

inder Singh Vs. State and ors.

inder Singh Vs. State and ors.

SooperKanoon Citation : [sooperkanoon.com/765858](http://sooperkanoon.com/765858)

Court : Rajasthan

Decided On : Jul-09-2009

Reported in : 2009(3)WLN404

Judge : N.P. Gupta and; Govind Mathur, JJ.

Appellant : inder Singh

Respondent : State and ors.

Disposition : Appeal allowed/Petition allowed

Judgement :

**N.P. Gupta, J.**

1. The appellant by this appeal seeks to challenge the order of the learned Single Judge dt. 09.12.1996 dismissing the appellant's writ petition.

2. Necessary facts are that the petitioner was allotted land in question total measuring 23 bighas and 4 biswas in Chak No. 26 P.T.D. in Sq. Nos. 305/355 and 304/356 in the year 1976. However, on a complaint made about the allottee being not bonafide agriculturist, and being employee of the R.S.E.B. This allotment was cancelled vide order dt. 24.10.1980 by the Dy. Commissioner (Colonisation). This order has been produced in the writ petition as Annexure-1. Appeal against that order filed before the Additional Colonisation Commissioner, and revision before

the Board of Revenue also were dismissed vide orders 18.07.1981 and 26.03.1984 respectively.

3. The ground given by the Dy. Commissioner (Colonisation) was that the certificate issued by the Assistant Engineer, R.S.E.B. dt. 05.09.1980 shows that the appellant was employed on the post of Helper-II since 14.03.1964 which fact was admitted by the appellant in his statement dt. 25.09.1980, and had resigned from job 21/2 years ago, on account of having been allotted the land, and thus he has concealed his profession to be Government servant, and wrongly projected himself to be agriculturist. It was found that had this fact been disclosed, he would not have been allotted land. It was also found that he has not disclosed to be holding any land in the name of his family members, or qua himself, while on verification from Tehsildar it was found that his father was holding 7 bigha 10 biswa of Barani land and 10 bighas Nahari land having been purchased, and another 4 bigha 18 biswas of land was also there with his father in Chak No. 16 PS Murabba No. 8. Thus, allotment having been obtained by concealment of these facts was cancelled.

4. Before the appellate authority it was argued that the employment was on Work Charge basis, and was of temporary nature; regarding the lands it was contended that his notional share would have been very meagre. However, it was found by the learned appellate authority that even work charge employee has to spent full time on job leaving no time available for cultivation, and thus it cannot be said that primary source of income was agriculture. Thus, interference in the order of the original authority was declined. It may be noticed here that the appellate authority did not dilate upon the aspect of any land having been held by the appellant, and that fact having been concealed.

5. Then, the learned Board of Revenue found that the appellant was having land in his father's name as found by the Dy. Commissioner (Colonisation), and this fact was required to be shown in the application for allotment, and that he has tried to conceal the possessing of this land by his father, and factum of his being in employment was also found, and thus the revision petition was dismissed.

6. Learned Single Judge distinguished the proposition relied upon by the counsel for the appellant laid down by the Hon'ble Supreme Court in Brij Lal v. Board of Revenue reported in : AIR 1994 SC 1128 and has dismissed the writ petition, by considering that initial order was passed on 24.10.1980, and the process of law being slow it took 16 years for this Court to ultimately decide the matter, and since the petitioner remained in possession only under the interim orders of the Court, Brij Lal's case does not apply. With these findings the writ petition was dismissed.

7. Arguing the appeal it was submitted by the learned Counsel for the appellant that the definition of landless person had undergone a change since 27.12.1982, making a provision that an employee other than a casual or work charged employee of government, or industrial establishment or concern shall not be deemed to be landless person. According to the learned Counsel apart from the fact that this was not a provision in 1976, and even this definition as introduced in the year 1982 excluded work charged employee from disability, or exclusion clause, of landless person. Meaning thereby that even after amendment person working as casual, or work charged employee could still be deemed to be landless person, if he otherwise fulfills the requirement. With this it was submitted that even the certificate issued by the Assistant Engineer, which was produced on record, does clearly show, that the appellant was employed as Helper II Work Charged basis, and the appointment was of purely temporary nature. In that view of the matter, his allegedly being in employment cannot be said to be any disability in allotment of land. Reliance was also placed on a Division Bench judgment of this Court in Sona Ram v. State of Rajasthan reported in 1997 RRD-9.

8. Regarding holding of the land it was submitted that of course it was not mentioned in the application that any land was held by his father, but then the land was only in the temporary cultivation lease which is from year to year, which may, or may not be renewed. In that view of the matter, it was not necessary to mention it, and so far as the ancestral land is concerned, the appellant's notional share could be only something around 1 bigha, and therefore, omission to mention that does not militate against eligibility of the appellant to get the land allotted.

9. Learned Counsel for the State, on the other hand, supported the impugned judgment.
10. We have heard learned Counsel for the parties, and have considered the material on record.
11. We may observe that the matter had come up for hearing earlier on 05.08.2008 on which date the record of allotting authority for the allotment of land in question and of the original authority regarding cancellation of the allotment proceedings was requisitioned, which has been received, and we have perused the same.
12. According to Rule 11 of the Rajasthan Colonisation (Allotment and Sale of the Government Land in the Indira Gandhi Canal Colony Area) Rules, 1975, on receipt of an application the Allotting Authority shall immediately register it in a register, and is to scrutinise the application and the affidavit annexed thereto and shall verify the particulars mentioned therein with reference to the relevant entries in the land record, and shall conduct or get conducted such enquiry as he may consider necessary for finding the true state of facts mentioned in the application.
13. In the present case, from perusal of the file of allotment we find, that the application was filed on 02.04.1974, while an order of allotment was made on 14.01.1976 holding the appellant to be a bonafide agricultarist, eligible to get allotment, and then the file was put up before the allotment committee, who vide order dt. 20.05.1976 made allotment. In the file we also find that on the application enquiry report was submitted by Tehsildar, reporting the details of the land, by pointing out that his father held 7 bighas 10 biswas Nahari land, 10 bighas Barani land, and mentioning that this 10 bighas of Barani land was purchased by the appellant's father Kehar Singh, and also mentions that on partition the notional share of the appellant would be 4 1/4 bighas Nahari and 2 1/2 bighas of Barani land. Not only this in this enquiry the statement of the appellant were recorded on 14.01.1976, wherein also he had given the detailed description of the land held by his father. In this background, a look at the order dt. 14.01.1976 does clearly show, that it was found therein, that the notional share of the land is 4 bigha 8 biswas, and therefore, he is eligible to be allotted 20 bighas 12 biswas of land, and

the allotment committee accordingly allotted 14 bigha and 9 biswas of command land, and 8 bighas 15 biswas of uncommand vide order dt. 20.05.1976. Thus, the big bogie projected about concealment of land by the appellant does not come in the way of the appellant, as allotting authority did take into account the land held by the appellant, and thereafter the land has been allotted, to the extent to which he was found entitled, after accounting for that land.

14. So far as his being in employment is concerned, learned Counsel for the appellant is right, that such work charged, or casual temporary employment does not incur any disqualification, nor does it militate against the fact that the appellant was bonafide agriculturist. In that view of the matter, we find that the order passed by the authorities below, and the learned Single Judge, stand vitiated on account of not looking into the record of the allotment proceeding, and therefore, we are constrained to set them aside.

15. Accordingly, the appeal is allowed. The impugned order of the learned Single Judge is set aside. The writ petition is also allowed, and the orders challenged in the writ petition being that of Dy. Commissioner (Colonisation) dt. 24.10.1980, Additional Commissioner (Colonisation) dt. 18.07.1981, and the Board of Revenue dt. 26.03.1984 are all quashed, and the allotment made vide order dt. 20.05.1976 is restored. Parties to bear their own costs.