
(2013) 11 RAJ CK 0072

In the Rajasthan High Court

Case No : Civil Writ (PIL) Petition No. 13082 of 2012

Gyanchand Loonkar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 11-11-2013

Acts Referred:

Citation : (2014) 2 WLN 222

Hon'ble Judges : Amitava Roy, C.J;Pratap Krishna Lohra, J

Bench : Division Bench

Advocate : Madhulika Vyas, for the Appellant;

Judgement

1. Heard learned counsel for the petitioner. The instant application presented as a public interest litigation is by a resident of Sakin Jhuro Ka Baas, Tehsil Pali District Pali seeking judicial intervention against encroachments and illegal constructions over gair mumkin nada by the respondents No. 5 to 7 and others. The petitioner has averred that the disputed land had been allotted by the Gram Panchayat Denda to one Dhana Ram S/o Poonam Chand Meghwal (respondent No. 5) on 20.12.2010 on the basis of a sale deed executed between the Sarpanch, Gram Panchayat, Denda and the buyer. According to him, he owns a plot of land near the land of gair mumkin nada. He has admitted that the respondent No. 5, thereafter, had sold out the land purchased by him in favour of the respondent No. 6 through a registered sale deed. Contending that the land involved is a catchment area and thus, it can neither be allotted nor utilized for any other purpose, the petitioner has stated that he wrote a letter dated 7.12.2011 to the Secretary, Gram Panchayat Denda seeking necessary information with regard to the area thereof as well as khasra number and other particulars of the same. The petitioner has stated that the allotment of the gair mumkin nada is patently illegal and opposed to the letter and spirit of the decision of the Hon'ble Apex Court rendered in Jagpal Singh and Others Vs. State of Punjab and Others, as well as the consequential circulars dated 25.4.2011 and 9.6.2011 of the State Government. He has disclosed further that

meanwhile, a suit had been instituted by him praying for permanent and mandatory injunction in the Court of the learned Civil Judge (Junior Division), Pali. Thereby, an order for restraining the respondent No. 7 from encroaching over the land and raising unauthorized construction thereon was sought for. As inspite of successive representations before the authorities concerned no effective response was found forthcoming, this petition has been filed.

2. In course of the arguments, the learned counsel for the petitioner, in response to a query made by this Court, did admit that the learned Civil Court had not granted the injunction as prayed for and eventually, the suit had been withdrawn. The averments made in the petition, according to us, are general and omnibus and do not disclose essential facts and particulars. It is however, apparent therefrom that the land involved had been allotted by the Gram Panchayat, Denda initially to the respondent No. 5 on 20.12.2010 and a sale deed was also executed between them. That thereafter, the land had changed hands through registered sale deed is also an admitted fact. All these have occurred almost 2-3 years from this date. Admittedly, before approaching this Court with the instant application, the petitioner had filed a suit for permanent and mandatory injunction in a competent civil court and that not only the order as prayed for was not granted, the suit had been eventually withdrawn.

3. While there cannot be two opinions with regard to the paramountcy of the decision of the Hon''ble Apex Court in Jagpal Singh (supra) as well as the significance of the circulars dated 25.4.2011 and 9.6.2011 of the Government of Rajasthan vis-a-vis the issues referred therein, in the singular factual backdrop of the instant case, we are not convinced that the instant petition conforms to the indispensable requisites for initiating a public interest litigation. With the intervening facts inter-alia of allotment and sale of the land involved by registered deeds and the structures raised on the land, in our view, an exhaustive scrutiny of facts will be called for in course of the adjudication as demanded. As a writ Court, such an exercise is considered inexpedient. In the above view of the matter, this petition is closed. It would be however open to the petitioner to pursue other remedies on the issues, as available to him in law.