

Nani Bai Vs. State and ors.

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Court : Rajasthan

Decided On : Jun-03-1984

Reported in : 1984WLN(UC)589

Judge : S.K. Mal Lodha and K. Bhatnagar, JJ.

Appeal No. : D.B. Civil Special Appeal No. 12 of 1972

Appellant : Nani Bai

Respondent : State and ors.

Disposition : Appeal dismissed

Judgement :

S.K. Mal Lodha, J.

1. This appeal under Section 18(1) of the Rajasthan High Court Ordinance, 1949 has been filed by the unsuccessful petitioner, whose writ petition was dismissed summarily by order dated November 15, 1971 of a learned single Judge.

2. For the sake of convenience, the appellant will be referred to as the petitioner. She filed the writ petition praying that the order (Anx. L) March 24, 1971, cancelling the allotment of the land to her may be quashed and the respondents (State of Rajasthan, Collector Chitorgarh and Tehsildar, Chittorgarh), may be directed not to dispossess her from the land in question measuring 5 bighas Arazi

No. 33/1, situate in village Ochhdi, Tehsil Chittorgarh. Certain other reliefs were also sought. Suffice it to state that the petitioner was allotted 5 bighas Arazi No 33/1 EI, situate in village Ochhadi, tehsil Chittorgarh by order Anx. D of the Additional Collector, Chhittorgarh. After that she executed the agreement Anx. E as required by the Rajasthan Colonisation (Medium & Minor Irrigation' Projects Govt. Lands Allotment) Rules, 1968 (for short (the Rules') and General Colonisation Conditions, 1955. A notice Anx. E dated October 16, 1969 was sent to the petitioner by the Additional Collector, Chittorgarh asking her show cause as to why the allotment of the land in question made in her favour be not cancelled, and the proceedings be not initiated for filing false declaration. In the notice, inter alia, it was stated as under-

1- vki Hkwfeghu d`kd ugh gS A

2- vkidks vkftohdk dk eq[; lk/ku d`f'k ugh gS A

3- vkids ikl iwoZ ls gh Q~sxes UV ls df/kd Hkwfe gS A

4- vkidh vkftohdk dk lk/ku d`f'k ugh gS A vkSj vki mDr Hkwfe ij vkf{kfr gS jkT; deZpkjh ij vkfJfr gS A

The petitioner gave reply Anx. I dated December 19, 1969, stating that no good ground exists for cancelling the allotment of the land in question made in her favour. It was submitted by her that the notice may be cancelled. A further reply to the notice (Anx. J) dated May 28, 1971 was filed by her counsel. The Additional Collector by his order Anx. M, dated January 16, 1970 held that the petitioner as well as her minor son Arvind Kumar were not entitled to the allotment under Rule 5(a) of the Rules read with Section 5(26-A) and (3) of the Tenancy Act. It was recorded by the Additional Collector that the petitioner is the wife of Bhera Shankar, who is a Patwari in district Jalore and she is not a landless agriculturist. He, there recommended to the State Government to cancel the allotment. The Minister for Colonisation Department, vide order Anx. 1 dated May 24, 1971 cancelled the allotment of the land in question made in favour of the petitioner. In passing the order, the expressed agreement with the finding of the Additional Collector, Chittorgarh to the effect that the petitioner being dependent on a

Government servant is not a bonafide agriculturist by profession and as such she was not a landless tenant being eligible for allotment of the land under the Rules. After passing of the order, the Collector, Chittorgarh by his order Anx. K, directed the Tehsildar to cancel the allotment and record the land as 'bitanam Sarkar'. The petitioner, therefore, filed the writ petition for the aforesaid reliefs.

3. The learned single Judge was of the opinion that the writ petition was not fit for exercising jurisdiction under Article 226 of the Constitution. He, therefore, rejected it summarily. Hence this appeal as aforesaid.

4. We have heard Mr. N.P. Gupta for Mr. D.S. Shisodia for the appellant and Mr. R.P. Dave, learned Deputy Govt. Advocate.

5. In the first instance, it was contended on behalf of the appellant that the order Anx. L dated March 24, 1971 is in violation of the principles of natural justice, as no notice for appearance before the Minister for Colonisation Department was issued to the petitioner. It may be stated that the notice Anx. H dated October 16, 1969 was issued by the Additional Collector, Chittorgarh to the petitioner to show cause as to why the allotment be not cancelled and the proceedings be not initiated for giving false declaration. In Anx. I, dated December 19, 1969, which is reply to the notice, it is clearly stated that the notice was served. By means of Anx. J dated May 28, 1971, which is the application filed on behalf of the petitioner by her counsel, the prayer has been made that the matter may be referred to the State Government and until decision by it, proceedings for dispossession may be stayed. A perusal of Anx. L shows that it has been recorded therein that the petitioner was not present in spite of proper service of summons on her. On the basis of the material that has been placed on record by the petitioner, it is difficult to infer that no notice for the appearance was served on the petitioner before passing the order Anx. L, dated March 24, 1971 and that the statement made in Anx. L that the petitioner is not present despite service of summons on her, is wrong. In these circumstances, we are of the opinion that the order Anx. L has not been passed in violation of the principles of natural justice. It may be stated that the notice dated December 16, 1969, which was issued by the Additional Collector, Chittor Garh was served on the petitioner and she has filed reply, and

on her behalf vide Anx. J. It was prayed that the matter may be referred to the State Government. The State Government, thereafter, passed the order Anx. L dated March 24, 1971.

6. It was, next, argued that the petitioner is entitled to the allotment, as she is a bonafide agriculturist and is entitled to the allotment under Rule 5(9) of the Rules read with Section (26-A) and (3) of the Raj. Tenancy Act. Under the Rules, only landless persons are eligible for allotment of the land. It is not in dispute that the petitioner was at the relevant time Patwari in district Chittorgarh. She is dependent on her husband. The principal source of income of the petitioner's husband, who is a government servant, is pay and allowances. On the basis of these facts, it was found vide Anx. L dated March 24, 1973 that she is not eligible for allotment of land. This conclusion is based on the admitted facts and circumstances of the case. As she is not the landless agriculturist as envisaged in the aforesaid, the allotment made to her was rightly cancelled vide Anx. L. In the reply to the notice (Anx. 1), it has been stated that the petitioner is the wife of the Government servant and this being so, it was held in Anx. 1 that she is not a bonafide agriculturist by profession. In the application Anx. B, it is, inter alia, stated as under:

xzke uke e; rglhy e; [kljk fdLe Hkwfela[;klkejh fprk SM+ ftyk fprk SM+ 411
ugjhAugjks ls flafpr Aokgh11 dqavks ls flafpr AisVk rkykcnsghlsykch djkuh cUMkj
A

Rule 5(a) of the Rules is as under:

Persons eligible to allotment of Government Lands: The persons eligible to allotment of Government lands under those rules shall be-

(a) landless tenants including landless tenants belonging to Scheduled Castes and Scheduled Tribes.

7. Sub-sections (26-A) and (3) of Section 5 of the Rajasthan Tenancy Act, read as under:

(26-A) 'Landless person' shall mean an agriculturist by profession who cultivates or can reasonably be expected to cultivate land personally but who does not hold any land whether in his own name or in the name of any member of his joint family, or holds a fragment;'

(3) 'Agriculturist' shall mean a person who by himself or by servants or tenants earns his livelihood wholly or principally by agriculture.

From the perusal of Rule 5(a) of the Rules and Sub-sections (3) and (26A) of Section 5 of the Rajasthan Tenancy Act, it is clear that the petitioner is not a landless person so as to be entitled to the allotment of the land. The order Anx. 1 dated March 24, 1971 of the Minister for Colonisation Department, cannot be said to be illegal, while passing this order, no substantial error of law was committed.

8. There is no error apparent on the face of the record.

9. It is well settled that certiorari can be issued only in the exercise of supervisory jurisdiction, which is different from appellate jurisdiction and the court exercising special jurisdiction under Article 226 is not entitled to act as an appellate court. It was observed in *Swam Singh v. State of Punjab* air 1976 SC 232, as under:

This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be corrected in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact however grave it may appear to be.

The case before us is not one, where order passed by inferior authority or Tribunal is in excess of its jurisdiction or as a result of its perusal to exercise jurisdiction vested in it or that it has acted illegally or improperly in exercise of its jurisdiction causing grave miscarriage of justice.

10. For the aforesaid reasons, the learned single Judge was right in holding that it was not a fit case for exercising jurisdiction under Article 226 of the Constitution.

11. No other point was pressed for our consideration.

12. The result is that there is no merit in this appeal and it is, accordingly, dismissed without any order as to costs.

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