

**Manphool Vs. the State of Raj. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/760291](http://sooperkanoon.com/760291)

**Court :** Rajasthan

**Decided On :** Mar-01-1983

**Reported in :** 1983WLN199

**Judge :** D.L. Mehta, J.

**Appeal No. :** S.B. Civil Writ Petition No. 1963/82

**Appellant :** Manphool

**Respondent :** The State of Raj. and ors.

**Disposition :** Petition dismissed

**Judgement :**

**D.L. Mehta, J.**

1. Heard learned Counsel for the petitioner. Mr. Niyajuddin accepts notice on behalf of the State. Both the parties submit that the case may be decided at the admission stage. The contention of the petitioner is that the proceedings initiated by the Tehsildar & notice issued by him under Section 22 of the Rajasthan Colonisation Act (hereinafter to be referred to as the Act) may be quashed. Petitioner is at liberty to tile objection before the Tehsildar and it is premature to hold whether the case of the petitioner falls within the purview of Section 22 of the Act or not. The prayer of the petitioner that the notice issued under Section 22 of

the Act may be 'quashed is rejected.

2. The second prayer of the petitioner is that he is eligible under Rule 13(5)(b) of the Rajasthan Colonisation Rules (hereinafter to be referred to as the Rules) for the allotment of the Land. Rule 13(5)(b) provides that where an adult son of the cultivator land-holder is eligible for allotment of Government land under these Rules and if after allotment of land to his father there remains the surplus land out of the land comprised in temporary cultivation lease holder of the father; such surplus land may be allotted to the adult son to the extent to which he is eligible, the learned Additional Government Advocate submits that the word 'may' has been used in Rule 13(5)(b) and so it is not mandatory that in all cases The surplus land should be allotted to the adult son. There may be causes where the persons of the scheduled caste, scheduled tribes and down trodden may be there and their needs of allotment qua the adult sons referred to in Rule 13(5)(b) may be higher. The contention of the learned Additional Government is that merits and demerits of the case has to be considered under Rule 13(5)(b) of the Rules it is nowhere directed that in all cases the land should be allotted to the adult son of the father who is having the surplus land Learned Additional Government Advocate submits that there may be cases when there may be one single adult son of the father and who is likely to inherit the property of his father and in that case if the land is allotted to the adult son on the ground of being the adult son of the father who has already been allotted land and the surplus land if allotted to the adult son will create an imbalance in the Society. Learned Additional Government Advocate submits that to achieve the objects laid down in the Preamble of the Constitution of India it is necessary that justice should be social, economic and political. He further submits that the right of equality of status and opportunity is also embodied in the Constitution. His submission is that if Rule 13(5)(b) of the Rules is considered as mandatory in nature & if the word 'May' is considered as 'shall' then the whole object of the Constitution will be frustrated. He has further invited my attention to Article 38 of the Constitution of India which reads as under:

The state Shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institution of the national life.

Clause (2) of Article 38 further provides that the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups residing in different areas or engaged in different vocations. Learned Additional Government Advocate further submits that the cases of the persons who are down trodden in Society and specially of the scheduled caste and scheduled tribe persons shall be whittled down if the provisions of Rule 13(5)(b) is considered as mandatory in nature. Learned Additional Government Advocate submits that the adult son has a right to be considered for the allotment and the authorities have the right to decide the application, if any, on the merits of the persons claiming allotment. It may be a consideration in the matter of allotment and if persons claiming allotment stand on equal footing then the preferential treatment may be given to the adult son as provided under Rule 13 Clause (5)(b) of the Rajasthan Colonisation Rules, but he should not be allowed to march over the persons who stand better than the alleged son of the T.C. holder. Learned Counsel for the petitioner has invited my attention to the judgment passed by this Court in S.B. Civil Writ Petition No. 669 of 1976 Govind Ram v. State decided by this Court on 28th October, 1976. My brother Judge has held in the said judgment as under; -

From the conjoint reading of Rule 4 & Rule 13(5)(b) it will appear that if the adult son of a temporary cultivation lease holder otherwise J eligible for allotment of the surplus land is in existence, surplus land in the hands of his father shall not be resumed and will be allotted to the adult son to the extent to which he is eligible. It is not disputed that the compliance of Rule 13(5)(b) has not been made by the competent authority while disposing of the cases of the temporary cultivation lease holder. I have looked into the cases before me and given my careful consideration to the contentions of the learned Counsel for the petitioners. It requires no argument to say that it is obligatory on the opposite party to duly consider the case of duly eligible adult son of temporary cultivation lease holders. The impugned orders suffer from serious infirmity as they do not comply with Rules 3 and 4 read with Rule '3 of the Rules of 1975. These Rules are mandatory. Therefore, the order passed, proceedings taken and allotment made to third parties cannot be sustained in law as they are in contravention of the mandatory provisions of the

Rules referred to above.

3. In this judgment it has been hold that the impugned order suffers from serious infirmity as they do not comply with Rules 3 and 4 read with Rule 13 of the Rules of 1V75. These Rules are mandatory. Rule 3 and 4 have been held to be mandatory under the judgment while there is no specific finding about the mandatory nature of Rule 13 in isolation. The point has not been considered at all what is impact of the word 'may' used in Rule 13(5)(W).

4. I hold that Rule 13(5)(b) is directory in nature in isolation and if the persons are similarly situated then the adult son should be considered in a preferential way. But at the same time if the other claimants are better situated and their case is on better footing then the application of the adult son may be rejected by the authorities concerned. Every case has to be decided on the merits of the claimant of the surplus land. For illustration if the adult son is giving in other village and if a down trodden Scheduled Caste person is not having an inch of land living in the same village, he should get a preferential treatment in the matter of allotment and only because of the enabling provisions of Rule 13(5)(b) the adult son should not be marched over the persons who are better qualified and better eligible on merits. The priority has been provided under the Rules. Rule 7 of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Rajasthan Canal Colony Area) Rules, 1975 read as under:

7. Priorities for allotment. - (1) Priorities for allotment of Government land under these rules shall be in the following orders:

(a) Persons referred to in Clause (1) of Rule 5.

(b) Temporary cultivation lease holders:

(c) Agricultural Graduates (Ex-Service men) and Bhakra land less persons for the area reserved for them.

(d) Landless persons of the same village;

(e) Landless persons of the same Colonisation Tehsil;

(f) Landless persons of other colonisation Tehsil of the same District and persons of contiguous Revenue Tehsil of the same District major part of which is in the Rajasthan Canal Colony area;

(g) Landless persons of Revenue Tehsil of the same District minor part of which is in the Rajasthan Canal Colony area.

(h) Landless persons of other Tehsil of the District;

(i) Landless persons of such contiguous districts of Rajasthan as have no major or medium irrigation Project;

(j) Landless persons of any other district of Rajasthan having no major or medium irrigation project;

(2) For the purpose of Sub-rule (1) a landless person shall be deemed to be of the village, Tehsil or District where he has been residing since before 1st day of April, 1955.

5. Rule 13(5)(b) should not march over the priorities provided under Rule 7 which are mandatory in nature. This fortities the contention of the learned Additional Government Advocate that the adult son cannot march over the person whose who are have-note and for whom the priorities have fixed under Rule 7 of the Rajasthan Colonisation Rules.

6. The third submission of the learned Counsel for the petitioner is that the application for review cannot be rejected on the ground of time barred Clause (3) of Rule 4 reads as under:

Where an application as is referred to in Sub-rule (1) has already been decided by any competent authority and the allotting authority finds that allotment order passed on such application is inconsistent with the provisions of these rules, it shall, of its own motion, review the order and shall, after giving the affected person an opportunity of being heard, decide the application under as in accordance with the provisions of these rules.

This rule provides that where the application as referred to under Sub-rule (1) has already been decided by competent authority finds that the allotment order passed on such application is inconsistent with the provisions of these Rules, it shall on its own motion review the order passed and shall after giving the affected persons an opportunity of being heard decide the application under and in accordance with the provisions of these Rules. The Rule is mandatory in nature and as has been held in Govindram's case(supra) referred above. Before Rule 4(3) applies, there must be an allotment order passed in favour of any party. Unless there is an allotment order the question of inconsistency does not arise at all. The counsel for the petitioner has not submitted that the land has been allotted to a person in contravention of these Rules. The counsel for the petitioner may make a grievance that the land is allotted to a third party in contravention of the Rules and his case is not considered in accordance with the provisions of Rule 4(3). The learned Counsel for the petitioner himself submits that the land has not been allotted to any one so far, so the Rule 4 Clause (3) does not come into operation at all at this stage. It is observed that while making the proceedings for the allotment of the surplus land the authorities will take into consideration the provisions of Rule 4 Clause (3) as well as Rule 13 Clause 5(b) and after taking into consideration the relevant provisions of Rule 7 and other provisions of law & the allotment shall be made in accordance with the provisions of the law. With these observations the writ petition is dismissed summarily.