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(1985) 08 RAJ CK 0073

In the Rajasthan High Court

Case No : Civil Special Appeal No. 29 of 1980

Giri Raj and Others — APPELLANT

Vs

State of Rajasthan and Others — RESPONDENT

Date of Decision : 21-08-1985

Acts Referred:
Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 — Rule 262, 272

Citation : (1986) 1 WLN 707

Hon'ble Judges : Inder Sen Israni, J;D.L. Mehta, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Dinker Lal Mehta, J.—This Special Appeal has been preferred by the villagers of village Bahaj, Tehsil and Police Station, Deeg, District Bharatpur, against the judgment dated 11th January 1980, passed by the learned Single Judge in S.B. Civil writ petition No. 1250 of 1979, whereby the learned single Judge dismissed the writ petition.

2. The respondent, Pyare Lal, is said to have encroached upon the village land and proceedings were initiated against him. On 18-9-1966, vide Annexure 1, he admitted that the land is the public land and he undertook that he would not occupy the land in future. The Gram Panchayat directed that encroachment made should be removed within a period of 15 days and a fine of Rs. 15/- was also imposed on him. Aggrieved by the said order an appeal was preferred before the Panchayat Samiti, Deeg, which was decided vide Annexure-2, dated 5-12-1966 and the appeal was dismissed.

3. Against the order of the Panchayat Samiti, Deeg, dated 5-12-1966, a revision petition was preferred before the Additional Collector, Bharatpur. The revision petition was also dismissed vide order dated 18th March, 1967, by the Additional Collector, Bharatpur. Thus, the order of the Panchayat dated 18-9-1966 imposing a fine of Rs. 15/- and direction given to the respondent to remove encroachment

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within 15 days was maintained. Subsequently, Shri Pyare Lal moved an application praying that he may be allowed to construct a Bara on the said land for keeping animals there. The application was converted into an application for the purchase of the land. Vide Annexure-4 the land measuring 350Sqr. yards was directed to be sold to the applicant at rate of Rs. 2.50 per Sq. Yard. The Panchayat Samiti vide its order dated 25th July 1967 confirmed the sale.

4. The revision petition was preferred against the said order which was rejected by the learned Additional Collector, Bharatpur, vide order dated 17-5-1979. Learned Additional Collector held that the revision petition is time barred. He has also considered the other questions which were raised by the petitioners and found that from the inquiry report it seems that the petition has been filed only with the intention that the opposite party wants to grab the land. It was also contended that the six persons who are alleging that they are the aggrieved party, cannot file the revision petition and provisions of Order 1, Rule 8 are attracted. Being aggrieved with the decision of the Additional Collector, dated 17-5-1979, Annexure-8, the writ petition was preferred before this Court, which was dismissed in limine by the learned Single Judge on 11th January 1980. This special Appeal has been preferred against the said decision u/s 18 of the Rajasthan High Court Ordinance. At the admission stage show cause notice was issued and after hearing both the parties the writ petition was admitted by this Court.

5. Mr. Pathak, appearing on behalf of the appellants, has assailed the judgment of the learned Single Judge as well as the other authorities on the following grounds. That the provisions of Rules 256 to 262 of the Rajasthan Panchayat & Nyaya Panchayat (General) Rules, 1961, have not been complied with. He further submits that without compliance of Rules 257 to 259 notice inviting objections was issued vide Rule 260. He has referred to Annexure 4 and submitted that the application dated 1-10-1969 could not have been entertained for construction of Bada. Mr. Pathak submits that prior to issuance of such a notice the Panchayat should have provisionally decided to sell the Abadi land vide Rule 259. He further submits that the publication of the notice inviting objections was only done in the record and there was no actual publication and no objections were filed and, there after, the auction of the land should have been done. On the contrary, the Panchayat collusively decided to transfer the disputed land under Sub-rule (2) of Rule 266 of the rules. He further submits that the Rule 266 does not apply in the instant case as the Panchayat has already held vide Annexure 1, 2 and 3 that Pyarelal was not having any claim of title over the land. He further submits that no reason has been given by the Panchayat to sell the land by way of negotiations.

6. Mr. Pathak appearing on behalf of the appellants have invited our attention to the case of Sarupa v. The Addl. Collector, Pali and Ors. 1978 WLN 249. This Court was considering the provisions of limitation and held that the legislature did not intend to put such a fetter on the revisional jurisdiction. There was therefore, no

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warrant for the Additional Collector, Pali to hold that the period of 30 days, prescribed for filing on appeal u/s 26A of the said Act should be treated as the normal period for filing a revision petition and that a revision petition filed after the lapse of the period of 30 days could be entertained only if the petitioner was in the position to explain the delay satisfactorily. In the said case the revision petition was filed after a lapse of 8 months. The revision petition was rejected by the Addl. Collector on the ground of limitation, However, this Court accepted the writ petition and directed the Additional Collector, Pali to hear the revision petition on merits.

7. Mr. Pathak has also invited our attention to the case of Hari Ram and Anr. v. State of Rajasthan 1977 WLN 167 and submitted that the revision petition lies. This Court in the case of Hari Ram and Anr. v. State (supra) held as under:

The provisions regarding sale of abadi and by the Gram Panchayat have been incorporated in Chapter XIII of the Rules and the procedure for sale has been laid down in Rules 256 to 268. Rule 270 provides for an appeal from an original order passed by the Panchayat, confirming the sale of abadi land or transfer or allotment of abadi land, to the Panchayat Samiti and from such an appellate order of the Panchayat Samiti a further appeal is provided to the Collector. A second appeal is provided against the appellate order of the Collector to the Revenue Appellate Authority. However, Rule 272 provides that in cases in which no appeal is filed under Rule 270 or such appeal is not pending, then the State Government or the Officer or authority, on which the powers of the State Government have been delegated, may on its own motion or on an application made to him in this behalf, call for the record for the purposes of satisfying himself as to the correctness, legality or propriety of any order passed by the Panchayat under Rule 265 and after examining the record, the State Government or the authorised officer or authority, as the case may be, may reverse, alter or modify the order of the Panchayat. It is not in dispute that the Additional Collector had the authority as a delegate of the State Government to entertain the revision application under Rule 272 as no appeal is alleged to have been preferred before the Panchayat Samiti under Rule 270 against the order of the Gram Panchayat passed under Rule 265, confirming the sales made in favour of the two petitioners. The Additional Collector was, therefore, acting within his undoubted jurisdiction in the present proceedings and if on an examination of the record relating to the two sales he found that the provisions of rules 260, 261 and 262 were not complied with by the Panchayat, while effecting the sale of the Ahatas in question in favour of the petitioners, then it cannot be said that the order of the Additional Collector was in any manner illegal or invalid.

8. On behalf of the respondents, Mr. D.K. Soral submits that the Rule 270 applies in this case and the appeal has not been filed before the Collector, and, as such, the present appeal should not be entertained. He further submits that the appellants are not the aggrieved party. He further submits that the land originally belonged to Pyarelal. However, he purchased it to avoid any dispute relating to

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the title of land.

9. Mr. Soral, during the course of arguments has also submitted that the file of the Panchayat may be summoned and should be looked into to ascertain whether the provisions of Rules 256 to 261 have been followed or not. Mr. Soral further submits that the provisions of Rules 256 and 257 do not apply in the cases whether the sale is made by way of negotiations under Rule 266. He further submits that the writ jurisdiction is the discretionary jurisdiction and the Court should not interfere if it comes to the conclusion that any irregularity has been committed by the Tribunal.

10. We have heard the rival contentions of the parties and perused the record of the case.

11. It is an admitted position that the present appellants were not the party to the proceedings which were taken before the Tribunal namely, the Gram Panchayat and the Panchayat Samiti. A person who is a party, has a right to file an appeal and, ordinarily, in writ jurisdiction no relief should be granted to him if he fails to file on appeal. However, there may be some exceptions to the General Rule.

12. We are in confirmity with the view taken by our brother Judge in the case of Hari Ram (supra). It is not in dispute that the Additional Collector had an authority as a delegate of the State Government to entertain the revision petition under Rule 272. In the instant case, no appeal is alleged to have been preferred against the Panchayat Samiti under Rule 270. Ordinarily, the Panchayat Samiti cannot hear the appeal against the confirmation order of the sale as the Administrative Committee of the Panchayat Samiti having the delegated powers of the Panchayat Samiti, has confirmed the sale, the Additional Collector is competent to hear the revision under Rule 272 specially when he finds that an illegality or gross injustice has taken place. Revisional powers should be exercised very sparingly and ordinarily, while exercising the revisional powers, the Collector should not interfere unless he comes to the conclusion that the gross injustice has taken place and the provisions of law have been violated. Apart from that the Collector has a power to call for the record for the purpose of satisfying himself about the legality, propriety and the correctness of the order passed by the Panchayat or Panchayat Samiti. He has a power to rescind, modify or set aside any of the order passed by the authorities concerned in exercise of their administrative powers. In the instant case, we do not find whether there was any justification for sale under Rule 266 and whether the Panchayat or Panchayat Samiti had any reason for adopting the mode of sale by applying the provisions of Rule 226. Ordinarily, the land should be sold by way of auction unless there are special reasons for not doing so. If the land is allowed to be sold by way of negotiations without assigning any reasons then the citizen will have a right to challenge the sale on the ground that the equal opportunity has not been provided in his favour. We would like to observe that unless there are extraordinary circumstances the provisions of Rule 266 should not be made

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applicable and the sale should be by way of auction as provided under other rule.

13. Apart from that it is necessary to determine whether the land which is sold is necessary for the public use or the village use by way of chowk, road or other allied matters such as, some times, it is used for the ceremonial functions of the village where the people assemble and perform the ceremonial functions. For this reason, under the Rajasthan Panchayat Rules, 1961, special provision has been made under Rule 257 for the preparation of the plan. Under Rule 258 after the preparation of the plan, three of the Panchas who are nominated by the Panchayat go for local inspection of the site and submit the report to the Panchayat. Under Rule 259, provisional decision is taken whether the sale should or should not made. Under Rule 260 the Panchayat invites to the general public about the proposed sale of land and invites objections against the proposed decision. Thereafter, the disposal of the objections if any, received in response to the notice shall be disposed of by the Panchayat after giving the parties concerned reasonable opportunity of being heard under Rule 261. The land is sold by way of auction under Rule 262. Rule 266 is an exception to the the General Rule 262. In Rule 266 also Clauses (a), (b) and (c) provide that the land may be sold by way of negotiations where any person has a plausible claim of title to the land and an auction may not fetch reasonable price. Thus, before applying the provisions of Rule 266, it is necessary to determine whether there is any plausible claim of title of any third party or not and, if the land is sold by way of auction it will fetch higher price or not. It is also necessary to determine whether, for the reasons to be recorded in writing the Panchayat thinks that an auction would not be convenient mode of the disposal of the land. No such grounds are available on record.

14. We consider it proper that this Special Appeal should be allowed. We set aside the order dated 11-1-1980 passed by the learned Single Judge as well as the order dated 17th May, 1979 passed by the Additional Collector, Bharatpur whereby the revision petition filed by the petitioners against the order of the Panchayat Samiti dated 17th December, 1976 and the order dated 25-7-1977, passed by the Gram Panchayat was dismissed. We further direct the Additional Collector to hear the revision petition on merits holding that the revision petition lies and the limitation will not come in the way. Learned Additional Collector is further directed to look into the record and to consider the provisions of Rules 256 and 266 and should decide the revision petition on merits. There is no orders as to costs.

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