(2018) 10 RAJ CK 0041

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1029 of 2018 In Civil Writ Petition No. 12753 of 2018

Dhane Singh @APPELLANT@Hash Ramavtar

Date of Decision : 06-10-2018

Acts Referred:
Rajasthan Tenancy Act, 1955 — Section 251, 251A

Citation : (2018) 10 RAJ CK 0041

Hon'ble Judges : Mohammad Rafiq, J;Prakash Gupta, J

Bench : Division Bench

Advocate : R.P. Garg, Akhilesh Kumar Saini

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.

This special appeal has been filed by the appellant Dhane Singh against the order dated 13.07.2018 passed by the learned Single Judge whereby the

writ petition filed by the appellant was dismissed. The appellant in the writ petition challenged judgments dated 13.09.2017 and 07.05.2018 passed by

the Board of Revenue, Ajmer as also order dated 28.02.2014 passed by the Tehsildar, Neem Ka Thana, Sikar.

Mr. R.P. Garg, learned counsel for the appellant argued that the learned Board of Revenue as also the Tehsildar, Neem Ka Thana have erred in law

in not appreciating the fact that no easementary rights can accrue to a tenant if he has an alternate route for approaching from his agricultural holding

to his house. He therefore cannot claim for a direct route. The Tehsildar, Neem Ka Thana as well as the Board of Revenue have wrongly exercised

the power under Section 251 of the Rajasthan Tenancy Act, 1955 (for short â?? the Actâ??) by directing to provide way to Respondent No. 1 from

his agricultural holding to his house. It is argued that even if the existing way is slightly longer that cannot be a reason to claim the way through the

agricultural land of the appellant wholly on the ground of its being short. It is argued that application under Section 251 of the Act was not maintainable

as according to Section 251A of the Act, the Tehsildar, Neem Ka Thana was not having any jurisdiction.

Order dated 28.02.2014 passed by the Tehsildar was without jurisdiction. The Tehsildar, Neem Ka Thana has exceeded its jurisdiction under Section

251 of the Act in passing the impugned order for providing the way to Respondent No. 1 by use of bullock carts and tractors etc. Learned counsel,

during the course of arguments, referred to order dated 16.11.2016 passed by the Additional District Collector, Sikar (for short â??the Additional

District Collectorâ??), who in the appeal filed by the appellant has reversed the order dated 28.02.2014 passed by the Tehsildar, Neem Ka Thana

and argued that the Board of Revenue was wholly unjustified in interfering in that order on its whims and fancies. Order dated 16.11.2016 passed by

the Additional District Collector, Sikar was based on objective assessment of the records. Learned counsel for the appellant, in support of his

arguments, relied upon the judgment rendered by Co-ordinate Single Bench of this Court at Principal Seat at Jodhpur in Bagh Singh Vs. The Board of

Revenue, Ajmer & Others, 2016 (1) WLC (Raj.) UC 338.

Learned counsel for Respondent No. 1 opposed the appeal and supported the orders passed by the learned Single Judge, learned Board of Revenue

and the Tehsildar, Neem Ka Thana, Sikar. Perusal of the order dated 13.09.2017 passed by the Board of Revenue indicates that Respondent No. 1

had to approach the Tehsildar, Laxmangarh, Sikar under Section 251 of the Act because the appellant created obstruction on the way that was

available for his access from agricultural holding to his house. The matter was transferred to the Tehsildar, Neem Ka Thana, Sikar.

The Tehsildar, Laxmangarh on 02.07.2010 and the Tehsildar, Neem Ka Thana on 05.04.2013 inspected the site in the presence of both the parties and

concluded in both the reports that the obstruction on the way was especially created by the appellant and that the way in dispute was being used for

quite some time. The Board of Revenue has noted that the Additional District Collector in his order dated 16.11.2016 has mentioned that he inspected

the site on 28.10.2016, but no report of any such inspection whatsoever was prepared or otherwise available on record.

There was also no evidence of the fact that the notice was issued to the parties to remain present at the time of inspection. The Board of Revenue

concluded that no inspection was actually carried out by the Additional District Collector. The Board of Revenue therefore held that the Additional

District Collector had no justification to completely ignore two consistent inspection reports carried out by two different Tehsildars. The Additional

District Collector in his order had not given any cogent reason for not accepting those two reports. It was therefore held that the appellant has created

an obstruction on the way in Khasra No. 64 and the Tehsildar, Neem Ka Thana vide order dated 28.02.2014 directed for removal of such obstruction.

We have glanced through the order dated 16.11.2016 passed by the Additional District Collector as also order dated 28.02.2014 passed by the

Tehsildar, Neem Ka Thana. In our opinion, apart from the reasons given by the Board of Revenue for not agreeing with the view expressed by the

Additional District Collector, we also find that he has not given any convincing reason to discard the findings recorded by the Tehsildar, Neem Ka

Thana. On the contrary, the Tehsildar, Neem Ka Thana in his order has referred to inspection conducted by the Patwari Halka on 14.12.2009 and the

inspection report of the Tehsildar, Laxmangarh dated 02.07.2010 as also â?? parcha maukaâ?? of the then Tehsildar, Neem Ka Thana dated

05.08.2013. Patwari Halka in his report has mentioned that in the revenue records a way in double dotted line runs through Khasra No. 107 recorded

as â??gair mumkin abadiâ?? (â??seva ka basâ??) which commences from Village Panlawa and runs through Khasra No. 107 and then passes

through Khasra No. 106/1 and Khasra No. 66/1, thereafter through Khasra No. 64 and meets with the way existing in Khasra No. 128 recorded as

â??gair mumkin rastaâ??.

Even in this case, the way is indicated in the records up to the boundary of Village Rahnava in revenue record in map (â??latthaâ??) in double dotted

line. Motbirs present at the spot mentioned to the Patwari that the way had been obstructed by khatedars of Khasra No. 64 and prior to this camel

carts, tractors etc. used to pass through this old way. The Tehsildar Laxmangarh in his report dated 02.07.2010 also made similar observations and

thereafter, the then Tehsildar, Neem Ka Thana in his report dated 05.04.2013 also mentioned so.

The Additional District Collector therefore could not have rightly interfered with the findings recorded by the Tehsildar, Neem Ka Thana vide its order

dated 28.02.2014. Learned Single Judge, in our view, was therefore perfectly justified in upholding the orders passed by the Board of Revenue

restoring the order dated 28.02.2014 passed by the Tehsildar, Neem Ka Thana. In view above discussion, there is no merit in this special appeal and

the same is accordingly dismissed. Stay Application No. 14812/2018 also stands dismissed.