
(2016) 12 RAJ CK 0100
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2573 of 2001

Babita Dhankar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 1 WLCRajUC 117

Hon'ble Judges : Mr. M.N. Bhandari, J.

Bench : Single Bench

Advocate : Mr. Ashok Gaur, Sr. Advocate with Mr. Shashikant Saini, Advocate, Mr. R.P. Singh, Sr. Advocate with Mr. G.P. Sharma and Mr. Shubh Karan Beniwal, Advocates, for the Petitioners; Mr. R.D. Rastogi, Addl. Solicitor General of India with Mr. Ashish Sharma, Mr.

Final Decision : Dismissed

Judgement

Mr. M.N. Bhandari, J.—By this writ petition, a direction is sought on the respondent No. 2 not to seal public road leading to Kailash Nagar from and to the cantonment area. It is in consonance to the direction/instruction issued on 13th October 1998 and 20.12.2000 in reference to the judgment of the Supreme Court. The prayer is even to demolish the wall (at point E) along with Kendriya Vidyalaya-2.

2. Learned counsel for the respondents have raised preliminary objection about maintainability of the writ petition. It is on the ground that prior to filing of the writ petition, a suit in the representative capacity was filed by the resident of Kailash Nagar, Kumawat Colony and Prem Nagar. The suit has been dismissed. An appeal has been filed which is pending consideration. During pendency of the civil litigation, this writ petition was filed in the individual capacity though the civil suit in the representative capacity was pending and now the appeal. An application under Order 41, Rule 27 CPC has been filed in the appeal to bring the instructions/letter dated 13.10.1998 and 20.12.2000 on record. Thus, effectively,

for same cause and the prayer, two litigations are going on, though not permissible. It is more so when the civil suit has been filed in the representative capacity. It is further submitted that the instructions referred by the petitioner in prayer clause are not applicable to the present case. It is not a cantonment area rather is an area belonging to South Area Command. It is quite sensitive.

3. Learned counsel for the petitioners submits that though civil suit was filed prior to filing of the writ petition but this petition was filed on its own cause. It is when petitioner's father suffered heart attack and was not permitted to use the public road. The prayer in the writ petition is also in consonance to the instructions issued by the respondents themselves. The road in question is a public road and used by the petitioners for last 40 years.

4. I have considered rival submissions of the parties and perused the record.

5. It is not in dispute that a civil suit on behalf of residents of Kailash Nagar Kumawat Colony and Prem Nagar was filed to seek injunction against the respondents. The petitioners are resident of Kailash Nagar. The civil suit has been dismissed after holding road to be of Army. An appeal against the order is pending. The writ petition pertains to the same road, which has been blocked by the respondents. The roads are claimed to be public roads whereas the respondents claiming it to be of the Army and coming in Command Area. Due to deployment of armory and weapons, it comes in sensitive area. The learned counsel for the respondents was inclined to show secret report to the court brought in the sealed envelope. It was not opened by the court because I am convinced about the objection raised by the respondents. The suit has been filed on behalf of the resident of Kailash Nagar, Kumawat Colony and Prem Nagar in a representative capacity. The petitioner is resident of Kailash Nagar thus she is also included in the representative suit, now pending appeal. The individual inconvenience may be there but after filing of representative suit, if individual is also permitted to litigate separately then it would allow endless and simultaneous litigation, which is not permissible. The writ petition was filed much subsequent to filing of the suit. If the litigation is allowed to multiply then may result in contradictory orders. If the writ petition is allowed then it would with finding contrary to what has been recorded in the Civil Suit now pending before the Appellate Court. It would lead to contradictory orders by the courts. The instructions referred by the petitioners have also been submitted by the petitioners in pending appeal. The writ petition was filed in reference to the instruction issued on 30.10.1998 and 20.12.2000 but those letters could have been produced in evidence before the civil court and now it has been submitted in evidence by invoking Order 41, Rule 27 CPC thus, in substance, this court should not allow simultaneous litigation for one and same issue and it is more so when a finding in regard to the claim of the petitioner to use the road has already been decided.

6. In the light of the aforesaid, I do not find writ petition to be maintainable and it is, accordingly, dismissed. It is, however, made clear that observation made in

this order would not in any way manner affect the pending appeal rather it would be decided based on the material before the court.

7. At this stage, a liberty is sought to approach Jaipur Development Authority for construction of alternative road. The liberty aforesaid is granted.