

W.R.

**IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**

**Appeal/LR/6482/2005/SAWAI MADHOPUR**

1. Ramkishan s/o Sukhdeva by caste Daroga
2. Jagdish s/o Rattiram
3. Ramphool s/o Kana
4. Sitaram s/o Badri
5. Raju s/o Badri
6. Mastram s/o Gopi

All Meena by caste, rs/o Bampui, Tehsil Boli District Sawai Madhopur.

**...Appellants**

***Versus***

1. Hanuman s/o Lakha, Caste Gurjar
2. Kalu s/o Moti Gurjar  
rs/o Bampui, Tehsil Boli, Sawai Madhopur.
3. The State of Rajasthan, through Sub Divisional Collector,  
Sawai Madhopur.

**...Respondents.**

**S.B.**

**Shri Rajinder Kumar, Member**

**Present:-**

Shri Girish Pareek, Counsel for the appellants  
Shri Yogendra Singh, Counsel for the respondents.

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**J U D G M E N T**

**Date: 7-01-2019**

1. This second appeal has been preferred against the judgment dated 27.12.2015 of the learned Revenue Appellate Authority,

Sawai Madhopur dismissing the first appeal of the present appellants and confirming the judgment dated 26.12.2000 of the learned court of Additional Collector, Sawai Madhopur. By the said judgment, the trial court had cancelled the order of allotment of disputed lands made in favour of the appellant no.1.

2. Facts giving rise to the filing of present appeal in nutshell are that the disputed lands were allotted to the appellant no.1 by the State Government on 16.12.1976 on the recommendation of the Land Allotment Committee. The possession of the disputed lands was delivered to the appellant no.1 and since then he is cultivating the same. The mutation of the disputed lands was also sanctioned in his favour and khatedari rights were conferred upon him. On 10.09.1996, the appellant no.1 sold disputed lands to the appellant no. 2 to 6 by way of registered sale deed. As a matter of fact, these appellants are now occupying the said lands since then. In, the meantime, an application under section 14(4) of the Rajasthan Land Revenue (Allotment of Government Land for Agricultural Purposes) Rules, 1970 was filed in the trial court by Jassi, who is a close relative of the respondent no. 1 and 2. The said application was dismissed by the trial court on 27.08.1981. Thereafter, the respondent no. 1 & 2 filed an application in the trial court for the similar relief of cancellation of allotment made in favor of appellant no. 1. The said application was also dismissed by the trial court on 23.09.1998. The respondent no. 1 and 2 got submitted a third application in the trial court for cancellation of allotment of the aforesaid land through the State Government and they themselves submitted an application for their impleadment therein. The learned Additional District Collector accepted the application vide judgment dated 26.12.2000 and passed the order for cancellation of allotment of the disputed land. Feeling aggrieved the appellants preferred an appeal in the Court of

the learned R.A.A. Sawai Madhopur, which was dismissed vide judgment dated 27.12.2005. Hence, this second appeal.

3. I have heard the learned counsels.
4. On behalf of the appellants, it was argued that this is a third round of litigation in as much as the applications earlier filed at the instance of the respondents No. 1 and 2 were dismissed and therefore, the third application was illegally accepted by the trial court. The allegations in all the three applications for cancellation of allotment of land were same. Therefore, this third application was not maintainable. The courts below committed factual and legal infirmity in accepting the application of the State Government because the appellant no.1 was in possession of the suit land since the time of its allotment and he was competent to sell the same to the appellants no.2 to 6. The land was developed by the appellant by investing lakhs of rupees. The earlier two applications were dismissed by the trial court holding that the appellant no.1 was not a government servant on the date of allotment of the suit land. The land was validly allotted in favour of the appellant no.1 and he has never violated any condition of allotment. In fact, there was no column in the allotment from which would require the applicant to mention that he is the government servant. Therefore, it cannot be believed that the appellant no.1 obtained the allotment of land by suppression of facts. The learned counsel also argued that it will be a travesty of justice, if the impugned judgments of cancellation of the disputed lands are allowed to maintain. Therefore, a prayer was made to allow the appeal and set aside the impugned judgment dated 27.12.2005 and 26.12.2000 and to restore the allotment order dated 16.12.1976. In support of his arguments, the learned counsel has relied upon the following citations:-

- i). AIR 1994 S.C. 1128 'Brijlal Vs. Board of Revenue & ors.:'-In that case, the permanent allotment of land made in favour of

the allottee was cancelled by the authorities on the ground that he had procured temporary allotment of land by giving false declaration of his age. But there was no basis at all for the authorities to come to the conclusion that the allottee was minor on the date of temporary allotment. Even otherwise, the appellant was in cultivating possession of the land for last more than 20 years. In such circumstances, it was held that it would be a travesty of justice to dispossess him from land.

ii). 2003 RRD 237 Om Prakash Vs. State of Rajasthan :- In this case also it was held by the Board of Revenue that cancellation of allotment of land after 30 years would be unjustified.

5. Learned counsel for the respondents vehemently opposed the aforesaid submissions. He argued that the first application was not filed at the instance of the respondent no. 1 and 2. In the previous two applications, it could not be established that the appellant no.1 was a Government servant. In the present proceedings, a definite evidence was submitted by the respondents that the appellant no.1 was government servant at the relevant time and therefore, he procured the allotment of the land by misrepresentation. In such circumstances, there is no illegality in the impugned judgments. In support of the aforesaid arguments, the learned counsel relied upon the following citations:-

i). 2009(1) RRT 64 Dhapu (Smt) Vs. State of Rajasthan :- In that case, the allotment of land was obtained by the allottee by misrepresenting that she is divorcee and landless person. The order of allotment made in the year 1978 was cancelled by the authorities concerned in the year 2008. It was held by the Hon'ble High Court that as the allotment of land has been obtained by mentioning wrong facts, therefore, the allotment was rightly cancelled.

ii). 2009(1) RRT 113 Balkishan Vs. State of Rajasthan :- In that case, it was held by the Hon'ble High Court that delay in cancellation of allotment is immaterial, if the same is obtained by fraud and misrepresentation.

iii). 1999 RRD 400 'Kishori Lal Vs. State of Rajasthan :- In that case also the allotment of land was cancelled as the same was procured by misrepresentation.

6. I have given my thoughtful consideration to the rival submissions and perused the record carefully.

7. Initially, order of allotment of land made in favor of the appellant no. 1 was challenged by Shri Jassi and others by filing application under Section 14(4) of the above Rules. The present respondents were not party to that proceeding. The land allotment order was challenged on the ground, inter alia, that the allottee was a government servant at the time of allotment and he had procured the allotment order by suppressing this material fact from the allotment authority. The aforesaid application was dismissed by the authority concerned on the ground that the applicants Jassi & ors have failed to prove that the allottee was government servant at that time.

8. Thereafter, two separate applications were submitted by the respondent Kalu and Hanuman in the trial court for cancelling the order of allotment of land passed in favour of the appellant no.1. The application of the respondent no.1 was dismissed by trial court with a direction to the Tehsildar, Boli to make an enquiry as to whether the appellant no.1 was government servant at the time of allotment of land and if it is proved that he procured the said allotment by making suppression of facts, then the State Government would be free to move an application for cancellation of the allotment of the land. This order passed by the trial court on 5.8.1997 was not challenged by the appellant no.1. The other application

filed by the respondent Kalu was dismissed by the trial court and the said order was assailed by filing appeal no. 229/96, which was dismissed by the Revenue Appellate Authority on 23.9.1998 by observing that in view of the order passed by the trial court on 5.8.1997, the State Government would be free to move an application for cancellation of allotment. In view of above, it becomes clear that the present proceedings are in continuation of the order passed by the trial court on 5.8.1997 and therefore, the question of the applicability of the principle of res judicata does not apply here.

9. Coming to the merits of present case, there are concurrent findings of facts of the courts below that at the relevant time, the appellant no.1 was in government service. The provisions of the Rajasthan Land Revenue (Allotment of Government land for Agricultural Purposes) Rules, 1970 would also make it clear that a landless agriculturist alone is entitled for allotment of land and the appellant no. 1 was not entitled for allotment of land at the relevant time. These findings of facts of the courts below are neither perverse nor illegal. In the memo of appeal filed in this court, the appellant has admitted that he was in government service at the relevant time. He has, however, taken a new plea that in the application form, there was no column which require the applicant to disclose that he is in government service. This plea has been taken in the second appeal for the first time. Even otherwise, the allotment of land made in favor of the appellant no.1 was *de-hors* the Rules and therefore, he can not be permitted to raise any such plea.

10. Although the allotment of land in favour of the appellant no. 1 was made in the year 1976 and a period of almost four decades has elapsed since then. But this fact, by itself, is not sufficient to legalize what was not permissible by virtue of the said Rules. Reliance in this regard can be placed upon a

Division Bench Judgment of the Hon'ble Rajasthan High Court passed in Balkishan's case (supra).

11. The facts of the cases relied upon by the appellants do not bear resemblance to the facts of the present case, therefore, no reliance can be placed upon them to grant any indulgence to the appellants. In view of the above, this appeal has no force.

12. Resultantly, the appeal is dismissed.

Pronounced.

**(Rajinder Kumar)**  
Member