



Mr. Vaibhav Bhargava

For Respondent(s) : Mr. Akshay Sharma-Addl.G.C.

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND**Order****17/01/2024****REPORTABLE**

1. The instant writ petition has been filed by the petitioners with the following prayer:-

"it is, therefore, prayed that by an appropriate writ, order or direction:-

a) the orders dated 11.10.2011 passed by Board of Revenue in appeal/LR/1423/2006/ Jaipur be quashed and set aside.

b) the order dated 28.12.2005 passed by Revenue Appellate Authority, Jaipur in appeal No. 43/2001 in so far as it relates to cancellation of allotment of land of Khasra No. 110/3301 measuring 7 bighas 17 biswas be set aside and quashed.

c) the order dated 30.01.2001 passed by Additional Collector (II) Jaipur in case No. Justice Beri Commission No. 14/04 application 26/94 be quashed and set aside.

Such other order as your Lordship deems proper may also be passed in favour of the petitioner.

2. Learned counsel for the petitioners submits that father of the petitioners was a "landless person", hence, considering the provisions contained under the Rajasthan Land Revenue Act (Allotment of Land for Agriculture purposes) Rules, 1957, the allotment of land bearing Khasra No. 1098/2 measuring, 7 Bigha



and land bearing Khasra No. 110/3301 measuring, 7 Bigha and 17 Biswa was made in his favour, way back in the year 1964 and 1961 respectively. Counsel submits that after a lapse of 40 years, the above allotments were cancelled by the Court of Additional Collector- II, Jaipur vide order dated 30.01.2001 on the basis of recommendations made by the "Beri Commission" constituted by the State Government. Counsel submits that no notice was given by the Commission to the petitioners and an ex parte recommendations were made for cancellation of the allotment. Counsel submits that against the impugned order dated 30.01.2001, the petitioners submitted an appeal before the Court of Revenue Appellate Authority, Jaipur (for short, 'RAA') wherein an order was passed and the allotment dated 12.06.1964 with regard to the land bearing Khasra No. 1098/2 measuring 7 Bigha was restored and rest of the order of cancellation was retained as it is vide impugned order dated 28.12.2005. Counsel submits that aggrieved and dissatisfied by this order, the petitioners submitted an appeal under Section 76 of the Rajasthan Land Revenue Act, 1956 (for short, 'the Act of 1956') before the Board of Revenue (for short, 'the Board') and the Board has gone a step ahead and suo motu has cancelled the allotment which was made in favour of the petitioners' father with regard to land bearing Khasra Nos. 1098/2 measuring 7 Biswa vide order dated 11.10.2011. Counsel submits that the aforesaid order passed by the Board was foreign to the procedure because no appeal was submitted by the State against the judgment dated 28.12.2005 passed by the RAA. Counsel further submits that allotment made in favour of father of the petitioners cannot be cancelled after a lapse of more than four



decades. Counsel further submits that once the petitioners got the khatedari rights, the same cannot be cancelled without following the due process of law as contained under Rule 44 of the Rajasthan Land Revenue (Allotment of land for Agriculture purposes) Rules of 1970. Counsel further submits that the allotment of the land in question was made in favour of the petitioners as per the Rules of 1956, hence the allotment of the land to the petitioners cannot be cancelled by the respondents in exercise of power contained under Rule 44 of the Rajasthan Land Revenue (Allotment of land for Agriculture purposes), Rules 1957 (for short, 'the Rules of 1957'). In support of his contentions, he has placed reliance upon the judgment passed by the Division Bench of this Court in the case of **Pat Ram and Ors. Vs. The State of Rajasthan and Ors.** D.B. Civil Writ Petition No. 948/1986 and the judgment passed by this Court in the case of **Anandi Lal Vs. State of Rajasthan and Ors.**, reported in **1996 RRD 170**. Counsel submits that under these circumstances, interference of this Court is warranted.

3. Per contra, counsel for the respondents opposed the arguments raised by counsel for the petitioners and submitted that the father of the petitioners was not a "landless person" as defined under Rule 2(3) of the Rules of 1956 and he was in possession of the land measuring 31 Bighas and 8 biswas land and this fact was intentionally and deliberately concealed by him at the time of getting the allotment by showing himself as a landless person. Counsel submits that several frauds were brought into the notice of the State Government with regard to the false allotments by various persons, hence a commission was constituted in the



name and style of "Beri Commission" in the year 1995 who inquired into the matter after issuing notice to all the allottees and thereafter, recommendations were made by the said Commission for cancellation of the allotment issued in favour of several persons including the father of the petitioners i.e. Sultan Khan. Counsel submits that considering the recommendations made by the aforesaid Commission, the Additional Collector, II, Jaipur exercising its power contained under Rule 44 of the Rules of 1970 passed the order impugned by which the allotment of both of the land of the petitioners' father was cancelled. Counsel submits that Rule 1956 were repelled by the new Rules of 1970. Counsel submits that under these circumstances, the Collector was quite competent to exercise its power contained under Rule 44 of the Rules of 1970 and by exercising the aforesaid power, the allotment of the land to the father of the petitioners was rightly cancelled by the Additional Collector vide order dated 30.01.2001. Counsel submits that aggrieved by the aforesaid order, the petitioner approached the Court of RAA by way of filing an appeal but without any basis the RAA has given reference of notional share of the petitioner with regard to land bearing Khasra No.1098/2 in the land of the father of the petitioners i.e. 31 Bighas. Counsel submits that without any basis a distinction was made between two lands which were allotted to father of the petitioners and without any basis the allotment made in favour of the father of the petitioners in the year 1964 with regard to land bearing Khasra No. 1098/2 was restored. Counsel submits that the aforesaid mistake/error committed by the RAA was rectified by the Board while passing the judgment dated 11.10.2011 and both allotments





made in the favour of the father of the petitioners were ordered to be cancelled. Counsel further submits that judgment relied by the counsel for the petitioner in the case of **Anandi Lal (Supra)** was brought into the notice of the Full Bench of this Court in a reference in the case of **Chiman Lal Vs. State of Rajasthan and Ors.**, reported in **AIR 2000 Rajasthan 206**. Counsel submits that after taking into consideration the relevant provisions/Rules and the judgments of Hon'ble Apex Court, finally the reference was answered against the analogy which was drawn by the Division Bench in the case of **Anandi Lal (Supra)**. Counsel submits that the Larger Bench of this Court in the case of **Chiman Lal (Supra)** has recorded a categorical finding that the Court cannot prescribe or fix any period of limitation and the Court cannot exercise the powers of the Legislature. Counsel submits that in view of the submissions made hereinabove, interference of this Court is not warranted.

4. Heard and considered the submissions made at Bar and perused the material available on record.

5. Before deciding the controversy involved in this petition, it would be gainful to quote the definition of the word "landless" as defined under the Rule 2(3-B) of the Rules of 1957 which reads as under:-

"Landless Agriculturist' means a resident of Rajasthan who is either a bonafide agriculturist or an agricultural labourer, and is cultivating or is likely to cultivate land personally, and whose main source of livelihood is agriculture or any occupation which is subsidiary or subservient to agriculture, and such person does not hold any tenure land anywhere in Rajasthan, or the area of such land which he holds including any land which has



been previously allotted to him, is less than the area prescribed in Rule 12:

Provided that the following categories of persons shall not be considered to be landless agriculturists, namely-

(a) an employee of the Government, or of a commercial or industrial establishment or concern, his wife and children dependant on him but a casual or work charged labourer shall not be treated as an employee for this purpose;

(b) a person who has sold or otherwise transferred, the whole or part of the land held by, or allotted to him and has, thereby, come to hold less than the minimum area specified above;]

(c) a married person whose wife or husband, as the case may be, holds land, including any land which has been previously allotted to him or her, jointly or severally, is more than the area prescribed in Rule 12;”

6. Perusal of the aforesaid definition of the word landless, it is clear that the landless means a person who does not hold any land either in his own name or in the name of any member of his joint family or who holds an area which is less than the minimum area prescribed for this purposes under Section 53 of the Tenancy Act.

7. The record indicates that at the time of allotment of the land in question, the father of the petitioner was in possession of 31 Bigha and 8 Biswa land and deliberately this fact was not brought into the notice of the allotment committee when the allotment in question was made in favour of the Sultan Khan (father of the petitioners). It appears that several frauds and misrepresentation were done by the several persons showing themselves as landless persons, so in order to ascertain correctness of the above facts, the Commission was constituted by the Government i.e. Beri





Commission, who inquired on this issue. Thereafter, after providing the due opportunity of hearing to all the respective persons, finally the recommendation was made not only against the father of the petitioners but also against the others for cancellation of their allotments and on the basis of those recommendations, the matter was taken up by the Additional Collector, II, Jaipur under Rule 44 of the Rules of 1970 and finally the order was passed against the petitioners and allotment of both land bearing Khasra Nos. 1098/2 and 110/3301 were cancelled.

8. Aggrieved by the aforesaid order, the petitioner submitted an appeal which was partly allowed by the RAA and the allotment with regard to land bearing Khasra No. 1098/2 was restored and the allotment with regard to the land bearing Khasra No1098/2 and 110/3301 was remained to be cancelled.

9. Aggrieved by the order dated 28.12.2005 passed by the RAA, the petitioner unsuccessfully submitted an appeal before the Board and the same was dismissed vide judgment dated 11.10.2011 and both allotment made in favour of the father of the petitioners were cancelled. Now the issue before this Court is whether the allotment which was made in favour of the father of the petitioners in the year 1961 and 1964 can be cancelled by the Collector in exercise of its power under Rule 44 of the Rules of 1970 beyond the period of limitation and after a lapse of four decades? The Full Bench of this Court in the case of **Chiman Lal (Supra)** has dealt with the legal question of limitation, after considering the judgment passed by Division Bench of this Court in the case of **Anandi Lal (supra)** and it has been held by the



Full Bench of this Court in para 10, 11, 12, 14, 15 and 16 which reads as under:-.

"10. However, at the time of hearing before us, learned counsel Shri Beniwal appearing for the petitioner has strongly relied upon the Division Bench Judgment of this Court in Anandi Lal's case (supra) wherein most of the Supreme Court judgments have been considered and it was submitted by learned counsel Shri Beniwal that when no period of limitation is prescribed under the provisions of Act or the Rules then the revisional powers can be exercised within a reasonable time which should not be more than one year. In this case learned Collector exercised his revisional powers after ten years of grant of Patta for canceling the same on the ground that there was a breach of statutory rules in granting patta in favour of the petitioner by the Gram Panchayat. In substance, the argument of Mr. Beniwal was that when no period of limitation is provided under the Act or the Rules then in such cases the revisional powers should be exercised within one year and not more than that, in other words, M. Beniwal wants us to fix the period of limitation for exercising the revisional powers under Rule 272 by the revisional authority in absence of provision for any period of limitation provided under the Act or the Rules.

11. However, learned counsel Shri Bishnoi for the respondent Nos. 1 and 2 and Mr. Bhandari for respondent No. 3 vehemently submitted that it is not the function of the Court to prescribe the limitation where the legislature, in its wisdom had thought it fit not to prescribe any period. Relying





upon the observations made by the Hon'ble Supreme Court in Ajaib Singh's case (supra) it was submitted that personal view of the Judges presiding the Court cannot be stretched to authorise them to interpret the law in such a manner which would amount to legislation intentionally left over by the legislature. They also submitted that even in Anandi Lal's case (supra) the Division Bench of this Court has never laid down a law that reasonable period means one year and if the powers are exercised after one year then such exercise of powers was bad. Their submission was that reasonable period goes with the facts and circumstances of each case which is pending consideration before the Court. Even in Anandi Lal's case the Division Bench itself clarified that in case fraud is alleged and public interest is shown to be suffering on account of collusion between the public officers and the private party, then revisional power may be exercised even after a period of one year. Thus, no hard and fast rule can be laid down regarding period during which revisional powers can be exercised, when no limitation is provided.

12. Before appreciating the rival contentions of the parties , we would like to state few facts of Anandi Lal's case (supra). In that case the dispute pertains to a land which was originally in the name of Pujari, Laxmi Narain Temple, who died somewhere in 1951 and the said land was ordered to be resumed and confiscated to the State as per the order dated 20-1-1955 passed by the Commissioner, Kota. In other words, the land was "Maufi" land, inasmuch as after death of the Pujari of Laxminarain Temple, no one was there to claim the land. By way of escheat, it was ordered to be resumed by the State. On





October 14, 1955, the Rajasthan Tenancy Act, 1955 came into force. Thereafter, the petitioner Anandi Lal filed suit on May 19, 1957 under the said Act for a declaration that he be declared "khatedar" of the land on the ground that on October 14, 1955, the day on which the Act came into force, he was in possession of the land in question. His suit was decreed on Oct. 12, 1957. The State Govt. of Rajasthan was party to the suit and no appeal was filed against the said order. Consequently, in the revenue record. Mutation entry No. 334 was made on 22-9-1958 and the petitioner continued to be in possession of the land and enjoyed the fruits of the same. However, on the report submitted by Tehsildar on 27-12-1983, the Addl. Collector, Baran made a reference after 25 years to the Board of Revenue under Section 232 of the Rajasthan Tenancy Act and under Section 82 of the Rajasthan Land Revenue Act, 1956 and it was prayed that decree passed by the Assistant Collector, Baran on 12-10- 1957 in favour of the petitioner Anandt Lal and mutation entry No. 334 dated 22-9- 1958 be cancelled. The Board of Revenue accepted the reference by its order dated 21-5-1986 and quashed the decree passed by the. Assistant Collector, Baran on 12-10-1957 and order for cancellation of mutation entry No. 334 made on 22-9-1958 and to restore the earlier position and the land was ordered to be entered in the name of "Mandi Maufi".

14. After considering the aforesaid judgments of the Hon'ble Supreme Court the Division Bench in Anandi Lal's case held that:---

"Once the cases of such tenants/ khatedars are decided and their rights have been





concluded and pursuant to the same they are in possession of the land. Ordinarily the revisional power under Section 82, of the Act, 1956 and under Section 232 of the Act, 1955, cannot be exercised after a period of one year from the date of the order sought to be revised. Once a tenant/khatedar acquires tenancy/khatedari rights and continues to be in possession of the land, his rights cannot be called in question after unreasonable delay. Such tenants/khatedars are required to be treated at par, for all purpose, with all other tenants/khatedars who acquired tenancy/khatedari rights over the land. To permit the exercise of revisional powers under Section 82 of the Act, 1956 and/or under Section 232 of the Act of the Act, 1956 after unreasonable delay, would amount to putting imprimatur of the Courts on the unreasonable and arbitrary exercise of power. Within a period of one year the tenant/khatedar of the land would have spent merely for the improvement of the land, he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on this basis and made many commitments. Therefore, ordinarily revisional powers under Section 82 of the Act of 1956 and under Section 232 of the Act of 1955, cannot be exercised after a period of one year. If this requirement of reasonable length of time is not read into





the aforesaid provisions the provisions would become unconstitutional.”

15. With greatest respect of the Hon'ble Judges of the Division Bench, we do not agree with the view taken by them that within a period of one year the tenant/ khatedar of the land would have spent money for the improvement of land and he would have arranged his affairs of life on the basis that he is in occupation of the land, he would have entered into several transactions on this basis and made many commitments. Because, it was nothing but mere presumption on the part of the Hon'ble Judges of the Division Bench and matters can never be decided on the basis of assumption and presumption. We do not also agree with the view taken by the Hon'ble Judges of the Division Bench in Anandi Lal's case (supra) that ordinarily revisional powers under Section 82 of the Act of 1956 and Section 232 of the Act of 1955 cannot be exercised after a period of one year. If this requirement of reasonable length of time is not read into the aforesaid provisions, the provisions would become unconstitutional.

16. In our considered view by holding that ordinarily the powers cannot be exercised after a period of one year under Section 82 of the Act of 1955 and under Section 232 of the Act of 1955 the Hon'ble Judges of the Division Bench in Anandi Lal's case (supra) stretched their personal views to authorise them to interpret law in such a manner which amounts to legislation which is not the function of the Court. This view of the Hon'ble Judges of the Division Bench stands overruled by the later Judgment of the Hon'ble Supreme Court in





Ajaib Singh's case (*supra*), wherein, the Supreme Court has observed that :--

"It is not the function of the Court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The Courts admittedly interpret law and do not make laws. Personal views of the Judges presiding the Court cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the Legislature."

10. While deciding the reference in the case of **Chiman Lal (Supra)**, the Full Bench of this Court has found that the judgment of Division Bench in the case of **Anandi Lal (supra)** was per se illegal and it was further held that the Courts cannot prescribe or fix any limitation because such act lies in the domain of Legislature and cannot be taken in hands by the judiciary.

11. In view of the above proposition as propounded by the Full Bench of this Court in the case of **Chiman Lal (Supra)**, it is safely held that the Additional Collector has not committed any error in entertaining the application and in rejecting and cancelling the Pattas issued in favour of the petitioners' father, on the basis of the recommendations made by the Beri Commission, which indicates that father of the petitioner was not a "landless person" and he was in possession of 31 Bigha and 8 Biswa land at the time of allotment. Hence, under these circumstances, neither Additional Collector nor the Board of Revenue has committed an error in passing the impugned order.



12. The petitioners are claiming their rights over the property in question on the basis of allotment made in favour of their father. Such allotment does not confer any title over the property, as the same was found to be illegal by the Additional Collector while cancelling the same on the basis of the recommendation of "Sethi Commission". The allotment has rightly been cancelled by the Additional Collector because the allotment itself was made in favour of the father of the petitioners in contravention of the Rules by treating him as a "landless person" while he was in possession of bighas of land at the time of allotment and he was not a landless person. The allotment was made in favour of the father of the petitioners on the basis of misrepresentation made by him.

13. The Division Bench of this Court in the case of **Sohan Kanwar Vs. Board of Revenue and Ors.** reported in **2002(1) WLC 415** has held that the order of allotment is bad in the eye of law if the same is being obtained by misrepresentation and the same cannot be maintained. It has been further held that anything obtained by misrepresentation on fraud can never be satisfied. It has been held in para 9 to 13 which reads as under:-

"9. These are thoughtful observations of the learned Single Judge in Pat Ram's case, which clearly means that as and when there is an allotment obtained by misrepresentation or fraud, the cancellation can be held to be justified. The case made out by the Collector is a case of misrepresentation. Therefore, the observations of the learned Single Judge in Pat Ram's case supports the action taken by the Collector. The observations of the learned Single Judge



regarding the enforceability of the Rules does not appear to be observations made after considering the language of the Rules which conferred the powers on the Collector to cancel the allotment and the rules give powers to the Collector to cancel the allotment made under the Rules. Rule 14(4) of the Rules of 1970 reads as under:-

"(4) The Collector shall have the power to cancel any allotment made by a Sub-Divisional Officer or a Tehsildar under the Rules repealed by rule 21 of the Rules either suo moto or on the application of any person in case the allotment has been secured through fraud or misrepresentation or has been made against rules or in case the allottee has committed breach of any of the conditions of allotment:

Provided that no such order to the prejudice of any person shall be passed without giving such person an opportunity of being heard".

10. On enumerated condition, any allotment made under the Rules is liable to be cancelled under Rule 14(4) of the Rules of 1970. In the instant case, basic order. conferring title on the allottee gets knocked down because of misrepresentation. Conferment of Khatedari right is only a consequential order. The basic order being an order obtained by misrepresentation regarding which a detailed discussion has been made by the learned Single Judge we are of the opinion that when the basic order goes the consequential orders have to go. Reference in this regard may be made to a decision of the Hon'ble Supreme Court rendered in Mithoo Shahani v. Union of





India (5), wherein it has been observed as under:-

"Where an order making an allotment is set aside the title which is obtained on the basis of the continuance of that order also falls with it. The relevant provisions of the Act and the Rules do not contain any provision which militates against the position which is consistent with principle and logic. It is manifest that a sanad can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside it would follow, and the conclusion is inescapable that the grant cannot survive, because in order that grant should be valid it should have been effected by a competent officer under a valid order."

11. That being the position, the order of allotment being bad in the eyes of law being obtained by misrepresentation can be said to be ineffective. Any subsequent action on the basis of an order which is obtained on the basis of misrepresentation also cannot be maintained. No amount of time lapsed can be considered to be sufficient to confer a right on a person who had perpetrated fraud.

12. Another argument of the learned counsel for the appellant relates to some observations made by the Hon'ble Supreme Court in the case of Tej Singh v. State of Rajasthan (supra). In Tej Singh's case (supra) the Hon'ble Supreme Court has observed as under:-



"In this case, the facts found are that on the date of making the application and assignment namely, 18.11.1968, the appellant was a Gram Sewak, a public servant, Though he was a resident, his main source of income was, from service as Gram Sewak and hence he cannot also be said to be a bona fide agriculturist. That is the finding of fact recorded by all the authorities. Under these circumstances, it would amount to suppression of the material fact and of obtaining an order of assignment of 5 beghas of land. Therefore, the cancellation of the order cannot be said to be illegal. The power exercised by the Collector cannot be said to be without jurisdiction."

13. By the aforesaid observations, the Hon'ble Supreme Court has upheld action of the Collector in cancelling the allotment of land. However, in view of the special facts of that case, the Hon'ble Supreme Court was of the view that the allottee was a temporary Gram Sewak in 1968 and admittedly in 1973 he resigned from the post and took up his avocation as an agriculturist and then for more than 20 years he has been personally cultivating the land and made improvements and thus, in this back ground the Hon'ble Supreme Court maintaining the order of cancellation ordered the authorities not to dispossess the allottee from the land. Thus, the facts of the case clearly state that as and when any power is exercised by the Collector in the back ground of misrepresentation, this was not liable to be interfered with. In the instant case the



observations of the Hon'ble Supreme Court made in the case of Tej Singh (supra) apply with full force and the action of the Collector is liable to be sustained in the light of the observations made in Tej Singh's case."

14. This Court finds no force in the arguments of the counsel for the petitioner that the pattas in question cannot be cancelled after a lapse of expiry of long time. It is the settled proposition of law that if any patta has been obtained by concealment or fraud then no limitation will come in the way of the authority to cancel such allotment. The Division Bench of this Court has taken this view in the case of **Issack Khan Vs. State of Rajasthan**, reported in **2018(4) RLW(Raj.) 3326** in para 17 and 18. And it has been held that:-

"17. Coming to the contentions of the learned counsel that the petition filed for assailing the patta issued after unexplained delay of about ten years should have been dismissed on this count alone, suffice it to say that the allotment of the land belonging to local authority or Government obtained without any lawful entitlement by playing fraud is void and no limitation should come in the way of authority competent to cancel such allotment.

18. Lastly, coming to the effect of registration of the patta issued by the Gram Panchayat, suffice it to say that the registration of the document by itself does not confer any title over the property and thus, if the patta on the strength of which appellant was claiming right over the disputed land, is found to be illegal and void, the State Government exercising revisional power under Section 97 of the Act, was



well within its jurisdiction in annulling the decision of the Gram Panchayat in pursuance whereof the appellant was claiming right over the disputed property.”

15. In view of the aforesaid discussions, this Court finds no reason to interfere with the impugned orders passed by the Additional Collector and Board of Revenue. There is no force in this petition and the same is hereby dismissed.

16. Stay application and pending application(s), if any, also stand dismissed.

17. Parties are left free to bear their own cost.

(ANOOP KUMAR DHAND),J

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