

**Manoj Kumar Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Jul-18-2003

**Reported in :** RLW2003(4)Raj2730

**Judge :** Anil Dev Singh, C.J. and; H.R. Panwar, J.

**Acts :** Rajasthan Panchayat (General) Rules, 1961 - Rules 226 and 266

**Appeal No. :** D.B. Civil Spl. Appeal (Writ) No. 457 of 2003

**Appellant :** Manoj Kumar

**Respondent :** State of Rajasthan

**Advocate for Pet/Ap. :** Vijay Bishnoi, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

Singh, C.J.

1. This appeal is directed against the order of the learned Single Judge dated 10th May, 2002 rendered in S.B. Civil Writ Petition No. 1548/2001. The facts giving rise to the appeal are as follows.

2. The appellant was granted patta of a residential plot measuring 20 x 40 years by the Gram Panchayat, Udasar, The patta was challenged by Vikas Adhikari

before the Collector, Bikaner under Section 97 of the Rajasthan Panchayat Raj Act, 1994 (for short, 'the Act of 1994' hereinafter) by means of a revision petition. The Collector vide its order dated 30th December, 2000 allowed the revision petition preferred by the Vikas Adhikari, Panchayat Samiti, Bikaner and cancelled the patta issued in favour of the appellant.

3. Aggrieved by the order passed by the Collector, the appellant filed a writ petition before this Court. In the writ petition, the learned Single Judge declined to interfere with the order passed by the Collector. The appellant has challenged the order of the learned Single Judge in this appeal.

4. We have heard learned counsel for the appellant.

5. Learned counsel for the appellant vehemently argued that the Collector was not right in allowing the revision petition in view of the fact that the Gram Panchayat granted patta in favour of the appellant in the year 1990 and challenge to the patta was made after a lapse of about 10 years by the Vikas Adhikari by means of a revision petition.

6. We regret our inability to accept the submission of the learned counsel for the appellant. It is a gross case where the rules were thrown to the winds in making the allotment of the land to the appellant. It needs to be pointed out that the appellant is the son of Sampat Lal Up-Sarpanch of Gram Panchayat, Udasar. It is not a case where only one plot was allotted to a near relative of the Up-Sarpanch. There are other plots which have been allotted to near relatives of the respondent. Besides, one plot has been allotted to the Up-Sarpanch as well. It is not in dispute that the land was allotted to the appellants well as to the Up-Sarpanch and others by private negotiations and not by recourse to auction.

7. The allotments are governed by Rule 266 of the Rajasthan Panchayat (General) Rules, 1961 (for short, 'the Rules' hereinafter), Rule 266 of the Rules reads as follows :

'266. Transfer of abadi land by private negotiation.-(1) The Panchayat may transfer any abadi land by way of sale by private negotiation in the following cases :-

(a) Where any person has a plausible claim of title to the land and an auction may not fetch reasonable price;

(b) Where for reasons to be recorded in writing the Panchayat thinks that an auction would not be a convenient mode of disposal of the land;

(c) Where such course is regarded by the Panchayat necessary for the advancement of Scheduled castes and Scheduled tribes or others backward classes.

(d) Where the persons are in possession of the abadi land for 20 years or more but less than 42 years, one-third of the prevailing market price and in case of possession of over 40 years, one sixth of the prevailing market price shall be charged.

(2) The Panchayat may, by resolution, transfer by way of sale without charging any price therefore, any abadi land of which the probable value does not exceed Rs. 200/- in favour of any institution for a public purpose.'

8. A perusal of the aforesaid rule reveals that before the Panchayat makes any allotment of the land by private negotiation, it must record the reasons as to why the auction of the plot would not be a convenient mode for its disposal and the person has a plausible claim for acquiring the plot at a reasonable price. This mode of allotment by private negotiation is to be resorted to for promoting the interests of scheduled castes and scheduled tribes and other backward classes. Besides, the land can be allotted by private negotiations only in case a person is in possession of the abadi land for more than 20 years and less than 42 years, in which case he is required to pay one-third of the prevailing market price and in case of possession of over 40 years, he is required to pay one-sixth of the prevailing market rate. It is not claimed by the appellant that the conditions laid down in Rule 266 of the Rules were satisfied or any reasons were given in writing by the Panchayat for allotment of the plots to the appellant and his father Sampat Lal, Up- Sarpanch or his relatives by private negotiation.

It is significant to note that the plots in question were allotted to the aforesaid persons for a meager price of Rs. 814/- per plot. We are told that even at the time when Sampat Lal was Up- Sarpanch, the plots were only one kilo meter away from the expanding city of Bikaner and by no stretch of imagination, the price of the plots could be so low.

9. Instant case also reveals a peculiar fact. In the cause- title of the writ petition, the age of the appellant is mentioned as 32 years. Learned counsel for the appellant claims that the appellant is in possession of the plot for the last about 20 to 21 years. This means that the appellant must be only 10 years old when he allegedly entered into possession of the plot. We cannot appreciate a 10 years old child would be able to encroach upon the land and take over possession of the same.

10. The allotment of lands to the appellant, Sampat Lal and his relatives is a clear case of distribution of largesse by Gram Panchayat Udasar. The grant of virtual gift of plots to the appellant, and his relatives smacks of favoritism at the cost of the community. Sampat Lal was Up-Sarpanch when allotments were made to him and his relatives. The plots were acquired by them by entering into private negotiation with the Gram Panchayat without putting the plots to auction in violation of Rule 266 of the Rules. It leaves no manner of doubt in our minds that action of the Panchayat was arbitrary. In *Ajay Hashi v. Khaliq, (1)*, and several other decision of the Supreme Court, it has been held that Article 14 strikes at arbitrariness in State, action in any form. If can action is arbitrary there would be denial of equality. The distribution of bounty by the State or its functionary Panchayat cannot be countenanced.

11. In the circumstances, therefore, the order passed by the learned Single Judge does not call for any interference. Accordingly, the appeal fails and is hereby dismissed with the costs of Rs. 2,000/-. The costs should be paid within a period of four weeks. In case, the cost is not paid, the Registry shall place a note on the file and the matter shall be placed before us.