

Ali Mohammad Bhat and anr. Vs. State of J and K and ors.

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Court : Jammu and Kashmir

Decided On : May-27-2003

Reported in : 2003(3)JKJ163

Judge : Permod Kohli, J.

Acts : [Constitution of India](#) - Articles 14, 19, 19(1) and 31(1)

Appeal No. : OWP No. 429 of 2001

Appellant : Ali Mohammad Bhat and anr.

Respondent : State of J and K and ors.

Advocate for Def. : M.A. Rathor, AAG

Advocate for Pet/Ap. : M.A. Chasoo, Adv.

Judgement :

Permod Kohli, J.

1. Petitioner No. 1 was owner of land measuring 9 marlas comprising Khasra No. 178 situated at Kharbagh. Petitioner No. 2 is his son and a matriculate unemployed. The Education Department approached petitioner No. 1 for donation of land referred to above for construction of a Government School on the condition that the petitioner's son i.e., petitioner No. 2 shall be given employment as Class

IV employee with the Education Department in lieu of the land. It is the case of the petitioner that land was given to the Education Department in the year 1988 and a school building has been constructed thereon. Petitioners applied for employment in lieu of the land for petitioner No. 2 who was qualified to be appointed as Class IV. This was in terms of SRO 181 dated 3.6.1988. Despite repeated requests case of the petitioner was not settled. Petitioners approached various functionaries of the department, Additional Deputy Commissioner, Srinagar vide his communication dated 19.12.1992 requested the Deputy Director (P/S) directorate of School Education Kashmir to process the case of the petitioner No. 2 for employment in lieu of land donated by his father. No action was initiated on that basis. Another communication was addressed by Additional Commissioner, Srinagar to the same functionaries under his No. 158/LAC dated 2.6.2001 which reads as under:

'The Deputy Director (P/S), Directorate of School Education, Srinagar.

No:- 158/LAC Dated 2.6.2001

Sub: Land Acquisition case of Ali Bhat S/o Lassa Bhat R/o Kharbagh Ganderbal for construction of P/S building.

Ref: This Office No. 1149/SC/Misc. dated 19.12.1998.

Sir,

In enclosing herewith application of above named person I am to say that his land measuring 9 marlas under Khasra No. 178 village Kharbagh has been acquired by your Department and a building stands constructed on this land in the year 1988. He has neither been paid any compensation of the land nor his son employed in the department.

You will please look into the matter and intimate the factual position at your earliest.

Yours faithfully,

Sd/-

Addl. Deputy Commissioner, Srinagar.'

2. Nothing seems to have been done and the petitioners were informed that SRO 181 stands repealed by a subsequent SRO 214 dated 11th July, 1991 whereunder no fresh appointment can be made even in respect to cases which are under process at the time of the issuance of this SRO. On the denial of appointment to the petitioner No. 2, petitioners were constrained to approach this Court through the medium of the present petition seeking a direction to provide employment to petitioner No. 2 in lieu of land donated by petitioner No. 1 and also to relax the age bar as at the time of the filing of the petition, petitioner No. 2 was likely to cross the maximum age limit. A further writ of certiorari is asked for quashing SRO 214 dated 11th July, 1991 to the extent it deprives those persons whose cases were under process under SRO 181. In reply to petition respondents have not disputed the acquisition of land for purposes of construction of school from the petitioners. The stand of the respondents is that SRO 181 of 1988 stands rescinded and substituted by SRO 214 dated 11th July 1991, whereunder petitioner cannot be provided employment in lieu of the land. It is stated that the averments made in the writ petition are vague and it is not known whether school was constructed on the land or not.

3. It have heard learned counsel for the parties.

4. The petition is admitted to hearing and with the consent of learned counsel for the parties, it is taken up for final disposal.

5. At the time acquisition of land by the respondents, SRO 181 dated 3.6.1988 was in operation. Said SRO is reproduced as under:

'SRO 181:-In exercise of the powers conferred by the proviso to Section 124 of the Constitution of Jammu and Kashmir and not with standing anything contained in the rules and orders for the time being in force, the Governor hereby directed that the appointment of one member of the family who are left with 50% or less of their agricultural land on account of the same having been acquired by the Government for public purposes, shall be made without any reference to the Recruitment Board concerned, against a post available at the lowest rank of the cadre for which such

a person is eligible. In case the vacancy is not available in the Department which has acquired the land, the General Department shall make such appointment in any Department where the vacancy may be available, By order of the Government.'

6. In terms of the aforesaid SRO where after acquisition the person is left with 50% or less of their land, one member of the family is entitled to employment in the department which acquires the land. This SRO further provides that if vacancy is not available in the department which has acquired the land, General Department shall make such appointment in any department where the vacancy may be available. In para 3(ii) of writ petition, petitioner has specifically mentioned that 9 marlas was the whole immovable property of the petitioner No. 1, therefore, the case of the petitioners squarely fall within the scope of SRO 181. Respondents have not denied the contents of communication dated 19.12.1992 and 2.6.2001 from Additional Deputy Commissioner, Srinagar to Directorate of School Education. In letter dated 2.6.2001 it is specifically admitted that the department has constructed a building on the acquired land in the year 1988, hence the stand of the respondents that it is not known whether the building has been constructed or not, is belied. Other contention of the petitioner is that there was an express promise to the petitioners that the petitioner No. 2 shall be provided employment in lieu of donation of land. A specific averment has been made in para 3(i) and ground (A) of the petition. The respondents in their objections have not denied these averments specifically or even by necessary implication, therefore, the only inference that can be drawn is that the averments made in the writ petition are admitted. Land of the petitioners having been taken away on the promise of providing employment to the petitioner No. 2, respondents cannot backout from their promise and deny employment to the petitioner No. 2.

7. It is vehemently argued by the learned counsel or the respondents that SRO 181 dated 3.6.1988 having been rescinded by subsequent SRO No. 214 of 1991, petitioners case cannot be considered in view of bar for fresh appointment as created under SRO 214. This contention of the respondents cannot be accepted for the simple reason that the petitioners land was taken away in the year 1988 when SRO 181 was in operation. Merely because respondents did not

appointment the petitioner No. 2 till SRO 214 came into being cannot deprive the petitioner from his right which was created under SRO 181. From the communications placed on record by the petitioners it is evident that delay in making appointment is attributable only to respondents. A poor man was deprived of his property on solemn promise of providing employment. Now respondents cannot be allowed to plead that with the passage of time, the right of the petitioner stands defeated on account of subsequent change in law. Petitioner who is government by SRO 181 because his right to seek employment is created under said SRO the moment land of the petitioners is taken away and utilized by the respondents. Subsequent change in law cannot take away the vested right of the petitioner. Impugned SRO 214 of 1991 dated 11th July 1991 to the extent it defeats the right of the petitioner is not sustainable in law. It is accordingly held that petitioners right under SRO 181 to seek employment remains in tact not withstanding issuance of SRO 214. Petitioners have relied upon 1998 Lab LC 100 Vol 31 para 34, which is reproduced as under:

'Apart from being violative of the rights then available under Articles 31(1) and 19(1) (f), the impugned amendments, insofar as they have been given retrospective operation, are also violative of the rights guaranteed under Articles 14 and 16 of the Constitution on the ground that they are unreasonable and arbitrary since the said amendments in Rule 2544 have the effect of reducing the amount of pension that had become payable to employees who had already retired from service on the date of issuance of the impugned notifications, as per the provisions contained in Rule 2544 that were in force at the time of their retirement.'

8. Apart from the SRO 214 being violative of Articles 14 and 16, respondents are also estopped from denying employment to the petitioners after taking away their property without paying compensation and on the promise of providing employment. Doctrine of equitable estoppel is fully attracted in the facts and circumstances of the present case. In addition to this every citizen has legitimate expectations that the modal State with its socialistic and democratic approach will act fairly particularly when the citizens are induced to act in a particular manner on the promise of some incentive. If a person acts on any legitimate expectations and changes his positions to his detriments, he cannot be refused the benefit of any

promise or the expectations which is generated by the State. This petition accordingly, succeeds. Respondents are directed to provide employment to petitioner No. 2 as Class IV in the Education Department of the State within a period of two months in lieu of the land of the petitioners.

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