
(2010) 08 RAJ CK 0141
In the Rajasthan High Court

Chhagandas

APPELLANT

Vs

Heemaram and Others

RESPONDENT

Date of Decision : 10-08-2010

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 225, 251

Citation : (2010) 08 RAJ CK 0141

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Govind Mathur, J.—An application was submitted by respondent Heemaram before the Gram Panchayat, Pamera for getting the way opened from the khatedari land of the petitioner. The application aforesaid came to be accepted on 5.8.2006. Being aggrieved by the order dated 5.8.2006 the petitioner preferred an appeal before the Additional Collector, Sirohi as per provisions of Section 225 of the Rajasthan Tenancy Act and the appeal aforesaid was accepted on 29.5.2007. While accepting the appeal the Additional Collector, Sirohi held that no inquiry as required was conducted by the Gram Panchayat and also that as per provisions of Section 251 of the Rajasthan Tenancy Act only existing ways if closed or any obstacle is created could have been opened and to reach at the conclusion regarding existence of way a detailed inquiry is required. The Additional Collector by order dated 29.5.2007 remanded the matter to Gram Panchayat, Pamera for fresh disposal after providing opportunity of hearing to the parties and also to conduct necessary inquiry before deciding the issue. The Gram Panchayat under an order dated 27.7.2007 rejected the application submitted by the respondent with a finding that no way was existing that could have been ordered to be opened while exercising powers u/s 251 of the Rajasthan Tenancy Act. A challenge to the decision of the Gram Panchayat was given by the respondent by way of filing an appeal before the Additional Collector, Sirohi as per provisions of Section 225 of the Rajasthan Tenancy Act, 1955 and that came to be accepted on 29.6.2009. The Additional Collector held

that before rejecting the application submitted by Heemaram no inquiry as required was conducted. The Additional Collector while relying upon the inspection made on 26.7.2006 held that the way was existing from last about 30 years, thus, directed to get the way opened. Being aggrieved by the order dated 29.6.2009, this petition for writ is preferred.

2. As per counsel for the petitioner, if no inquiry as required was conducted by the Gram Panchayat while rejecting the application submitted by the petitioner for getting the way opened, then at the most the appellate authority could have remanded the matter for getting the matter inquired adequately but in no case it was open to direct the petitioner for providing a way to the respondent. It is also urged that the Additional Collector relied upon an inspection report dated 26.7.2006, which as a matter of fact was not found proper by the Additional Collector under the order dated 29.5.2007.

3. Per contra, as per counsel for the respondents the Gram Panchayat as per report dated 26.7.2006 reached at the conclusion that the way was existing from last 30 years and that was closed at quite a subsequent stage. An effort is also made by counsel for the respondents to establish existence of the way at the spot.

4. Heard counsel for the parties and examined the record.

5. From perusal of the order dated 29.5.2007 (Anx.5), it is apparent that in revenue appeal No. 1/2007 the inspection made by the Gram Panchayat for providing a way to the respondent was not found proper. The Additional Collector, therefore, while remanding the matter under the order aforesaid, instructed the Gram Panchayat to make a detailed inquiry for reaching at an appropriate decision as per provisions of Section 251 of the Rajasthan Tenancy Act. The Gram Panchayat in pursuant thereto passed the order dated 27.7.2007. In appeal preferred against the order dated 27.7.2007, the Additional Collector relied upon the inspection report, that was a foundation for the order dated 5.8.2006, which was quashed under the order dated 29.5.2007. If the Additional Collector was of the view that no adequate inquiry was conducted, then he would have remanded the matter for fresh inquiry, but in no way it was open for him to rely upon an inquiry report which was not found adequate to determine rights of the parties in earlier proceedings conducted by the Additional Collector himself. In such circumstances the direction given by the Additional Collector, Sirohi under the order dated 29.6.2009 for getting the way open from the land of the petitioner is erroneous.

6. Accordingly, this petition for writ is allowed. The order impugned dated 29.6.2009 is quashed to the extent it relates to giving direction to the petitioner for getting the way open from his land. The direction aforesaid is substituted by direction that the Gram Panchayat, Pamera shall consider the matter afresh by holding a fresh inquiry to reach at a definite conclusion as per Section 251 of the Rajasthan Tenancy Act, 1955.