

Valing and anr. Vs. Bor and ors.

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Court : Rajasthan

Decided On : Jun-28-1999

Reported in : 2000(2)WLC229; 1999(1)WLN657

Judge : B.J. Shethna, J.

Appeal No. : S.B. Civil Writ Petition No. 1735 of 1999

Appellant : Valing and anr.

Respondent : Bor and ors.

Disposition : Petition dismissed

Judgement :

B.J. Shethna, J.

1. The petitioners are sons of late Vaktaq have challenged in this petition the allotment order dated 6th Sept. 1994 (Annex.-7) passed by the Collector, Banswara allotting the land in question to the respondent No. 5 for the purpose of starting Upper Primary School.

2. The challenge to this allotment order was made before the Revenue Appellate Authority, but it was dismissed by an order dated 5.8.1989 (Annex.-8). It was further challenged before the Board of Revenue but the same was also dismissed on 16.4.1999 (Annexure/9). The allotment order as well as the orders passed by

the RAA and the Board of Revenue at Annexures/8 & 9 respectively have been challenged in this petition by the present petitioners.

3. The challenge is based on mainly two grounds. Mr. Shisodia Senior Advocate for the petitioner vehemently submitted that the petitioners have developed cultivated land in question since years together, therefore they were entitled for regularisation of the land. He submitted that instead of regularising the land, the same was wrongly allotted to the respondent No. 5 for constructing school. He further submitted that before passing the order of allotment the petitioners were never heard. Hence, the impugned allotment order at Annexure/7 is bad in law.

4. As per the averments made in this petition itself it is clear that even their father (deceased) was not the owner of the land in question. His possession on the land was of a trespasser. It was not a 'Na-Kabil Kaste' land (not cultivable). Land in question is apertenent to the Arazi No. 224 & 225 of deceased Vaktaq who committed tresspass on the land and having illegal possession of it. It is the case of the petitioner that they being the sons of deceased Vataq they came in possession of the land and continue to develop the same.

5. In my opinion trespasser has no right much less legal right for regularsiation of his land on which he committed trespass. At this stage it may be stated that the petitioners were already dispossessed as per the memo dated 23.3.1994 issued by the Revenue Inspector. The case of the petitioners was that they were in fact in possession of the land but the Revenue Inspector has wrongly prepared such memo to the effect that they were dispossessed. Against the memo, a representation was made to the Collector but the same was not decided. The writ petition was filed before this Court which was disposed of on 23.11.1994 by this Court (Hon'ble Sh. P.K. Palli, J.) with a direction to the Collector to dispose of the representation within three months from the date of receipt of the order. Thus, it is clear that the petitioners were never in possession of the land in question since 1994.

6. The Collector, Banswara in exercise of powers under Rule 2 of the Rajasthan land Revenue (Allotment of Land for Government Building) Rules 1971 allotted 2 bighas and 10 biswas of the land from Arazi No. 220 along with the other land to

the respondent No. 5 by his order dated 6.9.1994 for starting school. Admittedly it was a government land on which the father of the petitioners committed trespass. Their possession was not regularised⁸¹ they were already dispossessed from the land in the year 1994. Under the circumstances the Collector. Banswara was fully justified in allotting the land to the respondent No. 5 for the purpose of starting school for the benefit of village children of Banswara District which is a tribal area.

7. In my opinion, before allotting land to the respondent No. 5 the petitioners were not required to be heard at all. There is no question of any violation of principles of natural justice in this case. The Court has to strike the balance between the individual and the public at large.

8. Under the circumstances I am of the opinion that Board of Revenue and Revenue Appellate Authority have rightly not interfered with the allotment order Annexure-7 passed by the Collector. This petition is moved under Article 226 of the Constitution of India but strictly speaking it is a petition under Article 227 of the Constitution of India, the scope of which is very narrow and limited. Even this Court would not exercise its extraordinary jurisdiction under Article 226 of the Constitution of India in such type of cases when no error much less error on law is committed by the Court or by the Collector in passing the allotment order of allotting Government land to the respondent No. 5 for noble purposes of starting school.

9. In view of the above discussions this petition fails and is summarily dismissed.