



RAJASTHAN HIGH COURT

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

सत्यमेव जयते

S.B. Civil Writ Petition No. 5570/2003

Hari Narayan Sharma son of Shri Ram Bilas Sharma, resident of Keshav Nagar, Sawai Madhopur, at President of Sanadhya Gaur Brahamin Samaj Mantown, Sawaimadhapur.

-----Petitioner



Versus

- 1.State of Rajasthan through Secretary, Local Self Department, Secretariat, Jaipur.
- 2. The Director cum Deputy Secretary, Local Self Department, Directorate, behind High Court building, Jaipur.
- 3. The Commissioner, Nagar Parishad, Sawaimadhapur.
- 4. The Porwal Jain Samaj, Sawaimadhapur through President.

-----Respondents

For Petitioner(s) : Mr. Abhishek Pareek

For Respondent(s) : Mr. Rajendra Prasad, Advocate General with Mr. Tanay Goyal and Mr. Sheetanshu Sharma
Mr. N.K. Maloo, Sr. Adv. with Mr. Harsh Pratap Singh, Mr. Ajay Singh Rajawat
Mr. Tarun Jain
Mr. B.K. Sharma

JUSTICE ANOOP KUMAR DHAND

Reserved on 14/05/2025
Pronounced on 20/05/2025
Reportable

Order

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Factual Matrix:

1. By way of filing this writ petition, the petitioner has questioned the legality of the order dated 25.06.2003 passed by the respondent-State, by which the land in question has been allotted to the respondent No.4 under Rule 18 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short "the Rules of 1974").

2. The instant writ petition has been filed with the following prayer:

- "i) by a writ, order or direction the order of allotment of land to the Porwal Jain Samaj, Annexure-9 dt.25.6.2003 may kindly be quashed and set aside.
- ii) by a writ, order or direction, the respondents be directed to allot the land in dispute to the petitioner-Society i.e. Sanadya Gaur Brahamin Samaj for the purpose of educational purposes and for Lord Shiva's temple;
- iii) any other order which your lordships may deem fit and proper in favour of petitioner may also be passed; and
- iv) Costs of writ petition be also awarded to the petitioner."

Submissions by counsel for the petitioner:

3. Learned counsel for the petitioner submits that the petitioner is the President of Sanadhya Gaur Brahamin Samaj (hereinafter referred as 'the petitioner-Society') who applied for allotment of the land in question on 27.07.1985 before the Municipal Council, Sawai Madhopur (hereinafter referred as 'the Council') by way of submitting an application in the year 1985. Counsel submits that the application of the petitioner was considered and the Administrator of the Council made



favourable recommendations for allotment of the land in favour of the Petitioner-Society. Counsel submits that the reports were summoned from the Town Planner and during pendency of the aforesaid process, the allotment order has been passed in favour of the respondent No.4 in utter violation of the provisions, contained under Rule 18 of the Rules of 1974. Counsel submits that as per the mandate, contained under Rule 18 of the Rules of 1974, any land can be allotted to the public and charitable institutions on payment of 50% of the sanctioned reserve price, but in the instant case, the land in question has been allotted to the respondent No.4 at the rate of 5% of the sanctioned reserve price. Counsel further submits that the application filed by the respondent No.4 was not even maintainable under Rule 18 of the Rules of 1974, as the respondent No.4, is neither public nor a charitable institution, rather it is a society, registered under the Rajasthan Societies Registration Act, 1958. Counsel submits that the application could have been submitted by the respondent No.4 under Rule 19 of the Rules of 1974. He further submitted that the respondent No.4 is also not entitled to get the allotment in terms of Rule 19(5) of the Rules of 1974, because no land can be allotted to such society who has acquired any land either by allotment or otherwise at the place in the State where the land is proposed to be allotted. Counsel submits that in rejoinder, the petitioner has specified 11 properties acquired by the respondent No.4, but no counter to the same has been submitted either by the State or by the respondent No.4,



hence, under these circumstances, the impugned allotment order dated 25.06.2003 is liable to be quashed and set aside.

In support of his contentions, counsel has placed reliance upon the judgments passed by this Court in the cases of **Jhulelal Charitable and Education Trust Vs. The State of Rajasthan** reported in **1999 AIR Rajasthan 309** and **Jhulelal Charitable & Educational Trust, Nimbahera vs. State of Rajasthan and Others (Civil Spl. Appeal (Writ) No.663/1999)**.

4. Counsel submits that the petitioner had submitted the above application for the allotment of the land in question for the purpose of establishment of a School. However, the said application was rejected by the Senior Town Planner, who did not have the authority to do so but despite this, the application filed by the petitioner was rejected by the order dated 03.06.2002, on the ground that the land in question had been reserved for a School and had already been allotted to respondent No. 4 for the purpose of constructing a hostel.

Submissions by the counsel for the respondents:

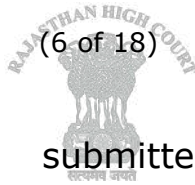
5. Per contra, learned counsel for the respondents opposed the arguments raised by the counsel for the petitioner.

6. Mr. Rajendra Prasad, learned Advocate General submitted that after allotment of the land in question by the order dated 25.06.2003, a lease deed has been executed in favour of the respondent No.4 on 18.07.2003 and the said lease deed has not been challenged or assailed by the petitioner, either before



this Court or before any competent Court of law. Unless and until the lease deed is challenged, the allotment order cannot be cancelled. He further submits that so far as the plea with regard to allotment of the land in question at the rate of 50% of the sanctioned reserve price is concerned, the same has not been taken by the petitioner in the pleadings, but for the first time, this argument has been raised at the time of hearing of this writ petition. Counsel submits that the State has power under Rule 31 of the Rules of 1974 to relax the provisions with respect to price, interest, size of plot/strip of land, meaning thereby, the State has powers to allot the land at a lesser price. Counsel submits that the provision, outlining the powers of the State, has not been challenged by the petitioner in the present writ petition. It is further submitted that the petitioner had applied for the allotment of land for dual purposes—namely, for establishing a school and a temple. The petitioner has not approached this Court with clean hand inasmuch as his application was duly considered and rejected by the competent authorities, and the said rejection has never been challenged before this Court. Unless and until the petitioner contests the cancellation of his own application, he cannot be permitted to question the allotment made in favour of respondent No. 4. In light of the above submissions, learned Advocate General submits that no interference of this Court is warranted.

7. Reiterating the arguments raised by the Advocate General, Mr. N.K. Maloo, Sr. Advocate appearing on behalf of the respondent No.4, opposed the prayer made by the counsel



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for the petitioner and submitted that the petitioner's application was rejected by the authority i.e. Senior Town Planner on 03.06.2002. However, despite having knowledge of the said order, upon receiving the State's reply, the petitioner has never challenged it. Counsel submits that after rejection of the application submitted by the petitioner, a proposal was taken up by the Council in favour of the petitioner for allotment of land. Counsel submits that this fact has not been mentioned by the petitioner in his pleadings and the same has been concealed in the instant writ petition. Counsel submits that, after considering the proposal put forth by the Council, the State Government, in exercise of its powers under Rule 31 of the 1974 Rules, allotted the land in question to the respondent No.4 at 5% of the sanctioned reserve price for educational purposes, specifically for establishing a hostel for students. Counsel further submits that the petitioner remained silent for a period of 15 months from the date of rejection of his application until the allotment and execution of the lease deed in favour of respondent No. 4. Counsel submits that the description of 11 properties, in the rejoinder of the petitioner, nowhere indicates that any of those properties have been allotted to respondent No. 4, i.e., Porwal Jain Samaj. Therefore, under these circumstances, it cannot be believed, by any stretch of imagination, that the respondent No. 4 has acquired the said properties. Counsel submits that under these circumstances, the instant writ petition is liable to be rejected.



Discussions & Analysis:

8. Heard and considered the submissions made at the Bar and perused the material available on the record.

9. Perusal of the record indicates that the petitioner-society through its President, submitted an application before the Council on 27.07.1985 for allotment of 150x200 Sq. Yards land for the purpose of constructing an Educational Institution and Temple. The Administrator of the Council, made a recommendation to the Deputy Secretary, Local Self Government Department to allot 150x200 Sq. Yard of land in favour of the petitioner-Society on 29.07.1985, as free of cost in public interest. In view of the aforesaid, the Deputy Director, Department of Local Bodies vide letter dated 07.04.1986 sought report from the District Collector and Town Planner, but the land in question measuring 223x165 Sq. Yards was allotted to the respondent No.4 for construction of a hostel at the price of 5% of the sanctioned reserve price and sanction was granted to them vide impugned order dated 25.06.2003 to execute the lease deed in favour of the respondents No.4 for 99 years. Thus, feeling aggrieved by the aforesaid action of the respondents, the petitioner approached this Court by way of filing this writ petition.

10. The respondents-State submitted its reply and averred that the Senior Town Planner, Kota, rejected the petitioner's application by order dated 03.06.2002, stating that the land in question was reserved for the purpose of a school. It was further submitted that the said land was subsequently allotted





to the respondent No. 4 the construction of a hostel by order dated 05.06.2003.

11. The facts pleaded by both parties, reveal that both the petitioner and the respondent No.4 sought the disputed land for educational purposes—the petitioner for the construction of a school, and the respondent No. 4 for the construction of a hostel.

12. Before adjudicating the controversy involved in this writ petition, it would be gainful to extract the relevant provisions, contained under Rule 18, 19 and 31 of the Rules of 1974, which read as follows:-

“Rule 18. Allotment of land to public and charitable institutions. -

(1) No land shall be allotted for a price less than the sanctioned reserve price except for categories covered under Rule 17. Provided that lands for schools and other public and charitable institution may be allotted on payment of 50% of the sanctioned reserve price.

(2) If any land is required by the Government from the Board the following price shall be paid by Government :

(a) Cost of land, if the land was acquired by the Board by making compensation and cost of development plus 20% to cover administrative and other establishment charges to the Board.

(b) In case of Nazul land, the Government shall pay only the cost of development plus 20% to cover the establishment and administrative charges to the Board.

(c) If the land required by the Government was already developed before it was transferred to Board, no development charges shall be payable but if any additional development has been undertaken by the Board that development charges plus 20% thereof shall be paid by the Government to the Board:





Provided that the State Government may exempt any Department of the State Government from payment of cost of land and other charges under clause (a) to (c).

(d) Above mentioned principles shall also apply in case of land belonging to the Board if allotted the Universities or other statutory or non-statutory bodies under Government Orders :

Provided that the State Government, if so thinks expedient in the public interest, may order allotment of land free of cost or without charging cost of development or administrative or other establishment charges mentioned in clause (b) and (c) above subject to the condition that land is wholly required for construction of Government residential quarters.

Rule 19. Allotment of land to Institutions other than Charitable and Public Institutions.

- Land shall be allotted to Institutions other than public and charitable institutions on the following terms and conditions are not fulfilled by the allottee :-

- (1) that the institution shall be registered under the Societies Registration Act, 1960 (Act No. 20 of 1960).
- (2) That the institution is a non commercial and does not intend to drive any commercial benefit out of the land allotted to it or out of the building constructed over the plot so allotted.
- (3) That the land shall be allotted to such institutions on the reserve price.
- (4) The land so allotted shall not be put to any commercial utility.
- (5) That the institution to whom such land is allotted has not acquired any land either by allotment or otherwise at the place in the State where the land is proposed to be allotted.
- (6) That no land shall be allotted in the area which have commercial utility.
- (7) That the institution shall complete the construction of the building for which the land is allotted within a period of two years from the date of which it is allotted.





(8) That the land so allotted shall not be transferable either by sale or otherwise to any one, or liable to any encumbrances before or after the completion of the building without permission of the Board.

(9) That where no construction is completed within the time prescribed under condition No. (7) the allotment shall be liable to cancellation or such institution shall surrender the land back immediately and the Board may refund 3/4th of the cost of such land paid by the allottee.



Rule 31. Sale or disposal of Municipal land.

- The procedure for sale or disposal of municipal or other lands vesting in or belonging to the Board not covered by these rules shall be the same as provided under these rules.

Power to relax rules. - In exception cases where the State Government is satisfied that operation of these rules causes hardship in any particular case or where the State Government is of the opinion that it is necessary or expedient in public interest to do so, may relax the provisions of these rules in respect to the price, interest, size of plot/strip of land to such extent and subject to such conditions as it may consider necessary for dealing with the case in a just and equitable manner.

13. As per Rule 18(1) of the Rules of 1974, no land shall be allotted for a price less than the sanctioned reserve price and the lands reserved for schools and other public and charitable institution may be allotted on payment of 50% of the sanctioned reserve price.

14. Both the petitioner and the respondent no. 4 needed the land in question for their different objective i.e. for school and for hostel respectively. But, in any case, the land cannot be allotted at free of cost or at below the 50% of the rate of the sanctioned reserve price.



15. The application submitted by the petitioner was rejected by the Administrator of the Council vide order dated 03.06.2002, on the ground that the land in question had been reserved for the purpose of a school. However, the petitioner had applied for the same purpose i.e. construction of a school and had stated in the application that there was no school or temple in the vicinity.



16. The very same land has been allotted to the respondent No.4 vide order dated 25.06.2003 for the purpose of construction of hostel and that too at the rate of 5% of the sanctioned reserve price, while as per Rule 18(1) of the Rules of 1974, no land shall be allotted for a price less than the sanctioned reserve price and the lands reserved for schools and other public and charitable institution may be allotted on payment of 50% of the sanctioned reserve price.

17. The respondents have tried to take shelter of Rule 31 of the Rules of 1974, which deals with the power of the State Government to relax the Rules. Perusal of Rule 31 of the Rules of 1974 indicates that only in exception cases, where the State Government is satisfied that operation of the said Rules causes hardship in any particular case or where the State Government is of the opinion that it is necessary or expedient in public interest to do so, may relax the provisions of these Rules in respect to the price, interest, size of plot/strip of land

18. Perusal of the impugned allotment order dated 25.06.2003 does not indicate as to whether the powers under Rule 31 of the Rules of 1974 were exercised at the passing of



the same, or whether the Rules were relaxed by treating the case of respondent No. 4 as an exceptional one. It also does not disclose whether, in public interest, the prescribed rate of 50% was reduced to 5% in favour of respondent No. 4. The circumstances mentioned under Rule 31 of the Rules of 1974 are missing in the order dated 25.06.2003.

19. A similar situation arose before this Court in the case of **Jhulelal Charitable and Educational Trust** (supra), where the land was also allotted at a rate, lower than the sanctioned 50% of the reserve price—specifically, at only 25% reserve price. Although a license was initially granted, but it was later cancelled by the Additional Divisional Commissioner, and against the cancellation order, the said Trust approached this Court by way of filing SB Civil Writ Petition No.5143/1993, but the same was rejected and it was held in para 7 and 8 as under:

“7. There is yet another strong reason to nullify the licence dated 12-9-1991 granted by the Municipal Board, Nimbahera in favour of the petitioner. It is apparent from perusal of the order dated 4-9-1991 Annexure 2 to the writ petition filed by the petitioner himself that the reserve price of the land in dispute is Rs.150 per Sq. Mt. which has been allotted to the petitioner after reducing 75% sanctioned reserve price and has been allotted to it at the rate of 25% i.e. Rs.37.50 per Sq. Mt. and total amount paid by the petitioner is only Rs.34,837.50 + 37.50 for leasing out the land in dispute for 99 years. Thus the aforesaid price fixed by the Municipal Board, Nimbahera is also per se illegal being violative of provisions envisaged under Sub-rule (1) of Rule 18 of the Rules of 1974 according to which no





land shall be allotted for a price less than the sanction reserve price except for categories covered under Rule 17 provided that lands for school and other public and charitable institution may be allotted on payment of 50% of the sanctioned reserve price. It is not understandable how Municipal Board, Nimbahera allotted the land in dispute to the petitioner on payment of only 25% of the sanctioned reserve price causing a huge loss to public exchequer against mandatory provisions envisaged under Sub-rule (1) of Rule (1) of Rule 18 of the Rules of 1974.

8. It is to be imbibed that Rules of 1974 has been framed by the State Government in exercise of its powers conferred by sub-section (1) of Section 279 read with [Section 80](#) and [92](#) of the Act of 1959 and [Section 102A](#) of the Rajasthan Land Revenue Act, 1956, therefore, the Municipal Board, Nimbahera has no legal authority whatsoever to lease out the land in question to the petitioner for 99 years without ensuring payment of 50% of the sanctioned reserve price from the petitioner. The Municipal Board, Nimbahera has no legal authority to grant licence to the petitioner on 12-9-1991 at the rate of 25% of the sanctioned reserve price."

20. The aforesaid order, passed by the Co-ordinate Single Bench of the Court at Principal Seat at Jodhpur, was assailed before the Division Bench by the said Trust by way of filing DB Civil Special Appeal (Writ) No.663/1993, however, the same was also rejected holding that the municipality was not justified in allotting the land to the said Trust below the price envisaged by the Rules. It was held in para 6 to 8 as under:

"6. We have considered the submissions of learned counsel for the appellant but we regret our inability to accept the same, it is not in dispute that in the application made by the appellant for allotment of land, it was not stated that the land was required for the purpose of



establishing an Educational Institution. The argument that the appellant would have established an Educational Institution on the land in question appears to be an after thought. Without receiving proper application from the appellant the Municipality was not justified in allotting the Sand to the appellant. The Municipality was also not justified in allotting the land to the appellant below the price envisaged by the Rules.

7. In the circumstances, therefore, the learned Single Judge was entirely right in rejecting the writ petition of the appellant. We are told that while passing the revisional order, the Addl. Divisional Commissioner directed allotment of the land in question to respondent No. 4. The Addl. Divisional Commissioner passed this order in revisional jurisdiction though he was not competent to pass such an order, as basically it is the function of the Municipality to consider the question of allotment of land. Therefore, the direction of Addl. Divisional Commissioner to the Municipality to allot the land to respondent No. 4 is set aside.

8. It will be open to the appellant to file a fresh application before the Municipality for allotment of land for establishing an Educational Institution. While considering the application for the appellant, the Municipality shall also consider the application of respondent No.4 and decide both the applications on merits by speaking order. The order of the learned Single Judge imposing costs of Rs.5,000/- on the appellant is set aside."

21. In the instant case, also, the land in question could not have been allotted to the respondent No. 4 at a rate below 50% of the sanctioned reserve price. However, it was allotted to him at a meager and nominal rate i.e. only 5% of the sanctioned reserve price. The present case does not qualify as an exceptional circumstance, in which the respondents-State





could have exercised its power contained under Rule 31 of the Rules of 1974 to reduce the price to such an extent. No such exceptional circumstances have been explained to justify how this case falls within the scope of Rule 31 of the Rules of 1974.

22. The respondent-State is not sure and clear in its stand.

The application of the petitioner for allotment of the land in question was rejected on the ground that the land in question had been reserved for construction of a School, even though, the petitioner had also applied for the very same purpose namely, for establishing a school. While the respondent No.4 has submitted application for constructing a hostel and not for the purpose of School, then how the State has allotted the land which was reserved for the purpose of school, for construction of hostel and that too at the lower price, being contrary to Rule 18 of the Rules of 1974. It appears that there were certain hidden extraneous considerations behind the entire action of the State for allotment of land in question in favour of the respondent No.4. The respondent-State have failed to satisfy this Court as to why the land, which was reserved for School, has been allotted to the respondent No.4 for construction of hostel and why the allotment has been done at a very meager and petty price of 5% of the sanctioned reserve price when the reserved sanctioned amount was 50%.

23. This Court now deals with the other objections taken by the respondent No.4 that the petitioner has no locus standi to submit this writ petition before this Court on behalf of the petitioner-Society as no resolution authorizing him, to file the



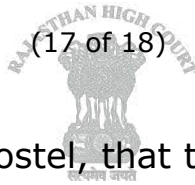


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instant writ petition has been submitted on the record. Perusal of the record indicates that the petitioner is President of the petitioner-Society i.e Sanadhya Gaur Brahamin Samaj and in the capacity of the President of the said Society, he has submitted the application for allotment of the land, for the purpose of construction of a School and Temple. When the very same land has been allotted to the respondent No.4 vide order dated 25.06.2003, he has assailed this order by filing this writ petition. Hence, the petitioner has locus standi to file this writ petition before this Court and no separate resolution of the petitioner-Society was required to authorize him to file this writ petition.

24. The Advocate General and the counsel for the respondent No.4 have raised an objection that the application for allotment submitted by the petitioner-Society was rejected vide order dated 03.06.2002 and the same has not been challenged by the petitioner, and thereafter, the land in question was allotted to the respondent No.4 and lease deed was also executed on 18.07.2005. Hence, this writ petition is not maintainable. It is the case of the petitioner that the said order dated 03.06.2002 was never communicated to the petitioner, and no such proof of communication has been placed on the record. If at all the order dated 03.06.2002 is not challenged by the petitioner, then also the impugned allotment order dated 25.06.2003 can be challenged by him, as the same is contrary to Rule 18 of the Rules of 1974. A land reserved for the purpose of construction of School has been allotted to the respondent





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No.4 for construction of hostel, that too at a very lower reserve price of 5% only, while as per Rule 18, no such land can be allotted below the 50% of the sanctioned reserve price. Such an illegal order, which is contrary to law cannot be allowed to be sustained by this Court. It is pertinent to mention here that the powers under Article 226 and 227 of the Constitution of India are designed to enforce the Rule of law and it cannot be invoked to direct the authorities concerned to act contrary to law.

25. It is settled proposition of law that when the Constitution confers on the High Court, the power to grant relief, it becomes duty of the Court to grant such relief, in fit cases, and Court would be failing to perform its duty, if relief is refused, without adequate reasons. This view has been taken by the Constitution Bench of the Hon'ble Apex Court in the case of **Calcutta Discom Company Ltd. v. Income tax officer**, reported in **AIR 1961 SC 372**.

26. Bare perusal of the impugned order dated 25.06.2003 per se reveals that it is ex-facie illegal and contrary to Rule 18 of the Rules of 1974. A land reserved for allotment for construction of School has been allotted to the respondent No.4 for construction of hostel at a very meager price. Hence, this Court finds no valid reason, for which the relief should be refused, in the light of the above judgment passed by the Hon'ble Supreme Court in the case of **Calcutta Discom Company Ltd. (supra)**.





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Conclusion:

27. Upshot of the discussions made herein above, is that the impugned order dated 25.6.2003 stands quashed and set aside. The instant writ petition stands partly allowed. The stay application and all pending applications (if any) also stand disposed of.

28. It goes without saying that it will be open for the petitioner as well as the respondent No.4 to file a fresh application before the Municipal Council for allotment of land for establishment of an educational institution, in the interest of public at large.

29. Needless to observe that in case, applications, as directed above, are submitted by the petitioner and the respondent No.4, the same would be decided by the State-respondent on merits by passing a reasoned and speaking order strictly in accordance with law.

30. Ordered accordingly.

31. No order as to costs.

(ANOOP KUMAR DHAND),J

KuD/17