



**HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.**

S.B. Civil Writ Petition No. 1352/1999

Shiv Ratan

----Petitioner

Versus

1. State of Rajasthan through Colonisation Tehsildar, Kolayat.
2. The Assistant Colonisation Commissioner, Kolayat.
3. The Colonisation Commissioner, Bikaner.
4. The Board of Revenue for Rajasthan at Ajmer.

----Respondent

For Petitioner(s) : Mr. Varun Goyal.  
For Respondent(s) : Mr. I.S.Pareek, AGC

**HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**

**Reportable**

**Order**

**21/02/2024**

Heard learned counsel for the parties.

The present writ petition has been filed against the order dated 12.01.1999 passed by the Commissioner (Colonisation), IGNP, Bikaner as well as the order dated 23.03.1999 passed by the Board of Revenue, Ajmer affirming the order dated 12.01.1999.

Briefly the facts relevant to be noted in the present case are that the petitioner was a temporary cultivator of village Barsalpur, Tehsil Kolayat District Bikaner. While, the petitioner was cultivating the land, vide order dated 21.12.1985, his temporary cultivation lease was cancelled. Since, the possession of the petitioner over the land was not disturbed and he was in continuous possession of the land, the petitioner filed an application for permanent



allotment of the land under the Rajasthan Colonisation (Allotment and Sale of Government Land in Indira Gandhi Canal Colony), Rules, 1975. On 05.09.1989, the Assistant Commissioner (Colonisation), ordered to place the said application before the Allotment Advisory Committee. The Allotment Advisory Committee vide its order dated 20.12.1990 dismissed the application of the petitioner seeking permanent allotment of the land in question. Since, the order dated 20.12.1990 was passed without affording/giving any opportunity of hearing to the petitioner, therefore, on having come to know about the said order dated 20.12.1990, the petitioner filed an application under Section 151 of CPC and on that application, an order dated 20.08.1991 was passed by the Assistant Commissioner (Colonisation), IGNP, Kolayat for placing his case again for permanent Allotment before the allotment Advisory Committee. The Allotment advisory committee vide its order dated 07.03.1992 allotted 25 bighas of command land out of cultivation lease of 37 bigha land to the petitioner.

The Tehsildar (Colonisation), Kolayat District Bikaner after verifying the facts, issued a certificate (Annex.3) to the petitioner showing him to be the resident of village Barsalpur District Bikaner and that he is a bonafide agriculturist of village Barsalpur.

The Tehsildar (Colonisation), Kolayat preferred an application under Rule 24(3) of the Rules of 1975 before the Commissioner (Colonisation), Bikaner for cancellation of the Permanent Allotment made in favour of the petitioner. The application was allowed by the Commissioner (Colonisation), IGNP, Bikaner vide order dated 12.01.1999 and the permanent allotment of 25 bighas



of land made in favour of the petitioner was cancelled. The order dated 12.01.1999 was assailed by the petitioner by way of filing a Revision Petition before the Board of Revenue, Rajasthan, Ajmer. The Board of Revenue, Rajasthan, Ajmer vide its order dated 23.03.1999, dismissed the revision petition filed by the petitioner. Hence, the petitioner has preferred the present writ petition.

Learned counsel for the petitioner submits that the Commissioner (Colonisation), IGNP, Bikaner had committed an error while passing the order dated 12.01.1999 holding that no power of review is vested with the allotting authority and the petitioner should have filed an appeal against the order dated 20.12.1990. Learned counsel further submits that it has been wrongly held in the order dated 12.01.1999 that the petitioner is not a bonafide resident of village Barsalpur, Tehsil Kolayat, district Bikaner. He submits that the Board of Revenue also rejected the revision petition filed by the petitioner on the same ground. Learned counsel submits that the petitioner is a resident of village Barsalpur and is a bonafide agriculturist of Khasra No.234 of the said village since issuance of Temporary cultivation of lease granted in his favour which is evident from the certificate (Annex.3) issued by the Tehsildar (Colonisation), Kolayat. Learned counsel further submits that the power of review is very much vested with the authority concerned.

He submits that though no power of review is provided under the provisions of Rajasthan Colonisation Act, 1954, however, by virtue of Section 5 of the Act of 1954, laws relating to agricultural tenancies, land, the powers, duties, jurisdiction and procedure of revenue courts, survey and record operations, the settlement and



collection of revenue, rent and other demands and the partition of estates and tenancies, for the time being in force in a colony, shall, in so far as may be applicable, apply to tenancies held and to proceedings conducted under this Act. Learned counsel submits that by virtue of Section 5 of the Act of 1954, the provisions of the Rajasthan Land Revenue Act, 1956 can be employed in the present case. Section 86 of the Act, 1956 provides for the review of any order passed by the Revenue Court or any officer of its own motion or on any application filed by any interested party. Thus, the application filed by the petitioner under section 151 CPC for review the order dated 20.12.1990 could be considered as an application filed by the petitioner under section 86 of the Rajasthan Land Revenue Act, 1956. He, therefore, prays that the writ petition filed by the petitioner may be allowed and the order dated 12.01.1999 passed by the Commissioner (Colonisation), IGNP, Bikaner as well as order dated 23.03.1999 passed by the Board of Revenue, Rajasthan, Ajmer may be quashed and set aside.

Per contra, learned counsel for the respondents vehemently opposed the submission made by learned counsel for the petitioner. While supporting the orders dated 12.01.1999 and 23.03.1999, he submits that no power of review is vested with the Assistant Commissioner (Colonisation), Kolayat and he could not have entertained the application filed by the petitioner under section 151 of CPC for reviewing the order dated 20.12.1990. Learned counsel further submits that the petitioner was not a resident of Village Barsalpur being in temporary cultivation over the land, therefore, there is no question of passing any order for





permanent allotment of the land in favour of the petitioner. He, therefore, prays that the writ petition filed by the petitioner may be dismissed.

I have considered the submissions made at the bar and also gone through the relevant record of the case including the impugned orders dated 12.01.1999 (Annex.3) and 23.03.1999 (Annex.5).

The fact that petitioner was found to be a resident of village Barsalpur and also bonafide agriculturist of the land in question is clear from the certificate (Annex.3) issued by the Tehsildar, Kolayat. The petitioner was in cultivatory possession of the land in question even after the lease for cultivatory possession was cancelled in the year 1985 as he was never dispossessed from the land in question. Therefore, the petitioner applied for the grant of permanent allotment of the land. However, the case of permanent allotment of the petitioner was rejected vide order dated 20.12.1990 without giving him any opportunity of hearing. Thus, the petitioner preferred an application under section 151 of CPC and the same was allowed by the Assistant Commissioner (Colonization), Kolayat vide its order dated 20.08.1991. Although, the application preferred by the petitioner was under section 151 CPC and the same was not titled/labeled as review application but in the present circumstances, it can safely be presumed that the application was filed to review the order/decision dated 20.12.1990. The concerned Authority after examining the application on merit passed the order dated 20.08.1991 and as a consequence thereof, the Allotment Advisory Committee issued



the order dated 07.03.1992 for permanent allotment of the land in favour of the petitioner.

The Commissioner (Colonization), IGNP, Bikaner held that no power of review is vested with the Assistant Commissioner (Colonization), Kolayat under the Rules, therefore, the application preferred by the petitioner under section 151 of CPC could not have been entertained. Section 5 of the Colonisation Act, 1954 reads as under:-

**5. Applicability of tenancy and land revenue laws:**

(1) Except as otherwise provided in this Act, the laws relating to agricultural tenancies, land, the powers, duties, jurisdiction and procedure of revenue Courts, the survey and record operations, the settlement and collection of revenue, rent and other demands and the partition of estates and tenancies, for the time being in force in a colony, shall, in so far as may be applicable, to apply to tenancies held and to proceedings conducted under this Act.

(2) Nothing in such laws shall, however, be so construed as to vary or invalidate any rule made, or any condition entered in any statement of conditions issued, by the State Government under this act.

As per Section 5 of the Act, 1954 when there is no provision under the Act, resort can be made to other Acts including Rajasthan Tenancy Act, 1955 and Rajasthan Land Revenue Act, 1956 and therefore, the provisions of Section 86 of the Rajasthan Land Revenue Act can be applied in the present case which confer the power of review to the reviewing officer to review its own order. Relevant provision of Section 86 of the Rajasthan Land Revenue Act, 1956 reads as under:-

**86. Review by the Board and other Courts:-** (1) The Board, of its own motion or on the application of a party to a suit or other proceeding, may review and may rescind, alter or confirm any order made by itself or by any of its members.

(2) Every other Revenue Court or officer may either on its own or his own motion or on the application of any



party interested, review any order passed by itself or himself or by any of its or his predecessors in office and pass such orders in reference thereto as it is or he things fit”.

As per section 86 (2) of the Act, 1956, the Assistant Commissioner (Colonization), Bikaner had power to review its own order, thus, in the opinion of this court, no error was committed by the Assistant Commissioner (Colonization) while passing the order dated 20.08.1991.

The revenue laws and the laws pertaining to the land in the State of Rajasthan can be used as supplemental provisions in the aid of the Act of 1954 by virtue of Section 5 of this Act and therefore, Section 86 of the Rajasthan Land Revenue Act, 1956 can be applied in the present case for considering the application filed by the petitioner under Section 151 CPC for setting aside the ex-parte order dated 20.12.1990.

Looked at from another angle, the Assistant Commissioner (Colonisation) had rightly reviewed its earlier order dated 20.12.1990 as the same was passed without giving opportunity of hearing to the petitioner and since the order dated 20.12.1990 was having an adverse effect on the rights of the petitioner, therefore, the same was required to be passed after complying with the provisions of the principles of natural justice. Therefore, the Assistant Commissioner (Colonisation) has rightly exercised the power of review while entertaining the application preferred by the petitioner.

As far as petitioner being bonafide agriculturist of village Barsalpur is concerned, the certificate (Annex.3) issued by the Tehsildar (Colonisation), Kolayat clearly shows that the petitioner is resident of village Barsalpur and a bonafide agriculturist being in



continuous possession and cultivation of land situated in Khasra No.234.

In view of the discussion made above, the writ petition filed by the petitioner is allowed. The order dated 12.01.1999 passed by the Commissioner (Colonisation), Bikaner as well as the order dated 23.03.1999 passed by the Board of Revenue, Ajmer are quashed and set aside. The order of permanent allotment dated 07.03.1992 passed by the Assistant Commissioner (Colonisation), Kolayat, District Bikaner is upheld.

**(VINIT KUMAR MATHUR),J**

3-Anil Singh/-