

Smt. Vimla Vs. Additional Collector and ors.

Smt. Vimla Vs. Additional Collector and ors.

SooperKanoon Citation : sooperkanoon.com/773068

Court : Rajasthan

Decided On : Feb-26-2002

Reported in : 2002(3)WLC680; 2002(4)WLN177

Judge : Bhagwati Prasad, J.

Appeal No. : S.B. Civil Writ Petition Nos. 173 and 174 of 2002

Appellant : Smt. Vimla

Respondent : Additional Collector and ors.

Disposition : Petition dismissed

Judgement :

Bhagwati Prasad, J.

1. In these present writ petitions the petitioners have raised the grievance against the order passed by the Additional Collector, Churu in revision dated 7.3.2001. By the order impugned the Additional Collector has quashed the grant made in favour of the petitioners. In both these cases since the points involved are same, both the cases are being decided by a common order.

2. The learned Additional Collector in his order has observed that the grant in favour of the petitioner was made by the Panchayat without charging any money for the land. These Pattas have been designed to be Pattas granted under the

provisions of the Rajasthan Panchayat And Landless Persons, Village Artisans And Small And Marginal Farmers Rules, 1975 (hereinafter referred to as 'the Rules of 1975').

3. In the grants made to the petitioner, on the Patta it has prominently been mentioned that these grants are made in the special category. The petitioners are not falling in any of the category for which the grant was mentioned.

4. On the deeds which have been sanctioned by the Panchayat, there is no scale mentioned for the map. Neither any length or breadth of the allotted land has been mentioned nor any area has been indicated in these grants. Only rectangular have been drawn on the Pattas with 3 x 2 cm dimension. The lands have been shown to be in the north side of house of Kheraj Ram. The Revisional Authority has found that the land covered by grant in favour of petitioners have been shown to be situated the north side of the land of Kheraj Ram.

5. On 1.11.1960 a Patta was granted to Kheraj Ram by the Gram Panchayat, Bhimasi. In the Patta which was granted to Kheraj Ram, on the northern side it was mentioned that there is a public courtyard situated. The Revisional Authority has concluded on the basis of this averment that the Patta in question has been granted on public courtyard and, therefore, it is bad. This has been observed by the Revisional Authority that the public courtyard in the village are for the use of public at large of the village and a courtyard is not available for allotment.

6. The Revisional Authority has further found that the allottees had hereditary residential place. The Allotting Authority by misusing its powers have made these allotments. The Education Extension Officer of Panchayat Samiti who has made the allotment has no authority under the law to make such allotment. Even otherwise such allotments are bad. Neither there is any area, length or breadth mentioned in the Pattas. It has also been mentioned that the husband of the petitioner i.e. Vimla Devi is an employee in the Police Department and thus allotment in favour of the wife of an Government employee without charging any fees by the Panchayat is again illegal.

7. This has also been noticed by the Panchayat that no records for allotment were prepared by the Gram Panchayat, Lalasar and, therefore, the Panchayat has refused to send any record in this relation. The Panchayat Samiti, Churu has also said that such records is not available with them. The allotments have been made by playing fraud. The finding of the Revisional Authority that even if the revision was not immediately filed, allotment could be the subject-matter of the suo motu revisional powers.

8. Neither the allottees were entitled to get the land allotted under the Rules of 1975 nor the land was available to be allotted because it was a public land belonging to the category of public courtyard. Further the proceedings were finalised by a officer i.e. Education Extension Officer of the Panchayat Samiti, who had no right to act under the Rules.

9. The learned Counsel for the petitioner while challenging the allotment has submitted that no enquiry was made by the Revisional Authority in the nature of taking evidence to determine whether the land allotted to the petitioner was a public courtyard this violates the principles of natural justice. Learned Counsel for the petitioner has placed reliance on the decision of *Devi v. State of Rajasthan* 1984 RLW 528 and has prayed for conducting the enquiry in this aspect the matter should be remanded.

10. Learned Counsel for the petitioner further asserted that the Patta was granted in the 1975. It is a age old possession and such possession should not be cancelled at the whim of the authorities as has been held by this Court in *Mastana Ram and 12 Ors. v. State of Rajasthan and Ors.* reported in 1981 WLN (UC) 223. Learned Counsel for the petitioner has further urged that such allotments which are age old have been saved by the Hon'ble Supreme Court and has placed reliance on *Brij Lal v. Board of Revenue* : AIR 1994 SC1128 . He has also relied on another Supreme Court decision in the case of *Tej Singh v. State of Rajasthan and Ors.* reported in 1995 RRD 68 and has canvassed that these illegalities have been ignored by the Hon'ble Supreme Court and the allotments have been saved.

11. The learned Counsel for the petitioner has further urged that when the Patta was allotted to the petitioner, his possession become adverse and that being the

position no proceeding could be initiated in this relation to disturb the adverse possession of the petitioner and has placed reliance on Achal Reddi v. Ramakrishna Reddiar and Ors. AIR 1990 SC 553.

12. The learned Counsel for the petitioner has further urged that against the issuance of Patta no revision could be maintainable and a civil suit was the only remedy. The case has been adjudicated without permitting the petitioner to cross-examine the persons who have filed affidavit. The learned Counsel has further asserted that no revision could be filed in view of the law laid down by this Court in Mastana Ram (supra).

13. I have considered the submission of the learned Counsel for the petitioner and have given my thoughtful consideration.

14. It is admitted position that the petitioner does not fall within the category of SC/ST, Village Artisans, Small and Marginal farmers. Thus, was not entitled to be allotted the land free of cost under the provisions of the Rules of 1975. This being the admitted position that the petitioner has been allotted land dehors the Rules, the right of the petitioner is to be adjudged independent of a valid decision in favour of the petitioner conferred under the existing law. Since the land was allotted to the petitioner under the Rules of 1975, there was no question of following Rule 255 to Rule 266 of the Rajasthan Panchayat Act as existed on the relevant date. Thus, it is a case of total non-application of the law prevalent for allotment of lands.

15. The authority who has exercised the power is the Education Extension Officer. There is no power vested in such an authority to make any allotment. Panchayat has expressed its inability to send any records to the Revisional Authority of such allotment because the Panchayat has said that no such records were prepared in the Panchayat. The stand of the Panchayat Samities is that all records pertaining to allotment have been destroyed. The allotment has been made in the shape of such Patta which have been issued by an authority who never had any authority under the law. For the allotment of panchayat land, Panchayat is the sole authority. No such power has ever been exercised by the Panchayat.

16. In the aforesaid background if we see the right of petitioner, then he is per se an usurper, under a grant which cannot be considered to be legal and valid. The law relied upon by the learned Counsel in the shape of the decisions of the Hon'ble Supreme Court in the case of Brij Lal (supra) and Tej Singh (supra) will not govern the case of the petitioner. In these cases the land in question was not one where right of villagers was involved. The land allotted was an agricultural land over which some agriculturist was required to cultivate. In the instant case, none of these ingredients are available. Further under Article 142 of the Constitution of India Hon'ble Supreme Court can exercise powers.

17. The learned Counsel for the petitioner submitted that the High Court can also under Article 226 of the Constitution of India exercise the same jurisdiction. This Court feels that such kind of exercise of jurisdiction would not be justified. Firstly powers under Article 226 of the Constitution of India is not in the manner as provided under Article 142 of the Constitution of India. Secondly, land in question is claimed by the petitioner on the basis of such documents which were prepared by the authority not empowered to do that. It was the Rules which were not applicable to the petitioner, The petitioner has got the land allotted without paying money. The authority passing the orders was not authorised to pass order. These facts are shocking and put a restraint on the court to exercise liberal attitude in favour of such an usurper. This Court is not inclined to adopt any liberal attitude towards the petitioners.

18. As regards the question of adverse possession, the same has been wrongly canvassed by the learned Counsel. In Anchal Reddi (supra) law laid down by the Supreme Court is to the effect that:

'8. There is no controversy that the plaintiff has to establish subsisting title by proving possession within 12 years prior to the suit when the plaintiff alleged dispossession while in possession of the suit property. The First Appellate Court as well as the second Appellate Court proceeded on the basis that the plaintiff is not entitled to succeed as such possession has not been proved. The concurrent finding that the plaintiff had title inspite of the decree for specific performance obtained against him, when that decree had not been executed are not assailed by

the appellant in the High Court. The appellant cannot, therefore, urge before us on the basis of the findings in the earlier suit to which he was not a party that Ex.A-1 sale deed is one without consideration and does not confer valid title on the plaintiff, the sole question that has been considered by the High Court is that of subsisting title. We have to consider whether the question of law as to the character of the possession Varada Reddi had between 10.7.1946 and 17.7.1947 is adverse or only permissive. In the case of an agreement of sale the party who obtains possession, acknowledges title of the vendor even though the agreement of sale may be invalid. It is an acknowledgment and recognition of the title of the vendor which excludes the theory of adverse possession. The well-settled rule of law is that if a person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title in possession will not be regarded as adverse in law, even though he claims under another title having regard to the well-recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who had got into possession under an executory contract of sale is a permissible character cannot be heard to contend that his possession was adverse. In the conception of adverse possession there is an essential and basic difference between a case in which the other party is put in possession of property by an outright transfer, both parties stipulating for a total divestiture of all the rights of the transferor in the property, and in case in which there is a mere executory agreement of transfer both parties contemplating a deed of transfer to be executed at a later point of time. In the latter case the principle of estoppel applies estopping the transferee from contending that his possession, while the contract remained executory in stage, was in his own right and adversely against the transferor.

Adverse possession implies that it commenced in wrong and is maintained against right. When the commencement and continuance of possession is legal and proper, referable to a contract, it cannot be adverse.

In view of the above, no adverse possession can be seen in the petitioner.

19. The learned Counsel for the petitioner's argument that no enquiry was held in relation to the fact that the allotted land is public courtyard is also not sustainable

because the Revisional Authority has seen and examined the Patta belonging to the grand-father of the petitioner. In the northern side of that Patta public courtyard is mentioned. The petitioners are the beneficiaries of the allotment in favour of their grand-father Kheraj Ram. In northern side of Patta of Kheraj Ram a public courtyard has been shown as far back as in the year 1960. It cannot be said that there was no material available with the Revisional Authority to conclude that the land was not a public courtyard. In this background no useful purpose would be served by ordering any inquiry. Further the petitioner's conduct in getting the allotment made by Education Extension Officer who was not empowered to issue Patta shows that he wants to regulate actions by wrong means. Allotment was under such Rules which were not applicable to the petitioners, such persons cannot claim, equity. When the petitioners themselves have breached the law with impunity, the conduct of the petitioner goes a long way in exercise of the jurisdiction under Article 226 and extra ordinary powers of this Court. In view thereof, there is no force in the petitions. The writ petitions are, therefore, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com