

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

APPEAL/ LR /4440/2005/Dausa.

Sonya s/o Jhuntha, Caste Balai, r/o Village Aluda, Tehsil and Distt. Dausa.

... **Appellant.**

Versus

1. Ramsahai s/o Govinda, Caste Mali, r/o Dhani Nala Vali, Aluda, Tehsil and Distt. Dausa.
2. Allotment Advisory Committee, Dausa through Sub-District Collector, Dausa
3. State of Rajasthan through Tehsildar, Dausa

.....**Respondents.**

S.B.

Shri Rajinder Kumar, Member

Argued by :

Shri Samir Ahmed, counsel for the Appellant.

Shri Mukesh Jain, counsel for the respondents.

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J U D G M E N T

Dated: 4-02-2019

1. This second appeal has been preferred against the judgment dated 21.07.2005 of the learned Settlement Officer cum Revenue Appellate Authority, Jaipur camp Dausa whereby the first appeal filed by the respondent no. 1 Ramsahai against the order dated 3.01.2005 of the trial court of District Collector, Dausa was accepted and the order of allotment of land passed in favor of the appellant was set-aside.
2. Facts of the case in nutshell are that on 20.04.1976 the disputed land was allotted in favor of the appellant in pursuance to the recommendations of the Land Allotment Committee. Aggrieved by the said order of the Sub-

Divisional Officer, the respondent no. 1 filed an application under section 14 (4) of the Allotment of Land for Agricultural Purposes Rules, 1970, which was dismissed by the District Collector on 3.01.2005. Feeling aggrieved, the respondent no. 1 preferred an appeal in the court of the Settlement Officer cum Revenue Appellate Authority, Jaipur camp Dausa and vide the impugned judgment dated 21.07.2005, the appeal was accepted in the manner indicated above. Hence this second appeal by the allottee.

3. I have heard the learned counsels.
4. On behalf of the appellant, it was argued that a false report was made by the process server on the notice issued against the present appellant by the first appellate court, whereupon it was mentioned that the present appellant Sonya had since expired and the notice has been affixed on his house. This report was incorrect because at the relevant time the revisionist was alive and even till date he is alive. The learned first appellate court, therefore, passed the impugned judgment without hearing the present appellant. In this way the principles of natural justice have been violated. Learned counsel also argued that the land was allotted in favor of the appellant Sonya after completion of due formalities. The appellant is in actual and physical possession of the disputed lands since the time of the allotment and it would be travesty of justice if the allotment is cancelled at this point of time. In support of these arguments, the learned counsel relied upon 2001 RRD 133 (H.C) 'Moolchand Mehra Vs State of Rajasthan' and AIR 1994 SC 1128 'Brijlal Vs Board of Revenue'. The learned counsel also argued that the respondent Ram Sahai has no possession over the disputed land and even if it is assumed for the sake of argument that he is in its possession, the same is only in the capacity of a trespasser. It has been consistently held by the Revenue Board and the Hon'ble Rajasthan High Court that if the Government land is in occupation of a trespasser, it will not be taken to be as an 'occupied land' and such a land can be allotted to a landless person.

In this regard learned counsel relied upon a judgment of the Revenue Board reported in 1995 (2) RBJ 733 'Gopal Vs Sukha' and a judgment of the Hon'ble Rajasthan High Court reported in 1988 RRD 445 'Guman Singh Vs Board of Revenue'. Learned counsel further argued that the District Collector after due consideration of the matter rightly dismissed the application under section 14 (4) of the Rules whereas the learned first appellate court without meeting out the reasoning of the trial court illegally accepted the appeal on the ground that respondent no. 1 is in physical occupation of the disputed land. He further argued that the first appellate court also gave illegal findings that the formalities of allotment of land were not followed before allotting the same to the appellant Sonya. Therefore, a prayer has been made to accept the appeal and set aside the impugned judgment and to restore the order of the District Collector.

5. Learned counsel for the Respondent no. 1 vehemently opposed the above submissions. He argued that the District Collector committed material illegality in dismissing the application. The learned first appellate court rightly came to the conclusion that the respondent no. 1 is in occupation of the disputed land and therefore the same could not have been allotted to the appellant Sonya. The learned first appellate court also rightly came to the conclusion that due formalities for allotment of land were not followed and therefore, the land was illegally allotted to the present appellant Sonya. A prayer has been made to dismiss the appeal.
6. I have given my thoughtful consideration to the rival submissions and perused the record carefully.
7. It is an admitted fact that on the notice issued against the present appellant by the first appellate court, it was wrongly reported that he had since expired and copy of the notice was affixed on his house. Upon receipt of the said report, the learned first appellate court without proceeding under Order 22 Rule 4 CPC proceeded to decide the appeal in the absence of the present appellant. The respondent no. 1, who was

appellant in the first appeal, ought to have moved an application for bringing on record the legal representatives of the deceased. Had it been done so, the fact that the appellant was alive could have come to the notice of the appellate court. The appellant and the respondent belong the same village and the fact that the present appellant was alive must have been in the notice of the respondent Ram Sahai but he kept silent at that time without bringing true facts in the notice of the court. Be that as it may, the order impugned was passed by the first appellate court in the absence of the appellant and without hearing him. This fact alone was sufficient to set aside the impugned order and direct the first appellate court to decide the appeal afresh but this procedure would further delay the disposal of the case and the parties would also have to suffer huge expenses, therefore, on the request of the learned counsels, this appeal is being decided on its merits.

8. There is no denying the fact that the disputed land was allotted to the appellant Sonya way back in the year 1976 on the recommendation of Land Allotment Authority. The record also reveals that the possession of the land was given to him immediately after allotment. The learned trial court after due consideration of the matter rightly came to the conclusion that all the formalities were fulfilled before making allotment of the land to the present appellant and possession of the land was also delivered to him. The learned trial court also came to the conclusion that the appellant Sonya has not violated any terms and condition of the allotment order. However, the learned first appellate court without any material on record came to the conclusion that formalities for the allotment of the land were not followed in the present case. The learned first appellate court also gave illegal findings that the land in dispute was 'occupied land'. Even if for the sake of arguments, it is assumed that the respondent Ram Sahai is in occupation of the disputed land, the same cannot be held to be in his possession in a legal manner. Therefore, the disputed land cannot be deemed to be an 'occupied land'. In such a situation, the said land was rightly allotted to the present appellant. It would really be a travesty of

justice to dispossess the appellant from the disputed land and to cancel the allotment after a period of four decades, particularly when there is no allegation that the allotment in his favor was made after suppression of facts. In nutshell, it can be said that the order of the learned first appellate court is based only on assumptions and without any legal basis. The appeal deserves to be allowed.

9. Resultantly, the appeal in hand is allowed. The judgment of the first appellate court is set aside and the judgment of the District Collector is restored.

Pronounced.

(Rajinder Kumar)
Member