
(2012) 07 RAJ CK 0051
In the Rajasthan High Court
Case No : Civil Special Appeal No. 410 of 2012

Hem Raj

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 06-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Easements Act, 1882 — Section 13

Citation : (2012) 3 WLN 536

Hon'ble Judges : Narendra Kumar Jain, J; Dinesh Maheshwari, J

Bench : Division Bench

Advocate : Vijay Jain, for the Appellant;

Final Decision : Dismissed

Judgement

1. By way of this intra-court appeal, the petitioner-appellant seeks to question the order dated 19.05.2012 whereby the learned Single Judge of this Court has dismissed the writ petition (CWP No. 4488/2012), preferred against the order dated 20.01.2012 as passed by the Board of Revenue for Rajasthan at Ajmer ("the Board of Revenue"/"the Board"). By the said order dated 20.01.2012, the Board of Revenue had dismissed a revision petition against the order dated 06.05.2011 as passed by the Sub-Divisional Officer, Bhadra rejecting the objections raised by the appellant against execution of an order for opening of a way, passed way back on 22.01.1996 and affirmed by a Division Bench of this Court in the order dated 15.09.2009 as passed in D. B. Civil Special Appeal (Writ) No. 212/2002. It is also an admitted position that a petition for special leave to appeal ("SLP"), as filed before the Hon"ble Supreme Court against the said order dated 15.09.2009, was dismissed on 12.03.2010. Thus, in a nutshell, the position is that by way of this appeal, the appellant seeks to question the concurrent orders passed by the Revenue Authorities and then, by the learned Single Judge of this Court for execution of an order for opening of the way that has been affirmed by this Court and then, by the Hon"ble Supreme Court.

2. Briefly put, the relevant background aspects of the matter are that an application moved by Rajbala D/o Shanti and Shanti D/o Surja Ram, for removal of the obstruction and for providing a way towards their agricultural land, was ultimately granted by the Sub-Divisional Officer, Nohar ("the SDO") by the order dated 22.01.1996 after extending an opportunity of hearing to the present appellant as the way was to pass, inter alia, through his land. Aggrieved by the order dated 22.01.1996, the appellant preferred an appeal that was dismissed by the Revenue Appellate Authority, Hanumangarh on 01.08.1997; and then, further appeal was also dismissed by the Board of Revenue on 13.02.2002. Then, a writ petition filed by the appellant (CWP No. 1092/2002) was also dismissed by a learned Single Judge of this Court. Thereafter, the special appeal preferred by the appellant before the Division Bench of this Court (SAW No. 212/2002), was considered and dismissed by a detailed order dated 15.09.2009.

3. Essentially, the contention urged before the Division Bench in the said special appeal (SAW No. 212/2002) was that the order as passed by the SDO suffered from want of jurisdiction. The Division Bench, even while not rejecting such contention on want of jurisdiction with SDO, found no reason to consider interference in the extra-ordinary writ jurisdiction for the reason that it were a case of easement of necessity and there was no justification to deprive the applicants of the right existing in their favour per Section 13 of the Easements Act. The considerations and observations of the Division Bench in the order dated 15.09.2009 read as under:-

In our view it is no doubt true, that neither the requirement of Section 251 are established nor does Section 251 or Condition No. 8 of the Colony Conditions confer any power or jurisdiction on the S.D.O. to pass the type of order like Annex.9, as passed in the present case, and to that extent the learned counsel for the appellant is right in his submission.

However, that matter does not end here inasmuch as since the appellant wants to invoke Article 226 the jurisdiction of this Court, merely showing that the order impugned is erroneous, or has been passed without jurisdiction, without telling anything else, would not always make it obligatory for this Court to invoke and exercise its extra-ordinary jurisdiction under Article 226. The consideration of substantial justice and/or failure of justice, so also the aspect as to what would be the consequence of interference under Article 226, including as to whether interference will result into bringing about or restoring another illegality are also required to be considered before invoking the extra-ordinary jurisdiction under Article 226. We are fortified in our this view by the Full Bench judgment of this Court in Jagan Singh Vs. State Transport Appellate Tribunal reported in AIR 1980 Rajasthan-1, and the series of judgments of Hon"ble Supreme Court including those in Madras Fertilizers Ltd. Vs. Assistant Collector of Central Excise reported in JT 1994 (1) SC-150, Chandigarh Administration Vs. Jagjit Singh reported in JT 1995(1) SC-445, State of U.P. Vs. Harish Chandra reported in JT 1996 (4) SC-414, Union of India Vs. Kirloskar Pneumatic Company Limited reported in JT

1996(5) SC-26, The Secretary, Jaipur Development Authority Vs. Daulat Mal Jain reported in JT 1996(8) SC-387, and Dattatraya Laxman Kamble Vs. Abdul Rasul Moulali Kotkunde reported in (1999) 4 SCC-1.

In our view when on the admitted facts being, that both the contesting parties have purchased the lands from the same ultimate owner, who had recorded way up to Kila No. 22 of Murabba No. 81, which led to his entire chunk of land, and when he sold his entire land in peacemeal to different persons, may be at the same time, per force Section 13 of the Easements Act, easement of necessity does arise, and interference in Article 226 by setting aside the orders Annex. 9, 10 and 11, so also the impugned order of the learned Single Judge, would have the affect of depriving the respondents of that right, which statutorily arise in their favour. We are not unmindful of the report of Patwari, being Annex. 6, but then, a close reading of this report dated 25.6.1995 shows, that crops of "narma" and "san" (jute) is cultivated. These two crops are species of Kharif crop, and the date of inspection being 25.6.1995, possibilities are not ruled out about those having been sown recently. In the application (Annex.5), it was pleaded that the present appellant is out and out to obstruct the way, and report (Annex. 6) does not show as to how old the crop is, or since when the alleged way has ceased to exist. It is also significant to note, that it is nowhere shown on the side of the present appellant that till 1995 what was the alternative way, which was being enjoyed by the private respondents to reach to their field, which may have persuaded us to take a different view regarding aspect of Section 13 of the Easements Act.

In other words, rather to put it tersely, the present is the case where despite order Annex. 9 being wholly without jurisdiction, and not supported by any legal authority, if interference is made under Article 226, that would have the effect of bringing about another illegal situation, say restoring illegality thereby depriving the private respondents of easement of necessity, flowing from Section 13 of the Easements Act.

In that view of the matter, though for different reasons, we do not find any sufficient ground to interfere with the order of the learned Single Judge. The appeal has thus no force and is, therefore, dismissed.

(underlining supplied for emphasis)

4. As noticed, the petitioner-appellant even attempted to challenge the aforesaid order before the Hon"ble Supreme Court but the SLP was dismissed. Hence, the order dated 22.01.1996 as passed by the SDO sanctioning the way in question attained finality, essentially for the reason that no alternative way was available to the applicants.

5. After conclusion of the matter in the higher Courts, the applicants Rajbala and others filed an application for execution of the order that had attained finality. The appellant raised an objection against execution but the same was rejected by the order dated 11.06.2010. The appellant, then, preferred a revision petition

and the Board of Revenue, by its order dated 01.09.2010, remanded the matter for decision afresh by a speaking order. Thereafter, the Sub-Divisional Officer, Bhadra, dealing with execution case, passed a detailed and considered order on 16.05.2011 (Annex. 6) rejecting all the objections raised by the appellant. The appellant attempted to challenge this order dated 16.05.2011 before the Board of Revenue in a revision petition that was rejected by an order dated 20.01.2012 (Annex.7)

6. Seeking to question the orders aforesaid, the petitioner-appellant filed the writ petition leading to this appeal. It was contended before the learned Single Judge of this Court that the order dated 22.01.1996, sanctioning the way in question, was ex facie without jurisdiction and the same was not executable. It was also contended that the execution application, filed after a lapse of about 13 years from the date of order, was barred by limitation. It was further submitted that the mother and father of the respondents Nos. 3 to 5 had purchased the land in question during the pendency of the litigation and hence, the respondents were not entitled to the right of way on the basis of the order dated 22.01.1996. The learned Single Judge has rejected the contentions so urged on behalf of the petitioner-appellant and has dismissed the writ petition with the following findings and observations:-

5. Indisputably, the respondent nos. 3 to 5 have filed the application for execution of order dated 22.1.96 as a legal heirs of Shri Jaisa Ram and Vidhya Devi, who were already impleaded as parties to the proceedings before the Board of Revenue and this court and therefore, the right and interest in the property of the decree holder having been transferred to them as a transferee in title, they are entitled to make an application for execution of the order. In this view of the matter, the Board of Revenue has committed no error in rejecting the objection raised in this regard by the petitioner.

6. It is to be noticed that order dated 22.1.96, was appealed against by the petitioner before the Revenue Appellate Authority and thereafter before the Board of Revenue, Rajasthan, Ajmer and thus, the order passed by the SDO stands merged in the order passed by the Board of Revenue in the second appeal. Moreover, against the order passed by the Board of Revenue, the petitioner had preferred the writ petition and thereafter, special appeal before this Court and thus, the order passed by the SDO has attained finality after the decision of this court of the special appeal preferred by the petitioner, vide order dated 15.9.09. In this view of the matter, the execution proceedings cannot be said to be barred by limitation.

7. The order dated 22.1.96 having attained finality, the petitioner cannot question the validity thereof all over again before this court and therefore, the contention raised by the petitioner questioning the validity of the order passed by the SDO which is sought to be executed cannot be entertained and therefore, not required to be dealt with.

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

7. The learned counsel for the petitioner-appellant again attempted to argue on the same lines before us that the order dated 22.01.1996 was wholly without jurisdiction and cannot be executed. It was also submitted that the respondents Nos. 3 to 5 have no locus standi to file the application for execution; and the execution application is even otherwise barred by limitation. We find the submissions as sought to be urged on behalf of the appellant totally bereft of substance; and no merit in this appeal.

8. The contention that the private respondents have no locus standi to file the application for execution remains totally baseless when it is noticed that the private respondents are the heirs of Shri Jaisa Ram and Vidhya Devi, who were indeed impleaded as party-respondents in SAW No. 212/2002 before this Court. The other contention regarding limitation is also meritless when it is noticed that the order dated 22.01.1996 was affirmed in the order dated 13.02.2002 as passed by the Board of Revenue; and when it is further noticed that the dispute remained pending in this Court upto the year 2009 in the aforesaid intra-court appeal; and enforceability of the order dated 22.01.1996 was finally pronounced in the above-referred order dated 15.09.2009. The application for execution, as filed on 04.10.2010, cannot be considered barred by limitation.

9. So far the question if the order dated 22.01.1996 was beyond jurisdiction of the SDO is concerned, this aspect had been considered in detail by the Division Bench of this Court in the order dated 15.09.2009; and, even while not rejecting the contention as urged on behalf of the petitioner-appellant, this Court found that the matter related to the easement of necessity and thus, held that even if without jurisdiction, the order dated 22.01.1996 was required to be maintained because, setting it aside would bring about another illegal situation and deprive the private respondents of easement of necessity.

10. In the face of the detailed and considered order dated 15.09.2009, all the submissions as sought to be urged by the petitioner-appellant could only be said to be wholly baseless and rather lacking in bona fide.

11. After having considered the matter in its totality, we formed a clear opinion that not only this baseless appeal was liable to be dismissed but and further, even coercive orders were required to be passed so as to ensure immediate execution of the order in question because, in our view, it would be rather a travesty of justice if the order that had attained finality upto the Hon"ble Supreme Court be not complied with yet. Upon our making such observations, the learned counsel for the petitioner-appellant prayed for a breather of few moments so as to advise his client properly; and, at request, we granted some time for the purpose.

12. The learned counsel for the appellant has now reverted and submitted before us that the appellant has proceeded to carry out the compliance and has opened the way today itself. We take the submissions as made by the learned counsel on

record.

13. So far the present appeal is concerned, for what has been observed and discussed hereinabove, it has no merit; and is, accordingly, dismissed but while taking the statement as made by the learned counsel for the appellant on record. A copy of this order be sent to the Sub-Divisional Officer, Bhadra.