

Jesaram and 161 ors. Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Feb-01-1985

Reported in : 1985(1)WLN662

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 2016 of 1984

Appellant : Jesaram and 161 ors.

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. The writ petitions mentioned in the Schedule annexed with this order raise common questions, so, they are being disposed of by this common order.
2. I may state a few relevant facts in the petition of Jesaram mentioned above.
3. The petitioner Jesaram was allotted 50 Bighas of land comprised of Squares No. 256/376 and 257/376 by allotment order dated December 25, 1961 (Annx. 1), in compliance of the order of the Commissioner Colonization dated Oct. 16, 1961 for allotment of land to the declared landless agriculturists of Bhakra Project Area

in the Rajasthan Canal Project Area. It was stated in the allotment order that the rules framed under the Rajasthan Colonization Act, 1954 shall apply to the allotted land and the allottee would be bound by the rules framed from time to time. It was further provided that the allottee will be responsible for making payment of price of the land as determined by the State Government in time. There were other conditions as well. The petitioner also executed an agreement stipulating the same conditions. In the year 1967 the Rajasthan Colonization (Rajasthan Canal Project Government Land Allotment & Sales Rules, 1967 (for short 1967 Rules) came into force and the petitioner was required to make payment of the price under the said Rules. The petitioner paid the total price amounting to Rs. 33,750 32 by 1977. The petitioner's case is that the land was, thus, vested in the petitioner. The petitioner received a notice dated June 15, 1984 (Annx. 2) from the Deputy Commissioner Colonization, Rajasthan Canal Project, Vijaynagar where under he was required to appear before the Deputy Commissioner, Colonization on 17-7-1984 for submitting an application for regularisation of the allotment. It was stated in the notice that the regularisation or the allotment has to be made under Rule 24 of the Rajasthan Colonisation (Allotment and Sale of Government Land in the Rajasthan Canal Colony Area) Rules, 1975 (for short '1975 Rules') and it was also stated that those Bhakra landless persons, who have got the land in excess of the allotment limit are required to get the land regularised under Rule 24 of the 1975 Rules. The allotment will be made upto 25 Bighas irrigated land or 50 Bighas of un-irrigated land on the reserved price and those who are in possession of excess land upto ceiling limit, the allotment will be made to them on payment of four times of the reserved price. The petitioner has challenged the notice (Ex. 2) on the ground that the petitioner having paid the price as provided under the 1967 Rules, the petitioner cannot be called upon to make any payment for the land allotted to the petitioner on permanent basis on 25-12-1961. 1975 Rules will not in any way govern the case of the petitioner. The State Government or the Deputy Commissioner Colonization has no authority to ask the petitioner to submit an application for regularisation and the notice dated 15-6-1984 is without jurisdiction. The petitioner has, therefore, prayed that the notice (Annx. 2) be quashed and the respondents be restrained from taking any proceedings against the petitioner in connection with the land allotted to him in the year 1961.

4. Reply to the writ petition has been filed on behalf of the respondents No. 1 and 2. It is stated that the petitioner was Bhakra landless persons within the meaning of the term defined in the repealed rules for allotment of the land, which were in force in the Rajasthan Canal Project Area previously and also under sub-clause (V) or Rule (1) of the 1975 Rules. His application for permanent allotment of agricultural land came to be transferred in the Colonization Department Rajasthan Canal Project, Bikaner along with the application of the persons alike him in the year 1960. Thereafter, such persons were allotted 50 Bighas of command land in the Rajasthan Canal Project Area. The petitioner's case was regularised under the Rajasthan Colonisation (Raj. Canal Project Government Land Allotment & Sale) Rules, 1967 (for short '1967 Rules') which were repealed by the Rajasthan Colonization (Allotment of Government Land to Post-1955 Temporary Cultivation Lease Holders and other landless persons in the Rajasthan Canal Project Area) Rules, 1971. The Rules of 1971 were struck down by the Supreme Court on May, 1975 in Jaila Singh's case AIR 1975 SC 1436. Thereafter, the State Government framed the 1975 Rules. In pursuance of the directions given by the Supreme Court, Rule 5 of the 1975 Rules made a provision for eligibility and extent of allotment. According to which the Bhakra landless persons were also eligible for getting allotment upto 25 Bighas of land. It was further stated that Bhakra landless persons to whom the land could not be allotted in the Rajasthan Canal Project Area prior to the Rules of 1967 and 1971 got allotment of the land upto 25 Bighas under the Rules of 1975. However, the terms and conditions of allotment of those Bhakra landless persons, who had got allotment before the rules of 1967 came into force and their cases, as a separate class were pending before the Government for determination of the terms and conditions as per stipulation contained in the allotment order. The Government, therefore, issued an order No. F. 4(20) Rev./Col./82 dated 18/20-2-84 to the Commissions Colonization, Bikaner for getting reviewed the land allotment cases of such Bhakra landless persons and the terms and conditions were laid down therein. This order was within the competence of the Government not only under 1975 Rules but also under the conditions contained in the allotment order (Annx. 1). Therefore, the notice (Annx. 2) issued by the respondent No. 2 in pursuance's the Government Order is legal. It was also stated that the Bhakra landless person is not entitled to more than 25

Bighas of the common land under the Rules of 1975. But as the petitioner and the persons, alike him were previously allotted 50 Bighas each provisionally, the Government vide its aforesaid order, decided to regularise/allot them entire land on special conditions by treating them as a separate class and directed to pay the current reserved price of 25 Bighas and four times of the reserved price for the rest of the ceiling limit. In fact, the petitioner is not entitled to more than 25 Bighas of land but under its special power, the Government decided to allot the entire land on special rates. The petitioner is bound by the terms and conditions of the allotment and it is now not open to him to challenge the same, which has been prescribed by the Government under the order (Ex. R/1). The allotment was not made to the petitioner on permanent basis. It was just a provisional allotment but of permanent nature subject to the stipulation contained in the allotment order. It was stated that the petitioner cannot be considered as a temporary cultivation allottee. The term 'Temporary Cultivation Lease-holder' is defined in Rule 2(1)(xvii) of the Rules of 1975. The allotment of surplus land to the adult member of the family is covered Under Section 13(5)(b). The petitioner's case is not similar to the case of a temporary lease-holder. No khatedari rights have been vested in the petitioner until the entire payment is made by him. The dues have been determined only recently by the State Government. The respondents, therefore, prayed that the writ petition may be dismissed.

5. I have stated the facts of the aforesaid writ petition and it is not necessary to state the facts of the other writ petitioners as the facts are identical giving rise to the identical considerations.

6. I have heard the learned Counsel for the petitioner and learned Government Advocate on behalf of respondents No. 1 and 2. On behalf of respondents No. 1 and 2. On behalf of the petitioners, the arguments have been mainly advanced by Mr. Mridul.

7. It may be stated that the notice (Annx. 2) has been issued in pursuance of the Government Order (Ex. R/1.) The crucial question in the case is whether the Government could have issued the order (Ex. R/1.) The order (Ex. R/1) purports to have been issued under Rule 24 of the Rules of 1975, whereby it has authorised

the Allotting Authorities to allot or regularise the allotment of the land on the terms and conditions mentioned in the order. The order (Ex. R/1) contains the term that the land allotted to the Bhakra landless persons, contrary to the Rules of 1975 may be given upto 25 Bighas on reserved price and beyond that upto the ceiling limit, the land may be allotted on four times of the reserved price. It is in pursuance of this order, the notice (Annx. 2) has been issued.

8. It is to be seen as to whether the Government is competent to issue the order (Ex. R/1) in respect of those Bhakra landless persons to whom lands have been allotted in excess of 25 Bighas prior to the 1967 Rules.

9. It may be stated that the petitioners were allotted lands as they were Bhakra landless persons to whom the land could not be allotted in the Bhakra Project Area. In the allotment orders as well in the agreement executed by the petitioners, the main conditions, which were laid down, were that the allottee shall be bound by the Rules, which may be framed by the State Government under the Rajasthan Colonization Act, 1954 from time to time and that the allottee shall pay the price of the land as may be fixed by the State Government. In the agreement, it was also stipulated that the allottee will abide by the terms as may be determined by the Government in respect of the land allotted to them. The other conditions were that, the allottee shall not sub-let the land contrary to the Rules nor he will transfer the land in any way before making payment of the entire price. It was nowhere provided or stipulated in the allotment order or agreement that the allotment is only temporary or provisional. After allotment of the land, 1967 Rules came into force with effect from July 18, 1967. Rule 8(1) of the Rules provided as under:

8. Terms of Allotment-(1)(a) Subject to the provisions contained in the Act, these rules and the terms and conditions specified in the Rajasthan Colonisation (General) Colony Conditions, 1955, allotments of Government lands under these rules shall be on a permanent basis, the allottees being eligible ultimately to the conferment of khatedari rights subject, however, to special terms conditions, which might here after be imposed by the Government

(b) All allotments of Government land made in the Rajasthan Canal project Area before the commencement of these rules on a permanent basis irrespective of the

area allotted to each allottee, shall be deemed to have been made under these rules and the allottee shall be liable to the payment of price of such land at the rates provided for in Rule 23.

10. It would appear from Clause (b) that the allotments made before the commencement of these rules, shall be deemed to have been made under these rules on a permanent basis irrespective of the area allotted to each allottee. The only obligation of the allottee of the land is that he shall be liable to make payment of price at the rates as provided in Rule 23. The petitioners' cases are covered under Sub-clause (b) and the allotment made on permanent basis irrespective of the area, shall be deemed to have been made under the 1967 Rules and their obligation is that they are liable to pay price at the rates specified in Rule 23. The extent of allotment is provided under Rule 19 of 1967 Rules. Rule 19 lays down that Government lands in the Rajasthan Canal Project Area shall be allotted to the Bhakra landless tenants upto 15 Bighas in each case and according to Rule 20, the area mentioned in Rule 19, is of command land. Where the area held or to be allotted is uncommand 2 Bighas thereof shall be reckoned equivalent to 1 Bigha of the command land. Rule 8(b) is a deeming provision. As already stated earlier that the allotments on permanent basis irrespective of the area allotted, shall be deemed to have been made under the Rules and the rule relating to extent of allotment would not determine their case. Certain rules of 1967 Rules, came up under challenge before this Court and this Court in *State of Rajasthan v. Ramdhan* AIR 1971 Raj. 71 struck down the latter part of Rule 16 and 19(a)(iii) read with Rule 7(x) and (xi). Those rules were struck down only on the ground that both Bhakra Canal Rules and the Rajasthan Canal Rules had been framed under the Rajasthan Colonization Act, 1954 but they have treated unit of family differently and cannot be, therefore, justified. By the same reasoning, no distinction can be made between Pre-1955 and Post-1955 tenants by rules made under the same Act.

11. 1967 Rules were repealed by Rule 19 of the Rajasthan Colonization (Allotment of Government Land to Post-1955 Temporary Cultivation Leaseholders and other landless persons in the Rajasthan Canal Project Area) Rules 1971. Sub-rule (2) of Rule 19 saves the actions taken and things done under 1967 Rules and it was

provided that notwithstanding the repeal of 1967 Rules, anything done or any action taken under the 1967 Rules shall be deemed to have been done or taken under those Rules. Sub-rule (3) of Rule 19 further provided as under:

(3) All allotments of Government land in Rajasthan Canal Project Area to which these rules extend made before the commencement of these rules on a permanent basis shall irrespective of the area allotted to each allottee, be deemed to have been made under these rules and the allottee shall be liable to pay the price of such land at the rates and in the manner prescribed in the rules repealed under Sub-rule (1).

12. It would appear from Sub-rule (3) that the allotments made before commencement of the 1971 Rules on a permanent basis irrespective of the area allotted to each allottee shall be deemed to have been made under the 1971 Rules and the only obligation of the allottee is that he shall pay the price of land at the rates and in the manner prescribed in the 1967 Rules. Rule 3 of the 1971 Rules, provided the extent of allotment upto 25 Bighas to those who are eligible for Government land and Bhakra landless persons; is one of the eligible category of persons. It was provided that the eligible person, if holds or is a sub-tenant of any land anywhere will be allotted only so much Government land as together with his existing holding does not exceed 25 Bighas. It was also provided that such land shall be allotted to them only if such land is available adjacent to his existing holding or in the same village.

13. In *Jailasingh's v. State of Rajasthan* : AIR 1975 SC1436 , Condition No. 3 of the Rajasthan Colonization (Rajasthan Canal Project Pre-1955 Temporary Tenants Government Land Allotment) Conditions, 1971 (for short the 'Conditions') and the definition of the landless person as contained in Rule 2(1)(xiii) as well as Rule 3(2) of 1971 Rules were declared void being discriminatory under Article 14 of the Constitution, so they were struck down and it was observed that it is open to the State to frame new rules applying to both Pre-1955 and Post-1955 tenants without any discrimination between them. It may be stated that *Jailsingh's* case (supra) related to the temporary leases granted to the various persons whether before 1955 or after 1955 as it was observed by the Supreme Court that none of

the tenants, whether they are Pre-1955 or post 1955 tenants have any vested rights. Thus, Jailasingh's case does not take into account, the allottees of the lands, who were allotted land prior to 1967 on permanent basis in excess of extent of allotment provided in the 1967 or the 1971 Rules.

14. After Jailasingh's case (supra) with effect from 8-8-1975, the 1975 Rules came into force. By Rule 3(1) Pre-1955 Conditions and the 1971 Rules were repealed. However, Sub-rule (2) of Rule 3 provided as under:

(2) Notwithstanding any such repeal under Sub-rule (1), anything done or any action taken or deemed to have been done or taken under the said repealed Conditions and the said Rules shall, if they are not inconsistent with these rules, be deemed to have been done or taken under these rules.

15. Under Sub-rule (2) of Rule 3, anything done or action taken or deemed to have been done or taken under the repealed Conditions and the 1971 Rules shall be deemed to have been done or taken under the 1975 Rules, provided that they are not inconsistent with the 1975 Rules i.e., to the extent of consistency anything done or any action or deemed to have been done or taken under the repealed Conditions or the 1971 Rules shall be considered to have been done or taken under the 1975 Rules and not otherwise. Rule 5 of the 1975 Rules provided for eligibility and extent of allotment. Five categories of persons are eligible for allotment, which includes the Bhakra landless persons and extent of allotment fixed is 25 Bighas and if any person holds any land anywhere in India, he will be allotted only so much Government land, so that, the total land may not exceed 25 Bighas. Rule 24 of the 1975 Rules, reads as under:

24. Allotment of Government land in Special cases Notwithstanding anything contained in these Rules the Government may make allotment to any person as a special case

Provided that Government may delegate the powers of allotment in any case or a class of cases under this rule to the Colonization Commissioner or the Collector or to any other prescribed authority, subject to such terms and conditions as may be prescribed in this behalf.

16. It is in exercise of the powers conferred under Rule 24, the Government has issued the order (Ex. R/1). Admittedly there is no provision in the 1975 Rules providing anything in respect of allotment of land to the Bhakra landless persons in the Rajasthan Canal Colony Areas made prior to the 1967 Rules. The land, which was allotted to such persons prior to the 1967 Rules, was in excess of extent of allotment provided in the 1967 Rules, the 1971 Rules and the 1975 Rules. The allotment was also made to them on permanent basis, as neither in the allotment order nor in the agreement, it was stated that the allotment is provisional or temporary, and 1967 and 1971 rules also considered the allotment on permanent basis. The allotment, no doubt, was subject to certain conditions. Those allotments were saved in the 1967 Rules and the 1971 Rules under Rule 8(b) and Rule 19(3) respectively. They were only required to pay the price according to the 1967 Rules and it is not disputed that they have paid such price.

17. The question arises whether such allottees can be called upon to make payment of the price as ordered by the Government under the order (Ex. R/1) purporting to have exercised its power under Rule 24. Rule 24 no doubt confers a special power on the Government to make allotment to any person as a special case. The restriction regarding eligibility provided in Rule 5, would not come in the way of Government. In Rule 5, five categories of the persons viz. (1) Ex-servicemen (2) Temporary Cultivation Lease-holders, (3) Agriculture Graduates, (4) Landless persons, and (5) Bhakra landless persons, are only eligible for allotment of the land. What Rule 24 empowers is that the Government may make allotment of land to any person as a special case not with standing anything contained in the 1975 Rules and this power can be delegated by the Government to the Colonization Commissioner or the Collector or to any other prescribed authority subject to the prescribed terms and conditions in this behalf under the proviso to Rule 24. The authorities to whom the power may be delegated are required to exercise the power subject to the terms and conditions prescribed by the Government for allotment of the land in any case or class of cases. In my opinion, Rule 24 of the 1975 Rules does not empower the State Government to issue an order in respect of the allottees of the lands who were allotted lands prior to 1967. Rule 24 would not be attracted when the allotments have already been made prior to 1967. It may be stated that after payment of price according to 1967

Rules, nothing remains to be done by the allottees and a right in the land had vested in them on payment of price. When a right is vested' in them, there are no powers conferred on the State Government under the 1975 Rules, whereby such allottees can be called upon to make payment of the reserved price upto 25 Bighas and payment of four times of the reserved price in respect of excess land upto the ceiling limit. The rights, which have been acquired by the petitioners, they can not be divested of those rights in the manner in which, it is sought to be done by the State Government by issuance of the order (Ex. R/1). In my opinion, the order Ex. R/1) and the consequence notice (Annx. 2), both are liable to be struck down. The petitioners have been in possession for the last 18 to 23 years. The price can only be fixed once and the price can not be revised or increased by the State Government at its will from time to time in respect of the Pre-1967 allottees, so, it was incompetent for the State Government to increase the price of the land after it was once fixed.

18. India is a socialist Republic. Article 39 in Part IV of the Constitution relating to directive principles of the policy, inter alia, provides that the State shall in particular, direct its policy towards securing:

(a) that the citizen, men and women equally have right to an adequate means and livelihood;

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;

(c) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment. Mr. Calla learned Government Advocate submitted that in Jaila Singh's case (supra) it was left open to the State to frame now rules applying to both Pre-1955 and Post 1955 tenants without any discrimination between them. The 1975 Rules, thus, were framed keeping in view the observations of the Supreme Court. The Bhakra landless persons, who were allotted the land prior to the 1975 Rules, were allotted 50 Bighas of land and such tenants were under an obligation to abide by the Rules, which may be framed by the Government from time to time. As these tenants are in possession of more land as compared to those allottees of lands under the 1967

Rules and under the Rules enforced thereafter, so, instead of depriving them of their excess land, they have simply been called upon to make payment of more price for 25 Bighas and for land in excess of 25 Bighas upto the ceiling limit. This has been done by the Government only with a view that the Pre 1967 allottees may continue to hold the land on payment of price as prescribed by the Government in the order (Ex. R/1). It may be stated that in order to avoid discrimination equal or equitable distribution of the land is required to be made in conformity what has been laid down in Ramdhan's case (supra) and Jailasingh's case (supra). But it appears that in case of the Pre-1967 allottees, their lands could not be reduced and a power of charging high price could not be exercised. The goal of equal distribution of the land, thus, could not be achieved and it does not appear to be permissible under 1975 Rules that the Pre 1967, allottees may be called upon to pay the price as contemplated in the order (Ex. R/1). Neither the allotment nor the agreement provides that there can be a revision of price by the State Govt. from time to time and the allottees would be under the obligation to make payment of such revised price. The applicability of the Rules, as may be enforced from time to time cannot be taken to mean that the price is subject to revision by the Rules. It is true that the Pre-1967 allottees are in an advantageous position as compared to the allottees under the 1967 Rules and under the Rules framed thereafter. But the-Pre-1967 allottees cannot be brought at par in view of the rights vested in them under the allotment order or agreement and under the 1967 and 1971 Rules. It is true that under the 1975 Rules actions taken & things done or deemed to have been done in the earlier rules, have not been saved, if they are inconsistent with the 1975 Rules. But such a provision, in my opinion, does not affect the allotment made prior to the 1967 Rule as the 1975 Rules do not make any provision as to how the Pre 1967 allottees would be dealt with.

19. Thus, in the light what I have considered above, the notices issued under the Order (Ex. R/1) and Ex. R/2 are liable to be quashed and any action taken thereunder is also liable to be quashed and the writ petitions deserve to be allowed.

20. Accordingly, the writ petition are allowed, the order (Ex. R/1) dated 18/20-4-1980 and notices issued and action taken consequent to that order are quashed.

In the circumstances, the parties shall bear their own costs.

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