

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Review/LR/2355/2013/Bikaner.

1. Ramu Ram son of Multana Ram caste Kumhar resident of village Bithnok Tehsil Kolayat Distt. Bikaner.
2. Sharmila wife of Sanjay Kumar caste Chandak resident of Sutharon Ki Badi Guwad, Bikaner.
3. Jitendra Kumar son of Shankar Lal caste Brahmin resident of Bithnok Tehsil Kolayat Distt. Bikaner.

...Petitioners.

Versus

1. Shivratan son of Ramchandra caste Brahmin resident of village Bithnok Tehsil Kolayat Distt. Bikaner.
2. Surja Ram son of Girdhari Ram caste Brahmin resident of village Bithnok Tehsil Kolayat Distt. Bikaner.
3. State of Rajasthan through Tehsildar, Kolayat.

...Non-petitioners.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Ashok Nath, counsel for the petitioners.

Shri J.K. Pant, counsel for the non-petitioners.

Date: 1.7.2013

J U D G M E N T

This review petition has been filed under section 86 of the Rajasthan Land Revenue Act, 1956 in compliance of the Hon'ble High Court's order dated 20.3.2013 (C.W.P. No. 2868/2013). This petition has arisen from the judgment passed by the Single Bench of this court on 6.3.2013 in Appeal No.LR/1201/2013/Bikaner.

2. The factual matrix of the case is that Ramu Ram was allotted 30 bighas of land in khasra No. 1215 situated in village Bithnok Tehsil Kolayat in the year 1977-78. After the allotment, Patwari and Inspector Land Records demarcated the allotted land and created new khasra No. 1215/1 measuring 30 bighas almost in the middle of khasra No. 1215. Out of the allotted land, Ramu Ram sold 5 bighas of land to Sharmila Chandak wife of Sanjay Chandak and 1 bigha land to Jitendra Kumar on 19.4.2010 through registered sale

deeds. After the sale some villagers of village Bithnok namely Shivratan and Surja Ram filed an application on 28.6.2012 before Collector, Bikaner and alleged that the land sold by Ramu Ram has been erroneously fitted on the main road by the Patwari, therefore, the buyers of the land should be fitted where the original allottee was fitted in the original khasra No. 1215. The Collector sent the application filed by Shivratan and Surja Ram to Assistant Colonisation Commissioner, Kolayat. Thereafter, Sharmila also filed an application before Colonisation Commissioner for fitting of her newly purchased 5 bighas of land in khasra No. 1215/1. The learned Colonisation Commissioner also forwarded her application to Assistant Colonisation Commissioner, Kolayat on 24.7.2012. The Assistant Colonisation Commissioner heard the tenants, complainants and the Tehsildar and passed a detailed order on 9.11.2012. Being aggrieved by the order passed by the Assistant Colonisation Commissioner, Ramu Ram and buyers of the land filed an appeal before Additional Colonisation Commissioner-cum-Revenue Appellate Authority, Bikaner which was accepted on 28.1.2013 and the case was remanded to Assistant Colonisation Commissioner, Kolayat. Being aggrieved by the order passed by the first appellate court, an appeal was preferred before this court (Appeal No. 1201/2013) which was decided by this court on 6.3.2013 after hearing both the parties, whereby the judgment passed by the appellate court on 28.1.2013 was quashed and the judgment passed by the Assistant Colonisation Commissioner, Kolayat on 9.11.2012 was upheld. Being dissatisfied by the judgment passed by this court on 6.3.2013, a civil writ petition No. 2868/13 was preferred by Ramu Ram and ors. before Hon'ble Rajasthan High Court at Jodhpur. The learned Single Bench of Hon'ble High Court passed an ex-parte order at the admission stage wherein the petitioner was directed to file a review petition before this court and till decision of the review petition, the judgment passed by this court was stayed on

20.3.2013. In compliance of the Hon'ble High Court's order dated 20.3.2013, this review petition came before this court for hearing.

3. Heard the learned counsels of the parties.

4. The learned advocate for the petitioners contended that before the judgment passed by this court on 6.3.2013, the Assistant Colonisation Commissioner on 12.2.2013 complied with the remand order passed by Additional Colonisation Commissioner dated 28.1.2013. Therefore, the appeal before this court became infructuous on the day of decision that was 6.3.2013. The learned advocate further argued that the non-petitioners No. 1 and 2 were not parties before Additional Colonisation Commissioner-cum-Revenue Appellate Authority, Bikaner, therefore, they had no locus to file an appeal before this court. He further submitted that the application was filed by the petitioners for correction of fitting of their land before Colonisation Commissioner and the Colonisation Commissioner directed the Assistant Colonisation Commissioner for detailed enquiry in this court but the Assistant Colonisation Commissioner decided the case at his level which was an order passed beyond jurisdiction. He finally urged the court that in compliance of the order passed by the appellate court on 28.1.2013, learned Assistant Colonisation Commissioner inspected the site and passed an order on 12.2.2013 and also issued the map of corrected fitting on 25.2.2013. Therefore, the appeal filed by Shivratan and Surja Ram before this court became infructuous. The learned advocate requested the court that in light of the new facts, the judgment passed by this court on 6.3.2013 be recalled and if the parties are aggrieved by the order passed by the Assistant Colonisation Commissioner dated 12.2.2013, they can prefer appeal before the competent court.

5. The learned advocate for the non-petitioners contended that the entire proceedings alleged to be performed on 12.2.2013 are ante-dated. It is a cover-up case to provide undue benefit to the petitioner with active connivance of Colonisation authorities. The learned advocate further submitted that proceedings of this court manifestly reveal that an affidavit has been filed by Ramu Ram himself on 20.2.2013 which is after the impugned judgment passed by the Assistant Colonisation Commissioner on 12.2.2013, wherein he has not mentioned that such a judgment has already been passed by Assistant Colonisation Commissioner and the appeal has become infructuous. He also contended that basically the controversy involved in this case started on complaint filed by the non-petitioners No. 1 and 2 Shivratan and Surja Ram who filed their application before the District Collector, Bikaner on 28.6.2012 but in the remanded case the learned Assistant Colonisation Commissioner neither issued notice to the complainants Shivratan and Surja Ram nor the State was heard and the order dated 12.2.2013 was passed just to cover-up the case in favour of the petitioners. The learned advocate finally urged the court that the proceedings conducted on 12.2.2013 are farcical, as such proceedings do not have any bearing on this case as the proceedings have been drawn to provide undue benefit to Ramu Ram, Sharmila Chandak and ors in a fraudulent manner. He took support of the judgment passed by the Full Bench of Hon'ble High Court in Hari Das Vs. Banshidhar (1962 RLW 8) and urged the court that when the remand order has been quashed and set aside by this court then the proceedings conducted on 12.2.2013 automatically fall and became infructuous.

6. I have given thoughtful consideration to the rival contentions raised by the learned counsels of the parties and have perused the record available on file.

7. This court has carefully perused the proceedings drawn in this case right from the beginning. Indisputably the Proceedings were initiated on the complaint made by the non-petitioners No. 1 and 2 - Shivratan and Surja Ram residents of village Bithnok on 28.6.2012. The learned Collector directed the Assistant Colonisation Commissioner, Kolayat to look into the matter, thereafter Smt. Sharmila wife of Sanjay Chandak who bought some part of the disputed land on 19.4.2010 from Ramu Ram, the original allottee, filed an application before Colonisation Commissioner on 18.7.2012 which was also forwarded to Assistant Colonisation Commissioner, Kolayat for necessary action. On the basis of these two applications, the Assistant Colonisation Commissioner inspected the site, heard the parties and the concerned State authorities and passed an order on 9.11.2012. The Assistant Colonisation categorically opined that the fitting made by Patwari after sale of some part of the disputed land to Sharmila Chandak and Jitendra Kumar in the year 2010 on the road is illegal and has been done just to give undue benefit to the purchasers of the land. The learned Assistant Colonisation Commissioner mentioned in its judgment that it was a criminal act on the part of Patwari to shift the fitting on the main road just to benefit certain individuals and has further complicated the matter. The Assistant Colonisation Commissioner ordered that the new fitting done by the Patwari quashed and the original fitting done in khasra No. 1215/1 when Ramu Ram was allotted the land in the year 1977-78 is upheld.

8. Ramu Ram and ors filed an appeal before Additional Colonisation Commissioner, Bikaner. The learned Government Advocate vehemently argued before Additional Colonisation Commissioner that when Ramu Ram was allotted the land, his allotted land was demarcated in the year 1983 in khasra No. 1215/1 and now it cannot be shifted on the main road and such correction is arbitrary and illegal. The

Government Advocate termed it as an effort to grab the precious government land on the main road through the correction of fitting. The learned Additional Colonisation Commissioner ignored the pleadings of the State, quashed the order passed by the Assistant Colonisation Commissioner on 9.11.2012 and remanded the case. Being aggrieved Shivratan and ors who were the complainants in this case have filed an appeal before this court assailing the order passed by the Additional Colonisation Commissioner-cum-Revenue Appellate Authority, Bikaner dated 28.1.2013 which was accepted on 6.3.2013 and the judgment passed by Additional Colonisation Commissioner-cum-Revenue Appellate Authority dated 28.1.2013 was quashed and set aside. This review petition has been filed before this court in compliance of the Hon'ble Rajasthan High Court order in S.B. Civil Writ petition No. 2868/2013 dated 20.3.2013.

9. The main issue involved in this case is that before the appeal filed by Shivratan and ors. (2013/1201) was decided by this court on 6.3.2013, the Assistant Colonisation Commissioner disposed of the remanded case on 12.2.2013, therefore, Hon'ble High Court has directed the petitioner to file a review petition before this court in light of the new facts.

10. Learned advocate for the petitioners has raised this point that Shivratan and Surja Ram, appellants before this court, were not the aggrieved persons and had no locus to file the appeal. This court finds it appropriate to observe that the land situated in khasra No. 1215 is a part of big siwai chak land falling on the main road. The local villagers of Village Bithnok are interested parties and they have a right to know that whether this government land is put to an appropriate use. In this case also, the disputed land which was earlier in temporary cultivation of Ramu Ram and thereafter it was permanently allotted to Ramu Ram in the year 1977-78 and

was also fitted in middle of the khasra demarcating a new khasra No. 1215/1 by the then revenue authorities. The villagers filed the complaint when this fitting was arbitrarily shifted on the main road. Looking to the nature of the complaint, this court is of the considered view that the complainants have the locus to assail such an arbitrary and illegal proceeding before a competent court pertaining to the Government land which has a potential to be put to community use.

11. In order to know in detail about the ground realities, this court ordered on 5.6.2013 and called the Assistant Colonisation Commissioner, Kolayat and the concerned Patwari to be present before this court on 13.6.2013 with relevant record. Shri Prabhudan Charan, Assistant Colonisation Commissioner, Kolayat and Shri Magan Lal Chhipa, Patwari, Bithnok attended the court with all relevant record and their statements were taken. Both the officials have made it clear that in this case, the original fitting was done after the allotment by the then Patwari and Inspector Land Records, creating a new number 1215/1. This original fitting was almost in the middle of the khasra No. 1215. They have stated that Ramu Ram has encroached upon the government land and this fitting on the main road has been done arbitrarily by the Patwari in the year 2010 after the sale of some part of the disputed land. They have also asserted that in rest of the old cases, the fitting is unchanged but only in this case, after the purchase of this land by Sharmila Chandak, this new fitting was shifted on the main road.

12. In this review petition the following inescapable conclusions emerge in light:-

- (i) Ramu Ram and ors. filed the first appeal before Additional Commissioner Colonisation, Bikaner but chose not to implead the complainants as a party in appeal

knowing it well that the impugned judgment of the Assistant Colonisation Commissioner dated 9.11.2012 has been passed on the basis of their complaint. The learned appellate court decided the case even in one hearing and on the basis of an application from Ramu Ram and ors. filed on 10.1.2013, the case was preponed and decided on 28.1.2013. The procedure followed by the appellate court in this case is unbecoming of a court and resulted in gross miscarriage of justice.

(ii) This is a case where khasra No. 1215/1 was demarcated on the basis of original possession of Ramu Ram by the revenue authorities. The notification of the Government for correction in fitting or tarmeen have been erroneously interpreted in this case. Here Ramu Ram was in possession on 1215/1 for more than 30 years. Now the road has been upgraded, therefore, he wishes to shift on the main road because the road side land has become more valuable and can fetch him more money.

(iii) The second appeal was filed by Shivratan and ors before this court on 19.2.2013 assailing the judgment of the first appellate court dated 28.1.2013. Ramu Ram, Sharmila Chandak and Jitendra Kumar filed a caveat application under section 148-A of the Civil Procedure Code before this court on 5.2.2013. When the appeal came on the first hearing i.e. 19.2.2013, the learned advocate for the caveator was given copy and the case was fixed for 20.2.2013. On 20.2.2013, Ramu Ram filed reply of the application under section 96 of the Civil Procedure Code and the stay application along with his two affidavits before this court but he chose not to reveal anything about the so called judgment passed by the Assistant Colonisation Commissioner in the remand case on 12.2.2013.

(iv) The learned Assistant Colonisation Commissioner has passed the judgment on 12.2.2013 in compliance of the order passed by Additional Colonisation Commissioner-cum-Revenue Appellate Authority, Bikaner on 28.1.2013. The learned Assistant Colonisation Commissioner was under obligation to issue notices to the complainants, State and other parties but since the order was passed by Additional Colonisation Commissioner on 28.1.2013 and the case was fixed for hearing on 1.2.2013 and summarily decided on 12.2.2013 which manifestly reveals that the State and the complainants were not given any notice nor they were heard about the so-called fitting done in favour of Ramu Ram and ors.

(v) Originally Ramu Ram was allotted this piece of land on temporary cultivation and thereafter he was permanently allotted this land in the year 1977-78 in khasra No. 1215. The then Patwari and Inspector Land Records demarcated the allotted land that was 30 bighas creating a new khasra No. 1215/1 on the map and it was fitted somewhere in the middle of khasra No. 1215 (some 200-300 meters away from the main road). Such a fitting is manifestly demarcated in the revenue map of village Bithnok.

(vi) When once the allotted land has been demarcated in the middle of the khasra on the basis of possession then after 30 years the fitting cannot be shifted on the main road because the allottee has constructed his residential house in the allotted land, he has been cultivating that particular demarcated land for more than 30 years, therefore, there is no plausible ground to shift the fitting on the main road after 35 years. It cannot be done on the

ground that the land on the main road has become valuable and a petrol pump is to be established on the main road.

(vii) The entire controversy started when Sharmila Chandak and Jitendra Kumar bought the disputed land on 19.4.2010 and Smt. Sharmila Chandak applied for license of a petrol pump from Bharat Petroleum. Anyhow she wanted to be fitted on the main road so that the license can be obtained. Since she bought the land from Ramu Ram in khasra No. 1215/1, she cannot be fitted alone on the main road because originally the land which was bought was in the middle of the khasra which is some 200-300 meters from the main road. The entire proceedings of 12.2.2013 and learned Additional Colonisation Commissioner dated 28.1.2013 have been conducted in connivance with the petitioners and just to provide undue benefit to the petitioners. This is ex-facie and illegal and arbitrary exercise of court jurisdiction to shift the fitting of some individual allottee on the main road.

13. It also creates reasonable doubt that whether the latest order passed by Assistant Colonisation Commissioner on 12.2.2013 has been passed on the same day or it is ante-dated? The affidavit filed by Ramu Ram in this court on 20.2.2013 does not reveal this position that the remand order has already been complied with. It is also very strange that the order which has been passed after hearing Ramu Ram, Sharmila Chandak only and has been passed in their favour on 12.2.2013 and they are unmindful of such a judgment even on 20.2.2013!

14. The conclusions drawn in this case are very significant which evidently present an example that how the colonization

machinery can be managed to unjustly enrich an individual ignoring the basic rules for allotment and fitting of the allotted land. The order passed by the learned Assistant Colonisation Commissioner on 12.2.2013 is ex-facie a bad order in the eyes of law because the learned presiding officer did not care to even inform the complainants and the State authorities before passing this order. This order has been passed in an unusual haste and just to unduly benefit the petitioners.

15. This court also takes support from the Full Bench decision passed by Hon'ble High Court in the case of Hari Das Vs. Banshidhar (1962 RLW 8), wherein it has been observed without equivocation that the orders passed in compliance of the remand order automatically topple down, if the original remand order is quashed by the competent court. In this case also, the remand order passed by the learned Additional Colonisation Commissioner dated 28.1.2013 has been quashed and set aside by this court, then the order passed in compliance of the said remand order by Assistant Colonisation Commissioner on 12.2.2013 also falls in consequence.

16. As discussed above, this review petition filed by the petitioners is devoid of any merit and hence is dismissed. There is no justification to recall the judgment passed by this court on 6.3.2013. The order passed by learned Assistant Colonisation Commissioner, Kolayat on 12.2.2013 is also quashed and set aside. The order passed by the Assistant Colonisation Commissioner, Kolayat on 9.11.2012 is upheld. The Tehsildar is directed to delete the new fitting made in compliance of the orders passed by Assistant Colonisation Commissioner, Kolayat on 12.2.2013 and the original fitting made in the middle of the khasra demarcated as khasta No. 1215/1 is conclusive.

17. I also find it appropriate to direct the Colonisation Commissioner, Bikaner to look into this matter carefully and ensure that such casual and illegal orders are not passed by the Colonisation Authorities just to please or undue benefit certain individuals ignoring the basic rules of allotment and fitting. Such casual orders by the authorities do bring disrepute to the organization as a whole and should be discouraged with a strict hand. If we allow a thirty year old fitting to shift on the main road what will happen to such similar cases? It will open flood gates to such cases which will breed corruption and arbitrariness in the system. Therefore, sincere efforts should be made in this direction so that recurrence of such cases does not take place. The land demarcated in khasra No. 1215/1 may be measured and whatsoever encroachment is found to be done by Ramu Ram or other parties on this government land, be removed after following due process of law. The Additional Registrar (Judicial), Board of Revenue is directed to send a copy of this judgment to learned Colonisation Commissioner, Bikaner for needful action at his level.

Pronounced.

(Bajrang Lal Sharma)
Member