

(2023) 01 RAJ CK 0112

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 13973 Of 2022

Kumbha And Others

APPELLANT

Vs

Bhagirath Ram And Others

RESPONDENT

Date of Decision : 25-01-2023

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 251A
Land Revenue Act, 1996 — Section 91

Citation : (2023) 01 RAJ CK 0112

Hon'ble Judges : Vinit Kumar Mathur, J

Bench : Single Bench

Advocate : Deelip Kawadia, Deepak Nehra, R. D. Bhadu

Final Decision : Disposed Of

Judgement

Vinit Kumar Mathur, J

Heard learned counsel for the parties.

Though the matter is listed in the 'orders' category, however, with the consent of learned counsel for the parties, the writ petition is being taken up for final disposal.

The present writ petition has been filed with the following prayers:-

"A. by an appropriate writ, order of direction, the notice dated 26.08.2022 (annexure-7) issued by the learned Trhsildar u/s 91 of the LR Act, may kindly be quashed and set aside.

B. the learned BOR may kindly be directed to pass appropriate order on pending stay petition filed by the petitioner along with the Revision Petition.

C. That till disposal of the stay petition in pending Revision petition, the notice dated 26.08.2022 may kindly ordered to be kept in abeyance."

Brief facts of the case are that the petitioners are having an agricultural field in

Village Sou, Tehsil Tinwri, District Jodhpur. The respondents preferred an application under Section 251-A of the Rajasthan Tenancy Act before the Sub Divisional Officer for grant of way. The application so preferred by the respondents has been allowed by the Assistant Collector-cum-Sub Divisional Officer, Osian vide order dated 20.07.2022.

Against the order dated 20.07.2022, the petitioners preferred an appeal before the Revenue Appellate Authority and the Revenue Appellate Authority has issued notices to the respondents, however, no order has been passed on the stay application and it has been ordered that without hearing the respondents and without the perusal of the record, the interim order cannot be granted in favour of the petitioners. Aggrieved= against the order passed by the Revenue Appellate Authority, the petitioners preferred a revision petition before the Board of Revenue which was rejected by the Board of Revenue vide its order dated 23.10.2022. Hence this writ petition.

Learned counsel for the petitioners submits that the stay application of the petitioners is still pending before the Revenue Appellate Authority and the respondents are pressing hard for constructing the way in pursuance of the order dated 20.07.2022, and if the order dated 20.07.2022 is implemented by construction of the way, then the appeal of the petitioners will be rendered infructuous. He, therefore, prays that the Revenue Appellate Authority may be directed to decide the appeal itself and if it is not possible, then at least stay application of the petitioners may be decided within a stipulated period of time and till the decision of the stay application, the order dated 20.07.2022 may not be given effect to.

Learned counsel for the respondents are not in a position to controvert the reasonable submission made by the learned counsel for the petitioners.

In view of the submissions made before this Court, the present writ petition is disposed of with a direction to the Revenue Appellate Authority, Jodhpur to decide the pending appeal of the petitioner within a period of four weeks from today and if it is not possible to decide the appeal itself, then the Revenue Appellate Authority shall decide at least the stay application of the petitioner within a period of four weeks from the date of receipt of the certified copy of this order strictly in accordance with law.

It is made clear that till the stay application of the petitioners is decided by the Revenue Appellate Authority, the respondents shall not give effect to the order dated 20.07.2022.

Stay petition as well as other pending application, if any, shall stand disposed of accordingly.