

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 16375/2021



----Petitioner

Versus

1. State Of Rajasthan, Through Secretary, Revenue Department, Secretariat, Jaipur (Raj.).
2. District Collector, Jaisalmer (Raj.).
3. Sub Divisional Officer, Jaisalmer, District Jaisalmer (Raj.).
4. Tehsildar Jaisalmer, District Jaisalmer (Raj.).

----Respondents

For Petitioner(s) : Mr. Paramveer Singh
For Respondent(s) : Mr. Ram Dayal Choudhary,

HON'BLE MR. JUSTICE VINIT KUMAR MATHUR**Reportable :****Order****07/03/2024**

1. Heard learned counsel for the parties.
2. Briefly noted the facts in the present case are that the petitioner being landless agriculturist was in possession of land measuring 38 bighas but he was not aware of the khasra number of his land which is in his possession. While the petitioner was in possession of the subject piece of land, he preferred an application for regularization of the land by way of allotment. The petitioner's application for regularization/allotment of land was considered and he was allotted a land measuring 38 bighas. The allotment of the land was made to the petitioner in the year 1977 and the land was mutated in his favour in Khasra No.134/269. After marking of the



khassas in the area concerned, the petitioner came to know that the land, which is actually in his possession, is not the same land which has been mentioned in the allotment order and the land which has been allotted to him falls in Khasra No.134/269 and is slightly away from the land which is in his possession. The land of the petitioner was demarcated as a land of Khasra No.173 of Village Bhojasar. The petitioner applied for regularization of the land under his possession situated in Khasra No.173 Village Bhojasar. Since the land which is in possession of the petitioner falling in Khasra No.173 was not allotted to the petitioner, therefore, notices under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as 'the Act of 1956') were issued by Tehsildar, Jaisalmer. In these circumstances, the petitioner approached the respondents with a prayer that the land which was allotted to him in the year 1977, falls in Khasra No.134/269 whereas the land which is actually in his possession falls in Khasra No.173, thus, the land which is actually in his possession may be allotted to him by resorting the provisions relating to the exchange of land. The application preferred by the petitioner was recommended by the Gram Panchayat, Hameera vide Resolution No.3 in its Special Gram Sabha dated 07.11.2017. Thereafter, the Tehsildar Jaisalmer vide his letter dated 27.03.2018, also gave '*No Objection*' with respect to the exchange of land from Khasra No.134/269 to Khasra No. 173.

3. When the request of the petitioner was not acceded to, he preferred an application on 05.03.2019 (Annex.10) to the District Collector for exchange of the land. On the application so preferred by the petitioner, the matter was got enquired and a factual



report was submitted by the Sub Divisional Officer, Jaisalmer. Thereafter, the District Collector, Jaisalmer vide letter dated 29.06.2020 directed the Sub Divisional Officer, Jaisalmer to personally visit the site and submit a report regarding feasibility of exchange. The Sub Divisional Officer, Jaisalmer, after visiting the site, submitted his report dated 15.07.2021 stating that the land which was actually allotted to the petitioner in Khasra No.134/269 is not feasible for agricultural purposes and in exchange, the petitioner may be allotted land from Khasra No.173 as he is in possession of that land. Despite the matter having been duly enquired into and positive report having been submitted to the Collector, Jaisalmer, the application of the petitioner for exchange of the land has been rejected vide order dated 01.09.2021 (Annex.15) by the Designated Officer (Revenue) Collector, Jaisalmer. Aggrieved of the order dated 01.09.2021, the present writ petition has been filed.

4. Learned counsel for the petitioner vehemently and fervently submits that the order dated 01.09.2021 has been passed without taking into consideration the two reports submitted by the Sub Divisional Officer, Jaisalmer. The reports very clearly depict that the land which was actually allotted to the petitioner in Khasra No.134/269 is not cultivable, thus, the land which is actually in his possession in Khasra No.173 may be allotted to him in exchange. Learned counsel further submits that the land which is in possession of the petitioner in Khasra No.173 is a Government Land and the Land which was allotted to him on his application situated in Khasra No.134/269, is also a Government Land. Thus, there is no impediment in the light of Section 48 of the Rajasthan



Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') to grant permission for exchange of the land in the present case. Learned counsel submits that the petitioner is in possession of land situated in Khasra No.173 for last more than 50 years and by sheer dint of hard work, he has made the said land cultivable. Learned counsel further submits that the land was allotted to the petitioner for agriculture purposes and if the purpose for which the land was allotted is not fulfilled, then the whole purpose of allotment of the land will be frustrated.

5. Learned counsel further submits that the rejection made by the order dated 01.09.2021 passed by the Designated Officer (Revenue) Collector, Jaisalmer is also de-hors the law as in view of Section 48 of the Act of 1955 and Rule 24AA of the Rajasthan Tenancy Rules, the land sought for by the petitioner in exchange can very well be allotted to him.

6. Learned counsel also relied upon number of orders passed by the various Collectors under the same provisions for exchange of land, whereby exchange of Government land has been made in favour of the applicants while allowing their applications.

7. Learned counsel has relied upon a judgment of this Court rendered in **Sarvan vs. State & Ors. (S.B. Civil Writ Petition No.13044/2008)**, decided on **12.05.2021** wherein the observation has been made in the following terms :-

"On hearing learned counsel for the parties, I find that Section 48(2) provides that a landholder may in agreement with a tenant gives such tenant land other than land which is let, in exchange for land which is included in such tenant's holding. Sub-section (2) therefore does not envisage that there have to be two tenants for the purpose of exchange. Sub-section (1) of Section 48 although of course refers to mutual exchange of lands between two tenants which they hold from the said



landholder with the written consent of such landholder, but that condition may not be applicable to sub-section (2) of Section 48".

8. Learned counsel for the petitioner, therefore, prays that the writ petition may be allowed and the order dated 01.09.2021 passed by Authority below may be quashed and set aside and the application of the petitioner for exchange of the land may also be allowed.



9. *Per contra*, learned counsel for the respondents vehemently opposed the submissions made by learned counsel for the petitioner and submits that the allotment of the land was made to the petitioner in the year 1977, whereas the petitioner has filed an application for exchange of land in the year 2019. Thus, there is delay of more than 45 years in filing the application. He, therefore, submits that the application is liable to be dismissed on the ground of delay itself.

10. Learned State Counsel further submits that there is no provision for exchange of land as Section 48 of the Act of 1955 mandates the exchange of land between two private persons only and therefore, the lands involved in the present case belong to the Government, thus, the application for exchange of land has rightly been rejected by the Collector, Jaisalmer vide order dated 01.09.2021. He, therefore, prays that the writ petition may be dismissed.

11. I have considered the submissions made at the Bar and have gone through the relevant record of the case including the order dated 01.09.2021.

12. The undisputed facts taken note of by this Court in this case are that the petitioner is in possession/occupation of the land



measuring 38 bighas in Village Bhojasar, Tehsil and District Jaisalmer for more than 50 years. The petitioner is an illiterate agriculturist. During this entire tenure, the land which is in possession of the petitioner was not marked and recorded in the revenue records and therefore, the petitioner was not aware of the fact that in which khasra, his land is situated. The petitioner had applied for regularization of the land which is in his possession in due course of time by way of filing an application in the year 1971 and he was allotted 38 bighas of land in the year 1977. The land which was allotted to the petitioner by the Government is located in Khasra No.134/269 and is different from the land of which he is in his possession. Later on, the land which is in possession of the petitioner was marked as Khasra No.173. In these circumstances, the petitioner approached the respondents by way of filing an application for exchange of the land.

13. Gram Panchayat, Hameera vide its resolution dated 07.11.2017 took up the matter for exchange of land and recommended for exchange of the land from Khasra No.134/269 to Khasra No.173. On the same lines, even Tehsildar, Jaisalmer vide his letter dated 27.03.2019, also recommended for exchange of the land by issuing '*No Objection*'. Since the request for exchange of land was not acceded to, the petitioner preferred an application on 05.03.2019 for exchange of the land before Collector, Jaisalmer. On the application preferred for exchange, the Collector got the matter enquired through Sub Divisional Officer, Jaisalmer by asking them to personally visit the site and the Sub Divisional officer, Jaisalmer after visiting the site submitted their factual reports dated 15.07.2021 which clearly depict that the land



which was allotted to the petitioner in Khasra No.134/269 is not cultivable and no agricultural activities on that land can be undertaken and, therefore, the exchange sought for by the petitioner may be allowed. But the Collector vide his order dated 01.09.2021, rejected the application preferred by the petitioner. The application was required to be considered by the Collector in the light of the provision of Section 101 of Rajasthan Land Revenue Act, 1956. For brevity, Section 101 of the Act of 1956 is reproduced as under :-



"101. Allotment of land for Agricultural Purposes.- (1) *Save as otherwise provided elsewhere by this Act, land for agricultural purposes shall be allotted by such authority and in such manner as may be prescribed by rules made by the State Government in this behalf.*

(2) *All allotments of land under this section shall be subject to the payment of rent fixed at such rates as may be fixed according to custom or by usage or any law on the subject.*

(3) *Omitted.*

(4) *If there be more than one person requiring the same land, the allotment shall be made in the following order -*

(i) *to co-sharer of the holding if it forms part of a compact block or is irrigated from the same source, preference amongst such co-sharers being given to one having land less than the area prescribed by rules made under the Rajasthan Tenancy Act, 1955 (Rajasthan Act 3 of 1955);*

(ii) *to persons residing in the village in which land be situated, preference amongst such persons being given to persons having no land or less than the area prescribed by the said rules;*

(iii) *by drawing lots:*

Provided *that the area so taken together with the area held by him does not exceed the area prescribed by the said rules."*

14. Section 101 very clearly prescribes that a person may be allotted the land for agriculture purposes by the State Government which clearly reflects the intention of the legislature that the purpose for allotment of the land is to undertake the agriculture activities on such land. Therefore, prima-facie this Court is of the view that a land which is cultivable is only required to be allotted to a person under Section 101 of the Act of 1956 to achieve and satisfy the intention of the legislature. From the report submitted



by the Sub Divisional Magistrate, Jaisalmer, it has come on record that the land bearing Khasra No.134/269, which was actually allotted to the petitioner, is not cultivable and the same is allotted to him then the purpose of allotment of land under Section 101 of the Act has been frustrated.



15. Similarly, the provisions for exchange of land in Section 5 Sub-Clause (26) and 49 of the Rajasthan Tenancy Act, 1955 and Rule 24AA of 1956 are required to be taken note of which reads as under:-

"Section 48 of the Act of 1955 :-

"48. Exchange of land— (1) Tenants of the same class may exchange land which they hold from the same landholder with the written consent of such landholder or which they hold from different landholders with written consent of all such land holders.

(2) A landholder may in agreement with a tenant given such tenant land other than land which is let, in exchange for land which is included in such tenant's holding."

Sub Section 26 of Section 5 of the Rajasthan Tenancy Act, 1955.

(26) "land-holder" shall mean the person (in any part of the State, by whatever name designated) to whom rent is, or, but for a contract, express or implied, would be, payable and shall include-

- (i) an estate-holder,
- (ii) a grantee at a favourable rate of rent,
- (iii) in the case of a sub-lease, the tenant-in chief who has sublet or his mortgagee,
- (iv) for the purposes of Chapter IX and X, and ijaradar or Thekadar, and
- (v) generally every person who is a superior holder, in relation to persons holding directly from or under him;"

24AA of the Rajasthan Tenancy Rules :-

"[24AA. (1) Exchange of lands by the tenants of the same class holding lands directly from the State Government may, with the mutual consent of such tenants in writing, allowed by the Tehsildar of the Tehsil in which such lands are situated or by the Collector of the district if such lands are situated in different tehsils of the same district] or

(2) Where land is held by any tenant directly from the State Government, Government or an officer authorised by it in this behalf may with the consent of such tenant, give him any other land in exchange for the land let out to him."

16. A bare perusal of Section 48 of the Act of 1955 shows that a landholder may in agreement with the tenant given such tenant land other than land which is let, in exchange for land which is



included in such tenant's holding. As per sub clause 26 of Section 5 of the Act of 1955, the State is the land holder and therefore the custodian of land being Collector, he was required to consider application of petitioner who is tenant. In the present case, since both the lands belong to the landholder i.e. State which is sought for exchange by the petitioner, therefore, there is no impediment for the State Government to allow the application of the petitioner for exchange of land. Apart from that, sub-rule 2 of Rule 24AA of the Rajasthan Tenancy Rules, very clearly postulates that where the land is holding by any tenant directly from the State Government, the Government or any officer authorized by it on its behalf may with the consent of such tenant, give him any other land in exchange for the land let out to him. In the present case also, since the Collector is the authority concerned and the person who is seeking the land in exchange is the petitioner, therefore, there is no impediment for the Collector to allow the application preferred by the petitioner for exchange of land.

17. The point of delay argued by learned Govt. Counsel is noted to be rejected only on the ground that the application preferred by the petitioner was not rejected on the ground of delay by the Collector and, therefore, the same need not be deliberated and discussed in this case.

18. Nothing on record which shows that there is any rider/embargo or impediment to allot or exchange the land in possession of the land in lieu of the land allotted to the petitioner in Khasra No.134/269.

19. This Court also takes note of the fact that in the identical situation, the applications filed by the tenants who are similarly



situated to the petitioner, their applications for exchange of land were allowed in their favour by the respective Collectors of different Districts in the State of Rajasthan. Learned counsel for the respondent is not in a position to refute the said fact.



20. Looked at from another angle, it will be travesty of justice if the exchange of land is not permitted in the present case as the petitioner has made a *Banjar* and non-cultivable land into a cultivable land by his hard work, dedication and commitment in last 50 years, all his efforts will go in vain. At the same time, the land which is allotted to the petitioner in Khasra No.134/269 is *Rocky* and not fit for undertaking agricultural activities and if the same is allotted then it will defeat the purpose enshrined under the provisions of the Rajasthan Land Revenue Act.

21. In view of the discussions made above, the writ petition merits acceptance and the same is, hereby, allowed. The order dated 01.09.2021 passed by Designated Officer (Revenue) Collector, Jaisalmer is quashed and set aside. The respondent – Collector, Jaisalmer is directed to allot the land in favour of the petitioner in exchange by passing appropriate order.

(VINIT KUMAR MATHUR),J

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