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Court : Rajasthan

Decided On : Mar-24-2008

Reported in : 2008(3)WLN505

Judge : Gopal Krishan Vyas, J.

Appeal No. : S.B. Civil Writ Petition No. 2335/2006

Appellant : Manak Lal

Respondent : State and ors.

Judgement :

Gopal Krishan Vyas, J.

1. By this petition, the petitioner is challenging the validity of the order dt. 19.02.1996 (Annex.4), whereby, the Colonization Department of the State Government has passed an order for allotment of land in exchange in favour of respondent Sunderlal.

2. Brief facts of the case are that initially on 12.02.1976 petitioner was allotted 25 bighas of land as landless person under the Rajasthan Colonization (Allotment and Sale of Land in Indira Gandhi Colony Area) Rules of 1975. However, for the said allotment, petitioner could not deposit the due instalments in time, therefore, the allotment was cancelled on 10.02.1982. Against the cancellation order dt.

10.02.1982, petitioner preferred appeal before the Revenue Appellate Authority, Bikaner, who partly allowed the appeal vide order dt. 01.10.1994 and remitted the matter back to the allotment Authority to allot another piece of land to the petitioner. Thereafter, vide allotment letter dt. 29.07.2005 the petitioner was allotted 25 bighas of command land in pursuance of the judgment passed Revenue Appellate Authority on 01.10.1994.

3. Learned Counsel for the petitioner argued that vide allotment order dt. 29.07.2005, the petitioner was allotted 25 bighas of command land in Murabba No. 183/4 Chak 20 PKD, which was recorded as Government land (Araji Raj) in the revenue record. The said allotment of the petitioner was challenged by one Mst. Jainab Khatoon, who claimed herself to be allottee of the same land of Murabba No. 183/4 by way of appeal before the Revenue Appellate Authority, Bikaner, which is pending. According to the petitioner, an application was moved by respondent No. 6-Sunder Lal under Order 1 Rule 10 read with Section 151 CPC for impleading him as party respondent in the appeal. In the said application, respondent Sunder Lal claimed that land bearing Murabba No. 183/4 chak 12 KJD was allotted to him in exchange by the State Government vide order dt. 19.02.1996. Upon inquiry about the order dt. 19.02.1996, the petitioner came to know that the said land was allotted to respondent No. 6 by way of exchange.

4. According to the petitioner, respondent Sunder Lal got allotment in his favour by manipulation, so also District Collector, Bikaner has passed an order dt. 11.12.2001 to the effect that the Accountant General has raised certain objections which includes the land bearing Murabba No. 183/4 chak 12 KGD and other Murabbas (allotted in papers only) in the name of respondent Sunder Lal by showing the land as uncommand land.

5. It is further submitted that 75 bighas of uncommand land was allotted to respondent Sunder Lal bearing Murabba Nos. 88/5, 88/6 and 88/14 situated in chak 604-760 RD and the said land was having dense plantation by the Forest Department and monuments of the grave yard were existing, therefore, possession was not given to respondent Sunder Lal and it was ordered that Government Land which was not occupied by anyone be sanctioned for allotment.

According to the petitioner, the order dt. 11.12.2001 passed by the District Collector, Bikaner goes to show that respondent Sunderlal and his three brothers namely Sita Ram, Moti Lal and Gopi Kishan were allotted large chunk of land to the tune of 200 bighas in the name of four persons by showing the entire land as uncommand land, whereas, the land was command land, therefore, objections were raised by the Accountant General.

6. Learned Counsel for the petitioner while attacking upon the order Annex.4 dt. 19.02.1996 submits that the said allotment order is totally illegal and subject matter of inquiry after 2001, therefore, subsequent allotment made in favour of petitioner on 29.07.2005 in pursuance of the order passed by the Revenue Appellate Authority in appeal on 01.10.1994 is perfectly legal and valid order and it is prayed that petitioner may be treated legal allottee of the said land and the order Annex.4 dt. 19.02.1996 passed by the State Government may be set aside because it is de hors the provisions of Rules of 1975.

7. Learned Counsel for the petitioner vehemently argued that the order dt. 19.02.1996 is patently illegal order, therefore, it can be presumed that respondent No. 6 was allotted land illegally by manipulation. Further, it is submitted that vide order Annex.4 dt. 19.02.1996 exchange of land was permitted to respondent No. 6 and his brothers in place of land already allotted to them in Murabba No. 88/5, 88/6 and 88/14 amongst other lands because of the fact that there was dense plantation by the Forest Department and existence of monuments of the grave yard but the said reason for according sanction for exchange of land by the Govt. is totally falsified from Jamabandi (Annex.6) and Khasra Girdawari (Annex.7), which clearly go to show that land has been handed over to the allottee Sunder Lal and others and they are in cultivatory possession of the said land, but while showing that land as uncommand land, illegally Annex.4 dt. 19.02.1996 has been passed by the State Government on the basis of wrong facts placed by the respondent Sunder Lal before the State Government. Therefore, the order of allotment made in favour of respondent Sunderlal on 19.02.1996 is totally illegal and contrary to the facts and, thus, the said order deserves to be quashed and set aside.

8. Per contra, learned Counsel for the respondent vehemently argued that petitioner cannot challenge the order dt. 19.02.1996 (Annex.4) passed by the State Government in favour of respondent Sunder Lal, by which land was allotted in lieu of exchange of land already held by him. Further, it is submitted that the petitioner is challenging the order passed by the State Government (Annex.4) dt. 19.02.1996 but subsequently on the basis of order dt. 19.02.1996, allotment was made in favour of the respondent by S.D.O. Khajuwala on 30.08.1999, which has placed on record as Annex.R/6/1 and prayed that since the original allotment order is not under challenge, therefore, the writ petition deserves to be dismissed.

9. According to the learned Counsel for the respondent, when allotment was made in favour of respondent No. 6 in the year 1996, there was no allotment in favour of petitioner and for the first time so called allotment was made in favour of the petitioner vide Annex.2 dt. 29.07.2005 in pursuance of the judgment of Revenue Appellate Authority, Bikaner, whereby, the Revenue Appellate Authority passed an order to allot land to the petitioner but not the land which is already allotted to respondent No. 6 vide Annex.4 dt. 19.02.1996 by the State Government and further allotment made by allotting authority-Sub Divisional Magistrate, Khajuwala vide order dt. 30.08.1999 Annex.R/6/1. Therefore, the petitioner, who has come in picture of allotment only on 29.07.2005 cannot raise voice that the earlier allotment made in favour of respondent No. 6 was illegal because Revenue Appellate Authority, Bikaner has passed an order in favour of petitioner on 01.10.1994 to allot land in exchange any other land and not the land which is allotted to respondent. It is admitted position of the case that in compliance of order impugned dt. 19.02.1996, an allotment in Murabba No. 183/9 was made to the respondent No. 6 on 30.08.1999 whereas in compliance of judgment passed by Revenue Appellate Authority, Bikaner in favour of petitioner on 01.10.1994 allotment of the same land was made in favour of petitioner on 29.07.2005. Therefore, the petitioner being subsequent allottee of the land cannot ask for quashing the allotment made in favour of respondent No. 6. Further, it is submitted that original order of allotment issued by SDO, Khajuwala dt. 30.08.1999 (Annex.R/6/1) being not under challenge cannot be quashed. Further, the learned Counsel for the respondent argued that petitioner has concealed material facts from this Court that the answering respondent has filed a suit before the revenue

Court for declaration in which petitioner himself is party respondent. Further, it is submitted that one Mst. Jainab Khatoon has filed appeal against the allotment order made in favour of the petitioner before the Revenue Appellate Authority, Bikaner and that appeal is pending in which respondent No. 6 is also party respondent because he is original allottee of the land.

10. In rejoinder, while meeting with the points raised by the respondent, learned Counsel for the petitioner submitted that petitioner has challenged Annex.4 dt. 19.02.1996 passed by the State Government, which is the original order of allotment but while exercising power under Article 226 of the Constitution of India, this Court can quash the order dt. 30.08.1999 (Annex.R/6/1) because it is a consequential order. Hence objection raised by the respondent for not challenging order of allotment dt. 30.08.1999 (Annex.R/6/1) has no substance that original allotment order is not under challenge.

11. At this juncture, Counsel for the respondent No. 6 also submitted that if this Court comes to the conclusion that the land was rightly allotted to the respondent No. 6 Sunder Lal in pursuance of impugned order dt. 19.02.1996 by the SDO, Khajuwala on 30.08.1999 then subsequent order of allotment made in favour of the petitioner on 29.07.2005 (Annex.2), which is illegal, can also be quashed even if it is not under challenge to decide the controversy finally.

12. After hearing the Counsel for the parties and perusing the record of the case, it is obvious that initially on 19.02.1996 allotment was made by the State Government in favour of respondent No. 6 and his brothers in lieu of exchange of land. After about three years of that order on 30.08.1999, the SDO, Khajuwala issued allotment order of 75 bighas of land in favour of respondents, which is placed on record as Annex.R/6/1. The respondent Sunder Lal has specifically denied in reply that the land situated in Murabba No. 88/6, 88/14 and 88/5 measuring 75 bighas uncommand land is in his possession because it has already been cancelled. I am in full agreement with the submission made by the respondent No. 6 that the petitioner, who was not even allottee in the year 1996 and 1999 cannot raise voice that the earlier allotment of land made in favour of respondent No. 6 was wrong. Petitioner was allotted 25 bighas of land in Murabba

No. 183/4 on 29.07.2005 which was not available for allotment because respondent No. 6 was having existing right over the land as the said land was allotted to him on 30.08.1999.

13. In my opinion, petitioner is trying to get declaration of his title over the land which was allotted to him only on 29.07.2005 vide Annex.2 by way of this writ petition. It is required to be noted the land which is allotted to the petitioner by the SDO Khajuwala on 29.07.2005 is the same land which was earlier allotted to the respondent No. 6 vide Annex.R/6/1 dt. 30.08.1999, therefore, it can be said that there was no occasion for SDO, Khajuwala to allot the land of Murabba No. 183/4 to the petitioner when the said land was already allotted to respondent No. 6 on 30.08.1999. Therefore, allotment made in favour of petitioner vide Annex.2 dt. 29.07.2005 cannot be termed as valid allotment.

14. In view of the above discussion, in my considered opinion, this writ petition lacks merit and deserves to be dismissed and the same is accordingly dismissed to the extent of challenging order dt. 19.02.1996 (Annex.4) passed by the State Government so also the order of allotment dt. 30.08.1999 (Annex.R/6/1) issued by the SDO, Khajuwala in favour of respondent No. 6. However, petitioner is free to claim his allotment of land from the respondent department in pursuance of judgment dt. 01.10.1994 passed by the Revenue Appellate Authority, Bikaner in appeal No. 41/94 in his favour.