cyclostyled and are identical in all the cases. Notice issued to the petitioner Jhumar Lal reads as under :

jktLFkku ljdkj

Lok;Rr 'kklu foHkkx

Lak0 ,Q A Mk,yc@75@526 fnukad 24&6&78Jh >qejeq iq= jkepUnz Nhik

}kjk iz'kkld] uxjikfydk]

usk[kk] chdkusj

fo'k;% & HkwriwoZ v/;{k] uxjikfydk] uks[kk }kjk vfu;fer :i ls vkaofVr ,oa fodz; fd;s x;s }kjk vfu;fer x;s Hkw[ka.Mks dks fujLr fd;s tkus ckcr A

pwaFd HkwriwoZ v/;{k] uxjikfydk] uks[kk us voS/k ,oa vfu;fer:i ls vius vf/kdkj {ks= ds ckgj vkidks fu;eks ds fo:) Hkw[ka.M 3420 oxZ xt vkaofVr fd;k gS vr% vkidks jktLFkku uxjikfydk] vf/kfu;e] 1959 dh /kkjk 80 ds vUrZxr ;g dkj.k crvks lwpuk i= fn;k tkrk gS fd D;ks ugh mDr vkaofVr Hkw[ka.M dks fujLr dj fn;k tkos bl IEcU/k es vkidks tks Hkh vkifRr gks i= izklrh ds 15 fnol es viuk bl foHkkx dh fHktok;s AmRrj izklr u gksus dh n'kk es ;g eku fy;k tkosxk fd vkidks bl IEcU/k es dqN ugh dguk gS A

n %&

pklu vij lqfpr-----

3. After the service of the above pattern of notices to the petitioners, They filed replies and raised several objections. Copy of the replies have been filed in all the cases and are marked Ex. 4. The State Government on 23rd March, 1972 ordered the cancellation of these allotment., The one line order Ex. 5 reads as under :

jktLFkku ljdkj

Lok;Rr 'kklu foHkkx

la0 ,Q 550Mh ,y ch@79@636 fnukad 23&3&79vkns'k

Jh dugS;k yky] HkwriwoZ v/;{k uxj ikfydk] uks[kk }kjk fu;eks ds foijhr fuEukafr
O;fDr;ks dh Hkw[k.M+ fodz; fd;s x;s] ftUgs fujLr fd;s tkus gsrq bl foHkkx ds i=kad
,Q AMh ,y ch@75@523&554 fnukad 24&5&78 ds }kjk dkj.k crkvks lwpuk i= tkjh
fd;s tkus ij IEcfU/kr O;fDr;ks ls izklr mRrj ds voyksdu ls jkT; ljdkj lUrq'V ugh gksus
ls fuEukafr Hkw[k.M+ks ds fodz; dks ,rn~ }kjk fujLr fd;k djrk gS %& uke O;fDr
Hkw[k.M dk {ks=Qy1- Jh 'kadj yky iq= vehy[k jke 1500 oxZ xt2- Jh Hkaojyky iq= Jh
'kadj yky 1500 ^^ ^3- Jh >qeikyky Nkik 855 ^^ ^4- Jh y{ehukjk;.k 400 ^^ ^5- Jh
egkohj izlkn ghjyky 4650 ^^ ^6- Jh xkso/kZu iq= x.ks'kjk 1786 ^^ ^7- Jh iwjunki
800 ^^ ^8- Jh xkso/kZu iq= jkej[k 600 ^^ ^9- Jh jkeekyh 1600 ^^ ^10- Jh
xksihfd'ku 312 oxZ QqV11-Jh xaxkjk 312 ^^ ^12- Jh l;skdr vyh 390 ^^ ^13- Jh
jkeukjk;.k 430 ^^ ^14- Jh tljk 262 ^^ ^15- Jh dq'.k eafnj 5400 ^^ ^16- Jh mxe
flag 300 ^^ ^17- Jh exjkt 300 ^^ ^18- Jh dkywjke 200 ^^ xt19- Jh esokyky 4000 ^^
QqV20- Jh xkSjh'kadj 5000 ^^ ^21- Jh }kjdk izlkn 300 oxZ xt22- Jh t;jke 398 oxZ
QqV23- Jh Nxuyky >aoj 1600 oxZ xt24- Jh ykypUn 9600 ^^ ^25- Jh ukjk;.k nkl 1600
^^ ^26- Jh v'kksd dqekj 1100 ^^ ^27- /kUuksnkl 472 ^^ ^vkKk lsn %mi 'kklu lfpo

4. The list mentioned in this order contained the names of the 27 persons out of whom 18 have filed these writ petitions.

5. The learned Counsel for both the side made a joint request that since common questions of law arise in the present 17 cases they should be heard, considered and decided by a composite order. After hearing learned Counsel for the parties at length I am inclined to accept this request of the learned Counsel for the parties. Accordingly all these cases are decided by this one common judgment.

6. Mr. Parekh, learned Counsel for the petitioners has vehemently contended that both the show cause notice before cancellation of the allotment and order of State Government cancelling these allotment are liable to be quashed on the short ground that neither the show cause notice nor order makes a mention of any intelligible reasons for cancellation of these allotments. A bald vague and sweeping allegation mentioned in the show cause notices that the allotments were made

against law or rules and a sweeping reference in the order of cancellation that the State Government is not satisfied with the replies given to the show cause notices, fails to satisfy the basic requirements of law as well as of natural justice, that when a citizen is sought to be deprived of a legal right of holding the property in which a sale deeds stands in his name, he should be first informed of the reasons for The same so that he can make an effective reply and there after the order adjudicating his rights should be a speaking order. In support of the above contention Mr. Parekh relied upon the principles enunciated by Hon'ble Supreme Court in State of Orissa v. Dai (Miss) Binamani Der and Ors. : (1967)11LLJ266SC . The Siemens Engineering and v. The Union of India and Ors. : AIR 1976 SC1785 and the latest important decision S.L. Kapoor v. Jagmohan and Ors. : [1981]1SCR746 . The important relevant observations provide valuable guidance for the decision of the present cases are contained in para 16 and para 24 which read as under :

the requirements of natural justice are met only if opportunity to represent is given in view of proposed action. The demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based if it is furnished in a casual way or for some other purpose. We do not suggest that the opportunity need be a 'double opportunity' that is, one opportunity on the faetual allegations and another on the proposed penalty. Both may be rolled into one. But the person proceeded against must know that he is being required to meet the allegation which might lead to a certain action being taken against him. If that is made known the requirements are met.

the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary, if it comes from person who has denied justice that the person who has been (sic) justice is not prejudiced.

Mr. Parekh also relied upon the judgment of this court in Partumat and Anr. v. Managing Officer, Jaipur and Ors. I.L.R. XI Raj. 1121 where in this court has occasion to consider the question whether under revisional power conferred Under

Section 24 Displaced Persons (Compensation and Rehabilitation) Act, 1954 completed sales can be cancelled. This Court ordered as under :

Section 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, no doubt confers very wide powers of revision on the Chief Settlement Commissioner, but it does not authorise cancellation of sales after they are completed. No doubt, allotments can be set aside under Section 24 of the Act, but after such allotments ripen into sales, they cannot be cancelled. The Chief Settlement Commissioner or the Settlement Commissioner exercising his power has no authority to cancel sale of property and an order of cancellation of sale of property is without jurisdiction and invalid. It would be too much to read in Section 24 of the Act to hold that it extends to cancellation of sales by expressly providing for cancellation of allotments. The execution of a sale deed cannot be regarded as only a formal expression of an order of allotment depend on its subsistence.

7. Both Mr. Shishodia. learned Government Advocate and Mr. H.M. Lodha, learned Counsel for the respondents and other learned Counsel appearing for the respondents, submitted that in the present case fraud has been committed by the Municipal Board's Chairman by mis-use and abuse the authority in as much as the relevant rules did not permit any such sale by allotment. The Rajasthan Municipal Disposal of Urban Land Rules, 1974 were referred to substantiate the above contention. It was argued that the violations were so grave and that the sales were void ab-initio, no formal order was required to set them aside. It was pointed out that the petitioners claimed to be belonging to low income group and only land up to 300 Sq. Yrds. could have been sold and that too by auction only.

8. Confronted with the above submissions Mr. H M. Parekh, submitted that he is prepared to reply to each and every objection of the sale if an opportunity is given to his client. Mr. Parekh submitted that it would be a traversity of principle of natural justice and rule of law in case in which the citizen isn't informed of the real reason & after creating a weeping show cause formality he is deprived of the property before getting an opportunity of explanation due to such vague allegation.

9. I have considered the various objections and considered the contention of the learned Counsel for both the parties. Undoubtedly the sales were affected by the

Municipal Board in the year 1975 76, These sales are sought to be cancelled by the State Government in the year 1978 and the impugned order has been passed in 1979. There may be a good deal of the controversy about whether some of them or all of them belong to lower income group or whether the petitioners or some of them were in old possession of these land and whether proper procedure according to rules referred to above was adopted. It may be that in a given case or some or all the cases petitioners may or may not be ultimately able to show that there was no violation of the above rules or any other provisions of law (sic) setting aside of the sale or quashing the order of the allotment as the case may be. However, before doing so minimum requirement of law as well as principle of mature justice is that the citizen should be informed precisely of the ground on account of which the State Government is of the view that the sale was unlawful or illegal. A reading of the show cause notice dated 24th June, 1978 reproduced above which is identical in all these cases would convince that this notice lacked that requirement. It is typical case of vague sweeping and bald allegations of the land allotment having been made by the Chairman. Municipal Board, Nokha by exceeding his jurisdiction or authority and acting against the rules. Even a reference has not been made to the provisions of the Act or Rules which have been contravened. A citizen cannot be expected to give any effective reply unless he knows what is the precise allegation. Even this Court cannot decide whether illegality was on account of Chairman and the Chairman was not competent to make such sale or whether there was any rule or law requiring the sale in a particular manner either by auction, public notice and whether that was not done in these cases. Similarly the objection of the respondents' counsel raised before this court for the first time that low income group people could not have allotted such big areas of land also cannot be decided here. From this notice I am convinced that the present one is a notice which cannot fulfil the stringent requirements of notice to show cause before a citizen can be deprived of his property, which continues to be a constitutional right under Article 300A of the Constitution, after the same ceasing to be a fundamental right by virtue of 44th Amendment of the Constitution of India.

10. In the *S.L. Kapoor v. Jagmohan and Ors.* (supra) the Hon'ble Supreme Court emphasised the requirement of natural justice and observed that furnishing of an

information on which the action is based in a casual way is not enough. The Hon'ble Supreme Court observed that the principles of natural justice know of no exclusinory rule and non observants of natural justice is itelf prejudice to any men.

11. In view of the above observation and the dictim of law laid down by the Hon'ble Supreme Court in S.L. Kapoor's case (supra), I am firmly of the opinion that in the instant case the notice dated 24th June, 1978 is not at all a real notice required to be given to a citizen before a serious drastic action of cancellation of allotment of land is taken against him. In the very nature of things the petitioners could not have made any effective reply without knowing the precise reasons for the proposed cancellation.

12. The impugned order Ex. 5 dated 23rd March, 1979 could not have been made upto after the above serious lacuna of the absence of a show cause notice. In the instant case even this order fails to specify any reasons except mentioning that the State Government is not satisfied with the reasons contained in the replies submitted by the concerned people to the show cause notice. In a cause where land allotted to a citizen by the Municipal Board which is a statutory authority under the Rajasthan Municipalities Act is sought to be cancelled. It was all the more necessary that the State Government should have given the reasons in the impugned order. It is true that the respondents may be correct in a given case in holding that the sale was never made by the Municipal Board and no such resolution was passed. But even then that point has to be examined after the petitioners are told precisely of that allegation and allowing an opportunity of refuting that. I am convinced that both the show cause notice and the impugned order are in gross violation of principle of natural justice being hopelessly vague and sweeping in nature without specifying in either of them the precise fact or reasons for treating sale or allotment un-lawful or illegal.

13. In view of the above, it not necessary to examine in detail the various reasons given by the petitioners in challenging the impugned order. The impugned order dated 23.3.1979 as it concerned the cancellation of the allotment of sale of the land to the present petitioner in these writ petitions is concerned is quashed. The respondents are restrained from acting on it and taking further proceedings

against the petitioners. However, this decision would not debar them from taking appropriate proceedings under the law, if so permissible and after issuing a fresh show case notice and providing a reasonable opportunity of showing cause to the petitioners, before the allotment or sale made by them are sought to be cancelled.

14. All these writ petitions therefore, succeed and they are accepted as indicated above with out any order as to the costs.

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