

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Appeal No.4321/2005/LR/Dausa :

Badrinarain S/o Shri Shrawanlal, by caste Gurjar, r/o Village Kishanpura, Tehsil and District Dausa.

.....Appellant.

Versus

1. Nathulal S/o Pannalal Gurjar
2. Ramrakh S/o Nathulal Gurjar
3. Heeralal S/o Nathulal Gurjar
4. Babulal S/o Ramsahai Gurjar
5. Rampratap S/o Bhourilal Gurjar
6. Surgyan S/o Ramautar Gurjar
7. Bachu Singh S/o Harji Gurjar
8. Sukhram S/o Ghasi Gurjar
9. Kamal Singh S/o Ghasi Gurjar
10. Vijay Singh S/o Ramkishan Gurjar
11. Sitaram S/o Ramkishan Gurjar
12. Radhakishan S/o Ramsahai Gurjar
13. Girraj S/o Jhuntharam Gurjar
14. Mathuresh S/o Jhuntharam Gurjar

All are residents of Village Kishanpura Tapria, Tehsil & District Dausa.

15. State of Rajasthan through Tehsildar, Dausa.
16. Allotment Advisory Committee, through Sub Divisional Officer, Dausa.

.....Respondents.

S.B.

Shri Rajinder Kumar, Member

Argued by :

Shri Hemant Sogani : counsel for the appellant.

Shri Shyam Babu Pareek : counsels for Respondents.

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J U D G M E N T

Dated : 26.10.2018

1. This second appeal is preferred against the judgment dated 20.8.2005 of the Land Settlement Officer-cum-Revenue Appellate Authority, Jaipur : Camp- Dausa, whereby the judgment dated

02.3.2005 of the Collector, Dausa dismissing the application under Section 14(4) of the Rajasthan Land Revenue Act, 1956 filed by the respondents was set aside and consequently the order of allotment of the disputed land in favour of the appellant was also set aside.

2. The facts leading to this appeal are that the disputed land comprised in khasra no. 247 measuring 0.72 hectare situated in Village Kishanpura Tapria, Tehsil & District Dausa was recorded as 'Banjar-Siwai Chak' in the revenue record. On the basis of the recommendation of the Land Allotment Committee, the Sub Divisional Officer, Dausa allotted 0.50 hectare land in favour of the appellant. The appellant was recorded as 'gair khatedar' of the said land in the revenue record. The appellant obtained possession of the said land and started its cultivation as per rules and since then, he is in occupation of the said land and he is cultivating the same continuously. On 16.5.2001, the said land was converted into khatedari land and as per rules vide mutation no. 95 dated 18.9.2003, it was entered as khatedari land in the name of the appellant. The respondents (total 37 in number) filed an application under Section 14(4) of the Rajasthan Land Revenue Act, 1956 in the court of District Collector, Dausa with an allegation that the said land is 'gair mumkin rasta' land and the villagers use this land for going to Shamshan. The cattles of the villagers also use this land for sitting beneath the trees. Therefore, a prayer was made to set aside the order of allotment of the said land. The appellant contested the application by filing reply to the same. The Collector, Dausa after hearing the parties dismissed the application vide judgment dated 02.3.2005 and maintained the allotment order dated 22.5.2000. The respondents and few other persons preferred an appeal in the court of the Settlement Officer-cum-Revenue Appellate Authority, Jaipur : Camp- Dausa which came to accepted vide the impugned judgment dated 20.8.2005 in the aforesaid manner. Hence, this second appeal by the allottee of the disputed land.

3. I have heard learned counsels for the parties.

4. On behalf of the appellant, it was argued that the present matter pertains to land comprised in khasra no. 247 situated in Village Kishanpura Tapria Tehsil & District Dausa. A civil suit no. 120/04 regarding the disputed land was decided on 15.12.2016 in terms of the compromise between the parties. The copy of said judgment is relevant for the disposal of this case. Apart from it, the copy of present Jamabandi & Khasra Girdawari of the disputed land has also assumed significance in view of the changed circumstances. The said documents have been taken on record by this Board on the date of hearing of arguments under Order 41 Rule 27 CPC. The parties to the said civil suit including the respondent Kamal Singh agreed in maintaining the allotment of the disputed land in favour of the appellant Badri Prasad. He has further argued that at the time of the allotment, the disputed land was entered in the revenue record as 'Banjar-Siwai Chak' land and thus, it was capable of allotment. Therefore, the S.D.O., Dausa committed no illegality in allotting this land in favour of the appellant, particularly when the Allotment Committee has also made a similar recommendation in his favour. All the legal formalities were gone through before passing the order of allotment. The learned Collector, Dausa has considered all the legal and factual aspects and he found no illegality or fraud in the allotment process. The learned Settlement Officer has committed material illegality in reversing the well considered judgment of the Collector, Dausa. The allotment of land could be set aside only on the grounds mentioned in Section 14(4) of the Rajasthan Land Revenue Act, 1956. The disputed 0.50 hectare land is 'Banjar' land and the portion of land which is being used as Rasta by the villagers is a totally different land. The Settlement Department has rightly made entry of this land as 'Banjar Siwai Chak' land on the basis of its use at the relevant time. On the date of allotment also, this land was

'Banjar' land and therefore, it is immaterial as to what was the nature of this land prior to the entry made by the Settlement Department. In this way, the respondent had no right whatsoever to challenge the order of allotment of this land in favour of the appellant. Therefore, the order of the learned first appellate court is hypothetical, perverse and illegal. It was also argued that the land was allotted in appellant's favour way back in the year 2000 and the order was not obtained by him by committing any concealment or misrepresentation or fraud, therefore, it would be too late now to deprive him from the said land which has been made cultivable by him after incurring huge expenditure and labour.

5. Learned counsel for the respondents no. 1 to 4 opposed the above submissions. According to him, mere admission of one of the respondent in civil court does not alter the real nature of the land. The learned Revenue Appellate Authority has rightly set aside the judgment of the trial court, which was passed without considering the factual & legal aspects of the case in right perspective. He also argued that out of the total number of 37 respondents, the names of 22 respondents have been deleted by the Board at the instance of the appellant himself. Therefore, a prayer was made to dismiss the appeal.
6. I have given my thoughtful consideration to the rival contentions.
7. The record reveals that the disputed land was initially recorded as 'Gair Mumkin Rasta' land in the revenue record. However, the Settlement Department changed the nature of this land in the revenue record as 'Gair Mumkin Banjar' land. It is trite law that the settlement authorities are not authorised to delete the original entries and record new entries in their place without any order of competent authority. In this regard, reference can be made to the decisions of this Board reported in 2000 RRD 456 'Mohammad Mushtak & ors. Vs. Peeru & ors.' and 1969 RRD 231 'Panna Vs.

Rampal & ors.' In view of this settled legal proposition, the Settlement Authority committed grave illegality in altering the nature of this land from 'Gair Mumkin Rasta' to 'Gair Mumkin Banjar'.

8. Due to the aforesaid material illegality committed during settlement proceedings, the disputed land came to be allotted in the name of the present appellant. Legally speaking, such an illegal entry could not have been made the basis of allotment of land in appellant's favour.
9. Even otherwise also, the land set apart for rasta could not have been allotted to the appellant unless its use was altered by the competent authority. Therefore, looking from any angle, the disputed land was not capable of being allotment for personal use of the appellant.
10. The learned District Collector, Dausa in his judgment dated 02.3.2005 has upheld the allotment order observing that the land of rasta has been set apart and the remaining land has been allotted to the appellant whereas there was no basis in coming to the said conclusion. The record reveals that the disputed land was recorded as 'Gair Mumkin Rasta' in the revenue record prior to the change made by the settlement authorities. A perusal of Sub Para (g) of para 7 of the memo of appeal also reveals an admission on the part of the appellant that prior to allotment of this land in his favour, it was recorded as 'Gair Mumkin Rasta'. It is also pertinent that admission made by one of the respondent by filing compromise in the civil suit would also not alter the real nature of the land. Therefore, the learned Settlement Officer-cum-Revenue Appellate Authority, Jaipur: Camp- Dausa has not committed any illegality in passing the impugned judgment and reversing the illegal judgment passed by the learned District Collector, Dausa.
11. It is also pertinent that the allotment of land in appellant's favour was made on 22.5.2000 and immediately after the respondents got

the knowledge of the said order, they approached the court of District Collector, Dausa by filing objection petition in the year 2004. Therefore, it cannot be said that inordinate delay has been made in challenging the said order. Even otherwise, an illegal act can be challenged at any stage. Reference can be made to 2004(8) SCC 706 'Balwant N. Visvamitra Vs. Yadav Sadashi Mule'

12.Resultantly, this second appeal is dismissed being devoid of any force.

Pronounced.

(Rajinder Kumar)
Member

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