
(2008) 02 RAJ CK 0069
In the Rajasthan High Court

Bhanwar Lal Solanki

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-02-2008

Acts Referred:

Child Labour (Prohibition and Regulation) Act, 1986 — Section 11, 12, 14, 3, 9

Citation : (2008) 118 FLR 682 : (2008) 3 LLJ 909 : (2008) 2 RCR(Criminal)
967 : (2008) 2 RLW 1384

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Vineet Kothari, J.—Heard learned Counsel for the parties.

2. This writ petition has been filed by the petitioner being aggrieved by the impugned proclamation of sale issued under Rule 29 and 54 of the Rajasthan Land Revenue Act, 1956 Annex.6 dated 24.7.2004 for recovery of alleged penalty or fine of Rs. 1,20,000/-imposed by the authority concerned under the provisions of Child Labour (Prohibition and Regulation) Act, 1986 (hereinafter referred to as "the Act").

3. The learned Counsel for the petitioner Mr. Vinay Jain has submitted that straight way this proclamation of sale was issued for recovery of aforesaid amount of penalty which is supposedly imposed u/s 14 of the said Act without any imposition order under that provision. He submits that there is no other provision for imposition of fine or penalty under the said Act and the only provision relating to penalties contained in part IV Chapter dealing with miscellaneous provisions under the said Act is Section 14 which is reproduced hereunder:

14. Penalties.--(1) Whoever employs any child or permits any child to work in contravention of the provisions of Section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which

may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever, having been convicted of an offence u/s 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever

(a) fails to give notice as required by Section 9, or

(b) fails to maintain a register as required by Section 11 or makes any false entry in any such register ; or

(c) fails to display a notice containing an abstract of Section 3 and this section as required by Section 12 ; or

(d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder,

shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

4. He further submits that no penalty order was separately passed by the competent authority after giving an opportunity of hearing to the petitioner under the said provision. He further submits that the provisions of Section 14 pertain to prosecution of the employer guilty of employing child labour contrary to the provisions of said Act and upon conviction only the punishment by way of imprisonment or fine can be imposed which may extend up to Rs. 20,000/-. The impugned proclamation of sale notice purports to recover the sum of Rs. 1,20,000/-which is probably the fine of Rs. 20,000/-for each child labour employed by him found to be working in his unit on date of survey i.e. on 21.3.2002 vide Annex.3. He further submitted that during the pendency of this writ petition, as a matter of fact, on a complaint filed in the competent court of law against the present petitioner for the same alleged offence of employing child labour u/s 14 of the Act, the competent Court has acquitted the petitioner by a judgment dated 29.6.2005 which has been placed on record along with affidavit of the petitioner on 2.3.2007. He, therefore, submitted that there was no question of recovery of aforesaid amount of penalty or fine when the complaint itself has terminated in his favour by way of acquittal and thus, no fine could be said to have been imposed or imposable upon him. Thus the proclamation of sale issued before hand was per se illegal.

5. I have heard learned Counsels.

6. This appears to be rather strange to this Court that how straightaway the recovery proceedings under the provisions of Rajasthan Land Revenue Act could be initiated by the competent authority under the aforesaid Act and certificate of recovery was issued to the concerned Tehsildar for recovery of said amount of penalty or fine without even first passing an appropriate order or such fine

having been imposed by the competent court of law upon a proper complaint filed by the said authority u/s 14 of the said Act. This is like putting the cart before the horse. Even without imposition of a penalty or fine in accordance with law, the recovery of alleged amount of penalty is said to be effected by the said authority by resort to provision of Land Revenue Act. It also indicates the reckless and casual manner in which the concerned authority under the Act has acted in the present case against the petitioner. The averment made in the writ petition that no penalty order was passed after giving an opportunity of hearing to the petitioner is not even disputed from the side of the respondents in the reply filed to the writ petition. For the pious objective of the Act of prohibiting child labour employment, the concerned authority was expected to have acted in a far more methodical manner.

7. Since the proceedings initiated u/s 14 of the Act have been terminated in favour of the petitioner by way of acquittal, it is clear that no penalty amount or amount of fine could be recovered from the petitioner in the present case. Therefore, Annex.4, proclamation of sale issued by the Tehsildar Tonk on 24.7.2004 is without any foundation and is required to be quashed by this Court.

8. Accordingly this writ petition is allowed. The proclamation of sale issued against the petitioner Annex.6 dated 24.7.2004 is quashed. No order as to costs.