

TEJ SINGH  
v.  
STATE OF RAJASTHAN AND ORS.

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MAY 10, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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*Rajasthan Colonisation (Medium & Minor Irrigation Projects Government Lands Allotment) Rules, 1968—Rule 3(VI-A) and Rule 17-A—Land—Allotment of—Concealment of fact while making application—Held Rule 17-A though not retrospective yet when assignment is obtained by fraud the same is vitiated—Cancellation held valid—Section 23 of the Rajasthan General Clauses Act, 1889 held applicable—However direction given not to dispose—Mode absolute in view of the special facts of the case.*

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The land allotted to appellant under Rajasthan Colonisation (Medium & Minor Irrigation Projects Government Lands Allotment) Rules, 1968 was subsequently cancelled by Additional Collector, under Rule 17-A, on the ground that in his application for allotment of land, the appellant had concealed the material fact that he was working as a Gram Sewak which was his main source of income and that he was neither a *bona fide* agriculturist nor a landless person. The cancellation order, confirmed in appeal as well as in second appeal, was upheld by the High Court.

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In appeal to this Court, it was contended on behalf of the appellant that the Collector has no power to cancel the allotment of land under Rule 17-A because the same was not retrospective.

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Disposing the appeal, this Court

**HELD : 1.** Though Rule 17-A of the Rajasthan Colonisation (Medium & Minor Irrigation Projects Government Lands Allotment) Rules, 1968 was not given retrospective effect but when the order was obtained by suppression of the material fact or misrepresenting the material fact or any other factor enumerated in Rule 17-A which vitiates the passing of the order of assignment of the Government land, the order becomes illegal. Further, under section 23 of Rajasthan General Clauses Act, 1889 the power to issue notifications or orders would include the power of their cancellation. Therefore, the cancellation order passed by

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A Collector cannot be said to be illegal and the power exercised by him cannot be said to be without jurisdiction. [1016-A-C, 1015-G]

2. However, in view of the special facts of this case, although the cancellation order is valid, yet the same is set aside with a direction not to dispossess the appellant from the land. [1016-E-F]

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CIVIL APPELLATE JURISDICTION : Civil appeal No. 6088 of 1990.

From the Judgment and Order dated 12.7.90 of the Rajasthan High Court in D.B.C. W.P. No. 2394 of 1990.

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Rajendra Singhvi and Surya Kant for the Appellant.

Aruneshwar Gupta and K.S. Bhatti for the Respondents.

The following Order of the Court was delivered :

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The appellant while being a Gram Sewak had applied for and was assigned on November 18, 1968, 5 bighas of land in Khasra No.106 of Village Ramakhera Tehsil Nimbahera under Rajasthan Colonisation (Medium & Minor Irrigation Projects Government Lands Allotment) Rules, 1968, for short 'the Rules'. By proceedings dated June 20, 1980, the Additional Collector, Chittorgarh, cancelled the allotment on the ground that the appellant had concealed the fact that he was working as a Gram Sewak at the time of application and allotment and that he was not a *bona fide* agriculturist and he is not a landless person. On appeal it was confirmed and in second appeal Board of Revenue confirmed the same. The appellant filed the writ Petition No.2394/90. The Division Bench by order dated July 12, 1990 dismissed the same. Thus, this appeal by special leave. It is not disputed that person who wants to obtain allotment of land under 'the Rules' must be a landless person.

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"Rule 3(vi-A) defines "Landless person" as: "Landless person" means a resident of Rajasthan who is either a *bona fide* agriculturist or an agricultural labourer, cultivating or likely to cultivate the land personally and whose main source of income is agriculture or any subsidiary occupation like cattle breeding, provided such person does not hold any tenure land anywhere in Rajasthan or such land that he holds is less than a fragment."

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Provided that a released Sagri as certified by the Sub-Divisional Officer will be treated as landless person of that village.

Explanation-For the purpose of this proviso "Sagri" means the bonded labourer as defined in the Bonded Labour System (Abolition) Act, 1976 (Central Act 19 of 1976).

A reading thereof clearly indicates that the following conditions should be fulfilled for a person to be the landless person namely, (i) he must be a resident of Rajasthan (ii) he must be a *bona fide* agriculturist or an agricultural labourer cultivating or likely to cultivate the land personally and whose main source of income is agriculture or any subsidiary occupation like cattle breeding etc. provided that such person does not hold any tenure land anywhere in Rajasthan or such land that he holds is less than a fragment, he becomes eligible in assigning land as a landless person. The proviso and the explanation thereto were added by an amendment in 1976 with which we are not concerned.

The main contention raised in this case is that Rule 17-A under which the cancellation was made by the Collector is not retrospective. Therefore, the Collector is devoid of power and jurisdiction to cancel it.

Rule 17-A reads thus :-

"17-A Cancellation of Allotment - The Collector of the district shall have the power to cancel any allotment made under these rules, either *suomoto* or on the application of any person, in case the allotment has been secured through fraud or misrepresentation, or has been made against the rules or in case the allottee has committed breach of any of the conditions of allotment :

Provided that no such order, to the prejudice of any person, shall be passed without giving such person an opportunity of being heard."

It is true that the Rule was inserted on May 23, 1972 and it was not given retrospective effect. However, under section 23 of Rajasthan General Clauses Act, 1889 the power to pass an order or issue notification includes the power to take action to cancel an order so passed or notification issued from time to time. Therefore, the power to issue notifications or orders would include the power of their cancellation. This is the general power

A preserved in the authority, on which, the power to take action has been invested. Though Rule 17-A was not given retrospective effect but when the order was obtained by suppression of the material fact or misrepresenting the material fact or any other factor enumerated in Rule 17-A which vitiates the passing of the order or assignment of the Government land, the order becomes illegal. In this case, the facts found are that on the date of making the application and assignment namely, November 18, 1968, the appellant was a Gram Sewak, a public servant. Though he was a resident, his main source of income was, from service as Gram Sewak and hence he cannot also be said to be a *bona fide* agriculturist. That is the finding of fact recorded by all the authorities. Under these circumstances, it would amount to suppression of the material fact and of obtaining an order of assignment of 5 bighas of land. Therefore, the cancellation of the order cannot be said to be illegal. The power exercised by the Collector cannot be said to be without jurisdiction.

D The next question is whether it is a fit case for us to interfere under Art. 136 of the Constitution. It is seen that the appellant though was a temporary Gram Sewak in 1968 admittedly in 1973 he had resigned from the post and took up his avocation as an agriculturist and for more than 20 years, he has been personally cultivating that land and by continuing to be in occupation and enjoyment of the land. It is stated in the grounds as well as in the affidavit filed in support thereto that he had developed the land on loans obtained by him for the purpose. In view of the special facts of this case, although we have held that the cancellation order is valid, we set aside that order of cancellation and restore the assignment and the direction given earlier by this Court of not to dispossess him from the lands is made absolute. The appeal is disposed of accordingly. The Writ Petition is allowed accordingly but without costs.

T.N.A.

Appeal disposed of.