

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR****S.B. Civil Writ Petition No. 182/2000**

Smt. Raj Kanwar

----Petitioner

Versus

1. State of Rajasthan, through the Secretary to Govt., Revenue Department, Government of Rajasthan, Jaipur,
2. Board of Revenue for Rajasthan at Ajmer,
3. Commissioner for Colonisation, Bikaner.

----Respondents

Connected With**S.B. Civil Writ Petition No. 181/2000**

Smt. Sua Kanwar

----Petitioner

Versus

1. State of Rajasthan, through the Secretary to Govt., Revenue Department, Government of Rajasthan, Jaipur,
2. Board of Revenue for Rajasthan at Ajmer,
3. Commissioner for Colonisation, Bikaner.

----Respondents

For Petitioner(s)	:	Mr. J.L. Purohit, Sr. Adv. assisted by Mr. Magan Singh Gehlot Mr. Anil Kumar Singh
For Respondent(s)	:	Mr. I.S. Pareek, AGC

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**Order****REPORTABLE****28/02/2024**

1. Since both the writ petitions arise out of a common judgment, therefore they are being heard and decided finally by this common order.



2. Heard learned counsel for the parties.
3. The present writ petitions have been filed against the order dated 24.10.1997 passed by the Commissioner (Colonization), Bikaner and the order dated 30.06.1999 passed by the Board of Revenue, Rajasthan, Ajmer, whereby the revision petitions filed by the petitioners were dismissed.
4. Briefly, the facts noted in the present writ petitions are that the petitioners, being the bonafide agriculturists and residents of State of Rajasthan by way of filing an application applied for allotment of land as per Rule 13-A of the Rajasthan Colonization (Allotment and Sale of the Government Land in the Indira Gandhi Canal Colony Area), Rules, 1975 (hereinafter referred to as the 'Rules of 1975'). Considering the petitioners eligible for allotment of land, the respondents vide orders dated 29.12.1993 & 25.08.1993 allowed the application of the petitioners and allotted 24.5 Bighas and 25 Bighas of land to the petitioners respectively.
5. After allotment of the land, the petitioners were handed over the possession of their respective lands and they started cultivating the lands allotted to them. All of a sudden, the petitioners were served with the notices dated 03.07.1996 by the Commissioner (Colonization), Bikaner for cancellation of the allotment of their lands. The notices received were duly replied by the petitioners but the learned Commissioner (Colonization), considering the reply filed by petitioners, vide order dated 24.10.1997, cancelled the allotment of the lands made in favour of the petitioners and the lands were ordered to be recorded in the name of State Government and the same was directed to be





auctioned by taking into consideration the relevant provisions of the Rules of 1975.

6. The order dated 24.10.1997 passed by the Commissioner (Colonization) was assailed by the petitioners by way of filing revision petitions before the Board of Revenue but the Board of Revenue, while rejecting the revision petitions filed by the petitioners vide order dated 30.06.1999, affirmed the order passed by the Commissioner (Colonization) on 24.10.1997.

7. Mr. J.L. Purohit, learned Sr. Counsel appearing on behalf of the petitioners submits that the learned Commissioner (Colonization) had committed an error while passing the order dated 24.10.1997 as the deleted proviso of Rule 7 of the Rules of 1975 had been made applicable, although the same was deleted from the Statute Book on 15.07.1993. He submits that the deleted provisions were not required to be considered as the allotment orders in the case of the petitioners were made in the month of August, 1993 and December, 1993 and on the date of allotment orders, the proviso to Rule 7 was not on the Statute Book as the same was deleted in the month of July, 1993 itself. Thus, there was no occasion for the Commissioner (Colonization), Bikaner to take recourse to the deleted proviso while rejecting the allotment made in favour of the petitioners.

8. Learned Sr. Counsel further submits that a bare perusal of the definition of a 'landless person' as mentioned in Rule 2(1)(xiii) of the Rules of 1975 clearly shows that a person who is a resident of Rajasthan and has been, by profession, a bonafide agriculturist or a bonafide agricultural labourer having agriculture as a primary source of his income and who either does not hold any land



anywhere in India or holds land less than 25 Bighas will be considered a 'landless person', but it does not include the temporary lease cultivation lease holder, therefore, the petitioners are falling within the definition of 'landless person'. Learned counsel submits that as per Rule 7 of the Rules of 1975, the petitioners were rightly given the priority for allotment of the land.

9. Learned Sr. Counsel further submits that the Commissioner (Colonization), Bikaner had completely failed while taking note of the fact that the petitioners do not hold any land in their names as per the rules and firstly, the lands in the name of their husbands cannot be treated to be the lands in the name of the petitioners and secondly, even if it is taken to be the land of their joint ownership, then as per Annex.2 dated 13.08.1997 placed on record, the husbands of the petitioners were having *Barani* land ad measuring 9 Bighas and 13 Bighas respectively which is less than 25 Bighas of irrigated land, therefore, the petitioners are landless persons as per the definition of 'landless person' mentioned in the Rules of 1975.

10. Learned Sr. Counsel submits that the Commissioner (Colonization) had committed an error while passing the orders dated 24.10.1997 and rejecting the allotment of lands made in favour of the petitioners. He submits that on the same analogy, learned Board of Revenue affirmed the orders passed by the Commissioner (Colonization), therefore, the learned Board of Revenue had also committed an error while interpreting Rule 7 and Rule 2(1)(xiii) of the Rules of 1975 and rejecting the revision petitions preferred by the petitioners. He, therefore, prays that the



writ petitions may be allowed and the orders dated 24.10.1997 and 30.06.1999 may be quashed and set aside.

11. Per contra, Mr. I.S. Pareek, learned State Counsel vehemently opposes the submissions made by the learned Sr. Counsel for the petitioners and submits that the orders passed by the Commissioner (Colonization) and affirmed by the learned Board of Revenue are absolutely justified and do not call for any interference.

12. Learned State Counsel further submits that the learned Commissioner (Colonization) had rightly taken note of the Rules of 1975 while cancelling the allotment of land made in favour of the petitioners. He, therefore, prays that the writ petition may be dismissed. However, on pointed query being raised by this Court, the learned State Counsel is not in a position to dispute the fact with respect to the holdings of the land as per Annex.2 filed by the petitioners that 13 Bighas and 9 Bighas of uncommand land respectively is recorded in the name of husbands of the petitioners.

13. I have considered the submissions made at the Bar and have gone through the relevant record of the case including the orders impugned dated 24.10.1997 and 30.06.1999.

14. The date of allotment of the land in case of the petitioners is August, 1993 and December, 1993 respectively which is clear from the allotment orders placed on record. While considering the eligibility of the petitioners for allotment of the lands, they were considered 'landless persons' falling within the priority enshrined under Rule 7 of the Rules of 1975. However, on an application filed by Tehsildar under Rule 22 (3), the petitioners were issued notices



and the reply was filed by them which was considered by the Commissioner (Colonization) while passing the orders dated 24.10.1997 cancelling the allotment of lands made in favour of the petitioners.

15. For better appreciation of the facts in the present case, it will be essential to take note of certain provisions of the Rules of 1975, which are as under:-

Rule 2. Interpretation.- (1) In these rules, unless there is anything repugnant to the subject or context-

(i).....

.
.
.

(xiii) "**Landless Person**" means a person who,-

(i) is a resident of Rajasthan; and

(ii) has been by profession a bona fide agriculturist or a bona fide agricultural labourer, having agriculture as the primary source of his income and who either does not hold any land anywhere in India or holds and less than 25 bighas, but it does not include temporary cultivation lease holder:

Provided that a person holding continuously since before the 1st day of April, 1955 only barani land in a village may surrender that land in favour of Government free of cost and on acceptance of such surrender, he will also be treated as a landless person of that village.

Provided further that a released 'Sagri' as certified by the Sub-Divisional Officer will also be treated as landless person of that village.

Explanation – For the purpose of this proviso "**Sagri**" means the bonded labourer as defined in the Bonded Labour System (Abolition) Act, 1976 (Central Act 19 of 1976).





Provided further that the following categories of persons shall not be deemed to be landless persons, namely:-

- (a) an employee other than a casual or work charged employee of the Government or of a commercial or industrial establishment or concern, his wife and children dependent on him.
- (b) a person who has sold or otherwise transferred the whole or part of the land held by, or allotted to him other than land transferred to or acquired by the Government or statutory bodies and thereby reduces the size of his holding to become landless person.

7. Priorities for allotment.- (1) Priorities for allotment of Government land under these rules shall be in the following order :-

- (a) Temporary cultivation lease holders;
Provided that the temporary cultivation lease holder of the district in which the land to be allotted, is situated, shall be given first priority in allotment
- (b) A landless person of the same village;
- (c) A landless person of the same Colonisation Tehsil/ Revenue Tehsil;
- (d) A landless person of the same District or under the Antyodaya Scheme of the State Government, or as a beneficiary of the Integrated Rural Development Programme, who has worked for two years as paid labourer of the State Government in the construction of the Indira Gandhi Canal or in the development works connected with its command area, after he is so identified;
- (e) Agriculture Graduates, ex-servicemen, experator of Indira Gandhi Canal and Bhakra Landless persons for the areas reserved for them;
- (f) Landless persons of the neighbouring district.





(g) Landless persons of any other districts of Rajasthan excluding the persons mentioned in clause (h).

(h) Landless persons of Colonised Part of Tehsils belonging to area covered by Major and Medium Irrigation Project.

(2) For the purposes of Sub-rule (11) landless person shall be deemed to be of the Village, Tehsil or District where he has been residing [for the last fifteen years]:

Provided that for purposes of allotment of land in Stage-II the inter se priority of those landless persons who were eligible, and had applied for and were registered by the Allotting Authority for allotment of land in Stage-I under rule 10 and 11 but to whom land could not be allotted due to non-availability of land in Stage-I, shall be reckoned from the date on which they had originally applied for the allotment of land in Stage-I.

Rule 22. Powers of Colonisation Officers.-

(1)....

(2)....

(3) The Colonisation Commissioner shall have the powers to cancel any allotment made by an Allotting Authority under these rules either suo moto or on the application of any person in a case where the allotment has been made against the rules :

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

16. From a bare perusal of the provisions mentioned above, it is clear that on an application filed by the Tehsildar before the Commissioner (Colonization) under Rule 22 (3) of the Rules of 1975, the matter was examined and the order was passed on 24.10.1997. The fact that the proviso to Rule 7 was deleted from the Statute Book on 15.07.1993 is not disputed, therefore, on the





date on which the allotment of lands was made in favour of the petitioners (i.e. in August, 1993 & December, 1993 respectively), there was no embargo of proviso to Rule 7 to be taken note of. Thus, the learned Commissioner (Colonization) had committed an error while considering the same.

17. This Court further takes note of the fact that as per the definition of 'landless person', the eligibility of having the land or not is required to be taken note of only of the person who has applied before the authorities concerned and, therefore, for all intents and purposes, the land holdings of an individual person or the applicant were required to be taken into consideration while considering the application for grant of land under the 'landless person' category. Thus, the learned Commissioner (Colonization) has wrongly considered the land holdings of the petitioners' husbands towards the applicant/petitioners.

18. The Commissioner (Colonization), Bikaner had also committed an error while taking note of the provisions of Ceiling Act in calculating the lands derived by the husbands of the petitioners in the present case. Since the law does not provide the clubbing of the lands of husband and wife while considering the holding of land under the category of 'landless person', therefore, in the first instance, the lands which belong to the husbands of the petitioners were not required to be taken note of. Secondly, the provisions of the Ceiling Act were not applicable in the present case while calculating the holdings of the land of the petitioners. Thus, in the considered opinion of this Court, the Commissioner (Colonization) had committed an error while considering the



petitioners to be not falling within the category of 'landless person' as per Rule 2(1)(xiii) of the Rules of 1975.

19. In the considered opinion of this Court, the petitioners were rightly considered in the category of 'landless person' for allotment of land under the Rules of 1975 and had rightly been given the priority as per Rule 7 of the Rules of 1975.

20. The learned Board of Revenue had also committed an error while affirming the order of the Commissioner (Colonization) by passing the order dated 30.06.1999 on the same grounds. The learned revisional court failed to exercise its jurisdiction in accordance with the rules prevailing at the time of allotment of the lands in favour of the petitioners. Thus, the orders dated 24.10.1997 and 30.06.1999 are not sustainable in the eye of law.

21. In view of the discussions made above, the writ petitions merit acceptance and the same are allowed. The orders dated 24.10.1997 passed by the Commissioner (Colonization), Bikaner and the orders dated 30.06.1999 passed by the Board of Revenue, Rajasthan, Ajmer are quashed and set aside. The allotment of lands made in the favour of the petitioners are maintained and upheld.

22. Photocopy of this order be placed in the connected file.

(VINIT KUMAR MATHUR),J

5-6-/VivekMishra/-