

State of Rajasthan and anr. Vs. Mst. Tikko Bai and anr.

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Court : Rajasthan

Decided On : Jan-06-1997

Reported in : 1997(2)WLC1; 1997(1)WLN11

Judge : B.R. Arora and; A.K. Singh, JJ.

Appeal No. : D.B. Civil Special Appeal (Writ) No. 934 of 1995

Appellant : State of Rajasthan and anr.

Respondent : Mst. Tikko Bai and anr.

Disposition : Appeal dismissed

Judgement :

B.R. Arora, J.

1. This appeal is directed against the judgment dated 17.2.95 passed by the learned Single Judge, by which the learned Single Judge allowed the writ petition filed by the petitioner and quashed and set-aside the order passed by the Divisional Commissioner exercising the powers of the Central Government under Section 33 of the Displaced Persons compensation & Rehabilitation Act, 1954 and directed the respondents in the writ petition (the present appellants) to restore the allotment of the land in favour of the petitioner within a period of three months and if any other person has been allotted the aforesaid land then the said allotment

shall be treated as cancelled and its possession shall be restored to the petitioner after ejectment of the occupant who is in possession of the said land.

2. Shri Ped Singh-a claimant-was allotted 12 Bighas 10 Biswas of the agricultural land situated in Square No. 41 of Chak 14-S of tehsil Sri Ganganagar as a rehabilitation Grant payable to a displaced person having a verified claim. Ped Singh died leaving behind him his son Kala Singh and three daughters, namely, Bhiranwa Bai, Santo and Kishani Bai. Petitioner Smt. Tikko Bai is the widow of late (Shri) Kala Singh the son of deceased Ped Singh.

3. The land measuring 12 Bighas 10 Biswas, which was allotted to Ped Singh, after his death, was recorded in the name of Kala Singh and his three sisters being the legal representatives of deceased Ped Singh. Kala Singh, also, died. He had one son. The condition of the son of Kala Singh became precarious and, therefore, Smt. Tikko Bai took her son for medical treatment and left the village. While leaving the village for the treatment of Her son, She and asked Dalip Singh to take care of her land. When she returned back and requested Dalip Singh to vacate the land and hand-over the possession to her, Dalip Singh refused to do so.

4. On 20.1.82 Smt. Tikko Bai moved an application before the District Rehabilitation Officer, Sri Ganganagar for the eviction of Dalip Singh from the land in question and to restore the possession of the land to her. The Rehabilitation Officer,' by his order dated 10.11.83 found Dalip Singh in the illegal possession over the land in question and ordered for resumption of the land in favour of the Central Government under Section 19(2)(b) of the Act read with Rule 102 of the Rules.

5. Dissatisfied with the order dated 10.11.83 passed by the District Rehabilitation Officer, Sri Ganganagar, the appellant preferred an appeal before the Collector cum Authorised Chief Settlement Commissioner. The appeal filed by the appellant was dismissed. She, therefore, preferred a revision petition under Section 23 of the Act before the Collector cum Authorised Chief Settlement Commissioner, Sri Ganganagar. The revision petition filed by Smt. Tikko Bai was allowed by the Collector cum Authorised Chief Settlement Commissioner vide order dated 21.8.85 and the case was remanded to the Rehabilitation Officer for further

enquiry in the matter.

6. The Rehabilitation Officer, again, by his order dated 6.9.86 held that Dalip Singh is a trespasser over the land in question and he, therefore, ordered for resumption of the land in favour of the Government under Section 19 of the Act read with Rule 102 of the Rules. Smt. Tikko Bai preferred a revision petition before the Collector cum Authorised Chief Settlement Commissioner, Sri Ganganagar under Section 24 of the Act, which was dismissed by the Collector cum Authorised Chief Settlement Commissioner, Sri Ganganagar vide order dated 14.8.88.

7. Aggrieved with the order dated 14.8.88 passed by the District Collector cum Authorised Chief Settlement Commissioner, the petitioner preferred a revision petition under Section 33 of the Act before the Divisional Commissioner, Bikaner - the delegated authority of the Central Government under Section 33 of the Act. The revision petition filed by the petitioner was dismissed by the Divisional Commissioner, Bikaner vide order dated 1.9.93 by holding that the petitioner has parted with the possession over the land in contravention of the provisions of Rule 102 of the Rules and, therefore, her land was rightly ordered to be resumed in favour of the Central Government. Smt. Tikko Bai thereafter filed a writ petition before this Court, which was allowed by the learned Single Judge. The State Government and its functionaries have filed the present appeal challenging the judgment dated 17.2.95 passed by the learned Single Judge.

8. It is contended by the learned Counsel for the appellants that the Union of India was a necessary party to the proceedings and without impleading the Union of India as a party, the writ petition was not maintainable and no order could have been passed in favour of petitioner respondent Smt. Tikko Bai. He has, also, submitted that the petitioner respondent parted with the possession without taking any permission of the Government as is required under Rule 102 of the Rules and, therefore, the allotment of the land was rightly cancelled and the provisions of the Rajasthan Tenancy Act are not applicable in the present case because the land in question was an evacuee property.

9. Learned Counsel for the respondent-petitioner, on the other hand, has supported the judgment passed by the learned Single Judge and submitted that

after the grant of 'sanad' in favour of Ped Singh, the land came out of the 'compensation pool' and the authorities under the Act or the Rules had no jurisdiction to pass any order for the cancellation of the allotment of the land the order passed by the learned Single Judge, therefore, does not require any interference.

10. We have considered the submissions made by the learned Counsel for the parties.

11. Before dealing with the question on merit we will like to decide the preliminary objection raised by the learned Counsel for the appellants regarding maintainability of the writ petition on the ground of non-joinder of the Union, of India as a party-respondent in the writ petition, which was a necessary party to the petition. This objection was not taken by the appellants before the learned Single Judge. Neither any reply to the writ petition was filed nor this point was agitated before the learned Single Judge at the time of arguments. Even in the Memo of Appeal, this point has not been taken by the appellants and, therefore, for the first time, at the time of arguments, the appellants cannot be permitted to raise this ground. The contention raised by the learned Counsel for the appellants is, therefore, bereft of any substance.

12. There is no dispute so far as the factual aspects of the case are concerned. The land was allotted to Ped Singh and was entered in the Revenue Record in his name. After his death, the land was recorded in the names of Kala Singh and his three sisters. It is, also, not in dispute that Smt. Tikko Bai left the village for the treatment of her son and while leaving the village she left the land in the supervision of Dalip Singh. When an application was moved by her before the Rehabilitation Officer for eviction of Dalip Singh from the land in question, Dalip Singh claimed himself to be the adopted son of Ped Singh, which was disbelieved by the Rehabilitation Officer and a finding was recorded that Dalip Singh is not the adopted son of Ped Singh and he was treated as a 'rank trespasser'. Dalip Singh did not file any appeal against that order and as such so far as the findings that (i) Dalip Singh is not the adopted son of Ped Singh; and (ii) he is a 'rank trespasser' having no rights in the land of Ped Singh, are concerned, they stand confirmed.

13. Now, the question which requires consideration in the present appeal is: whether the Rehabilitation Officer had a power to order for the resumption of the land in favour of the Central Government and whether in exercise of his powers he was justified in ordering for the resumption?

14. Section 19 of the Act authorises the Managing Officer or the Managing Corporation to vary or cancel a lease or allotment of any property acquired under the Act which is wholly or partly occupied by a person. Rule 102 of the Rules deals with the cancellation of the allotment and a lease and authorises the Managing Officer or Managing Corporation in respect of the property of the compensation pool entrusted to him if the allottee of the lease has sub-let or parted-with the possession of the whole or any part of the property allotted or leased to him/her without the permission of a competent authority. The powers under Section 19 of the Act and Rule 102 of the Rules can be exercised by the Managing Officer or the Managing Corporation only in respect of the property which is in the 'compensation pool' and not with respect to the property which has gone out of the compensation pool. Once the property has gone out of the compensation pool by way of allotment, sale or otherwise, the authorities under the Act loses its jurisdiction or control over the land in question.

15. Ped Singh was allotted the land as a rehabilitation grant payable to a displaced person having a verified claim. The land was record in the name of Ped Singh and a 'sanad' was granted in his favour with respect to this land under Rule 68 of the Rules. After his death, the land was recorded in the names of Kala Singh and his three sisters being the son and daughters of deceased Ped Singh.

16. Section 2(a) of the Act defines the term 'compensation pool', which means the compensation pool constituted under Section 14 of the Act. Section 14 of the Act states that the 'compensation pool' shall consist of: (a) all evacuee property acquired under Section 12, including the sale proceeds of any such property and all profits and income accruing from such property; (b) such cash balances lying with the custodian as may, by order of the Central Government, be transferred to the compensation pool; (c) such contributions, in any form whatsoever, as may be made to the compensation pool by the Central Government or any State

Government; and (d) such other assets as may be prescribed.

17. The powers to vary or cancel the allotment vests in the officers under Section 19 of the Act or Rule 102 of the Rules and are subject to the limitations, the extent of which are provided under the Act and the Rules. Clause (a) of the 'sanad' authorises the Central Government to resume the whole or any part of the evacuee property if the Central Government is satisfied, at any point of time by recording the reasons that the transferee or his predecessor-in-interest had obtained this grant or allotment of the said property or obtained any compensation in any form whatsoever under the Act by fraud or misrepresentation. So, as per the conditions and terms of the 'sanad' or under the Rules, the cancellation can be made only if the allotment has been obtained by the claimant by way of fraud or misrepresentation.

18. It is not the case of the appellants that the allotment was made in favour of Ped Singh on account of any fraud or misrepresentation by him. The cancellation of the allotment was made only on the ground that Smt. Tikko Bai handed-over the possession over the land without any permission to Dalip Singh. Rule 102 of the Rules is applicable in relation to the land which is in the 'compensation pool' and not with respect to the land which has gone out of the compensation pool. The grant of 'sanad' in favour of Ped Singh, handing-over the possession to him and recording of the land in his name, clearly shows that the claimant became the owner of that land on the date when the 'sanad' was granted in his favour.

19. Once a displaced person, to whom the agricultural land was allotted as a 'Rehabilitation Grant' against his verified claim and is granted a 'sanad', he became the owner of that land on the day the 'sanad' was issued unless there are conditions in the 'sanad' or allotment, which may postpone the transfer of the allotment. With the grant of 'sanad' the property ceases to be the property under the compensation pool. When the property is ceased to be the property of the compensation pool, the authorities under the Act had no power to cancel the allotment on the ground that Smt. Tikko Bai gave the land for cultivation to Dalip Singh. Dalip Singh is not the adopted son of Ped Singh. Smt. Tikko Bai, while leaving the village for the treatment of her son, authorised Dalip Singh to look after

the land, who later on refused to hand-over the possession of the land to her. Section 46 of the Rajasthan Tenancy Act permits a widow to let-out or sub-let the land for cultivation and exempts the widow, unmarried woman or a divorced woman from the restrictions imposed by Section 45 of the Act.

20. Then: is another aspect of the matter, also. No proceedings were initiated by the Managing Officer cum Rehabilitation Officer under Section 19 of the Act read with Rule 102 of the Rules for the cancellation of the allotment or for resumption of the land. The proceedings were initiated by Smt. Tikko Bai against Dalip Singh for his eviction from the land in question. In those proceedings, no action for cancellation or resumption of the land could have been taken by the Managing Officer cum Rehabilitation Officer under Section 19 of the Act or under Rule 102 of the Rules. A procedure has been provided under Section 19 of the Act authorising the Managing Officer to take action against the allottee with respect to the land within the compensation pool. No such action was taken in this case.

21. Thus, when the Managing Officer/Rehabilitation Officer treated Dalip Singh as a 'rank trespasser' then he should have passed an order for restoration of the possession over the land to smt. Tikko Bai instead of resumption of the land. The order of resumption could not have been passed without cancellation of the allotment made in favour of Ped Singh but this was not done. the authorities under the Act and the Rules were, therefore, not justified in ordering for resumption of the land.

22. In this view of the matter, the order passed by the learned Single Judge quashing and setting-aside the order passed by the Authority under the Act, was, therefore, rightly passed. The judgment passed by the learned Single Judge, therefore, does not require any interference.

23. In the result, the appeal filed by the appellants has got no merit and the same is hereby dismissed. The appellants are directed to immediately restore the possession over the land in question to petitioner-respondent Smt. Tikko Bai if not already restored.

