
(1996) 01 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2203 of 1985

Mahaveer Prasad

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1996) 3 RLW 138 : (1996) 3 WLC 595 : (1996) 1 WLN 593

Hon'ble Judges : N.C. Kochhar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.C. Kochhar, J.—On an application having been moved by the petitioner under Rule 256 of the Rajasthan Panchayat (General) Rules, 1961 (the Rules), the respondent No. 2 sold to him the land in dispute and issued a Patta (Annex. 2) in respect thereof in his favour. The respondents No. 3 to 7 challenged the said sale by moving an application/revision under Rule 272 of the Rules. The learned Additional Collector, Sikar (who has not been impleaded as a party in this writ petition), after hearing the learned counsel for the parties, has, vide the impugned order dated 3.12.1985 (Annex. 3), quashed the sale and the patta on the ground that the sale was not in accordance with the rules, and was bad. Feeling aggrieved, the petitioner has approached this court by filing this writ petition under Articles 226 and 227 of the Constitution of India.

2. I have heard the learned counsel for the parties.

3. The first contention raised by the learned counsel for the petitioner is that along with the application/revision filed by the respondent No. 3 to 7 they had not attached the certified copy of the resolution of the respondent No. 2 and of the Patta issued in favour of the petitioner and, as such, the Additional Collector ought to have dismissed the application/revision on that short ground and had no power to go into the matter on merits.

4. Rule 272, which deals with the revision, reads as under-

272. Revision-(1) The State Government or any officer or authority to whom the powers of the State Government u/s 27-A may have been delegated by notification u/s 70, on its or his own motion or on an application made in behalf, may for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any order passed by the Panchayat or the Panchayat Samiti or the Collector (or the Revenue Appellate Authority), under Rule 265 (or Rule 266 or Rule 267 or Rule 268) or on appeal under Rule 270, called for the connected records and may, in doing so, direct that, pending the examination of the records, such order shall be held in abeyance:

Provided that the power conferred by this Sub-rule shall not be exercised while an order under Rule 265 (rule 266 or Rule 267 or Rule 268) has been appealed from under Rule 270 and such appeal is pending.

(2) After examining the records, the State Government or such officer or authority, as the case may be, may reverse, alter or modify the order of Panchayat, Panchayat Samiti, Collector or (Revenue Appellate Authority).

5. The bare reading of the above said provision shows that the State Government or officer or authority to whom the power has been delegated can examine the record not only on an application having been moved, before him but also on his or its own motion for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any order passed by the Panchayat Samiti and is empowered to reverse, alter or modify the order under consideration. Once the illegality, incorrectness or impropriety is brought to the notice of the authority concerned, it is not powerless to examine the record for the purpose of dealing with the matter. This contention is, therefore, without any force and is rejected.

6. The learned counsel for the petitioner has also challenged the impugned order on merits and has contended that he having filed an application and having been sold the land in dispute cannot be made to suffer for the fault of the respondent No. 2.

7. Rules 255 to 271 of the Rules deal with the sale of Abadi land. Bare perusal of these rules show that if an application is moved by a person desirous of purchasing an Abadi land from the Panchayat such application has to be entered in a register prescribed for that purpose and a file of the case has to be opened by the Panchayat who has to get prepared a plan of the land in question and in a resolution three persons have to be nominated for local inspection of the site for considering the factors mentioned in Rule 258 of the Rules and, thereafter, a provisional decision has to be taken in a meeting of the Panchayat and if it is provisionally decided to sell the land in dispute, a public notice in the prescribed form has to be issued inviting objections to the proposed sale in accordance with the procedure prescribed under Sub-rule (2) of Section 260 of the Rules and the objections, if any, have to be disposed of by the Panchayat after hearing the

parties concerned by giving them reasonable opportunity and if the objections are dismissed, the Panchayat shall order by a resolution of the auction of the land proposed to be sold on a date not earlier than one month from the date of the resolution and at the time and place to be specified and only in cases mentioned in Rule 266 of the Rules the land can be sold by private negotiation.

8. The learned Additional Collector has held that not only the application moved by the petitioner was not entered in the prescribed register but even the record did not have the resolution of the Panchayat taking provisional decision for sale of the land in dispute to the petitioner and even the register in which the Patta issued to the petitioner has been entered had cuttings causing suspicion about the transaction and further that the karyavaahi" of receipt of application, deposit of fee, order for inspection etc. had been in a hasty manner and even the public notice had not been issued in accordance with the rules. Considering all these factors and in view of the above said findings of fact, the learned Additional Collector has set aside the sale and has quashed the Patta by passing the impugned order. The said findings of fact are not stated to be perverse and are thus not open to challenge in this writ proceedings. It has not been disputed before me that the land in dispute was "Nazul land" and could be sold by the Panchayat only in accordance with the rules prescribed therefore and, if any, violation thereof has been made by the Panchayat, the authority concerned had the power to cancel the sale. In the present case, the petitioner obtained the Patta in violation of the prescribed rules and the sale having been cancelled and the Patta having been quashed, the petitioner cannot be heard to say that he having taken the benefit of illegal transaction cannot be made to suffer. This contention is also, therefore, without any force and is rejected.

9. No other point has been raised before me.

10. This writ petition is without any merit and is dismissed with costs.