(2010) 11 RAJ CK 0180

In the Rajasthan High Court

Case No : Civil Writ Petition No. 15151 of 2010

Madan Lal APPELLANT

Vs

Banwari and Others RESPONDENT

Date of Decision : 15-11-2010

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan Tenancy Act, 1955 — Section 212, 5(24)

Citation : (2011) 6 RCR(Civil) 2708 : (2011) 2 RLW 1700

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mahesh Chandra Sharma, J.—The Petitioner has filed this writ petition under Articles 226 and 227 of the Constitution of India against the judgment dated 28.10.2010 of the Board of Revenue passed in the Revision Petition No. 6935/2000 Banwari Lal and Ors. v. Madan Lal and another whereby the judgment dated 31.8.2009 passed by the Revenue Appellate Authority Sikar in appeal No. 99 of 2008 filed by Madan Lal against Banwari Lal and Ors. (Petitioners herein) was set aside. The Revenue Appellate Authority Sikar by the judgment dated 31.8.2009 allowed the appeal and quashed the order dated 18.8.2008 of the Assistant Collector Khandela. The prayer of the Petitioner in the writ petition is as under:

(i) issue an appropriate writ, order or direction in the nature thereof thereby the judgment dated 28.10.2010 passed by the Board of Revenue Rajasthan Ajmer in Revision I.D. No. 6935/2009/TA/Sikar (Banwari Lal and Ors. v. Madan Lal and Anr.) may kindly be quashed and set aside.

(ii) Issue an appropriate writ, order or direction in the nature thereof thereby the judgment dated 18.8.2008 passed by Assistant Collector Khandela, Distt. Sikar in case No. 14/2008 (Madan Lal v. Banwari Lal and others) may kindly be quashed and set aside.

(iii) Issue an appropriate writ, order or direction in the nature thereof thereby by the judgment dated 31.8.2009 passed by the Land Acquisition Officer and Revenue Appellate Court, District Sikar in Appeal No. 99/2008 (Madan Lal v. Banwari Lal and Ors.) may kindly be maintained.

2. Brief facts of the case are that the Petitioner-Plaintiff filed a revenue suit along with temporary injunction application with the pleadings that Khasra No. 194, 195, 196, 243, 193, 242, 244, 245, 246, 247, 248, 249, 250, 241 are situated in village Dhalyawas. These agricultural land has been cultivated by both the parties according to their partition. Petitioner is cultivating Khasra No. 241 and 248. For cultivating these lands there is a combined well and pump set in Khasra No. 194 and all the lands are inter connected with grounded pipe lines through which water is running to all these fields. It was pleaded in the suit that on 8.1.2008 non-Petitioners 1 to 4 threatened that they will remove the pipes from the well. The Petitioner filed a revenue suit and a temporary injunction application against the non-Petitioners before the Assistant Collector Khandela. The non-Petitioners filed reply to the temporary injunction application. After hearing arguments the Assistant Collector Khandela rejected the temporary injunction application by his order dated 18.8.2008. Thereafter the Petitioner moved an appeal against the said order of the Assistant Collector before the Revenue Appellate Authority Sikar. Same was allowed by the order dated 31.8.2009. Against the said order dated 31.8.2009 the non-Petitioners filed a revision petition before the Board of Revenue. The Board of Revenue vide order dated 28.10.2010 allowed the revision petition and quashed the order dated 31.8.2009 of the Revenue Appellate Authority and rejected the temporary injunction application. Against this order of the Board of Revenue this writ petition has been filed.

3. It is stated by the learned Counsel for the Petitioner that the Petitioner and the non-Petitioners are cultivating the lands from the well situated in Khasra 194. The well and the pump set provided are combined and the lands are interconnected with ground pipe lines through which water is running to all fields. The non-Petitioners threatened to remove the pipes and hence the Petitioner filed the civil suit and temporary injunction application. The order of the Assistant Collector Khandela rejecting the temporary injunction is liable to be set aside and the same was rightly set aside by the Revenue Appellate Authority by the order dated 31.8.2009. The Board of Revenue wrongly allowed the revision petition. The learned Counsel for the Petitioner drawn attention of this Court on the definition of "land" provided in Sub-section (24) of Section 5 of the Rajasthan Tenancy Act, 1955 wherein it has been provided that "land" shall mean land which is let or held for agricultural purposes or for purposes of subservient thereto or as grove land or for pasturage, including land occupied by houses or enclosures situated on a holding, or land covered with water which may be used for the purpose of irrigation or growing singhara or other similar produce but excluding abaddi land; it shall include benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth.

4. Mr. Anoop Dhand, learned Counsel for the Respondents contended that the Petitioner concealed the fact before the Revenue Court that he has also filed a civil suit for permanent injunction and a temporary injunction application before the Civil Judge Srimadhopur. The injunction application was rejected, and the suit is pending. In these circumstances it is a case of concealment of fact and the writ petition is liable to be rejected on this ground along. Before the Revenue Board these facts were brought to the notice and hence the Board of Revenue allowed the revision petition and set aside the order of the Revenue Appellate Authority dated 31.8.2009. The Petitioner did not approach this Court with clean hands that he lost the case before the Civil Court and thereafter he moved application u/s 212 of the Rajasthan Tenancy Act, 1955. In this manner he concealed the fact before the Revenue Court and in the Revenue Appellate Authority and it was discovered only before the Board of Revenue that the Petitioner filed a civil suit before the Civil Judge and the same was rejected. The Board of Revenue rightly allowed the revision and set aside the order of the Revenue Appellate Authority. In my view there is no error involved in the order passed by the Board of Revenue, which requires interference under Article 226 and 227 of the Constitution of India. The writ petition being devoid of merit stands rejected. The parties are left to bear their own costs.

