
(2017) 03 RAJ CK 0160
In the Rajasthan High Court
Case No : 2188 of 2017

Dalla Ram

APPELLANT

Vs

State of Rajasthan & Ors.

RESPONDENT

Date of Decision : 25-03-2017

Acts Referred:

Citation : (2017) 03 RAJ CK 0160

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : C.R.Jakhar, Manoj Bhandari, Suniel Purohit

Judgement

1. These writ petitions are directed against orders dated 7.12.16 of the Authorised Officer of Jodhpur Development Authority (JDA), Jodhpur, whereby the unauthorised occupation of the petitioners over the land comprising khasra no.94 of village Nandra forming part of public way is directed to be removed.

2. Precisely, the case set out by the petitioners is that lands occupied by them are covered by valid pattas issued by Gram Panchayat, Banar in their favour under Rule 157 (b) of Rajasthan Panchayati Raj Rules, 1996. According to the petitioners, the abadi land in question occupied by them is situated in khasra no.95 abutting to the road. It is submitted that while drawing conclusion that the petitioners have encroached upon the land forming part of the public way comprising khasra no.94, the respondents have neither measured the land forming part of the way nor the land occupied by the petitioners and thus, the conclusion drawn that the petitioners are in unauthorised occupation of the land forming part of the public way without any cogent material on record, is ex facie capricious and perverse.

3. A reply to the writ petition has been filed on behalf of the respondents taking the stand that the orders dated 7.12.16 have been passed after giving an opportunity of hearing to the petitioners. It is submitted that the petitioners have encroached upon the land forming part of the public way. It is submitted that it is

wrong to contend that no measurement was made at the site, to the contrary, the respondent authority visited the site and prepared the site inspection report which shows that the petitioners have encroached upon the public land.

4. Learned counsel appearing for the petitioners contended that a bare perusal of site inspection report makes it abundantly clear that the officer concerned has not taken measurement of the land as also of the plots alleged to be in unauthorised occupation of the petitioners. Learned counsel submitted that the order impugned has been passed without giving any opportunity of hearing to the petitioners and thus, the action of the respondents is *ex facie* violative of principle of natural justice. Learned counsel submitted that the land in possession of the petitioners is covered by pattas issued by the Gram Panchayat in their favour and therefore, the allegation levelled regarding the land being in their unauthorised occupation is absolutely baseless. Learned counsel submitted that the village road is only 12 ft. wide whereas the petitioners plots are situated 35 ft. away from the road and thus, the land in possession of the petitioners cannot be treated to be part of the road.

5. Learned counsel appearing for the respondents have reiterated the stand taken by the respondents in the reply to the petition.

6. I have considered the rival submissions and perused the material on record.

7. Indisputably, the petitioners claim to be in possession of the abadi land comprising khasra no.95 on the strength of pattas issued in their favour by the Gram Panchayat, Banar. The allegation of the respondents is that the petitioners are in occupation of the land comprising khasra no.94, which is admittedly entered in the revenue record as *gair mumkin gova* (road). But then, there is no material brought on record showing that before declaring the petitioners encroacher over the land comprising khasra no.94 forming part of the public way, the measurement of the land comprising khasra no.94 forming part of public way was taken so as to determine the area of the land alleged to be in unauthorised occupation of the petitioners. It goes without saying that the land forming part of the public way has to be kept open for use of the public at large and even local authority has no jurisdiction whatsoever under the law to allot the land forming part of the public way in favour of anybody. In this view of the matter, if the petitioners have unauthorisedly occupied the land forming part of the public way, the encroachment made has to be removed. But then, before taking the action, the respondents must determine the area of the land forming part of the public way alleged to be in unauthorised occupation of the petitioners and the appropriate action for removal of the encroachment if any, must be taken thereafter in accordance with law.

8. Accordingly, the writ petitions are disposed of with the directions to the respondents to take measurement of the land forming part of the public way as also the land in occupation of the petitioners and determine the area of the land forming part of the public way in unauthorised occupation of the petitioners if

any, after giving them an opportunity of hearing. After taking the exercise as aforesaid, if the petitioners are found in unauthorised occupation of the land forming part of the public way comprising khasra no.94, the respondents shall be at liberty to remove the encroachment in accordance with law. The entire exercise in terms of this order shall be completed within a period of one month from the date of this order. Till the conclusion of the proceedings pursuant to the order passed by this court as aforesaid, the petitioners shall not raise any construction over the disputed land. No order as to costs.