
(1977) 10 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1449 of 1976

Bhanwar Lal

APPELLANT

Vs

The Collector, Jodhpur

RESPONDENT

Date of Decision : 07-10-1977

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 70A

Citation : (1977) WLN 577

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Gupta, J.—The main grievance of the petitioner in this writ petition is that the Panchayat Samiti, Osian, proceeded to cancel the lease of a plot of land given in his favour by the Gram Panchayat, Osian, without affording the petitioner an opportunity of hearing. The facts which have given rise to this writ petition may be briefly stated.

2. The Gram Panchayat, Osian granted a lease of a plot of land situated near Gandhi Park in village Osian to the petitioner on a monthly rent of Rs. 45/- by its resolution dated April 4, 1976. The petitioner thereafter set up a temporary structure and started selling eatables at the aforesaid place. The Panchayat Samiti, Osian by its order dated May 12, 1976 set aside the resolution of the Gram Panchayat granting the lease of the aforesaid plot of land in favour of the petitioner. The petitioner thereupon submitted a revision petition u/s 27A of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as "the Act") before the Collector, Jodhpur, complaining that the petitioner was not at all heard by the Panchayat Samiti in the matter and that without giving an opportunity of hearing to the petitioner the Panchayat Samiti should not have cancelled the lease granted in his favour by the Gram Panchayat. The petitioner's further contention was that the Panchayat Samiti had no jurisdiction in the matter and it could not have set aside the aforesaid resolution passed by the Gram Panchayat on April 4,

1976. The Collector by his order dated August 16, 1976, held that the Panchayat Samiti possessed supervisory jurisdiction in such matters and it was authorised to cancel the resolution passed by the Gram Panchayat, Osian under its supervisory powers contained in Section 70A of the Act. The Collector further held that the Panchayat Samiti by its earlier order dated March 9, 1973 had declared that the land in question be left open for public use and that the Gram Panchayat was not justified in granting a lease to the petitioner in respect of the said land, which was recently got (sic) other persons in public interest. However, regarding the question of affording a hearing to the petitioner, the Collector held (that the petitioner, if he was interested, should have by himself appeared before the Panchayat Samiti and should have placed his point of view before the Panchayat Samiti. The present writ petition has been filed against the aforesaid order passed by the Collector, Jodhpur, dated August 16, 1976.

3. learned Counsel for the petitioner has advanced the same two submissions before me which were raised by the petitioner before the Collector, Jodhpur, namely, that the petitioner should have been afforded an opportunity of hearing by the Panchayat Samiti before it proceeded to cancel the lease granted in favour of the petitioner by the Gram Panchayat, Osian and that the Panchayat Samiti had no jurisdiction to cancel the resolution of the Gram Panchayat in this matter. So far as the second contention of the learned Counsel is concerned, the provisions of Section 70 A of the Act authorise the Panchayat Samiti having jurisdiction over the Panchayat circle, to exercise general supervision over the affairs of the Panchayat, except in matters relating to the exercise of civil and criminal jurisdiction of the Panchayat. The Panchayat Samiti is empowered to give directions in respect of non-judicial matters to the Gram Panchayats within its jurisdiction and it has been provided by Section 70-A of the Act that such directions shall be complied with by the Gram Panchayat concerned. The provisions of Section 70 A give supervisory powers to the Panchayat Samiti in respect of all non judicial matters and the question of grant of lease of a plot of land in question to the petitioner was certainly a non-judicial matter and could have been considered by the Panchayat Samiti under its supervisory powers. The order of the Collector, therefore, is perfectly justified so far as he has decided that the Panchayat Samiti had jurisdiction to cancel the resolution of the Gram Panchayat, Osian, dated April 4, 1976, granting a lease of the plot of land in question to the petitioner.

4. In respect of the other submission advanced by the learned Counsel for the petitioner that the Panchayat Samiti should not have proceeded to cancel the lease granted by the Gram Panchayat in favour of the petitioner, without affording him an opportunity of hearing in the matter, there can be no doubt that such an opportunity of hearing should have been given by the Panchayat Samiti. It is one of the fundamental principles of natural justice that the order passed by the Gram Panchayat in favour of the petitioner, by which a lease of the land in question was granted to him should not have been set aside by the Panchayat Samiti without affording the petitioner an opportunity of hearing. The petitioner

had a right to have his say in the matter and to present his side of picture before the Panchayat Samiti proceeded take a decision in the matter under its supervisory jurisdiction. There can be no doubt that even while exercising the powers u/s 70-A of the Act, the Panchayat Samiti is bound to hear such of the parties whose rights are going to be affected by the orders that it intended to pass. The Collector was not right in observing that the Panchayat Samiti was taking proceeding in respect of the resolution passed by the Gram Panchayat and no notice was necessary in the matter to the petitioner. As the petitioner was vitally interested in the matter, a notice to him in respect of the intention of the Panchayat Samiti to cancel the resolution of the Gram Panchayat dated April 4, 1976, was necessary. Mr. Singhvi, learned Counsel appearing for the Panchayat Samiti, submits that now an Administrator has been appointed who is looking after the affairs of the Panchayat Samiti and that the Administrator would be willing to give a hearing to the petitioner.

5. The petitioner's contention is that the plot of land which was leased out to (sic) by the Gram Panchayat was not included in the land which was set apart to be left open by the order of the Panchayat Samiti dated March 9, 1973. The Collector has upheld the order of the Panchayat Samiti cancelling the lease of the petitioner mainly on the ground that the plot of land, which has been leased out to the petitioner by the Gram Panchayat, forms part of the land in village Osian which was set apart by the order of the Panchayat Samiti dated March 9, 1973 to be left open for public use. It would be for the Administrator of the Panchayat Samiti now to consider this question as to whether the land in dispute forms part of the land which was set apart to be left open for public use by the order of the Panchayat Samiti dated March 9, 1973. Learned Additional Government Advocate submits that even if the Gram Panchayat could have leased out the plot of land in question, it should have done so by public auction. All such questions which are relevant to the matter will have to be gone into and decided by the Administrator of the Panchayat Samiti. It goes without saying that the petitioner is entitled to an opportunity of hearing by the Administrator. Learned Counsel for the parties, who are present today, are agreed that all the parties concerned, including the petitioner, would appear before the Administrator of the Panchayat Samiti, Osian, on November 17, 1977 for the aforesaid purpose and that no further notice of the aforesaid date shall be necessary to be given by the Administrator to the parties, including the petitioner. The Administrator should, however, give notice of the aforesaid date to the Gram Panchayat, Osian which is not represented by a counsel before this Court.

6. In the result, the writ petition is allowed. The order passed by the Collector, Jodhpur, dated August 16, 1976, and the order passed by the Panchayat Samiti, Osian dated May 12, 1976, are set aside and the Administrator of the Panchayat Samiti, Osian is directed to hear all the parties concerned including the petitioner on November 17, 1977, or on such later date as he may fix in that behalf on the aforesaid date and thereafter decide the matter relating to the lease of the plot of land in question afresh. All the parties concerned, including the petitioner, are

directed to appear before the Administrator, Panchayat Samiti, Osian for the aforesaid purpose on November 17, 1977 as agreed to by their learned Counsel. The Administrator shall also give notice of the aforesaid date to the Gram Panchayat, Osian, In the circumstances of the case, the parties are left to bear their own costs