

REPORTABLE

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal/LR/3653/2002/Chittorgarh.

Gram Panchayat, Katunda Tehsil, Begun Distt. Chittorgarh
through Sarpanch Shri Shankar Lal son of Kishore Gurjar,
Gram Panchayat, Katunda.

...Appellant.

Versus

1. Keli Bai daughter of Bhera Ram Dhakar
2. Sarju Bai daughter of Dunga Dhakar
Through general power of attorney Kanhaiya Lal son of
KHEMA caste Dhakar resident of Katunda Tehsil Begun
Distt. Chittorgarh.
3. Naval Ram son of Dhanna Gurjar
4. Nana Lal son of Foru Dhakar
5. Nathu Lal son of Kajod Gurjar
6. Ghisu son of Pyara Gurjar
7. Bheru son of Sola Gurjar
8. Sawai Lal son of Chunni Lal Gurjar
9. Rajkumar son of Manohar Lal Jain
All residents of village Katunda Tehsil Begun Distt.
Chittorgarh.
10. State of Rajasthan through Tehsildar, Begun.

...Respondents.

S.B.

Shri Bajrang Lal Sharma, Member

Present:-

Shri Jagdamba Prasad Mathur, counsel for the appellant.
Shri Ayyub Khan and Shri Yogendra Singh, counsels for the
respondents No. 1 and 2.
Shri Ishwar Devra, counsel for the respondents No. 3 to 9.

Date:25.6.2013

J U D G M E N T

This second appeal has been filed under section 76 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being aggrieved by the judgment passed by Revenue Appellate Authority, Chittorgarh on 23.8.1999 in appeal No. 102/98.

2. The factual matrix of the case is that the Tehsildar, Begun filed an application under rule 14(4) of the Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1970 (in short 'the rules of 1970') before the Additional Collector and requested that in village Katunda 1.13

hectare land of khasra No. 1358/1 was allotted on 6.10.1983 to Smt. Keli Bai and Sarju Bai by the allotment advisory committee, the allottees have not complied with the conditions of the allotment, therefore, their allotment be cancelled. This case was disposed of by Additional Collector (Administration), Chittorgarh who rejected the application filed by the Tehsildar and directed the Tehsildar to examine the case of respondents on the basis of guidelines issued by District Collector on 15.11.1997. Being aggrieved by the order passed by Additional Collector on 18.12.1997, the villagers of village Katunda filed an appeal before Revenue Appellate Authority, Chittorgarh which was dismissed on 23.8.1999. The learned Revenue Appellate Authority observed that the appellants are not the aggrieved party, therefore, their grievance is not maintainable. Being aggrieved by the judgment passed by the first appellate court, this second appeal has been preferred before this court.

3. Heard the learned counsels of the parties.

4. Shri Jagdamba Prasad Mathur, the learned counsel appearing for the appellant-Gram Panchayat contended that this appeal has been filed belatedly but the Gram Panchayat had no knowledge of the judgment passed by the first appellate court, therefore, in larger interest of justice their application under section 5 of the Indian Limitation Act be accepted and the appeal be heard on merits. He further contended that the disputed land has been a government land which is located on the road and near Abadi and it is a precious government land which can be put to any community use in larger public interest but the then Sarpanch got the land allotted to his relatives who are not even the residents of village Katunda and the disputed land has been got allotted by concealing the material information. The allottees have never been in cultivatory possession of the disputed land. He further submitted that the initial application under rule 14(4) of the Rules of 1975 was filed by the Tehsildar but that application was casually rejected by learned Additional Collector. He also

submitted that the villagers of village Katunda filed first appeal before Revenue Appellate Authority which was also dismissed on the ground that the villagers do not have any locus in the disputed land. Therefore, they cannot be the aggrieved persons. He also conceded this fact that Sarpanch of Gram Panchayat, Shankar Lal Gurjar was also one of the signatories of the appeal before Revenue Appellate Authority but in his role as Sarpanch of Gram Panchayat he filed this appeal in larger interest of public of Katunda village. The report prepared by Patwari Halka on 27.6.2002 explicitly reveals that there has been a long dispute between the villagers and the allottees pertaining to the allotment of this disputed land and the disputed land has been earmarked for expansion of the local college and it has not been cultivated so far but the brother of the allottees Kanhaiya Lal has enclosed this land. He also argued that the allotment made in favour of Keli Bai and Sarju Bai was a paper allotment made fraudulently. Both the allottees are married persons and they live with their husbands and their in-laws house and there were many landless persons belonging to scheduled caste and scheduled tribe on the day of allotment but the allotment to the allottees was made in contravention of the rules of 1970 fraudulently. Therefore, the allotment be cancelled.

4. Shri Ayyub Khan and Shri Yogendra Singh, the learned counsels appearing for the respondents No. 1 and 2 contended that the respondents are in possession of the disputed land since 1983 and at present they have been conferred khatedari rights, therefore, their allotment cannot be challenged at this stage. They also submitted that the allotted land has been cultivated by the allottees, but in some years there were no rains and the government has issued a notification on 4.1.2002 which manifestly stated that all persons who were allotted land prior to 29.9.1999 had not cultivated 50% of the land in the first year of allotment and the remaining area in the second year of their allotment has not been cancelled, shall be eligible for conferment of khatedari

rights. They also argued that the Sarpanch was aware of the judgment passed by learned first appellate court and the second appeal has been filed on 11.7.2002 after lapse of some three years, therefore, this appeal is hopelessly time barred and should be dismissed on the sole ground of limitation. They also contended that this allotment is being challenged on the political and personal vengeance. They finally urged the court that the allotment made in favour of the allottees is a justified allotment and it fulfills all the requirements provided under the Rules of 1970. Therefore, this second appeal be dismissed with cost.

5. 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.

6. First of all this court has to examine whether the second appeal filed before this court is within limitation or not? This is factually true that the second appeal has been filed after lapse of some three years but this is also an accepted fact that Gram Panchayat was not a party before the lower courts. This has been alleged by the learned advocate for the respondents that Kalu Ram, who is now Sarpanch of the Gram Panchayat was one of the nine appellants before the appellate court. This court has reconciled and found that the name of Kalu Ram exists in the list of appellants before the Revenue Appellate Authority. This court is also of the view that the role of an individual and role of head of a local body at the village level that is Gram Panchayat are two different roles. This appeal has been filed on behalf of the Gram Panchayat which is an elected local body of some villages and has a representative strength recognized even by the Constitution of India. Since earlier the Gram Panchayat was not heard by both the courts below this court recognizes their right to appeal as aggrieved party because the Gram Panchayat can ensure that the government land situated in their area is judiciously used by the statutory authorities. Therefore, in view of this court, Gram Panchayat is an aggrieved party because they have vested

interest in the disputed land; secondly since the Gram Panchayat was not a party in the courts below, therefore, the orders passed by both the courts below were not in knowledge of the Gram Panchayat. In these circumstances, the appeal filed by the Gram Panchayat is considered within limitation and this court finds it appropriate to condone the delay and accepts the application filed under section 5 of the Limitation Act.

7. Indisputably the allotment to Keli Bai daughter of Bhera Ram and Sarju Bai daughter of Dunga Dhakar was made on 6.10.1983 by the allotment advisory committee. This is also factually true that the Tehsildar, Begun himself applied before the Collector under rule 14(4) of the Rules of 1970 that the disputed land which was allotted in the year 1983 is not in possession of the allottees and no cultivation has been done till 1997. Therefore, the allotment be cancelled. The learned Additional Collector very casually observed that the District Collector has issued some guidelines on 15.11.1997, therefore, he directed the Tehsildar that on the basis of guidelines issued by the District Collector this case be examined first and then to file an application if need arises.

8. In the circumstances of the case, this court is of the view that the Tehsildar, Begun was the land-holder of the disputed land falling in his area and he apprised the District Collector in the form an application under rule 14(4) of the rules of 1970 that these allottees have not cultivated this land since 1983 and they are also not in possession of the land, therefore, in such a condition, the allotment made to these allottees be cancelled. The Additional Collector's observation on the application filed by the Tehsildar is totally misconceived, irrelevant and arbitrary. When Tehsildar has apprised the District Collector on contravention of the conditions provided in the rules of 1970 then it should have been seriously looked into by the Collector. In view of this court, the order passed by Additional Collector is very casual

and arbitrary which should not have been upheld by the Revenue Appellate Authority.

9. On careful perusal of the record this court considered it appropriate to call for a factual report from Sub-Divisional Officer, Begun regarding this allotment of land in larger interest of justice. The court directed the Additional Registrar (Judicial), Board of Revenue to ask for following information based on record and factual enquiry from the Sub-Divisional Officer:-

(1) Whether Keli Bai daughter of Bhera Ram and Sarju Bai daughter of Dunga Dhakar were married in the year 1983 when the impugned allotment was made?

(2) How much land was in tenancy of their fathers in the year 1983 and if married in names of their husbands/ father-in-laws?

(3) Whether the allottees are relatives to the then Sarpanch, if yes, what relationship?

(4) Whether the allotted land has ever been cultivated by the allottees as per revenue records. Give year-wise position as per khasra girdawari?

(5) What is the present status and location of the allotted land in village Katunda? Who looks after this land at present?

10. Sub-Divisional Officer, Begun submitted a detailed report with certified copies of revenue records. The report dated 9.6.2013 reveals that Keli Bai and Sarju Bai were married persons in the year 1983 when the allotment took place but the allotment was made to them showing their fathers name. Keli Bai was married to some Moti Dhakar in village Thukrai and her husband has agricultural land in his name but it was not shown in the application filed by Keli Bai and deliberately her father's name was mentioned in the application.

11. Sarju Bai was also a married applicant and her husband was Pyar Chand of village Katunda. Pyar Chand had 9.63 hectare of land in village Katunda but in her case also Sarju Bai was shown as daughter of Dunga Dhakar. This is also

very important to mention here that Sarju Bai's husband Pyar Chand was real brother to the then Sarpanch Kanhaiya Lal but the allotment advisory committee was kept at bay from the factual information and was misled.

12. The report further reads that the allotted land was never cultivated by the allottees and at present out of the allotted land 0.16 hectare land is in possession of the college and 0.40 hectare land is in possession of other persons having stone boundaries thereon and rest of the land is lying vacant. The report has manifestly explains that Keli Bai and Sarju Bai both were relatives to the then Sarpanch Kanhaiya Lal. Keli Bai was married in village Thukrai where Kanhaiya Lal, the Sarpanch, went in adoption and Keli Bai was married in the very house, therefore, she was a sister to him and Sarju Bai was his younger brother Pyar Chand's wife.

13. This court has carefully perused the revenue record filed by the Sub-Divisional Officer with his report. The khasra girdawari since svt. 2040 to 2069 manifestly reveals that there has never been any cultivation on the disputed land by the allottees.

14. The bare perusal of the judgment passed by Additional Collector and Revenue Appellate Authority in this case makes it clear that the judgments hide more and reveal less in this matters of allotment. Both the lower courts have not exercised their jurisdiction in a judicious manner.

15. Being aggrieved by the allotment in favour of Sarju and Keli, first appeal was filed by some nine villagers of different communities of the village before Revenue Appellate Authority alleging that the allotment made in favour of the allottees is bad because they are neither landless persons nor they are residents of Katunda village and only qualification they had was that they were relatives of the Sarpnach. They also made it clear before the appellate authority that the disputed land is very precious government land near the abadi which can be used for public purpose like establishing a college etc. This was also brought to the notice of the appellate authority that

on the date of allotment there were many landless persons of weaker sections belonging to scheduled caste and scheduled tribe but their claim was ignored and the land was got allotted to the allottees by the influence of the Sarpanch. The learned appellate court again observed that the appellants are not the aggrieved persons, therefore, the application filed by them under section 96 of the Civil Procedure Code seeking leave of the court for filing appeal is rejected.

16. This court has carefully perused the judgment passed by the learned first appellate court, who has focused more on the locus of the appellants and less on the merits of the case. When the villagers of a village, at least four communities of the village came to a court and apprised the court that the disputed land is a precious government land and has been grabbed by the influential persons of the village in contravention of the allotment rules. The allotted land has never been cultivated. The allottees had no eligibility, therefore, such an allotment be examined by the learned appellate court chose not to examine the allotment but cursorily rejected the appeal on the basis that the appellants have no locus standi for filing the appeal and they are not aggrieved party.

17. In view of this court, the impugned judgment passed by the appellate court is arbitrary and perverse and the learned appellate court has not exercised its jurisdiction judiciously vested in it. He has committed an error in exercising his jurisdiction in a judicious manner.

18. This court is aware that the respondents No. 1 and 2 who were allotted land in the year 1983. This is also true that they have been conferred khatedari rights as the allotment was more than ten years old. In view of the court, the spirit of the Rules of 1970 is entirely different. These rules were made just to ameliorate the sufferings of the rural landless labourers and the weaker sections of the society who do not have any land to cultivate. In this case the application filed by the Tehsildar before the Collector under rule 14(4) of the Rules of

1970 explicitly stated that the allottees did not cultivate this land in last 14 years.

19. This court is surprised that when an allottee did not cultivate the allotted land for last 14 years how they could be conferred khatedari rights? It has also been submitted before the courts below that both the allottees are not the residents of village Katunda and they have misrepresented in their applications about their place of residence and they also concealed the information about the land they held in tenancy of their husbands or fathers. In view of this court, the allottees played fraud on the allotment advisory committee and the information they revealed was misleading and fraudulent. Had they revealed all the relevant information about their place of residence, marital status, names of husband, land holdings etc then consideration of their applications could have been different in a different manner.

21. It is a well settled proposition of law that where a person obtains an order by making misrepresentation or playing fraud upon the statutory authority, such order cannot be sustained in the eyes of law.

In Lazarus Estate Ltd., Vs. Besalay (1956 All. E.R. 349), the court observed without equivocation that “no judgment of a court, no order of a minister can be allowed to stand if it has been obtained by fraud, for fraud unravels everything.

“Hon’ble Apex Court has also reiterated the same opinion in Smt. Shrisht Dhawan Vs. Shaw Brothers (AIR 1992 SC 1555) – Fraud and collusion vitiate even the most solemn proceedings in any civilized system of jurisprudence. It is a concept descriptive of human conduct”.

Hon’ble Supreme Court has also observed in United India Insurance Co. Ltd. Vs. Rajendra Singh & Ors., (2000) SCC 581- “Fraud and justice never dwell together (*fraud et jus nunquam cohabitant*) and it is a pristine maxim which has never lost its temper over all these centuries”.

22. In light of the pronouncements referred above, this court holds that in this case the allotment obtained by Keli Bai and

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Sarju Bai is based on misrepresentation and fraud because they concealed the material information in their application form and in such a case, such an allotment is bad in the eyes of law.

20. This court has also been apprised that the disputed land is near abadi and it can be used for public and community purpose. When the allottees have obtained the allotment fraudulently and the land has not been cultivated for last many years such allottees do not deserve for any allotment. In view of this court, the allotment made in favour of the allottees is void ab initio and they also did not comply with the conditions of the allotment, Therefore, the allotment deserves to be cancelled with immediate effect.

21. As discussed above, the second appeal filed by the Gram Panchayat is hereby accepted. The judgments of both the lower courts are quashed and set aside. The allotment made in favour of the respondents No. 1 and 2 on 6.10.1983 is also quashed and set aside. Tehsildar is directed to take possession of the disputed land.

Pronounced.

(Bajrang Lal Sharma)
Member