
(2013) 09 RAJ CK 0147

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No. 4 of 2013

Deepa Ram and Another

APPELLANT

Vs

The Board of Revenue and Others

RESPONDENT

Date of Decision : 02-09-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Land Revenue Act, 1956 — Section 75, 84, 91
Rajasthan Tenancy Act, 1955 — Section 16, 16(ii)

Citation : (2014) 2 WLN 8

Hon'ble Judges : Narendra Kumar Jain, J;Arun Bhansali, J

Bench : Division Bench

Advocate : Manoj Bhandari, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is directed against order dated 10.09.2012 passed by the learned Single Judge, whereby, the writ petition filed by the petitioners has been dismissed in limine. The facts in brief may be noticed thus: the petitioners were allotted 14 bigha land comprised in Khasra No. 651 in village Balunda for a period of one year by order dated 15.07.1966 passed by Tehsildar, Jaitaran; the nature of land was indicated as "Gair Mumkin Nadi" (uncultivable river); it is claimed by the petitioners that since the allotment in the year 1966, they are in possession of the said land; it appears that on a complaint made by one Ram Sukh ("the complainant"), the Tehsildar, Jaitaran by order dated 06.01.2004 treating the petitioners as trespassers on the land comprised in Khasra No. 651 i.e. Gair Mumkin Nadi directed the Patwari to dispossess them and report to him.

2. Being aggrieved, the petitioners preferred an appeal before the District Collector, Pali u/s 75 of the Rajasthan Land Revenue Act, 1956 ("Land Revenue Act"), who by order dated 13.03.2004 accepted the appeal, set aside the order dated 06.01.2004 and directed the Tehsildar to regularize the disputed land in terms of the circulars of the State Government and if the same is not liable for

allotment/regularization, then to pass order after hearing the parties.

3. The complainant Ram Sukh questioned the order passed by the Collector before the Revenue Appellate Authority, who by order dated 09.06.2005 partly allowed the appeal and modified the order dated 13.02.2004 passed by the Collector and directed that the petitioners herein be granted time to get the land use changed and thereafter the Tehsildar may decide the case.

4. The complainant approached the Board of Revenue, Ajmer ("the Board") by way of revision u/s 84 of the Land Revenue Act; a Member of the Board by judgment dated 12.07.2007 allowed the revision petition, set aside the orders passed by the Collector & Revenue Appellate Authority and restored the order dated 06.01.2004 passed by the Tehsildar, Jaitaran.

5. In the special appeal preferred by the petitioners before the Division Bench of the Board, the Division Bench by order dated 14.07.2011 dismissed the same. The review against the order passed by the Division Bench of the Board filed by the petitioners was also dismissed by order dated 23.04.2012.

6. Aggrieved by the judgments/order passed by the Board of Revenue, the petitioners approached this Court by filing S.B. Civil Writ Petition No. 8120/2012.

7. After hearing the petitioners and the caveator, the learned Single Judge by order dated 10.09.2012 came to the conclusion that no khatedari rights accrue in respect of the land in the bed of river or tank and, therefore, the same was not available for allotment and that the claim of the petitioners for regularization of the possession over the land in question was absolutely baseless and, consequently, dismissed the writ petition.

8. The learned Single Judge while deciding the writ petition observed thus:--

6. Indisputably, as per provisions of Section 16(ii) of Rajasthan Tenancy Act, 1955 (in short "the Act of 1955"), no khatedari rights accrues in respect of the land in the bed of river or tank. In Abdul Rahman's case (supra), a Bench of this court has issued direction to the State Government to remove encroachment in the catchment area of the water bodies. In the matter of "Suo Motu V. State of Rajasthan" (S.B.C. Writ petition No. 11153/11), disposed of by Jaipur Bench of this court vide order dated 29.5.12, specific directions are issued restraining allotment of the land falling in catchment areas of water reservoirs like Johar, Nala, Tank, River, Pond etc. It is further directed that the appropriate action shall be taken for cancellation of the allotment made in defiance of Section 16 of the Act of 1955. It is not in dispute that as per the revenue record the land falls within the river bed and thus, not available for allotment. Suffice it to say that the claim of the petitioner for regularisation of the possession over the land in question, is absolutely baseless.

7. In considered opinion of this court, keeping in view the directions issued by this court in Abdul Rahman's case (supra), the decision of the Board of Revenue in setting aside the order passed by the District Collector and RAA and restoring

the order passed by the Tehsildar for eviction of the petitioners treating them to be trespasser over the land in question does not suffer from any infirmity or illegality or jurisdictional error so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

8. In the result, the writ petition fails, it is hereby dismissed in limine.

9. It was submitted by learned counsel for the appellants that the appellants are in possession of the land in question since 1966 and have developed the land in question over a period of time. It was also submitted that proceedings u/s 91 of the Land Revenue Act have been initiated against the appellants from time to time and penalties have been imposed and, therefore, it cannot be said that the appellants are trespassers on the land in question. It was also contended that the observations of the learned Single Judge that as the land falls within the river bed and thus, the same is not available for allotment and regularization of possession, is not borne out from the Act and the Rules.

10. We have considered the submissions made by learned counsel for the appellants.

11. There is no dispute that the nature of the land comprised in Khasra No. 651, which was allotted for a period of only one year to the appellants in the year 1966 is "Gair Mumkin Nadi". The appellants have failed to show any right to remain in possession of the said land at the end of one year i.e. from 1967.

12. The directions issued by the Collector by order dated 13.02.2004 for allotment/regularization of the land in question and the Revenue Appellate Authority, which by its order dated 09.06.2005 went a step further in directing that the appellants herein be granted opportunity to get the land use of the disputed land changed and thereafter the Tehsildar should deal with the matter, looking to the nature of the land, such directions were ex facie against settled position of law and were, therefore, rightly set aside by the Board.

13. This Court in Abdul Rahman v. State of Rajasthan (2004) 4 WLC 435 has issued directions for maintaining the channels like Nalla, Rivers, Tributaries etc.

14. Besides provisions of Section 16(ii) of the Rajasthan Tenancy Act, 1955 ("the Tenancy Act") also provides that notwithstanding anything contained in the said Act or in any other law or enactment for the time being in force in any part of the State, Khatedari rights shall not accrue in land used for causal or occasional cultivation in the bed of river or tank. Consequently, there is no question of regularization of possession of the appellants as claimed by them.

15. So far as the apprehension expressed by the learned counsel for the appellants that in view of the observations made by the learned Single Judge, the land in question, which is otherwise available for allotment under the Rajasthan Land Revenue (Allotment of Tank-Bed Lands for Cultivation) Rules, 1961 ("the Rules"), would also not be allotted is concerned, the apprehension is

apparently misplaced. If the land in question falls within the definition of "tank bed lands" as defined in the said Rules and if under Rule 3 of the Rules, the Sub Divisional Officer decides to issue proclamation and invite application for allotment, the land in question can always be allotted and if the appellants fulfill the eligibility requirements as contained in Rule 4(2) of the Rules, nothing prevents them from applying for the same and for the authorities to allot the land in question strictly in accordance with the provisions of the Rules. In view of what has been discussed hereinbefore, there is no substance in the appeal and the same is, therefore, dismissed.