
(2003) 03 RAJ CK 0020
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1262 of 2003

Champa Lal

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 27-03-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 RLW 2154 : (2003) 3 WLC 220

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Advocate : N.S. Acharya, for the Appellant;

Final Decision : Dismissed

Judgement

Tatia, J.—Heard learned counsel for the petitioner.

2. The brief facts of the case are that a land was allotted for establishing a petrol pump in the name of Shri Ganpat Singh S/o. Thakur Durjan Singh, who was proprietor of M/s. J.J. Co-operative Stores, Bhinmal by lease deed dated 20th May, 1955. According to the petitioner, instead of moving an application for renewal of the land by the original allottee, an application for unoccupied Government land for establishing a petrol pump was submitted by Janak Singh S/o. Harnath Singh giving address of J.J. Store, Station Road, Bhinmal (Raj.). This application was submitted on 22nd Sept., 1977. Upon this application, after taking into consideration the fact that said petrol pump is in operation since 1955, lease was renewed for further period of 20 years. It appears from the order dated 30th Sept., 1991 (Annex. 3) certain more amount was charged for renewal of the lease. The said lease was converted into a lease for 99 years by order dated 24th July, 1992 (Annex. 4). It is submitted that the Patta was issued to the respondent No. 3 on 29th July, 1992, which is a registered document.

3. The petitioner submitted detail objection before the Secretary, Department of Revenue, Government of Rajasthan Divisional Commissioner, Jodhpur and

District Collector, Jalore on 12th Oct., 1998 raising grievance against the grant of lease on various grounds starting from the year 1955. It is relevant to mention here that in para 7 of the complaint of the petitioner, the petitioner submitted that the land was allotted to Shri Janak Singh, who has shown measurement of 800 sq. yards = 120" x 60" of the land. The lease came to an end in the year 1988, which was not renewed, but respondent No. 3 Janak Singh got the renewal of lease and he constructed one boundary wall encroaching upon the land of the neighbour and other plot holders. The petitioner's father on 9th Sept., 1985 submitted an application before the Municipal Board, Bhinmal for getting the encroachment removed, upon which an order was passed on 17th Dec., 1985 for removal of the encroachment against which an appeal was preferred before the District Collector, Jalore. The appeal was allowed and the order of Municipal Board, Bhinmal was set aside by the District Collector, Jalore. The said order was challenged by filing a revision petition before the Divisional Commissioner, Jodhpur and District Collector, Jalore and that too was dismissed on 19th Sept., 1992. The Divisional Commissioner remanded the matter back to the Municipal Board, Bhinmal. What happened thereafter, has been given in the complaint.

4. On the said complaint dated 12th Oct., 1998, the District Collector, Jalore inquired into the matter and prepared a report dated 21st Nov., 2001, copy of which is placed on record as Annex. 10. This report, running into 34 pages, contains findings against the proceedings taken in the matter of grant of lease of petrol pump of respondent No. 3 and the matter was referred to the State Government. The State Government by order dated 28th Feb., 2002 passed the order and dropped the proceedings holding that the petrol pump is running since inception and it has not been established at wrong place. The State Government also observed that the District Collector gave permission as "back as on 18th Jan., 1960.

5. Learned counsel for the petitioner vehemently submitted that the report running in 34 pages dealing with all factual aspects cannot be set aside by the State Government by passing an order in four lines without giving any reason for dropping the proceedings. The order dated 28th Feb., 2002 is a non-speaking order, therefore, it deserves to be quashed and set aside and the State Government may be directed to pass a reasoned order in the matter.

6. Learned counsel for the petitioner heavily relied upon term No. 9 given in the lease deed dated 29th July, 1992 wherein it is provided that when there is dispute between the parties, then the matter is required to be referred to the Secretary of the Revenue Department, Government of Rajasthan, who is to decide the matter as arbitrator. Therefore, according to learned counsel for the petitioner, the State Government should not have rejected or dropped the proceeding initiated on the complaint of the petitioner and there is a finding against the petitioner in detailed inquiry report.

7. A bare perusal of the facts clearly reveals that this matter is relating to the private dispute between, the petitioner and the respondent No. 3. The dispute

arose in the year 1985 that too in the matter where lease was granted in the year 1955. The allegation of encroachment over the land by the respondent No. 3 is from atleast year 1985 for which a complaint was lodged by the father of the petitioner on 9th Sept., 1985. It is relevant to mention here that if it was a land of private person as stated in the complaint by saying that respondent No. 3 encroached upon the land of some neighbours and obstructed the way of the petitioner and the other plot holders, then that was their own independent civil right and they could have protected their own right in their own capacity. If the petitioner or any other person was owner of any property or acquired any right under the law to hold the property, then that right should have been protected by the petitioner and effected persons in time. The petitioner's father himself raised objections in the year 1985 but without pursuing the matter to the logical end. It appears from the complaint filed by the petitioner that the order of removal of encroachment was set aside by the District Collector in appeal and against which the revision petition was also filed before the Divisional Commissioner and the matter was remanded back to the Municipal Board.

8. Not satisfied with those proceedings, the petitioner after about 13 years of the raising of grievance by the petitioner's father and after about six years of the order passed by the Divisional Commissioner in the year 1998, submitted an application before the District Collector, Jalore. When, a question was put to learned counsel for the petitioner, how the District Collector or the State Government can grant any relief to the petitioner, it was replied that as per the condition of the lease deed, which provides settlement of dispute by the arbitrator and the Secretary Revenue is the arbitrator designated in the lease deed, therefore, Secretary, Revenue Department can decide the matter. The contention is devoid of any force in view of the fact that condition No. 9 applies to the parties of the lease deed and if there is a dispute with respect to the interpretation of any of the terms of the lease deed and any dispute relating to the lease and any liability arising out of the lease etc., those disputes can be decided by the Revenue Secretary as arbitrator with a condition precedent that it is a dispute between the parties to the lease deed dated 29th July, 1992. In this matter neither the non-petitioner No. 3 nor the respondent-State raised any dispute with respect to any of the matter covered under the condition No. 9 of the lease deed. The stranger cannot be permitted to initiate the proceeding to compel parties to lease to litigate.

9. From the findings recorded in the enquiry report dated 10th July, 2000, it is clear that a large number of disputed questions have been pointed out by the learned District Collector. The crux of the matter still remains is only the locus-standi of the petitioner to ask and seek redressal of the grievances through the State Government and the jurisdiction of the State Government and the jurisdiction of the State to grant relief to private party, who is stranger to contract of lease. It is relevant to mention here that even if it is found that the lease deed was illegal or obtained by fraud, then the State Government itself can get the lease deed cancelled only in accordance with law only and this itself

cannot give any relief to the petitioner. The petitioner is not claiming that he is owner of the land or part of the land in dispute. The petitioner's claim is only that his way was obstructed by the respondent No. 3. The State Government cannot be used as a tool for redressal of private dispute in the matter of way between petitioner and respondent No. 3. Once State has executed a lease deed, supposing included the land of others, those others can protect their rights only in accordance with law by filing civil suit etc. The petitioner even failed to satisfy how a registered lease deed can be cancelled by the any one of the party here State ?

10. It appears that the petitioner instead of fighting for his own right by standing on his own legs, wants to take help of executive authorities of the State Government and under assumption that the State Government will act as agent of the petitioner. A lease granted by the registered document can not be cancelled by any administrative order. If the encroachment was made by Janak Singh, respondent No. 3 over the plots of other persons in the year 1985, how the State Government can become agent of those persons, who submitted complaint in 1988 1985 and the State can grant relief of dispossession of the respondent No. 3 and can given possession of the land to those persons dispossessed in the year 1985 or prior to that.

11. Assuming for the sake of argument that the State Government cancell the said lease deed, still for getting relief, the petitioner have to go to the civil court for getting the relief of possession or removal of obstruction put on his own way. Therefore, the entire process is nothing but a futile process and appears to be with an object to take help of the Executive Officer rather than approaching before appropriate forum, which could have been in this case, a civil court because of the fact that if the petitioner's contention is that this is a land of the way, then lease deed executed in favour of the respondent No. 3 also could not have come in the way of the petitioner for seeking relief in time from the Court of law.

12. In the light of the above discussion, when the State Government has passed a brief order on 28th Feb., 2002 dropping the proceedings on the ground that the permission for petrol pump was issued as back as in the year 1960, there will be no reason for setting aside this order and sending back the matter to the State Government to decide a dispute, which was never raised by the State Government before the objections raised by the petitioner in its complaint in the year 1998.

13. In view of the above reasons, I am not inclined to entertain the present writ petition before it will not come to an end of the litigation, but it will result into giving birth to further litigation between the parties i.e. petitioner and the respondent No. 3 and all the efforts of the petitioner are under wrong assumption or it may be with oblique native of by passing, the lawful forum and to get some order for executive authority only. If any decision is given by the State thereafter, it may give birth to now litigation only. Therefore, the proper

course would be that petitioner may approach to the Civil Court only.

14. Therefore, there is no force in the writ petition filed by the petitioner and the same is hereby dismissed.