
(2009) 08 RAJ CK 0058
In the Rajasthan High Court

Leela Kunwar (Smt.)

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 03-08-2009

Acts Referred:

Citation : (2009) 3 WLN 472

Hon'ble Judges : N.P. Gupta, J; Govind Mathur, J

Bench : Division Bench

Judgement

N.P. Gupta, J.—These two appeals have been filed against two different orders of the learned Single Judge in two different writ petitions on two different dates, but then the two matters are closely interlinked, and therefore, they are being decided by this common order.

2. Appeal No. 246 arises out of the order passed by learned Single Judge on 16.12.2008 in the writ petition of Babu Singh being S.B.Civil Writ Petition No. 7320/08, noticing that according to learned Counsel for the petitioner (Babu Singh) after passing of the order of the learned Collector, certain proceedings were initiated, but it is not finalised till today. In that view of the matter, the Gram Panchayat was directed to decide the matter as per direction issued by learned Collector, within a period of two months from that date, and also directed that possession of the writ petition (Babu Singh) shall not be disturbed. In the appeal it is alleged that, that statement was wrongly made, inasmuch as, the matter had already been decided by the Gram Panchayat in the meeting dt. 21.07.2006.

3. We find from the writ petition that the Collector had passed the order on 18.04.2006 while according to the synopsis attached to the writ, in pursuance thereof the Committee was constituted by the Panchayat for site inspection and preparation of factual report on 06.07.2006, though in this regard, we do not find any factual averment in the writ petition. Be that as it may.

4. In the appeal it is contended that after 06.07.2006, the Gram Panchayat vide

resolution dt. 21.07.2006 had already set aside the patta granted in favour of Teejo wife of Poona Ram Sargara. It is also contended that Babu Singh has also filed a regular civil suit for perpetual injunction against Mohan Singh, another Babu Singh and Bhanwar Singh, all sons of Narayan Singh and vide judgment dt. 20.12.2008, that suit had been dismissed, inter-alia with recording a positive finding, that the plaintiff is not established to be in possession, while the possession over the land in question of the defendant is established.

5. Before us it was not disputed by learned Counsel for the private respondent that this judgment of the learned trial Court (Civil Judge, Desuri) has become final as it has not been challenged any further. It was however, sought to be contended that the Gram Panchayat vide resolution dt. 21.07.2006, had only appointed a Committee but had not cancelled the patta.

6. We have gone through the resolution dt. 21.07.2006 so also the resolution dt. 06.07.2006, and find that vide resolution dt. 06.07.2006, Committee was constituted, and accordingly a report was submitted by Pokar Singh-Ward Panch, Narayan Singh-Up-Sarpanch, Roopa Ram-Ward Panch, and Smt. Pushpa Devi-Ward Panch, and after considering that report, and the statement of the witnesses recorded, it was found by the Gram Panchayat, that as on the date, Leela Kanwar is in possession of the land, having purchased it from Choga Ram son of Kesaji Sargara, who has already been granted permission to raise construction also, and is having electricity connection as well. Accordingly, in compliance of the order of the Additional Collector dt. 18.04.2006, the Gram Panchayat unanimously resolved to cancel the patta No. 184 and file was disposed.

7. This sequence of events puts an end to the claim and patta of Teejo, and the person claiming through him being Babu Singh son of Guman Singh. That being the position, we find that there was no justification for remanding the matter to the Gram Panchayat for taking fresh decision, as the matter had already acquired finality. Consequently, the order dt. 16.12.2008 passed in Writ No. 7320/2008 being subject matter of Appeal No. 246/09 is set aside, and the writ petition stands dismissed.

8. So far as Appeal No. 245 is concerned, that arises out of Writ No. 7224/2008, which was also filed by Babu Singh son of Guman Singh for challenging the patta of Choga Ram and impleading Leela Kanwar, purchaser, as party. In that writ, the order of the learned Additional Collector upholding the patta of Choga Ram was assailed, and it has been found by learned Single Judge that the proceedings taken by the Panchayat are not in accordance with law, inasmuch as, the application filed by Choga Ram for patta, being Annex. 5 is of the year 1990, while the patta was issued on 12.04.1999, while Annex. 6 the copies of the order-sheets of the Gram Panchayat show, that it does not bear signature of the Sarpanch on the first order-sheet, nor does it bear any date, and thereafter, the proceedings were resumed after 9 years on 15.02.1999 only, and patta has been granted, which cannot be sustained.

9. After perusing Annexs. 5 and 6 together, we do not find any error in the observations made by the learned Single Judge, about the irregularity in the matter of grant of patta, and therefore, no interference is required to be made in that part of the order of the learned Single Judge.

10. However, the fact remains that application was filed by Choga Ram on 20.01.1990 requesting for grant of patta with respect to the old house, and as appears from the subsequent order-sheets of the Gram Panchayat contained in Annex. 6, evidence was recorded and site was inspected, and the Panchayat purportedly came to the conclusion, that the applicant has ancestral house, which is more than 50 years old. This coupled with the fact that in the regular civil suit filed by Babu Singh, learned trial Court being Civil Judge, Desuri had found the husband of the present appellant and the husband's brothers to be in possession of the land in question, and to be having electricity connections also, in these circumstances, leaving the matter at that only, is likely to work grave hardship, and at the same time, the patta, which has not been granted in accordance with law can also not be maintained.

11. Keeping in view these circumstances, we think it appropriate, while dismissing the appeal, to direct, that it will be open to the appellant to revive the request made by Choga Ram vide Annex. 5 before the Gram Panchayat, and if the appropriate circumstances are made out, the Gram Panchayat will decide the request afresh, in accordance with law, and at the earliest.

12. Accordingly, the Appeal No. 246 is dismissed, while Appeal No. 245 is dismissed with the direction contained in above para.