

IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER

Application/LR/8768/2006/Chittorgarh.

State of Rajasthan through Tehsildar, Gangrar Distt. Chittorgarh.
...Petitioner.

Versus

Bilal Khan son of Najir Khan caste Musalman resident of Chanderiya
Tehsil Gangrar Distt. Chittorgarh.
...Non-petitioner.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Abhishekh Kaushik, Dy. Govt. Advocate for State.
Shri J.S. Sankhla, counsel for the non-petitioner.

Date: 5.10.2012

J U D G M E N T

This application has been filed by the State Government through Tehsildar, Gangrar (Distt. Chittorgarh) under section 9 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the order passed by District Collector, Chittorgarh on 11.9.1978 in case No. 11/78.

2. The factual matrix of the case is that khasra No. 89 (old khasra No. 66 min) in village Chanderiya is the government land and unauthorisedly the non-petitioner has encroached upon this piece of land and constructed shops. The non-petitioner was also issued notice under section 91 of the Act by Tehsildar, Gangrar and was dispossessed. The order of the Tehsildar was upheld by the appellate court also. Thereafter, Tehsildar, Gangrar regularized this piece of land in favour of the trespasser on 30.12.1971 against which a reference was filed before the Board of Revenue. The Board of Revenue accepted the reference and quashed the order of Tehsildar as it was without jurisdiction, but the Board of Revenue observed that it is open to the Collector to grant relief to the non-petitioner in appropriate. In compliance of the Board of Revenue order dated 14.7.1976, the Collector regularized the government land measuring 1476 Sq. feet in favour of the non-petitioner for commercial use under the Rajasthan Land Revenue (Conversion of Agricultraul Land for non Agricultural Purposes) Rules, 1970. Being

aggrieved by the order of the Collector, Chittorgarh dated 11.9.1978, this application has been filed by the Tehsildar, Gangrar under section 9 of the Act.

3. Heard the learned counsel of the parties.

4. The learned Dy. Govt. Advocate contended that the order passed by the District Collector is illegal and arbitrary, as the disputed land is a government land and situated near the railway track. Therefore, this regularization of government land in favour of the non-petitioner could not have been done as per the Conversion Rules of 1971. He further contended that though there is an order passed by the Hon'ble High Court in Nazir Khan's case (S.B. C.W.P. No. 267/94) wherein Hon'ble High Court has accepted the writ petition and order of the Board of Revenue has been set aside but this fact was not raised and adjudicated before the Hon'ble High Court that the disputed land is situated just in contiguity of 50 feet from the Broad gauge railway boundary. He also contended that the disputed land was not in the khatedari of the non-petitioner. Therefore, as per rule 5(1) of the Conversion Rules of 1971 this disputed land could not have been regularized. The learned counsel finally urged the court that if the railway line and national highway is expanded this government land can be used for any public purpose and besides this, by converting this government land into commercial purpose it will unnecessarily increase the traffic congestion between the Railway line and National Highway which will lead to accidents. Therefore, in the larger public interest the order passed by the Collector be quashed. .

5. The learned counsel for the non-petitioner contended that the disputed land does not lie within the 50 feet of the railway boundary and Collector has regularized this land in 1978 which has been done some 34 years back and the non-petitioner is a poor man who is engaged in earning his livelihood from this piece of land. He also submitted that such an order passed by the Collector cannot be assailed under section 9 of the Act because there is clear provision of appeal under the Conversion Rules of 1971. He referred the Hon'ble High Court judgment passed in S.B.C.W.P. No. 267/1994 Nazir Khan Vs. State of Rajasthan which is similar to this case. The

learned advocate finally argued that the application filed by the State Government is devoid of any merit and is not maintainable in this court, hence be dismissed.

6. I have given serious consideration to the rival contentions of the advocates, perused the record available on file and also gone through the judgment passed by Hon'ble High Court in S.B.C.W.P. No. 267/1999 on 25.7.2005.

7. This is an undisputed fact that the disputed land is a government land situated in khasra No. 89 of village Chanderiya. Firstly, this land was regularized by Tehsildar, Gangrar on 30.12.1971. Since Tehsildar had no jurisdiction to regularize the government land in favour of the trespassers, the reference was made by the Collector against the order passed by Tehsildar. The Board of Revenue accepted the reference and quashed the order passed by Tehsildar on 30.12.1971. In this case, this is explicitly clear that khasra No. 89 is situated between National Highway and Broad gauge Railway line. The reports of Patwari and Tehsildar available on file suggest that the disputed land is just contiguous to the Broad gauge Railway track and National Highway and for the purpose of public safety this particular piece of land should not have been regularized as by allowing this conversion of the government land, shops will be constructed and it will lead to unnecessary congestion by parking of vehicles and will create a permanent traffic hazard.

8. This court has carefully perused the provision of Conversion Rules of 1971. The rule 5 of these rules provides as under:-

5. Land for which conversion cannot be allowed- The following land shall not be permitted to be converted to any non agricultural purpose under these rules, namely-

(1) **land in which the applicant does not have khatedari rights;**

(2) land which is allotted for a special purpose or on special terms under the-

(a) Rajasthan Land Revenue (Allotment and Conversion of Lands for the Construction of Seed Stores) Rules, 1965.

(b) Rajasthan Land Revenue (Allotment of Land for Receptacles) Rules, 1965.

© Rajasthan (Allotment of Land to Cooperative Societies) Rules, 1959.

(d) Rajasthan Land Revenue (Allotment of Land to Dairy and Poultry Farms) Rules, 1958

(e) Rajasthan Land Revenue (Allotment of Land to Gaushalas) Rules, 1957

(f) Rajasthan Land Revenue (Allotment of Tank Bed Lands for Cultivation) Rules, 1961.

(g) Any other rules, notifications or orders made by the Government under section 102 of the Act.

(3) land in respect of which notice under section 4 of the [Land Acquisition Act, 1894 has been issued or any proceedings thereon are pending:

(4) **land which is situated within [fifty feet] of any railway boundary or of the national highway.**

(5) land which is situated within [fifty feet] of any road maintained by the Government or a local authority."

Rule 5 of the Conversion Rules of 1971 mentioned hereinabove unequivocally provides that only the lands which are in the khatedari of a tenant can be converted. In this case, the disputed land is a government land is not khatedari land of the non-petitioner. This is also factually correct that the disputed land is not 50 feet away from the Railway boundary. It is contiguous to the Railway boundary which cannot be converted and regularized as per rule 5(4). This is also very pertinent to mention here that initially the land grabbers encroached this disputed land conniving with the Tehsildar or the district officials and got this land converted and then sold it just after. Presently the land has been transferred to some Ghazi Khan. The District Collector and Tehsildar were under obligation to see that whether the disputed land which is being regularised to an individual has a potential to emerge as a future threat to public safety or lead to a traffic hazard. The rules manifestly prohibit that only khatedari land can be converted. But a land grabber has been unduly benefited ignoring the manifest provisions of law. This court is amazed that why such land which is so critical to public safety, looking to its location (as it is situated between the broad gauge Railway track and the National Highway) has been regularized to an individual?

9. I have also perused the order passed by Hon'ble High Court in S.B. Civil Writ Petition No. 267/1994 wherein this issue has not been raised and adjudicated that the disputed land is a government land and it is contiguous to the broad gauge Railway track and National

Highway and the issue of public safety was also not raised before the Hon'ble High Court. The specific provision of Rule 5(1) and 5(4) of the 1971 Rules were also not adjudicated before the Hon'ble High Court. Therefore, the judgment passed by the Hon'ble High Court is in ignorance of the existing law and provisions of law hence is ***per incurium***. In this situation, the judgment passed in civil writ petition No. 267/1994 is not applicable in this case.

10. The learned advocate for the non-petitioner has also raised this issue that this is an application under section 9 of the Act which is not maintainable before this court, as there is manifest provision of appeal under these rules. This is very pertinent to mention here that Hon'ble High Court in its D.B. judgment in Harchand Vs. Board of Revenue for Rajasthan (ILR 1952(2) Raj. 833) has held as under:-

"We are, however, referred to section 12 of the Rajasthan Board of Revenue Ordinance, 1949 (XXII of 1949), which provides that the general superintendence and control over all other revenue courts and officers shall be vested in, and all such courts and officers shall be subordinate to, the Board. According to the provisions of this section powers of superintendence have been vested in the Board and it is open to the Board to exercise its powers of superintendence over all its subordinate courts in order to regulate the functions of the subordinate courts so as to keep them within their respective spheres of jurisdiction. If a subordinate court disregards any specific provision of law and does something illegally, it is open to the Board of Revenue to interfere and to set the matters right."

The Hon'ble High Court has also held in LRs of Koopa Vs. State and ors. (RLW 1999(3) Raj. 1868) that substantial justice has been done by the Board while rightly invoking its power provided in section 9 of the Act. Hon'ble High Court has also reiterated its view in State of Rajasthan Vs. Shyochand and ors. (2000 RRD 37) that the Board of Revenue can set right any manifest illegality committed by the subordinate courts in appropriate cases under section 9 of the Act.

11. In light of the pronouncements of the superior courts mentioned hereinabove, this court is of the view that the impugned order regularizing the government land to the non-petitioner flouting the manifest provisions of law is a conspicuous illegality which cannot be sustained. This case is a rare case where the public

authority has ignored the legal provisions and benefited a land grabber where the public safety has been compromised. In such circumstances this court is expected to act justifiably and should not allow the public cause to suffer. Therefore, this court finds it appropriate to invoke the extraordinary jurisdiction provided under section 9 of the Act to set right this illegality in the larger interest of justice. If the impugned order is allowed to exist, it will speak volumes of the justice delivery system wherein the claim of a land grabber proves heavier than the public interest and public safety.

12. As discussed above, this application filed by the State Government is accepted and the order passed by the District Collector, Chittorgarh on 11.9.1978 is hereby quashed and set aside. The Tehsildar is directed to remove all the encroachments on the disputed land, to enter it as government land and to protect it for community use like plantation of trees under the MNREGA.

Pronounced.

(Bajrang Lal Sharma)
Member