
(2002) 04 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Special Appeal No. 948 of 1999

Kesar Kanwar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 4 WLC 30 : (2002) 4 WLN 460

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. This case has a very chequered history. The writ petition No. 1840/87 was filed by the present appellant, challenging the order passed by Dy. Collector, Udaipur on 20.7.1987 and mutation proceedings, holding the petitioner-appellant to be trespasser on the land in question which is identified as 2 Bigha 3 Biswa of Khasra No. 448/2.

3. The writ petition was admitted by the Division Bench of this Court on 28.7.1987 and an interim order was passed for maintaining the status quo in regard to the construction in dispute, so also it was directed to the respondents that no portion or the boundaries thereof shall be demolished and the petitioner shall not be dispossessed from the land in question, till next date.

4. It appears that during this period certain part of the construction over the land in question was demolished by the respondents. The reply to the writ petition was filed and after hearing both the parties, the interim order was continued by permitting the petitioner-appellant to restore the boundary wall and swimming pool demolished by the respondents on filing an undertaking to the extent that he would demolish the portion so restored at his own cost, if the petition fails and the matter came up for hearing after about 12 years.

5. The writ petition was dismissed on the ground of availability of alternative remedy by the learned Single Judge by holding that the petitioner is relegated to the remedy of appeal in accordance with the law. The facts and circumstances in which this matter has reached this Court were not taken into consideration by the learned Single Judge while dismissing the petition on the ground of availability of alternative remedy after the matter was pended for hearing for more than 12 years.

6. In the aforesaid context, it is necessary for us to scan the facts which are not in dispute and which led to this litigation.

7. The land in question is recorded in the land records as Government land. In the first instance, the appellants were subjected to proceedings u/s 91 of the Rajasthan Land Revenue Act for ejectment inter alia on the ground that land being Government land the petitioner-appellants are trespasser over it. As noticed by us, the land in question is 2 Bigha and 3 Biswa in Khasra No. 448/2. By order dated 21.2.1968, the Tehsildar found the appellant to be trespasser and ordered for eviction. On appeal, the Addl. Collector vide his order dated 22.3.1969 by taking into consideration the contention raised on behalf of the appellants that the land in question was granted by former Ruler of erstwhile State of Mewar in respect of which Adadi Patta was also issued about which documents have been placed on record as Annexure Ex./1 and Ex.2, the petitioner appellant was in lawful possession of the land in question and therefore, proceedings u/s 91 of the Rajasthan Land Revenue Act were dropped and the order passed by the Tehsildar dated 21.2.1968 was set aside.

8. Again after expiry of about 14 years, proceedings u/s 91 of the Rajasthan Land Revenue Act were repeated against the petitioner by the Tehsildar and he was ordered to be evicted vide order dated 12.12.1983 (Ex./6). This order was also subjected to appeal. The Appellate Authority vide its order dated 19.11.1984 again came to the same conclusion as has been reached by the Additional Collector (Ex/5) and set aside the order dated 12.12.1983 passed by the Tehsildar. While, allowing the appeal, the appellant was further directed to make an appropriate application before the competent officer for making correct entries in the land records by mutation.

9. In compliance of the said direction given by the Appellate Authority, an application was made before the Assistant Settlement Officer, Udaipur for making necessary alteration in the land records. The petitioner has claimed title on the land on the basis of the Patta, Ex./1 and Ex./2. Since, the settlement proceedings were completed, the pending proceedings were transferred to the court of Collector, Udaipur who by his order dated 20.7.1987 held that the land in question namely Khasra No. 448/2 is part of Fateh Sagar and the applicant is trespasser. The application for mutation was rejected and the copy of the order was sent to the Tehsildar for necessary action in accordance with the law. Thus, on the basis of the findings of the Sub-Divisional Officer, Udaipur recorded in the order dated 20.7.1987, the Tehsildar once again started proceedings u/s 91 of

the Rajasthan Land Revenue Act for evicting the petitioner-appellant from the land in question. The summary proceedings recorded earlier was that the petitioner's possession was not unlawful.

10. In the aforesaid circumstances, the petitioner has challenged the order of the Sub-Divisional Officer, declaring the petitioner to be trespasser in the mutation proceedings. The petitioner preferred the petition directly under Article 226 of the Constitution of India for challenging the order passed by the Sub-Divisional Officer dated 20.7.1987 (Ex./8) as well as proceedings u/s 91 of the Rajasthan Land Revenue Act which has been started against him for ejectment.

11. With this background, this petition was admitted by the Division Bench of this Court and an interim order for maintaining the status quo was also passed and the order was confirmed also after hearing the respondents as noted above.

12. In these circumstances, we are of the opinion that the learned Single Judge before whom the matter came for final hearing was not justified in dismissing the writ petition solely on the ground of availability of alternative remedy at this distance of time without applying his mind on this aspect that the petitioner is being subjected to the summary proceedings u/s 91 of the Rajasthan Land Revenue Act in respect of which he has been found to be in lawful possession twice and determination of dispute has not been made by any competent Court through a regular trial.

13. The State is claiming himself to be a land holder whereas the appellant-petitioner is claiming to be holding the title over the land granted to him by erstwhile State of Mewar through Abadi Patta.

14. The Supreme Court in the case of *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, has held that in the matter arising out of the income tax proceedings, that the High Court would not be justified in dismissing the writ petition as not maintainable, because of the availability of alternative remedy, which was entertained and heard on merits.

15. In yet another case in *Dhampur Sugar Mills Ltd. v. Union of India*, reported in 2000 (122) E.L.T. 333 (S.C.) the Apex Court did not countenance the rejection of a writ petition by the High Court after it was pending for seven years before it only on the ground of availability of alternative remedy. The Apex Court said that the petition had been pending for seven years and it does seem a little harsh to relegate the appellant after seven years to the alternate remedy. The aforesaid matter arose from the proceedings under Central Excises and Salt Act.

16. The same view was again expressed by the Supreme Court in the case of *Somani Steels Ltd. and Anr. v. Collector of Central Excise and Ors.* reported in 2001 (127) P.L.R. 295 wherein the writ petition was dismissed solely on the ground of availability of the alternative remedy after the same was admitted and kept pending for eight years. The Court said that dismissal of writ petition after eight years on the ground of alternative remedy, would not be proper exercise of

jurisdiction.

17. In these circumstances, we are of the opinion that the learned Single Judge was not justified in rejecting the writ petition by the order under appeal after it was pended in the High Court for 12 years in which in the first instance, ex-parte interim order was passed and after hearing both the sides, the interim order was not only confirmed but petitioner was given liberty to restore demolished construction. Such mandatory relief at interim stage would not have been granted without application of mind to facts and merits at that stage. The learned Single Judge was not justified in ignoring all the circumstances appearing from record and in dismissing the writ petition without examining the merit of the case, solely on the ground of availability of alternative remedy at this distance of time.

18. In the aforesaid circumstances, two courses are open to us, firstly, either to relegate the petitioner-appellant before the Single Bench of this Court for deciding the writ petition on merit or looking to fact that the litigation is of such a long duration in which the petitioner-appellant is sought to be evicted in summary manner by successive proceedings, we proceed to, decide the appeal on the merits of the case as agreed by both the learned Counsel after hearing both the parties and after examining the material which has been placed on record.

19. After hearing both the parties and examining the material which has been placed before us, we are of the opinion that since the issue involved in this case is directly governed by the decision of the Supreme Court, so far as the present controversy is concerned, it would be appropriate to give a quietus to this litigation.

20. It is not in dispute before us that in the proceedings initiated u/s 91 and 136 of the Rajasthan Land Revenue Act for eviction and making correction in the land records are both summary in nature and rights of the parties can be decided where there is any bonafide dispute about the sale. Right from the beginning, the petitioner is claiming his possession over the land in question through the Abadi Patta issued from the erstwhile State of Mewar vide Ex./1 and Ex/2 and his claim has been found to be justified in two successive proceedings u/s 91 by the Land Revenue Authority. The petitioner-appellant has approached the Settlement Officer for the purpose of making correction in the land records only in pursuance of the direction issued by the Appellate Authority. The petitioner-appellant placed two documents before the mutation authority for the purpose of making alternation. The Sub-Divisional Officer, Udaipur was not only an Appellate Authority but was also an officer of the State, he obviously could not have in summary proceedings brushed aside the findings recorded earlier by two authorities in favour of the petitioner-appellant by finding him not to be trespasser but in lawful possession of the land in another summary proceedings.

21. u/s 91 of the Rajasthan Land Revenue Act, the question of title could not

have been determined earlier. So also in the proceedings u/s 136, question of title could not have been determined finally so as to issue direction for evicting the person from land on that basis. At best if the mutation authority did not agree with finding recorded by authority in proceedings u/s 91, it could only refer to make alteration in record and let the parties to get their rights declared in regular suit and the consequences of binding result. In fact as a result of the order passed by the Sub-Divisional Officer dated 20.7.1987, the proceedings for evicting the petitioner-appellant from the land in question by taking that finding binding, could not have been started ignoring two earlier proceedings in which Superior Authority namely Appellate Authority has successively found the petitioner in lawful possession. Without getting rid of such finding in proper proceedings, it was not open for the same authority to take successive proceedings on the same material. Such a consequence also was refused to be determined in a proceedings which could decide the issues finally to bind the parties. Obviously could not be intended for the proceedings provided for alteration in land records.

22. True it is that the State is not a tenant, therefore, a suit for declaration of tenancy would not be filed by the State. But there is no prohibition to file a suit for possession on the basis of title and no title....It is a clear case where the authorities of the State is harassing a person solely on the basis of the entries in the land records which are not document of title, nor conclusive part of title. They can be shown to be wrong.

23. Even if it be held that the State Government ought not to be required to file the suit then too, in our opinion the Collector in proceedings u/s 136 has only authority to refuse to alter the entry but his authority does not extend to declaring the petitioner-appellant a trespasser to the land in question and direct the Tehsildar to proceed. The fact that the two authorities at two different time have found the claim of the petitioner to be prima facie established from two documents, goes to show bonafide determination of title between the State and the petitioner-appellant about the legitimacy of the petitioner to remain in possession of the land in question. The question involved applicability and interpretation of the different laws as was applicable to the Mewar State and substituted by the laws made by the State of Rajasthan after independence and documents to be investigated for the title over the land in question u/s 91 of the Rajasthan Land Revenue Act. Section 91 of the Rajasthan Land Revenue Act is certainly not the provision which authorise Tehsildar to hold a person trespasser and evict him only on the basis of same evidence on two occasions. The Appellate Authority has found the possession of petitioner to be lawful. Such findings could not be ignored to take successive resort to summary proceedings.

24. The Supreme Court in the case of State of Rajasthan v. Smt Padmavati Devi (dead) by LRs. and Ors. reported in 1995 DNJ (SC) 208 had an occasion to examine the scope of the Rajasthan Land Revenue Act. The Court said that Section 91 of the Act prescribes a summary procedure for eviction of a person

who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bonafide dispute about his right to remain in occupation over the land....The provisions resorted to by the Government only against persons who are in unauthorised occupation of any land which is the property of the Government and if the person in occupation has a bonafide claim to litigate he could not be ejected save by the due process of law and that the summary remedy prescribed under Land Revenue Act was not the kind of legal process which is suited to an adjudication of complicated questions of title.

25. In coming to this conclusion, the Court referred to its earlier decision in the case of Government of Andhra Pradesh Vs. Thummala Krishna Rao and Another, It was a case arising under the Andhra Pradesh Land Encroachment Act, 1945 and had a parallel provisions in Section 6 as Section 91 of the Rajasthan Land Revenue Act.

26. In view of the circumstances as noticed above, we are satisfied that the petitioner-appellant had put forward a bonafide claim about his right to remain in possession over the land in question, investigation into which involves applicability and" interpretation of various laws and documents and as well as investigation into disputed questions of fact involving recording of evidence, therefore, the matter could not be adjudicated in summary proceedings under Sections 91 and 136 of the Rajasthan Land Revenue Act and cannot be evicted by resorting to summary proceedings u/s 91 of the Rajasthan Land Revenue Act.

27. In view of that, the findings recorded by the Dy. Collector, Udaipur vide his order dated 20.7.1987 (Ex./8) that the petitioner-appellant is a trespasser over the land in question and does not remain in possession thereof and directed the Tehsildar to take appropriate action thereof or to U.I.T. for taking action in respect of their land has to be set aside.

28. As a result, this appeal is allowed. Judgment under appeal is set aside. The writ petition is disposed of as above and the impugned order passed by the Dy. Collector, Udaipur dated 20.7.1987 (Ex./8) is set aside. So also proceedings initiated u/s 91 of the Rajasthan Land Revenue Act in pursuance thereof are quashed. It will be open for the parties to pursue appropriate remedy before appropriate forum for establishing their respective right over the land in question and to take the consequences thereof. There shall be no orders as to the costs.