



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

S.B. Civil Writ Petition No. 5707/2018

1. Chanesar Khan S/o Kalu Khan
2. Muse Khan S/o Meer Khan
3. Fatan Khan S/o Ise Khan
4. Hanif Khan S/o Kale Khan, All Are Residents Of Village Nedar, District Jaisalmer Raj.
5. Hazi Khan S/o Chanesar Khan
6. Arjun Singh S/o Sagat Singh
7. Balu Khan S/o Kabul Khan
8. Sarif Khan S/o Dale Khan
9. Shah Mohd. S/o Kadar Khan
10. Rahim Khan S/o Gaji Khan
11. Meve Khan S/o Allabux
12. Bawal Khan S/o Maskul Khan

----Petitioners

Versus

1. State Of Rajasthan Through Secretary, Revenue Department, State Of Rajasthan, Secretariat, Jaipur Raj.
2. The Secretary, Energy Department, Government Of Rajasthan, Secretariat, Jaipur Raj.
3. The District Collector, Jaisalmer, Collector Office, Jaisalmer Raj.
4. The Tehsildar Revenue/record, Pokran, Tehsil Office, Pokran, District Jaisalmer Raj.
5. Sub-Divisional Officer, Pokran, Tehsil Pokran, District Jaisalmer Raj.
6. The Director / Secretary / Manager, M/s. Adani Renewable Energy Park Rajasthan Ltd. Jvc Of Govt. Of Rajasthan And Areprl 31 A, 6Th Floor, Plot No. 5, Swej Farm, Mahima Trinita New Sanganer Road, Jaipur Raj.

----Respondents

For Petitioner(s) : Mr. Sumer Singh Rathore
For Respondent(s) : Mr. M.S. Singhvi, Advocate General
assisted by Mr. K.S. Lodha for
Respondent No.6 and Mr. D.S. Sodha
Ms. Rekha Borana, AAG assisted by
Mr. Saransh Vij & Ms. Vaishali Parihar



JUSTICE DINESH MEHTA

Order

27/11/2019

This writ petition seeks to challenge order dated 11.01.2018 passed by the District Collector, Jaisalmer whereby land ad-measuring 6115 bighas 06 biswa spread in various khasras of village Nedan has been allotted to respondent No.6-M/S Adani Renewable Energy Park Rajasthan Ltd. for establishment of solar energy plant.

Petitioners' basic grounds for challenging the allotment of the land vide impugned order are that;

(i) the allotment made to respondent No.6 is contrary to the provisions contained in Section 16 of the Rajasthan Tenancy Act, 1955 (hereinafter referred to as 'the Act of 1955') and Rule 5 of the Rajasthan Land Revenue (Allotment of land for Setting up of Power Plant based on Renewable Energy Sources) Rules, 2007 (hereinafter referred to as 'Rules of 2007'),

(ii) the establishment of solar plants would lead to pollution,

(iii) the land has been allotted ignoring petitioners' right of allotment/regularization.

(iv) if the solar park is established, the public utility areas such as (Talab, Nadi, Graveyard, Kabristan, place of worship etc.) will lose their utility and sanctity, and

(v) No report of Collector was obtained prior to allotment of the land in compliance of Provisions of Section 16 (xiv) of the Act of 1955.

Learned counsel for the petitioners elaborating his arguments submitted that though petitioners' applications (Annexure-1) for allotment of the land were pending, yet



respondents-State has proceeded to allot the contentious land to respondent No.6, vide impugned order. Such order is thus, in conflict with their rights of getting allotment.

It was further argued that establishment of solar plant, will lead to pollution. And that respondent No.6 will construct/raise a boundary wall, which will not only affect catchment area of pond, nadi etc. but the same will also make the use of graveyard, place of public worship impossible. It was equally apprehended that use of petitioners' khatedari land will be put to peril inasmuch as they will be denied access to their agricultural fields and 'dhani', which are situated amidst the land allotted to respondent No.6.

Submission was also made that the area in question allotted to respondent No.6 encompasses in its fold various ponds, nadis, river forest graveyard etc. which is clearly prohibited under Section 16 of the Tenancy Act.

Mr. Raghav, learned counsel appearing for the petitioners in other connected petitions vehemently argued that there are a number of ponds, nadi, river and thus, before allotting such land, Collector was required to get the report about the existence of catchment area, pond and river etc., which has admittedly not been done, for which, allotment deserves to be set aside as being contrary to Section 16 (xiv) of the Act of 1955.

Many other disputed questions were raised and grounds flowing therefrom were canvassed, which the Court refused to consider, finding them to be outside the scope of writ jurisdiction.

Mr. M.S.Singhvi, learned Advocate General submitted that the respondent No.6 is a joint venture company in which State is having 50% share holding, so also casting vote. It was submitted that the solar park is being established for generation of electricity



by way of solar power which is the need of the hour. While maintaining that the proposed solar park will create neither any hurdle nor nuisance to the residents and Khatedar – tenants of the area, it was assured that barbed wire fencing will be done in such a way that the residents continue to have free access to their land and no boundary wall will be raised so as to obstruct the right of way. It was submitted that barbed wire fencing will be done at the outer skirt of the solar park and stone/slab wall would be raised only in case it is utmost necessary. Responding to the allegations of pollution, he emphatically argued that no evidence or material is available which shows that installation of solar park and generation of electricity through solar cells amounts to pollution.

Statement was given by Mr. Singhvi that the respondent No.6 will not claim any right for the land, possession whereof has not been given to it by way of possession handing report dated 27.07.2018 and the land for which possession has not been given will be left to be used for the purpose it was meant.

Ms. Rekha Borana, learned Additional Advocate General appearing for the State raised serious questions about the bonafides of the petitioners and maintainability of the writ petition. While pointing out that the petition suffers from suppression of material facts it was argued that it involves number of disputed facts and that the allotment in question was strictly in accordance with law.

Inviting Court's attention towards averments made in para 2 of the writ petition, Ms. Borana argued that the petitioners have come to this Court portraying that they are cultivating the subject land, they are having peaceful possession over it, and their applications for regularization are pending consideration, but all



these facts are fundamentally wrong. It was further pointed out that in para 2 of the writ petition, petitioners have asserted their own khatedari rights in and around the area which are absolutely false assertion, hence petitioners are not entitled to invoke writ jurisdiction of the Court while maintaining that their applications were for allotment of land and not for regularization.

Asserting that Cabinet has taken a decision No.65/09 on 25.08.2009 to cancel the pending applications for allotment of Barani land in Jaisalmer District and all the applications invited in furtherance of the advertisement dated 08.03.2006 (Annexure-R/3) have been rejected, it was argued that petitioners have no existing or subsisting right over the land. Learned AAG clarified that some of the parcels of land allotted to respondent No.6 comprised of public utility land, hence, possession of such land was not given to the Company, as is evident from perusal of the possession handing report dated 27.04.2018. It was assured that the State would not hand over possession of such land to the respondent No.6 and that allotment to such extent will stand cancelled and land earmarked for common use will be put to such use only.

Heard.

After hearing learned counsel for the parties and upon perusal of the material available on record, this Court is of the considered opinion that the petitioners have raised host of disputed questions of facts, which cannot be gone into by this Court in exercise of writ jurisdiction.

The petitioners were, thus, heard only qua prayer clause (a) i.e. with respect to the order dated 11.01.2018 issued by the District Collector, Jaisalmer.



So far as the legality of the order is concerned, the same has been assailed on the ground that it is in violation of Section 16 of the Act of 1955 and Rule 5 of Rules of 2007. In view of the stand taken by the State that the possession of land of public utility such as pond, talab, nadi, graveyard etc. has not handed over to respondent No.6 coupled with the concession given by Mr. Singhvi, learned Advocate General appearing for respondent No.6, that they will not insist for handing over possession or allotment of such land, possession whereof has not been given, this Court is of the considered opinion that nothing remains to be adjudicated so far as the order dated 11.01.2018 on the ground of infraction of provision of Section 16 of the Act of 1955 and Rule 5 of Rules of 2007 is concerned. As the same has been appropriately addressed by the State itself.

No procedural illegality or irregularity has been alleged. The land has been allotted by the Collector in furtherance of the order dated 30.05.2017 passed by the State Government.

Adverting to other argument raised by Mr. Sumer Singh Rathore, learned counsel, that establishment of solar plant will amount to pollution, suffice it to say that neither any material nor any evidence or scientific report has been placed which can evince that establishment of solar plant leads to any sort of air, sound or water pollution.

The sun releases tiny packets of energy called photons. When photons strike a solar cells, they loosen electrons from their atoms, when they flow through the circuit, electricity is generated. The solar panels are made of many solar cells made of silicon. It is thus an electronic process which hardly generates any radiation or noise, which can lead to pollution. Neither any statutory



provision nor any Rule or Regulation has been brought to the notice of the Court to substantiate their stand that establishment of solar plant will lead to pollution.

This Court thus rejects petitioners' such contentions.

Petitioners' other argument that their applications for regularization of allotment is pending, yet allotment has been made to respondent No.6 also has no ground to hold, in view of the material placed by the respondent-State that Cabinet of the State Government, by way of resolution has decided on 16.08.2009, that the application invited for allotment of land in Jaisalmer would stand cancelled.

A meek submission was sought to be made by learned counsel Mr. Sumer Singh Rathore that such order has attained finality and that petitioners have not been informed about the rejection of their applications.

Some of the petitioners have separately challenged such decision/order of the State Government canceling or returning their applications of allotment. Be that as it may, since the petitioners have already availed their remedy against such decision of the State Government, this Court does not deem it appropriate to comment upon legality or propriety of such order. However, the fact that the petitioners' application for allotment/regularization have been turned down by the State, the argument of prior right of allotment is no more available to the petitioners.

Before adverting to the argument of learned counsel for the petitioners, Mr. Raghav with respect to provision contained in Section 16 (xiv) of the Act of 1955, it would be apt to reproduce the provision for ready reference, which I hereby do:



“Land which has been set apart or is, in the opinion of the Collector, necessary for flow of water thereon in to any reservoir or tanka for drinking water for a village or for surrounding village”

A simple look at the provision aforesaid leaves no room for ambiguity that it has been enacted with a view to protect water flow to any reservoir or 'tanka', which has been set apart by the Collector.

Argument advanced by learned counsel for the petitioners that before allotting such land it was imperative of the Collector to summon a report, cannot be countenanced. As a matter of fact, the provision postulates that a land which has been set apart or in the opinion of Collector is necessary for flow of water, in terms of the proviso, a report would be summoned. There is no material on record to show that the part of the land has been set apart or in the opinion of Collector is necessary for flow of water. As such, the argument advanced in this regard is untenable and thus rejected.

However, in view of the statement given by the respondent-State that possession of the land which falls in the catchment area or flow of river, pond has not been given to respondent No.6, and that the allotment made in relation to such land would stand cancelled; argument advanced by the petitioner does not need any further deliberations.

As an upshot of discussion foregoing, this Court finds no substance in the writ petition, for which, it is dismissed.

Stay petition also stands dismissed.

(DINESH MEHTA),J

174-Arvind/-