
(2000) 04 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Special Appeal No. 948 of 1997

Beg Raj and Others

APPELLANT

Vs

Superintending Engineer and Others

RESPONDENT

Date of Decision : 25-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 WLN 283

Hon'ble Judges : Rajesh Balia, J; Mohd. Yamin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The appellant has filed the writ petition No. 3336/97 challenging the order dt. 21st March, 1997 declaring Muraba Nos. 164/58 and 164/50 of Chak No. 4 BGM (A) belonging to respondent No. 3 as command area. The petitioners challenged the order inter alia on the ground that initial transfer of land from Chak 1 ALM to Chak 4 BGM (A) itself was invalid. The assertion of the petitioner while challenging this order is para 3 of his petition reads as under:

That although the land of the respondent No. 3 was situated in Chack No. 1 ALM, the same was got transferred in Chack No. 4 B.G.M. (A) by manipulation with the respondents No. 1 and 2. The said transfer was made without giving an opportunity of hearing to the petitioners and without giving them a notice under the Irrigation Act and Rules, even the order by which the said land was transferred was not made available to the petitioners.

3. The petition was dismissed in limine without any reply on behalf of the respondent by holding that Section 20 does not apply to the present case and therefore procedure prescribed Under/section 20 of the Irrigation Act need not be followed. It is against this order dt. 8th Sept. 1997 the present appeal has been filed. After issuing show cause notice the appeal was admitted on 23rd Feb.

1998. The interim order has been passed on 24.9.1997 which was continued by order dt. 21.12.1999 with the liberty to the respondent to make an application to vacate the stay order after filing the reply.

4. The reply-affidavit was filed on behalf of respondent No. 3 pointing out that petition filed by the petitioner suffers from suppressio veri and misstatements of facts. It was alleged in the reply affidavit that proceeding for transfer of land in question of respondent No. 3 from Chak No. 1 ALM to Chak No. 4 BGM (A) took place in 1993. Notices were issued under Rule 4 to all the interested persons. Some of the cultivators of Chak a BGM (A) had participated and given no objection to the proposed transfer of the land of the respondent No. 3 from Chak No. 1 ALM to Chak 1 BGM (A). It was alleged in the reply that notice was served personally on petitioner-appellant No. 1 and petitioner-appellant No. 7. In reply affidavit it was also alleged that infact the order of transferring the land from Chak 1 ALM to Chak 4 BGM(A) was made in 1994 to the knowledge of petitioners. Yet a false plea has been raised about ignorance and want of notice.

5. In rejoinder to this affidavit filed on behalf of respondent No. 3. the petitioner has unequivocally admitted that appellant No. 1 was served with the notice (Annexure/R3/3) which was issued by Zileadar and was served on petitioner No. 1 Beg Raj along with few other agriculturists of the Chak. In pursuance of the notice the appellants raised their objection by making statements before Zileadar. This conclusively establishes that proceedings for transferring the land of respondent No. 3 from Chak 1 ALM to Chak 4 BGM (A) had taken place in 1993 of which notices were issued and they had participated in the proceedings and they were fully aware about those proceedings, yet the petitioners have tried to plead ignorance about such proceedings and have asserted on oath that no notice about transfer of land was issued and order of supplying irrigation facility to this transferred land on the ground as of no such proceedings had taken place sometime in past and no notices were issued to them.

6. In these circumstances on the well settled principle that petition under Article 226 cannot be invoked in favour of any person who does not come to the Courts with clean hands and indulges in making wrong statements concerning substance of the matter.

7. We are, therefore of the opinion that this appeal does not deserve to be heard on merit and ought to be dismissed on this ground alone.

8. Accordingly this appeal is dismissed with costs which is quantified at Rs. 10,000/-.