2022 INSC 888

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5876 OF 2022
(ARISING OUT OF S.L.P. (C) NO. 20839 OF 2021)

MAHADEO & ORS. .....APPELLANT(S)

VERSUS

SMT. SOVAN DEVI & ORS. .....RESPONDENT(S)

J U D G M E N T

HEMANT GUPTA, J.

1. The challenge in the present appeal is to a judgment dated 19.04.2021 passed by the High Court of Judicature for Rajasthan whereby the order passed by the learned Single Judge on 13.11.2018 was upheld.

2. Shri Bheru Lal while serving as a Sepoy in the Indian Army suffered an injury on the right leg due to mine blast in the Indo-Pak war of 1965 which led to the amputation of his right foot. He was thereafter invalidated out of service.

3. The State has framed the Rajasthan Special Assistance to Disabled Ex-Servicemen and Dependants of Deceased Defence Personnel (Allotment of Lands) Rules, 1963[1]. Shri Bheru was a disabled ex-

1 For short, 'the Rules'

serviceman within the meaning of Rule 2(a) of the said Rules. Rule 6 contemplated allotment of land upto 25 Bighas of irrigated or 50 Bighas of unirrigated land. Rule 3 contemplated that these Rules shall apply only to the Government lands falling within the Bhakra, Chambal or Rajasthan Canal Project Colonies and already reserved or to be reserved by notification in the Official Gazette for allotment to the disabled ex-servicemen. Further, Rule 7 contemplated the terms and conditions of allotment. Sub Rule 4 was inserted on 16.02.1967 in Rule 7 which reads thus:

> "4. In case the allottee fails to take possession of the land allotted to him within six months from the date of allotment, the allotment shall be deemed to have been cancelled and the land shall thereupon be available for re-allotment to any other person under these Rules."

4. It appears that Shri Bheru Lal applied for allotment of land in the category of disabled war personnel. The Soldier Welfare Section of the Revenue Department of the State sent a letter to the District Collector, Udaipur on 19.3.1971 wherein it was conveyed that it has been decided to allot 25 Bighas in Village Rohikhera, Tehsil Vallabhanagar comprising in Khasra Nos. 133, 135 and 137. The letter reads thus:

"Rajasthan Government
Revenue (G) Department

The District Collector
Udaipur
No: Letter No. 77, F-9(15) of Raj. Dated ….March, 1971
Soldier Welfare Officer,

Office of the District Soldier Board,

Sub – Allotment of land and possession to permanently disabled soldier Sh. Bharon Lal S/o Govinda Bhonyee, R/o Bhayon Ki Pancholi, Tehsil Girva, Ballabhgarh.

Ref : Letter No. F12(2) 22/70

Sir,

On the basis of recommendations and directions, approval for grant of land vide circular No. DS Rav. LR SS Read dated 30.09.65, out of the land situated at Rohi Kheda Tehsil Ballabh Garh Nagar bearing Khasra No. 133, 135, 137 land 25 Bigha non irrigated land is allotted to permanently disabled soldier Sh. Bharon Lal S/o Govinda Bhonyee, R/o Bhayon Ki Pancholi, Tehsil Girva, Ballabhgarh.

With Regards
Sd/-
S.K. Bhat
Section Officer

Shekhawat
19.03.71"

5. There is no letter of allotment of land issued to the husband of the writ petitioner or to the writ petitioner on record in pursuance of the above communication. The above letter is inter-departmental communication and not a communication to the disabled soldier. In fact, an affidavit was sought from the Revenue Secretary of the Government of Rajasthan and in such affidavit dated 06.05.2022, it was stated as under:

> "23. I further state that the original copy of the sanctioning letter dated 19.03.1971 is not available in the office of record room of the Respondent State."

6. Shri Bheru Lal died on 17.07.1998. The wife, Sovan Devi[2] succeeded

2 For short, the 'writ petitioner'

the estate of her husband. It appears that she is working in the Headquarters of Director General, NCC. The writ petitioner submitted a representation while working in the Headquarters of DGNCC on 12.01.2010 that the possession of the land has not been handed over either to her husband or to her. The writ petitioner said to the following effect:

> "To,
> Secretary
> Distt – SS & A Board
> Udaipur
> Rajasthan
>
> SUB: ALLOTMENT OF LAND TO DISABLED SOLDIER LATE SEP BHERU LAL S/O GOVIND BAOMOLI
>
> Sir,
>
> I have the honour to request that I Smt. Sovan Devi W/o Ex Late Sep Bheryu Lal r/o village – Boyaki Pachauli, Dist-Udaipur, Rajasthan.
>
> A piece of land measuring 25 Bigha was allotted to my husband by Revenue Deptt Soldier Welfare of Udaipur in village Rohi-Ka-Khera. The Batlgar of Khasra No. 133, 134 and 135 vide revenue Deptt. letter No. F 12 (2) 22/70 dated 07-04-1970 but neither my husband (when he was alive) nor me get the possession of land till today.
>
> Recently when, I visited to the site and enquired about the land, I found that it was sold to different people of different places and they got registered in the Tehsil also. I met with Patwari of the area and shown my paper to him, he shown me the records of the land sold to different people and given me a copy of 'Intkal' of different people (copy att.).
>
> Now, through your record, I request that the case may be taken up with revenue Deptt, Udaipur for getting the possession of the land which will help me who is a widow and poor lady.

I shall be thankful to you for this act of kindness and highly obliged through out of my life.

Yours faithfully,

(Sovan Devi)
HQ DGNCC
MS(B)
WB-IV, R.K. Puram
New Delhi-110066
12 Jan 2010”

7. On the basis of such letter, the comments of the Report of the Tehsildar were asked by the District Collector on 11.06.2010. The Tehsildar reported that land measuring 125 Bighas has been allotted to 20 persons as mentioned in the said communication. It was also pointed out that remaining land measuring 31 Bighas 11 Biswas is unoccupied which is in Nadi (pond), i.e., land which is always filled with water. The District Collector communicated to the Sub-Divisional Officer on 07.01.2011 that the land has not been registered in the name of the husband of the writ petitioner, nor such case was found at the level of Sub-Division and Tehsil. It was proposed that the case be put up in the Vigilance Sub-Division Level Committee in view of the fact that the land stood allotted to different persons. The writ petitioner communicated on 27.06.2011 that she has no objection if alternative land is allotted to her. There are subsequent communications in the affidavit filed by the Secretary, Revenue discussing the question of allotment of land to the writ petitioner. It was on 04.06.2012 that the District Collector communicated to the District Soldier Welfare Officer

that the question of allotment of land to the writ petitioner in Pancholi, Tehsil Girva, District Udaipur is under consideration.

8. The writ petitioner thus filed a Writ Petition No. 4513 of 2013 raising a grievance that the possession of the land allotted on 19.3.1971 has not been handed over to her husband or to her. She averred the following:

> "3. That the petitioner is at present working with HQ, DGNCC, MS (B), WB-IV, R.K. Puram, New Delhi-110066.
>
> xxx xxx xxx
>
> 5. That on account of being invalidated out of service for his disability sustained during 1965 operation, the respondent no.1 through his letter dated 19.03.1971 informed the respondent no.3 than as per circular no. DS/Rev LR-SSB dated 30.09.1965 as per legitimate recommendation Shri Bheru Lal has been sanctioned to be allotted 25 bighas of un-irrigated agricultural land of Khasra No. 133, 135 & 137 of village Rohi-kheda Tehsil Vallabh Nagar, District-Udaipur."

9. The High Court passed various orders to ensure possession of the land given to her. In an affidavit filed by the Sub-Divisional Officer, Vallabhanagar, District Udaipur, before the High Court, it was stated that the request of the writ petitioner for allotment of alternative land was considered by the Allotment Advisory Committee on 19.08.2015 wherein, Survey No. 209 measuring 25 Bighas out of total 101.15 Bighas, Village Sagatpura was recommended to be allotted to the writ petitioner. The allotment letter was attached with the affidavit.

10. The learned Single Judge found that the alternative land offered to the writ petitioner is located at a very remote/far off area and is not

cultivable and therefore, a direction was issued to give possession of the land originally allotted to the writ petitioner. It was held as under:

> "……. Manifestly, with efflux of time, the Khasras Nos. 133, 135 and 137 have gained proximity with the National Highway and as a consequence, the value thereof must have spiralled up significantly. The alternate land offered to the petitioner vide order dated 19.08.2015 is located in a very remote/far off area and is not cultivable. Thus, the petitioner is perfectly justified in claiming that the original allotment letter should be honoured and enforced. The allotment was made to an Ex-serviceman who became disabled in the war filed and thus, technicalities and pedantic approach of the government officials can in no manner be appreciated or allowed to come in way of his widow i.e. the petitioner herein while considering her lawful claim for the land allotted to her husband. The initial opposition to the petitioner's claim for allotment of land in the self-same Khasras as put forth by the respondents was that it was falling within the catchment area. The said plea is totally falsified from the Tehsildar's letter dated 03.08.2018 (reproduced supra) Shri Sunil Joshi associate to Shri Rajesh Panwar, AAG candidly conceded during arguments that the report of the revenue authorities was misunderstood by the concerned Government Counsel who made this inadvertent admission in the Court on 19.09.2018. Manifestly, this approach of the State Counsel in presenting twisted facts for opposing the plea of the petitioner is absolutely depreciable. On a plain reading of various reports/communications of the revenue authorities, it is clear that the remaining land of the subject Khasras is not reserved as catchment area in the revenue record. It is only because of natural contours of the terrain, water gets collected thereupon and thus, casual description is given to the remaining 31 bighas land of Khasra Nos. 133, 135 and 137 as a nadi. However, it is not the case of the respondents that water remains accumulated on the chunk of land in question all year around. This accumulation is reported only during the monsoon period. This problem can be resolved easily by pumping the water out. Otherwise also, since the petitioner insists that she is ready to accept the plot of land in the same condition it exists, manifestly, the respondents have no business to deprive the petitioner from her lawful claim thereupon on frivolous premises.
>
> In view of the fact that there is no legal impediment so as

> to deprive the petitioner from seeking possession of the land allotted to her late husband (a war disabled ex-serviceman) and as, 31 bighas of vacant land is admittedly available in the disputed Khasras, this Court is of the firm view that the respondents should be directed to hand over possession of 25 bighas of land from the subject Khasras to the petitioner as per her lawful entitlement."

11. An intra-court appeal preferred by the State remained unsuccessful. It has come on record that the land in question was allotted to the writ petitioner. The allottees who were allotted the land as mentioned in the report have challenged the order passed by the High Court when an attempt was made to evict the appellants from the said land which was cultivated by them allegedly for more than 60 years.

12. The appellants came to know about the order passed by the High Court for the first time on 27.09.2021 when they filed a civil suit before the Court of Senior Civil Judge, Vallabhanagar. Since the order was passed by the High Court allotting land to the writ petitioner, the appellants approached this Court for challenging the order passed by the High Court.

13. The High Court had gone out of the way to order possession of land which was never proceeded with letter of allotment in favour of the writ petitioner. The approach of the High Court is most unfortunate.

14. It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said

question in a judgment reported as ***Omkar Sinha*** v. ***Sahadat Khan***[3]. Reliance was placed on ***Bachhittar Singh*** v. ***State of Punjab***[4] to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in ***K.S.B. Ali*** v. ***State of Andhra Pradesh***[5], and ***Dyna Technologies Pvt. Ltd.*** v. ***Crompton Greaves Limited***[6]. In ***Bachhittar Singh***, it has been held as under:

> "8. What we have now to consider is the effect of the note recorded by the Revenue Minister of PEPSU upon the file. We will assume for the purpose of this case that it is an order. Even so, the question is whether it can be regarded as the order of the State Government which alone, as admitted by the appellant, was competent to hear and decide an appeal from the order of the Revenue Secretary. Article 166(1) of the Constitution requires that all executive action of the Government of a State shall be expressed in the name of the Governor. Clause (2) of Article 166 provides for the authentication of orders and other instruments made and executed in the name of the Governor. Clause (3) of that article enables the Governor to make rules for the more convenient transaction of the business of the Government and for the allocation among

3 2022 SCC OnLine SC 601
4 AIR 1963 SC 395
5 (2018) 11 SCC 277
6 (2019) 20 SCC 1

the Ministers of the said business. What the appellant calls an order of the State Government is admittedly not expressed to be in the name of the Governor. But with that point we shall deal later. What we must first ascertain is whether the order of the Revenue Minister is an order of the State Government i.e. of the Governor. In this connection we may refer to Rule 25 of the Rules of Business of the Government of PEPSU which reads thus:

> "Except as otherwise provided by any other Rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the Department. Copies of such standing orders shall be sent to the Rajpramukh and the Chief Minister."

According to learned counsel for the appellant his appeal pertains to the department which was in charge of the Revenue Minister and, therefore, he could deal with it. His decision and order would, according to him, be the decision and order of the State Government. On behalf of the State reliance was, however, placed on Rule 34 which required certain classes of cases to be submitted to the Rajpramukh and the Chief Minister before the issue of orders. But it was conceded during the course of the argument that a case of the kind before us does not fall within that rule. No other provision bearing on the point having been brought to our notice we would, therefore, hold that the Revenue Minister could make an order on behalf of the State Government.

9. The question, therefore, is whether he did in fact make such an order. Merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government two things are necessary. The order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and then it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. As long as the matter rested with him the Revenue Minister could

well score out his remarks or minutes on the file and write fresh ones.

xxx xxx xxx

11. We are, therefore, of the opinion that the remarks or the order of the Revenue Minister, PEPSU are of no avail to the appellant."

15. This Court in ***Municipal Committee*** v. ***Jai Narayan & Co.***[7] held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of an opinion by the particular individual. It was held as under:

> "16. This Court in a judgment reported as *State of Uttaranchal* v. *Sunil Kumar Vaish*, (2011) 8 SCC 670 held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under:
>
> > "24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77(1) and (2) or Articles 166(1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77(2) or Article 166(2). A noting or even a decision recorded in the file can always be reviewed/reversed/overruled or overturned and the court cannot take cognizance of the earlier noting or

7 2022 SCC OnLine SC 376

> decision for exercise of the power of judicial review. (See *State of Punjab* v. *Sodhi Sukhdev Singh* AIR 1961 SC 493, *Bachhittar Singh* v. *State of Punjab*, AIR 1963 SC 395, *State of Bihar* v. *Kripalu Shankar* (1987) 3 SCC 34, *Rajasthan Housing Board* v. *Shri Kishan* (1993) 2 SCC 84, *Sethi Auto Service Station* v. *DDA* (2009) 1 SCC 180 and *Shanti Sports Club* v. *Union of India* (2009) 15 SCC 705)."
>
> 17. Thus, the letter seeking approval of the State Government by the Deputy Commissioner is not the approval granted by him, which could be enforced by the plaintiff in the court of law."

16. The basis of the claim of the writ petitioner is a letter written by the Secretary of the Soldier Welfare Department to the District Collector, Udaipur on 19.03.1971 for allotment of land. The Rules contemplate that if the possession is not taken within 6 months, the allotment shall be deemed to have been cancelled. Firstly, the inter-departmental communication dated 19.03.1971 cannot be treated to be a letter of allotment. Alternatively, even if it is considered to be a letter of allotment, the writ petitioner could not claim possession on the basis of such communication after more than 30 years in terms of the Rules applicable for allotment of land to the disabled ex-servicemen.

17. The disabled ex-serviceman had not taken any action for almost 27 years after the so-called letter of allotment during his life time. It appears that the writ petitioner was appointed at the office of Director General of NCC and thereafter, the process of possession was initiated by her. Still further, the alternative land was allotted to the writ petitioner on the strength of the interim orders passed by the Court

from time to time calling upon the officers of the State in Court. The proceedings show an extra interest taken by the High Court, and not in respect of mere allotment of land but also of the land which was once allotted and is now close to the National Highway. The manner in which the matter has been dealt with by the High Court under the guise of help to disabled ex-serviceman is wholly unwarranted.

18. Therefore, we find that the writ petition filed by the writ petitioner is wholly misconceived, mischievous with collateral motives and may be having the patronage of the officers/officials.

19. Consequently, the appeal is allowed. The order passed by the High Court is set aside with no order as to costs.

.....J.
(HEMANT GUPTA)

.....J.
(VIKRAM NATH)

NEW DELHI;
AUGUST 30, 2022.