
(2009) 01 RAJ CK 0094
In the Rajasthan High Court

Bhura Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-01-2009

Acts Referred:

Rajasthan Panchayati Raj Rules, 1996 — Rule 141

Citation : (2009) 2 WLN 486

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—In this writ petition, the petitioners have prayed for quashing impugned order Annex.-2 dt. 26.04.2007 and auction notice Annex.-3 dt. 08.08.2007 passed by the Addl. District Collector, Pali and Gram Panchayat Mundara Tehsil Bali (District Pali).

2. According to the facts of the case, a revision petition was filed by the petitioners u/s 97 of the Panchayat Raj Act, 1994 and the same was decided by the Addl. District Collector, Pali against the respondents and patta issued in favour of respondent No. 2 by the Gram Panchayat Mundara under Rule 158 of the Panchayati Raj Rules, 1996 was cancelled. The petitioners are claiming their right on the basis of their old possession, therefore, the petitioners are challenging the order of the Addl. Collector, Pali to the extent of passing the order for auction of the land vide order dt. 26.04.2007, Annex.-2.

3. The main contention of the learned Counsel for the petitioners is that the Addl. District Collector has exceeded his jurisdiction while passing the order for auction of the land because the revision petition was filed by the petitioners u/s 97 for cancellation of the patta issued in favour of respondent No. 2 and the matter was to be adjudicated upon with regard only to the prayer of the petitioners for quashing the patta issued in favour of respondent No. 2. But, while accepting the revision petition filed by the petitioners, though the learned Addl. District Collector cancelled the patta issued in favour of respondent No. 2 by the respondent Gram Panchayat; but, further, passed order for auctioning the said

land, therefore, now there is no opportunity left to the petitioners to apply for regularization of the land in accordance with Rule 157 of the Rajasthan Panchayati Raj Rules, 1996.

4. Further, it is submitted by learned Counsel for the petitioners that against the dispossession of the petitioners, a civil suit was filed by them which is still pending, therefore, in view of Rule 161 (1) of the Rules of 1996, no auction can be made by the Gram Panchayat because the dispute is pending in the civil Court. Learned Counsel for the petitioner submits that the impugned order passed by the Addl. District Collector, Pali upon the revision petition filed by the petitioners u/s 97 is correct only to the extent of quashing and cancelling the patta issued in favour of respondent No. 2; but, further part of the order for auctioning the land is totally unwarranted and without jurisdiction, therefore, the said part of the order may be quashed and set aside while maintaining the adjudication made by the Addl. District Collector with regard to cancellation of the patta.

5. Per contra, learned Counsel for the respondent Gram Panchayat vehemently submits that there is no right in favour of the petitioners because the petitioners were dispossessed way back in the year 1989 which is evident from the documentary evidence Annex.-R/3/3, in which, it is clearly mentioned that the petitioners were dispossessed in the year 1989 from the land in question with the aid of police. Further, it is submitted by learned Counsel for the respondent that in the civil suit filed by the petitioners for mandatory injunction, the temporary injunction application filed under Order 39 Rules 1 and 2, C.P.C. was dismissed by the civil Court vide order dt. 17.08.1996, in which, clear finding was given that the petitioners who are plaintiffs in the suit are not in possession and they were dispossessed from the land in question.

6. It is further submitted by learned Counsel for the respondent that against the order passed on the temporary injunction application filed by the petitioners, appeal was preferred and that, too, was dismissed by the Addl. District Judge vide order dt. 23.05.2000, therefore, there is no right in favour of the petitioners to get regularization of the land because admittedly the petitioners are not in possession of the said land in view of the fact that there is clear finding given by the trial Court while rejecting the temporary injunction application filed in the suit by the plaintiff-petitioners in the suit, therefore, the petitioners contention is totally untenable that in view of Rule 161 of the Rules of 1996 no land can be auctioned if any dispute in that regard is pending in the civil Court.

7. Learned Counsel for the respondent further argued that u/s 97 of the Panchayati Raj Act, 1994 there is power of superintendence left with the State Government and while exercising the said power the order passed for the auction of the land is well within jurisdiction and proper in the facts and circumstances of the case, therefore, no interference is warranted in this case and the writ petition deserves to be dismissed being devoid of any force.

8. I have considered the rival submissions made by both the parties.

9. The petitioners are challenging the following part of the impugned order dt. 26.04.2007 passed by the Addl. District Collector, Pali:

xzke iapk;r] eq.Mkjk dks vknsf?kr fd;k tkrk gS fd os fookfnr Hkwfe dks iapk;r vf? kfu;e esa izn?k izko/kkuksa ds vuqlkj izf?;k viukrs gq, lkoZtfud fuykeh ls fo?; rhu ekg esa fd;k tkosA

meaning thereby, the petitioners are aggrieved by the order of auction which is made by the Addl. District Collector while exercising power u/s 97 of the Act of 1994. In this connection, for adjudicating upon the competence of the Addl. District Collector to pass this order, certain facts of the case are required to be taken into consideration.

10. In this case, admittedly, the patta was issued in favour of respondent No. 2 which was challenged by the petitioners on the basis of their contention that they are in possession of the land. The Addl. District Collector did not accept the contention of the petitioners that they are in possession of the land; but, the revisional authority set aside the patta issued in favour of respondent No. 2 by the Gram Panchayat on the ground that before issuing the patta procedure laid down under the rules was not followed; meaning thereby, the Addl. District Collector was of the opinion that there is power left to the Gram Panchayat to grant patta after following procedure laid down under Rules 141 to 146 of the Rules of 1996 but the same was not followed, therefore, the patta so issued in violation of the procedure was not valid. In this view of the matter, the petitioner cannot claim any right on the basis of their possession over the land which is seriously disputed by the respondents on the ground that in the year 1989 vide Annex.-R/3/3, the petitioners were dispossessed from the premises in question with the aid of the police; but, repeatedly, the petitioners made encroachments over the land which is totally illegal action of the petitioners.

11. Further, it is admitted case of the parties that a civil suit was filed by the petitioners in which the temporary injunction application under Order 39 Rules 1 and 2, C.P.C. was filed which was also dismissed while giving the finding that there is no possession of the petitioners over the land; meaning thereby, the civil Court was also of the opinion that there was no possession of the petitioners on the basis of which they can claim any right. The order passed by the Civil Judge (Sr. Dn.), Bali in Civil Misc. Appln. No. 57/96 dt. 17.08.1996 was further upheld by the Addl. District Judge, Bali vide his judgment dt. 23.05.2000. Therefore, all the documentary evidence shows that the petitioners were not in possession of the land in dispute, therefore, obviously the petitioners cannot claim any right on the basis of possession. Similarly, in the order impugned also, the learned Addl. District Collector did not accept the contention of the petitioners that they are in possession of the land though the patta issued in favour of respondent No. 2 was set aside, however, on different ground of procedural lapses. Therefore, obviously, the petitioners cannot claim any right of so called possession which is

not accepted by the civil Court in the temporary injunction application as well as in appeal by the appellate Court.

12. The ground of the petitioner with regard to Rule 161 of the Rules of 1996 also does not have any force because whether the land is to be auctioned or not or to be regularised or not is within the domain of the Gram Panchayat, which is an elected body. Obviously, under Rule 161 of the Rules of 1996, if any dispute with regard to ownership exists, then, the land cannot be auctioned till the decision of the competent Court; but, here in this case, the question of ownership is not in the controversy, therefore, the ground raised with regard to Section 161 is hereby rejected.

13. The argument of the petitioners with regard to regularization of their land on the basis of old possession is also not acceptable at this stage because no documentary evidence has been produced by the petitioners to show that they are in possession of the land for last 50 years. On the contrary, order of rejection of the temporary injunction application in the suit filed by the petitioners which has been placed on record, so also, the order of the appellate Court upholding the order of rejection of the temporary injunction application show that the petitioners are not in possession of the disputed land. Similarly, upon perusal of Annex.-R/3/3, filed by the Gram Panchayat, it is obvious that the petitioners were dispossessed with the aid of police in the year 1989, therefore, the possession of the petitioners is seriously disputed. Hence, there is no right available to the petitioners to claim regularization under Rule 156, 157 of the Rules of 1996.

14. The main contention of the petitioner with regard to order of auction made by the Addl. District Collector is that u/s 97 no such order can be passed by the Addl. District Collector while exercising the revisional jurisdiction. Section 97 of the Act of 1994 is as follows:

Power of revision and review by Government.-(1) The State Government may, either of its own motion or on an application from any person interested, call for and examine the record of a Panchayati Raj Institution or of a Standing Committee or sub-Committee thereof in respect of any proceedings to satisfy itself as to the correctness, legality or propriety of any decision or order passed therein or as to the regularity of such proceedings and, if in any case, it appears to the State Government that any such decision or order be modified, annulled, reversed or remitted for reconsideration, it may pass order accordingly:

Provided that the State Government shall not pass any order prejudicial to any party unless such party has had a reasonable opportunity of being heard in the matter.

(2) The State Government may stay the execution of any such decision or order prejudicial to any party, pending the exercise of its powers under Sub-section (1) in respect thereof.

(3) The State Government may, of its own motion or on an application received from any person interested, at any time, within ninety days of the passing of an order under Sub-section (1), review any such order if it was passed by it under any mistake, whether of fact or of law or in ignorance of any material fact. The provisions contained in the proviso to Sub-section (1) and in Sub-section (2) shall apply to a proceeding under this Sub-section.

15. Upon perusal of the language of Section 97, it is abundantly clear that the State Government has power of superintendence but, at the same time, while exercising those powers, the Addl. District Collector can modify, annul, reverse, or remit for re-consideration and pass order accordingly. In my opinion, however, no direction can be given to the elected body which has power to take its independent decision in accordance with the provisions of law. If any action is taken contrary to law by such elected body, then, the power vests in the State Government u/s 97 to quash the same. The manner in which the property is to be disposed of, in that regard, direction cannot be given u/s 97 of the Act of 1994 and the power is left to the elected body of the Gram Panchayat in this behalf. The Gram Panchayat under Rule 141 of the Rules of 1996 is required to sell the land by auction, therefore, the said power which is available under Rule 141 is to be exercised by the Gram Panchayat and no specific order is required to be passed by the Addl. District Collector while exercising power u/s 97 of the Act of 1994.

16. It is settled principle of law that if any jurisdiction is left with particular authority to take decision, then, the decision is to be taken by the said authority only. Here, in this case, how the abadi land situated in the village will be disposed of is within the domain of the Gram Panchayat, therefore, obviously the order passed by the Addl. District Collector for auctioning the land in question is totally without jurisdiction.

17. In this view of the matter, it is held that the direction of the Addl. District Collector in the order dt. 26.04.2007 passed in the revision petition filed by the petitioners for auctioning the land is totally without jurisdiction. However, it is left open to the Gram Panchayat to take decision in which manner the land should be disposed of.

18. As a sequel to the aforesaid discussion, this writ petition is partly allowed. Order impugned dt. 26.04.2007, to the extent of direction to the Gram Panchayat for auctioning the land in question, is quashed and set aside. However, the Gram Panchayat will be at liberty to take decision in accordance with law for the disposal of the land in question.

19. There shall be no order as to costs.