

(2014) 05 RAJ CK 0269

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 1557 and 1869/2014

Ide Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Citation : (2014) 3 WLN 437

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Kuldeep Mathur, D.S. Sodha and Sandeep Shah, Advocate for the Appellant; P.R. Singh, Additional Advocate General and Dinesh Ojha, Advocate for the Respondent

Final Decision : Dismissed

Judgement

P.K. Lohra, J.—A fierce battle of supremacy is the genesis of these two writ petitions. In the writ petitions, Alluron ki Dhani and Allukhan ki Dhani are pitted against each other by locking horns for construction of a Government Primary School at a particular location. Writ Petition No. 1557 of 2014 is preferred by one Ide Khan for quashing order Dt. 14.01.2014 (Annex. 8) and a further prayer for construction of a School building at Alluron ki Dhani and allocation of appropriate funds for construction of School. For substantiating his case, the petitioner has pleaded in the writ petition that at the threshold in compliance of order passed by Joint Secretary, Elementary Education (Planning), Senior Deputy District Education Officer cum Block Elementary Education Officer, Panchayat Samiti, Sankra, Pokran issued office order Dt. 01.07.2013 for establishment of primary School at Alluron ki Dhani, Jalora Pokarna. After issuance of the said order, the villagers of Alluron ki Dhani convened a meeting and constituted a School Management Committee on 05.07.2013. Pursuant to order Dt. 01.07.2013, one Meer Hasan Sarif, Shiksha Sahyogi was ordered to be posted at Government Primary School, Alluron ki Dhani by order Dt. 04.07.2013 and one Mr. Dhanraj Meena, Teacher Gr. III was also appointed vide order Dt. 11.09.2013.

Subsequently, by order Dt. 16.09.2013, requisite budget for construction of School building was also sanctioned by District Programme Coordinator, Sarva Shiksha Abhiyan, Jaisalmer. However, after sanction of budget, an order was issued by the Sub Divisional Officer, Bhaniyana on 13.01.2014, whereby land for construction of Government Primary School, Allukhan ki Dhani, Jalora Pokarna was allotted. It appears that the aforesaid order was issued by the Sub Divisional Officer Bhaniyana under some bona fide mistake and therefore a corrigendum order was issued on 07.02.2014 clarifying that the said order refers to Alluron ki Dhani and not Allukhan ki Dhani. Petitioner has specifically pleaded that construction of the School building has also commenced. After issuance of show cause notice on behalf of State, Assistant of Addl. Advocate General appeared and prayed for time to file reply. Before filing of reply by the State, on behalf of petitioner, an Addl. Affidavit of the petitioner alongwith a report of Patwari, Village Jalora Pokarna to Tehsildar, Bhaniyana with Jamabandi of the land, wherein it was clarified that the proposed construction is being carried out at the appropriate site where the School was proposed to be constructed, was submitted.

2. In response to show cause notice, on behalf of respondents, affidavit of one Kan Singh Bhati, Addl. District Project Coordinator, Sarva Shiksha Abhiyan, Jaisalmer was submitted. In Para 3 it is clarified that Government Primary School, Alluron ki Dhani was started under the orders Dt. 01.07.2013 and Mr. Meer Hassan, Shiksha Sahyogi has been deputed. It is also clarified in the affidavit that Dhanraj Meena, Teacher Gr. III, has also been posted at Government Primary School, Alluron ki Dhani. The requisite sanction for construction of School at Alluron ki Dhani to the tune of Rupees seven lacs in favour of School Management Committee was also emphasized in the affidavit. In Para 8 of the affidavit, it was made clear that decision for establishment of School at Allukhan ki Dhani was made by the office of Sub Divisional Officer, Bhaniyana, District Jaisalmer for the reason that although one School was existing at Alluron ki Dhani but building for the same was not available.

3. The Second Writ Petition No. 1869 of 2014 is filed by Hussain Khan and others challenging the order Dt. 07.02.2014 (Annex. 6), whereby the Sub Divisional Officer, Bhaniyana has issued a corrigendum that in the earlier order Dt. 13.01.2014 Primary School has wrongly been mentioned and therefore the respondents be directed to construct Government Primary School at Allukhan ki Dhani, Village Jalora Pokarana. The petitioners in the instant writ petition have precisely relied on order Dt. 13.01.2014 issued by Sub Divisional Officer, Bhaniyana, which indicates allotment of land for construction of Government Primary School at Allukhan ki Dhani, Jalora Pokarna. Alongwith the writ petition, petitioners have also filed supporting documents including enquiry report of Addl. Elementary Block Elementary Officer, wherein he has mentioned that in Allukhan ki Dhani 50 families are residing and total number of students for imparting primary education are 60 to 70. Yet another enquiry report of the same officer is submitted wherein it is mentioned that only 20 to 30 families are residing at

Alluron ki Dhani and only 19 students are available for imparting primary education. In response to show cause notice on behalf of respondents, reply to the writ petition is submitted, wherein it is mentioned that requisite orders for establishment of School were in fact issued for Alluron ki Dhani and not for Allukhan ki Dhani. Emphasizing dire need for construction of a Government Primary School at Alluron ki Dhani, it is submitted in the reply that presently the School is running in community hall and therefore a separate building for School is required. The respondents have also clarified that requisite amount has been sanctioned for construction of Government Primary School at Alluron ki Dhani and construction has commenced under the supervision of School Management Committee and presently the construction has already reached to the plinth level and approximately Rupees three lacs have already been spent for the said construction. Thus, in totality, the respondents have categorically refuted the claim of the petitioners and submitted that there was no proposal for establishment of Government Primary School at Allukhan ki Dhani.

4. Mr. Kuldeep Mathur, learned counsel for the petitioner, has submitted that right from inception the proposal was for establishment of Government Primary School at Alluron ki Dhani and therefore order Dt. 14.02.2014 (Annex. 8) whereby construction has been stopped is liable to be quashed and set aside and the reliefs prayed for in the writ petition may be granted to the petitioner. Mr. Mathur has also argued that in view of affidavit submitted by Addl. District Project Coordinator, Sarva Shiksha Abhiyan, Jaisalmer, decks are clear for construction of School at Alluron ki Dhani and therefore the order impugned cannot be sustained.

5. Mr. Sandeep Shah appearing for the petitioners in S.B. Civil Writ Petition No. 1869 of 2014 while espousing the cause of Allukhan ki Dhani has urged that order Dt. 13.01.2014 speak volumes about the fact that proposal was for establishment of a Government Primary School at Allukhan ki Dhani and therefore order Dt. 07.02.2014 (Annex. 6) passed by Sub Divisional Officer, Bhaniyana, is liable to be annulled. Mr. Shah has also argued that numbers of students available at Allukhan ki Dhani are more than Alluron ki Dhani and therefore establishment of School at Alluron ki Dhani would not serve the purpose for establishment of a School. Mr. Shah has also placed reliance on Jamabandi of the land where the proposed construction of School is to be carried out and submitted that it is situated at Allukhan ki Dhani, Jalora Pokarna and therefore the impugned order cannot be sustained.

6. Mr. P.R. Singh, learned Addl. Advocate General, has submitted that the claim of Alluron ki Dhani is genuine and same is clearly borne out from the requisite orders issued by competent authorities from time to time. Joining the issue with Mr. Sandeep Shah, learned counsel for the petitioners, in S.B. Civil Writ Petition No. 1869 of 2014, Mr. Singh, has argued that the petition is prima facie politically motivated and is not genuine. According to learned Addl. Advocate General, prima facie, it is a proxy litigation. Mr. Singh has also submitted that the hue and cry raised by the petitioners in this petition is without any substance because the

proposed building of School is constructed at the site which was originally located and the Jamabandi for the land is also clear and explicit; there is no deviation from the initial order whereby the land for construction of Government Primary School was earmarked and requisite amount was sanctioned. With these submissions, learned Additional Advocate General has urged that writ petition filed by Hussain Khan and others merits dismissal.

7. I have heard learned counsel for the parties and perused the materials available on record.

8. On perusal of the materials available on record, there remains no quarrel that at the threshold decision was taken for establishment of Government Primary School at Alluron ki Dhani and pursuant thereto requisite amount for construction of the School has also been sanctioned. That apart, posting of one Shiksha Sahyogi and one Teacher Gr. III at Government Primary School, Alluron ki Dhani makes it crystal clear that there was no proposal for establishment of Government Primary School at Allukhan ki Dhani. The entire edifice of so called grievance of petitioner Hussain Khan and others in S.B. Civil Writ Petition No. 1869 of 2014 rests on order Dt. 13.01.2014 issued by the Sub Divisional Officer, Bhaniyana. The authority, who has passed the said order, has himself clarified the decision by issuing corrigendum that the order has been issued due to bona fide mistake for Government Primary School Allukhan ki Dhani and in fact the said order was made for proposed building of Government Primary School, Alluron ki Dhani. Besides the documents, which are available on record in both the petitions, the respondents have also clarified the position that at no point of time there was a proposal for establishment of a Government Primary School at Allukhan ki Dhani. The fact that construction has also commenced at the site and substantial amount has been spent for construction of the School are some of the relevant factors which deserve cognizance tilting equity in favour of Alluron ki Dhani. Establishment of a School at a particular place is the sole prerogative of the State and the competent authority, which cannot be made subject matter of judicial scrutiny unless and until it is shown that decision is not based on objective considerations. The umpteen materials available on record, speak volumes about the fact that a conscious decision was taken for establishment of Government Primary School, Alluron ki Dhani, and it was only under the bona fide mistake that order Dt. 14.01.2014 was passed wherein Government Primary School, Allukhan ki Dhani was mentioned. This bona fide mistake was rectified by the competent authority by issuing corrigendum. This trivial issue cannot be allowed to be blown out of proportion by the residents of Allukhan ki Dhani. As a matter of fact, Hussain Khan and others, residents of Allukhan ki Dhani, solely on the basis of order Dt. 14.01.2014 have made an abortive attempt to make mountain out of mole hill without any foundation whatsoever. The clear stand of the respondents, that no proposal was ever mooted or materialized for construction of Government Primary School, Allukhan ki Dhani, is sufficient to persuade this Court that no indulgence can be granted to the petitioners in S.B. Civil Writ Petition No. 1869 of 2014 for upsetting the order Dt. 07.02.2014, which

is in the form of corrigendum of order Dt. 14.01.2014. So far as Writ Petition No. 1557 of 2014 by Ide Khan, espousing cause of Alluron ki Dhani is concerned, the same is based on substantial proof for establishment of School i.e. Government Primary School, Alluron ki Dhani and the respondents have also fully concurred with the grievance of the writ petitioner. Thus, in these circumstances, there is apparently no reason to halt the construction of Government Primary School, Alluron ki Dhani, which has commenced with legitimately. Resultantly, Writ Petition No. 1557 of 2014 filed by Ide Khan is allowed and impugned order Dt. 14.02.2014 (Annex. 8) is quashed and set aside and School Management Committee is allowed to carry out construction of School. The Writ Petition No. 1869 of 2014 filed by Hussain Khan and others for espousing cause of the residents of Allukhan ki Dhani sans merit and same is accordingly dismissed.