

Supreme Court of India

Pradesh Pong Bandh ... vs Union Of India & Ors on 26 July, 1996

Equivalent citations: JT 1996 (7) 79, 1996 SCALE (5)452

Author: B S.P.

Bench: Bharucha S.P. (J)

PETITIONER:

PRADESH PONG BANDH VISTHAPITSAMITI, RAJASTHAN & ANR.

Vs.

RESPONDENT:

UNION OF INDIA & ORS.

DATE OF JUDGMENT: 26/07/1996

BENCH:

BHARUCHA S.P. (J)

BENCH:

BHARUCHA S.P. (J)

MAJMUDAR S.B. (J)

CITATION:

JT 1996 (7) 79 1996 SCALE (5)452

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T BHARUCHA, J.

This is a writ petition seeking the quashing of a notification dated 12th March, 1992, issued by the State of Rajasthan, amending the Rajasthan Colonisation (Allotment and Sale of Government Land to Pong Dam Qustees and their transferees in the Indira Gandhi Canal Colony Area) Rules, 1972. The writ petition also seeks directions to the State of Rajasthan to recognise allottees of land allotted to them as khatedars immediately on the expiry of ten years from the date of original allotment; to withdraw the cancellation of allotments where allotments had already been cancelled; and to allot land to oustees who had not yet been allotted any.

Construction work on the Pong Dam on the river Beas commenced in the year 1960. The land whose acquisition was requisite for the purpose then fell within the State of Punjab. After the reorganisation of State boundaries on 1st November, 1966, that land fell within the territorial limits of the State of Himachal Pradesh. Although the waters impounded by the Pong Dam within the State

of Himachal Pradesh, the benefit thereof accrued to a dominant extent to the State of Rajasthan.

The problems thrown up by the acquisition of the land were considered first between representatives 1962, at a meeting with the then Union Secretary for Irrigation and Power and the representatives of these two States, it was agreed that oustees of the Pong Dam, the Rajasthan Feeder and the Beas Sutlej Link would be eligible for allotment of land in the Rajasthan Canal area, i.e., in the State of Rajasthan. Meetings were then held between representatives of Union Ministry of Irrigation & Power and representatives of the States of Rajasthan and Himachal Pradesh from time to time. The Government of Himachal Pradesh estimated in 1969 that a total number of 20722 persons would be ousted by reason of the acquisition and gave this figure to the committee of Secretaries. It was accepted by the committee and placed before the committee of the concerned Chief Ministers. These figures were not questioned by the Rajasthan Government. There were some difficulties that then arose between the two States. The concerned Chief Ministers decided that the matter be finally left to the Cabinet Secretary. The main points of dispute related to the eligibility for allotment of land for resettlement and the eligibility of successors to land holders who had lawfully inherited land owning rights after 1961. The definition of oustee had been mutually agreed to be, so far as is relevant, this :

"For the purposes of resettlement of and 'oustee' from the Beas Project area, one must be a person residing permanently within the area acquired for the construction of the Beas Project either with effect from or, earlier than the 31st March, 1961, whether as a land owner, tenant, landless labourer or an artisan."

At a meeting held on 3/4 September, 1970, the Chief Ministers had agreed that, irrespective of the extent land acquired from an oustee, an oustee family would be given an allotment of 15.625 acres. This was based upon the view of the Planning Commission about viable holdings for the purposes of agriculture. On 14th December, 1968, the concerned Chief Ministers agreed that artisans, labourers, landless tenants, etc. would be given house sites within the abadi areas but no land as such, and the abadi areas were to be included in the total of 3.25 lakhs acres to be set apart for oustees in the Rajasthan Canal Project area. The oustees were to pay a concessional price for the land allotted to them, the basis being the price payable by Rajasthanian landless labour allotted land in the area. The Rajasthan Colonisation Department was expected to provide housing, roads, water supply, etc. for the houses that were to be paid for by the oustees. It was agreed on 3rd/4th September, 1970 by the Chief Minister of Himachal Pradesh, at a meeting of the Chief Ministers of the concerned States, that, although the total requirement of land on the basis of 15.625 acres for 20722 oustee families would be 3.25 lakh acres, he would be content with a maximum of 2.25 lakh acres and compensate allottees left out within Himachal Pradesh itself. Pong Dam oustees certified as such by the Himachal Pradesh Government on the application of the criteria agreed between the Chief Ministers of Rajasthan and Himachal Pradesh would be entitled to allotment as aforesaid. It was agreed that each oustee would cultivate the land personally and the entire holding would be brought under the plough within a time to be specified under Rules; that he would not sub-let the holding or any part thereof; that he would reside in the chak abadi; that he would not be entitled to transfer the land in any way for a period of 10 years from the date of allotment; and, in the event of any breach of these conditions, the land allotted would revert to the State. In his note dated 3rd July, 1972 wherein

he made his recommendations upon the points left to his decision, the Cabinet Secretary, with great prescience, observed, "I would wish to emphasise that this is an unique case of land acquisition oustees being rehabilitated in a State different from the one in which the land is acquired. There can be no rules and regulations in regard to such an adhoc arrangement. The matter can be governed purely by goodwill between the reservoir land donor State and the irrigat on beneficiary State and by humanitarian considerations".

On 15th September, 1972, based upon what has been set out above, the Government of Rajasthan made the Rajasthan Colonisation (Allotment of Government land to Pong Dam Oustees in the Rajasthan Canal Colony) Rules, 1972. The Rules stated that the Government of Rajasthan "shall reserve land in specific areas of Rajasthan Canal Colony for allotment to oustees and the allotment under these rules shall be made only out of this land. For our purposes, Rules 3, 4 and 6 are relevant, and they read thus:

"(3) An Oustee land owner fulfilling the conditions of eligibility specified in such rules (1) and (2), may be allotted for himself and his family one square, i.e., 15.625 acres, of land under these pules by the Allotting Authority.

(4) An Oustee who is only a tenant, landless labourer or an artisan shall not be entitled to allotment of any agricultural land under these rules and he shall be entitled only to allotment of a house site for the rehabilitation of the Oustees.

(6) Terms and conditions of allotment :

Allotments of land made under these rules shall be made and shall be deemed to have been made under the following terms and condltions :

1. The allottee shall pay to the State Government the price for the allotted land of such scale and in such manner as laid down in rule 7 of these rules.

2. Subject to the provisions contained in these rules the Rajasthan Colonisation (General Colony) cnndition, 1855 shall apply.

3. Initially an allotment shall be on ghair- khatedari tenure only and to the allottee no khatedari rights shall accrue in any land so allotted till the expiry 20 years from the date of allotment and till the full price of the land together with all other dues of the State Government, if any, he has been paid by him to the State Government.

4. During the period of ghair Khatedari tenure, allottee shall nat have any alienable and transferable rights in the land and shall not transfer or alienate the land to any other person in any way, e.g., by sale, mortgage, gift, transfer, lease or otherwise. No transfer or alienation of land even in the form of Nokarnama, Muktiarnama, Tabliknama, Ikranama or the like shall be permissible.

Provided that after the expiry of 10 years from the date of taking over possession by the allottee and subject to allottee having paid the full price of land allotted to him, the Colonisation Commissioner may, on the application of the allottee after satisfying the hard and exceptional circumstances exist, allow the allottee to relinquish the land allotted to him in favour of the State ; Government on refund of the price paid by him for the said land.

Provided further that no order under the first proviso allowing relinquishment shall be passed by the Colonisation Commissioner without obtaining the previous approval of the State Government.

In case the State Government refuses to give such approval, the Colonisation Commissioner may allow the allottee to transfer the land in favour of any other person.

5. Within six months of the date of possession the allottee shall have to start living permanently in Chak Abadi of the allotted land.

6. The allottee shall cultivate the allotted land personally and this personal cultivation shall exclude any other means of cultivation except by means of own labour, or by the labour of any other member of one's family or by hired labour under one's family or by hired labour under one's or one's family members personal supervision and presence.

Provided that in the case of a person who is widow or a minor or subject to any physical or mental disability or is a member of the Armed Forces of India or who being a student of an educational institution recognised by the State Government, is below the age of 25 years, land shall be deemed to be cultivated personally even in the absence or such personal supervision.

7. The allottee shall bring the entire culturable allotted land under plough within a period of 6 months of the date of allotment and shall fully utilise the irrigation water for cultivation of allotted land.

8. Except where the allottee is a member of the Armed Forces of India, he or a member of his family shall remain personally present on the allotted land at the time of every annual inspection during Girdawari.

9. The allottee has to produce his identity card on demand as and when demanded by the Colonisation or Revenue Authorities of the area.

9 (a). An allottee, possession of whose acquired land had not been taken before the allotment of land to him under these rules, shall have to produce before the Allotting authority a certificate from the Land Acquisition Officer of Himachal Pradesh Government regarding handing over of the possession by him of the acquired land within a period of the months of the harvesting of the crop standing at the time of issue of the certificate by the Certifying Authority.

10. In case of any breach of any terms and conditions by the allottee the allotment of land made to him shall be liable to be cancelled by the allotting authority or by the Collector and the land shall

revert to the State Government free from all encumbrances and without any liability of payment of compensation. He shall be neither liable to any action which may be taken under the provisions of the Act and the Rajasthan Colonisation (General Colony) condition, 1955."

On 2nd, 3rd and 12th September, 1981, the Chief Ministers of Rajasthan and Himachal Pradesh met and arrived at a Memorandum of Understanding. They reviewed the case of the 9169 Pong Dam oustees who had been allotted lands in the Rajasthan Canal Project area in the light of the problems experienced by them. As a result of detailed examination and consideration, it was found that 2594 allottees were continuing to cultivate the allotted land but their main problem was with regard to the provision of infra-structural facilities and amenities. The Chief Minister of Rajasthan assured his counterpart that every effort would be made to provide essential basic amenities. There were 689 oustees who had been allotted land but had sold or otherwise transferred it; it was agreed that these were not fit cases for review. In regard to the remaining cases of 5886 allottees, it was agreed that Rule 6(7) of the 1972 Rules would be amended to provide for the cultivation of 50% of the irrigated land in the first year after commencement of irrigation and the balance 50% before the end of the second year, while the allotted unirrigated land should be brought under cultivation before the end of the third year. According to this Rule, oustees who were allotted land were required to take over physical possession within 45 days of receipt of the notice of allotment, but 2289 allotment orders had been cancelled because the oustees could not take possession within that period. It was decided that these cases would be reviewed and the Rules would be amended to increase the period from 45 to 90 days and that a period of 60 days from the date of publication of the amended Rules in the Gazette would be provided to eligible persons to submit their applications. Rule 6 prescribed various alternative methods through which the allotted lands could be cultivated by the allottees but the allottee was not permitted to have the land cultivated by servants, on wages payable in cash or kind, manager or agent. It was agreed that Rule 6(6) should be amended to include the methods of cultivation provided for in Section 4(vi) of the Rajasthan Colonisation Act and to review cases in which allotment orders had been cancelled on this account. In relation to Rule 6(3), and this is very relevant, it was agreed that the period for acquisition of khatedari rights would be reduced from 20 years to 10 years provided that, before the acquisition of these rights, all dues payable to the State Government had been fully discharged and the right to sell the allotted land would not accrue before the expiry of 20 years from the date of allotment. There were cases in which the lands originally allotted to the oustees were not situated in the command area of Rajasthan Canal Project or, being situated in that area, were not irrigable and cancellations of allotment had been made. Those cases were agreed to be reviewed and cancellation orders withdrawn. It was also agreed that before allotment orders were issued, encroachments on the allotted lands should first be removed. These amendments to the 1972 Rules, it was agreed, would be made within three months. The amendments were duly carried out and on 22nd April, 1982, the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Ousteas in the Rajasthan Canal Colony) Amendment Rules, 1982, were published.

On 12th March, 1992, the impugned Rajasthan Colonisation (Allotment and Sale of Government Land to Pong Dam Ousteas and their transferees in the Indira Gandhi Canal Colony Area) Rules, 1992, were published. Section 3 thereof amended sub rule 3 of Rule 6 and in the proviso thereto, for the expression "20 years", the expression "25 years" was substituted. Section 4 introduced a new

rule, Rule 6-A. Sub- clause (1) thereof may be reproduced :

(1) Notwithstanding anything to the contrary contained in these rules, the land reverted to the State Government under sub-rule 10 of rule 6 as a result of transfer or alienation of the allotted land in breach of sub-rule (4) of rule 6 of the rules, may be sold by way of special allotment to the purported transferee who has been a bonafide resident of Rajasthan and has not been involved in antinational activities, and who is also in possession of the land as on 31st December, 1991 and continues to be in possession till the date of reversion, after holding such enquiry as the Collector deems proper, subject to the ceiling area applicable to the, purported transferee under the Rajasthan Imposition of ceiling on Agricultural Holding Act, 1973 (Rajasthan Act 11 of 1973).

It will be remembered that under the proviso to Rule 6, as it read after amendment on 22nd April, 1985, pursuant to the agreement between the Chief Ministers of Rajasthan and Himachal Pradesh at their meetings in September 1981, the allottee had no right to sell the land allotted to him before the expiry of 20 years from the date of allotment. Ten years later the proviso was unilaterally amended to increase the period of 20 years from the date of allotment to 25 years. The introduction of Section 6-A entitled the Rajasthan Government to sell "by way of special allotment" lands which had reverted to the State Government as a result of transfer or alienation in breach of Rule 6(4) to the purported transferees if they, were bonafide residents of Rajasthan and in possession of the reverted land.

Put shortly, the principal ground of the writ petition is that the State of Rajasthan, having obtained the benefit of the waters impounded in the Pong Dam, reneges on its obligations to the Pong Dam oustees and discriminates against them and in favour of the Rajasthanis. The case is supported to the hilt by the affidavit in reply to the writ petition made on behalf of the State of Himachal Pradesh on 20th August, 1992.

The affidavit states that on account of the construction of the Pong Dam a total area of 69932.32 hectares was acquired and approximately 30,000 families, scattered in 339 tikkas, were, uprooted. Out of these, 16,100 families were considered eligible of land allotment in Rajasthan. The affidavit recites the history of meetings between representatives of the States of Rajasthan & Himachal Pradesh and records that 9195 allotments had been made upto the year 1980 but, at the time when the affidavit was filed, "only 2537 allotments remained in-tact while the remaining 6658 allotments were cancelled by the allotting authorities of Rajasthan under the harsh application of the allotment rules, 1972". Meetings were held by the Chief Ministers of Rajasthan & Himachal Pradesh in September 1981 and a Memorandum of Understanding was signed on 13th September, 1981, which incorporated various steps and measures that were required to be initiated by the Rajasthan Government in the form of amendment of the 1972 Rules in order to facilitate the resettlement of the oustees in Rajasthan and, accordingly, the 1982 amendment was carried out pursuant to the 1992 amendment of the Rules, which was impugned in the writ petition, the Allotting Department, Rajasthan, had started to issue notices upon oustee allottees to appear in the court of S.D.M.R., Raisingh Nagar and Suratgarh in District Ganganagar. Approximately 4000 oustees had appeared

accordingly. 556 morabbas allotted to the oustee allottees had been cancelled for violation of Rule 6(5), 6(6) and 6(7) and in 1373 cases reversion proceedings in favour of the Rajasthan Government had been started to enable sale of the lands to the purported transferees. At a Monitoring Sub-Committee meeting held at New Delhi on 30th October, 1991, it was decided that the cases of illegal transactions should be verified by joint survey, inspection or verification by the Tehsildar, Resettlement & Rehabilitation, Anupgarh, and the Revenue Tehsildar, Rajasthan, and lands becoming available upon cancellation thereafter should be allotted only to Pong Dam oustees "but the allotting authority Rajasthan has conducted one sided survey ". An extract of the aforesaid meeting is reproduced in the affidavit and is instructive :

"After discussion, it was decided that the cancellation of land should be proceeded with after joint inspection/ verification by the Tehsildar, Anupgarh under the DCR&R and the Tehsildar of Rajasthan Government. The land thus available may be allotted only to the Pong Dam Ousteas and its physical possession delivered to the genuine ousteas authenticated by the DCR&R, SDM Raisingh Nagar informed that it would only be possible after the ban was lifted."

The 1972 rules being "very harsh to the allottees", their amendment had been agreed to in the Memorandum of Understanding signed by the Chief Minsters as aforementioned. The affidavit states, "Therefore the insertion/addition of new rule 6(A) in the aforesaid rules unilaterally by the Rajasthan Government is prejudicial to the interest of the Pong Dam Ousteas.

Moreover, detailed enquiry as agreed to in the meeting of the Chief Ministers of both the States held at New Delhi on 9th April, 1992 has not been held and the oustee allottees have not been afforded due opportunity of hearing. A notice was issued in the Daily Newspaper "Jansatta" dated 14th April, 1992 requiring 1980 Ousteas to present themselves in the court of SDM, Raisingh Nagar on 30th April, 1992. The notices were not personally served upon the ousteas."

The affidavit states that "out of the 30,000 uprooted families and 16,100 eligible ousteas families, 9196 ousteas were allotted morabbas in Rajasthan upto the year 1980. Out of these 6658 allotment were cancelled by the allotting Department Rajasthan on the pretext of violation of one rule or the other of the allotment rules 1972 and only 2537 allotments remained intact when on the hue and cry of the Pong Dam Ousteas and the intervention of the Beas Project Admn. and the H.P. Government a Memorandum of Chief Ministers on 13th September, 1981 in which it was, inter alia, decided to restore all the cancelled Morabbas of the Pong Dam Ousteas."

The affidavit also states, "Under the provisions of amended rules, 1982, 4734 ousteas came forward for the restoration of their cancelled Morabbas. Out of these, 4510 cases were accepted for restoration of the cancelled Morabbas and 224 cases rejected.

Out of these 4510 accepted cases, the possessions in 3151 cases have been oelivered upto 30th June, 1992 while the possessions in remaining 1359 cases are pending on account of the reasons viz. the allotted Morabbas are under illegal encroachments of the miscreants, under stay orders of various courts of Rajasthan, under dispute where same Morabbas has been allotted to two different ousteas,

for want of exchange where the uncommand land has been allotted, for review of cancellations and possessions under phase I and II where the allotting department has allotted morabbas in papers only but the possessions are still to be delivered".

In regard to the impugned 1992 amendment, the affidavit states, "The Rajasthan Government has amended the allotment Rules unilaterally which is prejudicial to the interest of the Pong Dam Oustees which aims at reverting the allotted lands to the Rajasthan Government and its subsequent sale to the purported transferee against the payment of Rs.3.00 lacs for command land and Rs.1.00 lac for uncommand land..... Th amendment in proviso to sub rule 3 of rule 6 of the allotment rules in the aforesaid notification dated 12.3.1992 by the Rajasthan Government under which the period of Khatedari right has been increased from 20 years to 25 years has been done with a view to gain time for cancelling the remaining morabbas on some pretext because the oustees have fulfilled the conditions of the existing rules 6(3) and was due for khatedari rights".

The affidavit states in regard to the manner in which the newly introduced Rule 6-A was being implemented :

"Even the minimum requirement of natural justice are being denied by the allotting authorities and much irreparable loss has already been incurred to the Pong Dam Oustees in respect of the following :

(i) That the allottees inspite of applications, are not being supplied copies of the documents which the purported transferees have attached alongwith the application in support of their possession of land.

(ii) The preliminary survey has not been conducted jointly but one sided survey has been conducted ignoring the earlier commitments of joint survey, inspite of the girdawri entries and deposit of regular instalments by the allottee.

(iii) That no statement of the allottee challenging the comments have been recorded nor they are allowed to produce witnesses to contradict shown the wrongful possession of the trespassers.

(iv) The allottees have not been govern the copy of the judgment passed over the reversion of the land for going in appeal under the provisions of Rule 10 of the Allotment Rules, 1972.

c) The allotting Department has started cancellation on fictitious grounds in several cases where the oustees are living in Rajasthan for the last 25 years, getting education to their children in primary/middle schools, have their ration cards, their names appearing in the voter lists, contested panchayat elections, given prizes to apprehend Pakisthani infiltrators, even then their Murabbas have been cancelled." The affidavit states, "..... the allottees have incurred heavy expenditure for the development of the allotted murabbas and in paying regular instalments along with other dues to the

Rajasthan Government and acquired Khatedari rights. Therefore, they cannot be debarred under the provisions of new rule". The affidavit concludes, "The rights of the allottees cannot be ignored taking unilateral decision because the allotments fall in the category of inter-state settlement and the consent of the Government of India and the H.P. Government for making new rules is absolutely necessary."

The affidavit in reply to the writ petition on behalf of the State of Rajasthan was made on 18th September, 1992. It claims that the petitioners had:

"made false suggestions and have tried to create malice and prejudice against the respondent no.3, State of Rajasthan and have also tried to mislead this Hon'ble Court..... The respondent no.3, State of Rajasthan do not dispute the entitlement of the Pong Dam Oustees for allotment of land, but under the 1972 Rules all the eligible and entitled Pong Dam Oustees were granted lands almost two decades back i.e. during 1973-

75. The respondent no.3, State of Rajasthan; do not wish or propose to oust any of the original allottee from his legal entitlement to which the State of Rajasthan is legally and morally bound. The State of Rajasthan is seeking and is making sincere efforts to oust and/or regularise the lands in possession of persons who have been transferred lands from the oustees in clear violation and contravention to the provision of the 1972 Rules. Most of the present incumbents are persons who have taken over lands from the original Pong Dam Oustees".

This is the burden of the song. The affidavit states that a survey conducted in December 1991 showed that out of 5076 allottees only 549 were in possession of the land allotted, 212 allotments were lying vacant and 4315 allottees had transferred their lands to persons who were not oustees and these persons were in possession. The affidavit adds, "As in majority of the cases persons who had taken lands from the original allottees were in possession and their eviction would have raised another hue and cry, a policy decision was taken by the State of Rajasthan that instead of physically evicting these persons, who had obtained valid transfers in their favours from the original allottees, it would be reasonable, just and proper to regularise these invalid transfers". (Sic).

The affidavit states that representations and grievances were made to the State of Rajasthan regarding irregularities in the regularisations made pursuant to the notification dated 12th March, 1992, that is, the impugned notification. With a view to meet these grievances the State of Rajasthan, by a notification dated 3rd September, 1992, which was issued pursuant to a decision taken in a meeting between the Revenue Minister of Himachal Pradesh and the Chief Minister of Rajasthan, issued directions that the allotting authorities will review all the previous cancellations and pass fresh orders after providing an opportunity of hearing to all the allottees.

The notification of 3rd September, 1992, is annexed to the affidavit, and makes interesting reading. The minutes of the meeting pursuant to which this notification is stated to have been issued are not annexed to the affidavit and went not available at the hearing.

The notification of 3rd September, 1992, makes amendments to the Rajasthan Colonisation (Allotment and Sale of Government Land to Pong Dam Oustees and their transferees in the Indira Gandhi Canal Colony Area) Rules, 1992, and inserts a new Rule 8-AAA therein, which reads thus :

"8--AAA Review of Cancellation order on account of breach of Rule 6(4), 6(5) or 6(6) and allotment order under Rule 6-A :-

(1) Notwithstanding anything contained in these rules, all the orders of cancellation of allotment on account of breach of sub-rule (4) of Rule (6), except those orders which were passed after hearing the allotted in person, and the allotment order under Rule 6-A has been passed before the coming into force of this rule shall be reviewed suo moto by the Allotting Authority and a fresh order shall be passed, after making due enquiry with regard to the genuineness or otherwise of the documents and other relevant matters, either confirming the order of cancellation under rule 6(10) and the allotment order under rule 6-A or cancelling the allotment under Rule 6-A and restoring the original allotment made under these rules. No order shall be passed under this sub-rule without affording an opportunity of being heard to the original allottee and the purported transferee.

(2) Notwithstanding anything contained in these rules, the order of cancellation of allotment on account of breach of sub-rule (4), (5) or sub-rule (6) of Rule 6 passed before the coming into force of this rule and no order has been passed in rule 6-A shall be reviewed and after due enquiry, the cancellation order may be withdrawn and an order-of restoration of the original allotment may be passed by the Allotting Authority on an application presented within 60 days from the date of coming into force of the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees and their transferee in the Indira Gandhi Canal Colony) (Amendment) Rules, 1992, by a person who was previously allotted land under these rules."

Rule 8-AAA, therefore, itself acknowledges that orders had been passed cancelling allotments to oustees under the provisions of Rules 6(4) without hearing the concerned allottee oustees and without due enquiry where, thereafter, allotment orders had been made under Rule 6-A in favour Rajasthani citizens. It must necessarily follow that this was also the position where there was no such subsequent order under Rule 6-A and also where the cancellation of allotment was for purported breach of Rule 6(5) or 6(6). Where, after cancellation of allotments under Rule 6(4), allotment orders had been made under Rule 6-A or cancelling allotments under Rule 6-A and restoring allotments to the original allottees, the review under Rule- 8AAA is required to be made suo moto. Where, however, cancellations of allotments to oustees had been made on account of breach of Rule 6(4), 6(5) or 4(6) and no order had been passed under Rule 6-A, the review is required to be made only if the allottee oustee presents an application within 60 days from the date of coming into force of the Rule 8AAA.

The writ petition came up before this Court on 7th September, 1993, when counsel for the States of Rajasthan and Himachal Pradesh submitted that a body would be set up by the Governments

concerned so that grievances of high-handed action against oustee allottees could first be considered by that body and adequate protection given wherever necessary. The writ petition was adjourned for eight weeks to enable the Union of India and the Governments of Rajasthan and Himachal Pradesh to evolve a scheme and submit the same to the Court.

The writ petition next reached hearing on 22nd February, 1996. It was submitted then that a scheme had been drawn but it had not been considered by the Court. Pursuant to that scheme committees had been constituted at State and District levels and they were looking into grievances. The Court directed the States of Rajasthan and Himachal Pradesh to state on affidavit that the scheme had, in fact, been implemented and State and District level committees formed. The affidavits had stated that District Level Committee meetings had been held but gave no details. The second affidavit on behalf of the State of Himachal Pradesh made reference to the earlier affidavit dated 10th April, 1996 and stated.

"The assurances and decisions made by the Rajasthan Government as indicated in Paras 3 implemented. The matter stated in paras 5 the 7 of the affidavit dated 10th April 1996 requires basic amendments in Rajasthan Colonisation Rules, 1972, but no such amendments have been incorporated in the Rules as no copy of the Notification/Amendment has been supplied to the State of Himachal Pradesh by the Rajasthan Government. In addition to the facts stated in paras 3 and 4 of the affidavit, it is submitted that the basic amenities, like roads, drinking water, school etc. have not been provided in most of the areas where allotments have been made of the Pong Dam Oustees in Phase II by Rajasthan Government." There were, the affidavit stated, "1935 cases of 8-AAA (I) category, out of which only 694 cases were disposed of before 16.10.1993 but thereafter only 142 cases have been decided and 1,099 cases are still pending with the Rajasthan Government. There were 381 cases of 8-AAA (II) category, out of which 31 were disposed of before 16th October, 1993, but thereafter 69 cases had been decided and 291 cases are still pending. Most of the oustees against whom the cases were previously decided by the Revenue courts of Rajasthan under Rule 6-A have filed Review/Appeal applications in the competent courts of Rajasthan which are still pending for decision. The Pong Dam Oustees are attending various courts for getting justice and they have attended these courts 12/15 times for the last two and a half years which has caused a also to state what work had been done by the committees since their constitution.

Pursuant to the order dated 22nd February, 1996, the State of Himachal Pradesh filed two affidavits, the first dated 10th April, 96, and the second dated 30th May, 1996. In the first affidavit it was stated that a State Level Committee meeting had been held to provide basic amenities like roads, drinking water, schools, dispensaries, etc. in the areas where oustees had been allotted morabbas in the manner provided to residents of Rajasthan. It was agreed to re-examine such cases of cancellations as had been decided on the basis of forged documents. It was agreed not to cancel allotments based upon the provision relating to self cultivation or residence where the legal heirs of deceased allottees serving in the State or Central Governments were involved and to review such cases where morabbas had been cancelled. The Rajasthan Government had agreed that the, period

of cultivation would commence only after making provision for irrigation in the areas where allotments were made. There were 1559 fresh applications of oustees according to the Memorandum of Understanding of 12th September, 1981. The Himachal Pradesh Government had scrutinised these applications and 965 applications had forwarded to the Rajasthan Government for consideration. The remaining 594 applications were under process. lot of running expenditure and harassment too. The Rajasthan Government, thus, is not seriously interested in the speedy disposal of such cases. On the basis of the above facts, there is an urgent need for the Government of Rajasthan to speed up disposal of the pending cases so that the oustees do not face further harassment.

xxx xxx xxx That there are 1,559 fresh applications of the Pong Dam oustees pending for allotment of land in Rajasthan Canal area. Under Rule 3(1) of the Rajasthan Canal Colony Rules, the Government of Rajasthan is required to reserve land for allotment, but till date to land has been reserved by the Government of Rajasthan despite the assurances given in the inter-State Meeting held on 13.10.1995 at New Delhi. The Government of Rajasthan is thus not adhering to the mandatory provisions as laid under the Rules.

That the Rajasthan Government is charging higher rate of Rs.52,500/-

per square of land measuring 15.625 acres in Phase II from the allottees in whose favour the alternative allotments have been made on review of their earlier decision of cancellation of the land under Rule 8-A and such a higher charging of the price is not justified."

The State of Rajasthan filed an affidavit date 15th April, 1996. Pursuant to the order of this Court dated 22nd February, 1996. In para 6 of the affidavit, with reference to the work done by the District Level Committee, Sri Ganganagar, it was stated :

"There are total 1935 cases wore pending under Section 8AAA (1) of 1954 Act, in which cases allottees transferred the land by agreement to sale. The Competent Authority had taken up 1935 cases for reviewing the cases suo moto and conduct inquiry with reward to the genuineness of such transfer of land by the allottees. Til 16.10.93 total number of 694 cases were disposed of and during the period of 17.10.93 to 31.03.96, 142 cases were disposed of. Remaining 1099 cases are still pending with Competent Authority in which the inquiries are going on. A direction has also issued by the District Level Committee to Competent Authorities to dispose the aforesaid pending cases as expeditiously as possible.

(ii) The Competent Authority had received 381 applications under Section 8AAA of 1954 Act in which cases allotments to the allotments were cancelled due to violation of the Allotment Rules. Out of 381 cases till 16.10.1993, 31 cases were disposed of and from 17.10.93 till 31.03.96, 69 cases were disposed. Remaining 281 cases were pending for disposal before the competent authority. The District Level Committee had also given specific direction to the Competent Authority to dispose of pending cases expeditiously.

xxx xxx xxx There were total number of 302 cases pending before Competent Authority for given possession of the land to the allottees which could not be given due to non- availability of command area, etc. Out of these 302 cases till 16.10.93, possession has been given to persons and from 17.10.93 till 31.03.96, 11 persons were given possession of land by re-allotment in the commend area. The District Level Committee had given direction to the Competent Authority for verification of the command land and for giving earliest possession of the remaining 286 allottees."

With reference to the work done by the District Level Committee, Bikaner and Jaisalmer, it was stated that 886 oustees had been allotted lands. Out of these, in 158 cases re-allotments were made as there were no irrigation facilities in the lands originally allotted and in 31 cases the matter of re-allotment of land was pending before the Competent Authority. The State Level Committee, the affidavit stated, had taken a decision to give to the families of oustees, in the second phase, the following facilities

(i) Free ration for two years;

(ii) A grant of Rs 8,000/- per hectar other their loan would be given to each family for land leveling

(iii) A grant of Rs 8,400/- would be given for making houses to each Oustees family

(iv) Interest free loan of Rs 5,000/- in two instalment would be given to each Oustees family."

It may be noted that the State of Rajasthan has not controverted the allegations made against it in the affidavits of the State of Himachal Pradesh in reply to the writ petition and pursuant so the order dated 22nd February, 1996.

Mr Aruneshwar Gupta, learned counsel for the State of Rajasthan, submitted that the Beas waters would have been lost to the country had the Pong Dam not been constructed the submission appears to us to be a non-sequitur in the context of the writ petition. The dam need not have been built, but it was to The State of Rajasthan is the predominant beneficiary of the waters impounded by it Residents of the State of Himachal Pradesh were ousted from their lands by the impounding of the waters. The State of Rajasthan agreed with the State of Himachal Pradesh to re- settle them. Twenty-four years later they are not all settled. Irrigable land, water, roads, schools and dispensaries are not available to all oustees allotted land in the State of Rajasthan. Small wonder that some may have deserted their allotments and some may have transferred them for such compensation as they could get and returned to their native State. This really answers Mr. Aruneshwar Gupta's principal argument that the oustee allottees were found to have invalidly transferred their allotments or left them vacant, but we shall presently have more to say about it. Mr. Aruneshwar Gupta submitted that the averment in the affidavit of the State of Rajasthan in reply to the writ petition that all eligible oustees had been allotted land in 1973-1975 had not been denied. Mr. Aruneshwar Gupta overlooks the averments in the affidavit of the State of Rajasthan itself, made in reply to the court's order dated 22nd February, 1996. It is stated in that affidavit, which is dated 15th April, 1996, that 302 cases were pending where possession of land to allottees "could not be given due to

non-availability of the command ares, etc. Out of these 302 cases till 16.10.93 possession has been given to 5 persons and from 17.10.99 till 31.3.96 11 persons were given possession of land by re-allotment in the command area". It is also stated in that affidavit that out of 189 other court, re-allotment had to be made in 158 cases as there were no irrigation facilities on the allowed land and the remaining 31 cases were still pending re-allotment, Allotment of the lands took place in 1973-75; this is the State of Rajasthan's case. That the allottees would not be able to sell the land allotted to them for a period of 20 years after allotment was a stipulation agreed to between the States of Rajasthan and Himachal Pradesh, It was upon that stipulation that the allottees were allotted the land and paid its price. When the 20 years period was nearing completion in 1992 the State of Rajasthan unilaterally increased the period by 5 years by amending the proviso to Rule 6(3). The State of Rajasthan could not change unilaterally what was the subject of agreement as aforesaid; besides, the right to sell the land after 20 years vested in the allottee and could not be divested. As will become clear, there is substance in the plea of the State of Himachal Pradesh that the period had been increased with a view to gain time to cancel allotments on the pretext that the oustees had breached one or other condition of allotment and that the amendment is a mala fide exercise of power. Rule 6-A, newly introduced in 1992, needs to be considered in a wider context. Suffice it to say now that it is bad because the land reserved for oustees must go, on reversion to the State of Rajasthan, to such oustees as remained un-settled.

That the provisions of Rules 8(4), (5) and (6) have been mis-used has been indicated in Rule 8-AAA itself and in the affidavit of the State of Rajasthan filed pursuant to the order of 22nd February, 1996; Rule 8-AAA provides for the review of all order of cancellation under Rule 6(8) where, subsequently, orders under Rule 8-AAA had been issued "except those orders which were passed after hearing the allottee in person". It had been decided in 1992, as the affidavit of the State of Rajasthan shows, to regularise the possession of the Rajasthanis who were in possession of lands allotted to oustees. It was for that purpose that Section 6-A was then incorporated. Rule 8-AAA was required to be introduced within a few months thereafter because the State of Himachal Pradesh complained of its blatant misuse and a review of cancellations was agreed to. Rule 8-AAA states, as already noted, that a review was required because the oustee allottees had been deprived of allotments in breach of the provisions of natural justice. The number of cases where this happened because of alleged breach of Rule 6(4) and subsequent application of Rule 6-A was 1935. Out of these, 836 cases had been disposed of by 1st March, 1996. What the consequence of such disposal was is not stated in the affidavit of the State of Rajasthan. Mr. Aruneshwar Gupta could not tell us either, but, according to him, no oustee allottee could have been put back in possession because of a judgment of the Rajasthan High Court. He did not cite the judgment nor give the number or title of the case. For alleged breaches of Rules 6(5) and 6(6) the position is similar. The affidavit of the petitioner dated 28th June, 1996, states that 2063 allotments were cancelled upon the insertion into the Rules of Rule 6A; that, upon review, 843 cancellation orders were affirmed and only 94 cases were decided in favour of oustee allottees; and that in 1126 cases review is pending.

Moreover, where Rule 6-A was applied and a Rajasthani was in possession, the review under Rule 8-AAA was to be made suo motu; otherwise, the oustee allottee whose allotment had been cancelled by the application of Rules 6(4), (5) and (6) was required to make an application for review within 60 days of Rule 8-AAA coming into force. It is reasonable to assume that upon dispossession the

oustee allottee would have retreated to his native State of Himachal Pradesh. It is manifestly absurd to expect him to read the Rajasthan Gazette and make a review application under the provisions of Rule 8-AAA within 60 days of its publication. The provision for review in Rule 8-AAA where Rule 6-A has not been applied is illusory: the agreement between the States of Rajasthan and Himachal Pradesh in this behalf is not honoured.

This is not to suggest that an allottee would not have transferred the allotted land. He may have, but such cases need inquiry because the possibility of trespass, coercion and intimidation, as suggested by the affidavit of the State of Himachal Pradesh, cannot be ruled out. Having regard to their track record, the revenue authorities of Rajasthan cannot be entrusted with the task.

We have drawn attention to the broad sweep of the prayers of the writ petition. Mr. Aruneshwar Gupta has also invited us to give appropriate directions. We think that directions are necessary if the oustees are to get their due; we are left in no doubt that the State of Rajasthan has disfavoured them and favoured the Rajasthani and has made rules and implemented them with that in mind.

The notification dated 12th March, 1992 amending the Rajasthan Colonisation (Allotment of Government Land to Pong Dam Oustees in the Indira Gandhi Canal Colony) Rules, 1972, and, consequently, the substitution of 25 years for 20 years in the proviso to Rule 6(3) and the introduction of Rule 6-A are quashed and set aside.

The Chief Justice of the Rajasthan High Court shall nominate, within 6 weeks of receipt of a copy of this order, one or more District judges for the purpose now set out. The notion of regularising the Rajasthanis in occupation of lands allotted to oustees saw the light of the day in 1992. Therefore, the cases of all cancellations of allotments to oustees subsequent to 1st January, 1992, shall be reviewed by the District Judge. Notice that he shall be so doing shall be given to the oustee allottees concerned personally, by registered post at the last known address and through the agency of the Himachal Pradesh Government. Public notice that all such cases are to be reviewed by the District Judge shall be published in two newspapers printed in the vernacular and having circulation in Himachal Pradesh, particularly in the Kangra region; also in two newspapers printed in Hindi and having circulation in Rajasthan, particularly in the Indira Gandhi Canal Colony area. Costs in regard to the individual and public notices shall be borne by the State of Rajasthan. For the purpose of such review the State of Rajasthan shall produce before the District Judge the entire record pertaining to each such allotment and cancellation. Even though the oustee allottee concerned may not appear, the District Judge shall review his case. Where the District Judge finds that an oustee allottee has committed a breach that invites the forfeiture of his land, he shall so record. Where the District Judge finds to the contrary, whether or not the oustee allottee appears, he shall so record. The District Judge shall also record, should he so find, that the oustee allottee was forced to leave the land because of lack of irrigation or other essential facilities such as water, roads, schools and medical assistance and/or because of coercion, intimidation or trespass. The District Judge shall send his reports to the committee now mentioned. The reports shall be binding upon the oustee allottees and the State of Rajasthan. The District Judge shall complete the task allotted to him as soon as is reasonably possible and, in any event, within 18 months of beginning it.

A committee shall be constituted by the Union of India (the 1st respondent) within 6 weeks of receipt of a copy of this order which shall have the Secretary, Ministry of Water Resources, Union of India, as its Chairman and the Secretaries of the appropriate Ministries in the States of Rajasthan and Himachal Pradesh as its members. The committee shall be responsible for the settlement in the command area of the Indira Gandhi Canal Colony in Rajasthan of all oustees who have secured certificates of eligibility in that behalf from the State of Himachal Pradesh, except those who, having been allotted land, have been found by the District Judge aforementioned to have forfeited it, provided that they were not forced to leave the land because of lack of irrigation or other essential facilities such as water, roads, schools and medical assistance and/or because of coercion, intimidation or trespass. Such land only shall revert to the State of Rajasthan and it shall be utilised for the purpose of allotment to oustees not yet settled. The committee shall ensure that the recommendations of the District Judge are carried out and, where so recommended, the original oustee allottee shall be put back in possession of the land allotted to him. In the event that for some supervening reason this cannot be done, it shall be the obligation of the State of Rajasthan to make available an equivalent extent of irrigable land in the said command area for being allotted to him. The oustee allottee shall not be liable to make any additional payment in either event. Where, on re-settlement of oustees, additional monies have already been collected by the State of Rajasthan, they shall be refunded. The committee shall ensure that essential facilities such as water, roads, schools and dispensaries are available to the oustee allottees. The directions of the committee in regard to all matters entrusted by this order to it and all its consequential or incidental directions shall be binding on the State of Rajasthan.

We do not presume to impose a time limit on the committee, for its members will share our dismay that some 24 years on many oustees remain unsettled.

In its affidavit dated 18th September, 1992, the State of Rajasthan has stated that it had apprehended a hue and cry if the Rajasthanis who had taken lands from the allottees were evicted. Whatever the hue and cry that might arise as a result of having to dispossess Rajasthanis from lands allotted to oustees shall be the direct consequence of the deeds of the State of Rajasthan upon which we have adversely commented. It shall be the duty of the State of Rajasthan to enforce the law, maintain order and ensure that the oustee allottee, his family and his belongings are un-harmed.

The writ petition is allowed accordingly. The State of Rajasthan shall pay to the petitioners the costs of the writ petition quantified at Rs.25,000/- (Rupees twenty five thousand).