
(1976) 02 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1038 of 1974

Bhanwar Lal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-02-1976

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 179

Citation : AIR 1976 Raj 136 : (1976) RLW 116 : (1976) 9 WLN 55

Hon'ble Judges : C.M. Lodha, J

Bench : Single Bench

Advocate : H.C. Jain, for the Appellant; H.N. Calla, Deputy Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.M. Lodha, J.—This writ petition is directed against the two orders of the Assistant Collector (S. D. O.) Nagaur dated March 13, 1974 (Ex. 24) and March 29, 1974 (Ex. 25), whereby the learned Assistant Collector held that 5 1/2 bighas of land out of the total 15 1/2 bighas situated in village Mundawa over which the petitioner is alleged to have his possession was "ghair mumkin abadi Devsthan" and may be recorded as such. The petitioner's contention is that the impugned orders passed by the learned Assistant Collector are completely without jurisdiction and may be quashed. In this connection, it has also been urged that the impugned orders were passed without any opportunity having been given to the petitioner of being heard.

2. In order to establish his right to the land in question, the petitioner has narrated the past history with respect to this land in great detail. But I do not consider it necessary to delve into all those details. For the purpose of disposal of this petition, it would be sufficient to state that the petitioner came into possession of the land in question (which was formerly comprised of khasras No. 1780 to 1805 and is now bearing khasras No. 1558 and 1559) under a duly registered sale deed Ex. 7 dated 4-9-1956 executed in favour of the petitioner's

father Banshilal by one Jaswant Singh. The title of the vendor Jaswantsingh has also been traced back to the original owners Balikhan and Kamruddinkhan to whom the land had been granted under a Patta dated 20th March 1925 (Ex. 2) by the former ruler of Jodhpur. It further appears that the revenue records pertaining to the land in question were prepared in the name of the petitioner who has also produced rent receipts as well as khasragirdawari in his favour. There seems to have been some effort in the past to dislodge the petitioner from the land in question by alleging that the land in question was evacuee property and at another time that it was public property in the shape of "mahal" but those efforts proved abortive.

3. Coming to the present dispute, on 3-10-1973, the villagers of village Mundwa made a complaint before the S. D. O., Nagaur that the land in question, i. e. 5 1/2 bighas, may be declared as religious endowment and the petitioner may be dispossessed from this land which may be handed over to the Devasthan Department. There is a "Baradari" (a sort of resting place) on the land in question which is enclosed by a compound wall. The S. D. O. forwarded this complaint to the S. H. O., Mundwa for enquiry and report and the S. H. O. police made a recommendation to the S.D.O. that the land in question was a picnic spot for sight-seeing and was also of architectural interest and therefore it would be proper to hand it over to the Devasthan Department. On this recommendation, the Assistant Collector, Nagaur, without issuing any notice to the petitioner, by his order dated 13-3-1974 held that the land in question is a religious place and consequently public property. He also observed that it was not a part of the agricultural land inasmuch as it was at a higher level and was enclosed with a compound wall and so he held that it may be recorded as "shair mumkin abadi Devsthan" in place of "aaraji awwal". This order was passed with respect to 5 1/2 bighas only which is covered by khasra No. 1559. By a subsequent order dated 29-5-1974, the Assistant Collector directed the Tehsildar Nagaur to enter this land in the revenue records as "ghair mumkin abadi Devsthan".

4. It may be pointed out, here, that the opposite parties have not filed any reply to the writ petition. Learned Deputy Government Advocate has urged that the impugned orders of the Assistant Collector were only in exercise of his powers as Land Record Officer to correct the entries in the record of rights and if the petitioner felt aggrieved by this order of the Assistant Collector, he should have filed either an appeal u/s 75 of the Rajasthan Land Revenue Act (which will hereinafter be called as "the Act"), or should have filed a declaratory suit under Sub-section (3) of Section 125 of the said Act. The contention of the counsel for the petitioner on the other hand is that the impugned orders were passed by the Assistant Collector u/s 179 of the Act regarding which he had no jurisdiction.

5. In my opinion, the impugned orders of the Assistant Collector are not sustainable under any of the provisions of the Act. Assuming that he had jurisdiction to correct the record of rights, there was no such application or prayer before him. The complaint by the public of Mundwa was that the land in

question may be declared public property and may be ordered to be handed over to the Devsthan Department. They had clearly mentioned that it was in the possession of the petitioner, yet no notice was issued to the petitioner nor any opportunity was given to the petitioner of being heard. There is no provision of law under which the Assistant Collector could have called for a report from the S. H. O. Mundwa. He had no jurisdiction to declare the property in question (which was admittedly in possession of the petitioner) as religious endowment or Devsthan belonging to the public at large. The orders passed by the learned Assistant Collector, Nagaur are in my opinion, arbitrary and completely without jurisdiction and as such, liable to be quashed.

6. Accordingly, I allow this petition and set aside the impugned orders. There will be no order as to costs.