

(1996) 10 RAJ CK 0002
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4241 of 1990

Mahendra Udyog

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-10-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1996) 3 RLW 274 : (1997) 1 WLC 711 : (1996) 2 WLN 411

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Instant writ petition has been filed for issuing a writ of prohibition prohibiting the respondents from dispossessing the petitioner from Khasra No. 506 situated in village Kanod, Tehsil and District Jaisalmer measuring 10 Bighas, which is under his occupation and possession.

2. Indisputably, the petitioner has been dispossessed from the plot in question vide order dated 25.9.89 Ex.R/4 to the reply passed by Naib Tehsildar, Jaisalmer in Suit No. 20 of 1989 in exercise of his power u/s 91 of the Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956").

3. It is admitted by the learned Counsel for the petitioner Mr. S.S. Purohit that irrespective of full knowledge of ejectment order dated 25.9.89, no appeal or revision has been preferred against the ejectment order, therefore, the said order had attained finality.

4. Law relating to issue a writ of prohibition now must be taken to be settled that such writs can be issued to Sub-ordinate Courts or Tribunals forbidding them from continuing with judicial or quasi-judicial proceedings on the ground that pendency of proceedings before them are either without jurisdiction or in excess of their jurisdiction or contrary to the laws of the land. Avowed object of writ of prohibition is to restrain the Courts or Tribunals from exercising a jurisdiction

which they do not possess or to prevent them from exceeding the limits of their jurisdiction.

5. It is also well to remember that before issuing a writ of prohibition under Article 226 of the Constitution of India, the Court is required to be objectively satisfied about absence of jurisdiction or about excess of jurisdiction together with total absence of alternative remedy. The aforesaid two conditions are required to co-exist for issuing a writ of prohibition.

6. In the instant case, it goes without saying that Naib Tehsildar in District Jaisalmer has ample jurisdiction to pass an order for ejectment against the petitioner from the land in question under Sec. 91 of the Act of 1956. It is to be noticed that the petitioner has alternative remedy against the order of ejectment passed by Naib Tehsildar under the Act of 1956. In the present case, both the conditions precedent for issuing a writ of prohibition are not satisfied, therefore, I decline to issue writ of prohibition in favour of the petitioner.

7. In alternative, it is also contended by learned Counsel for the petitioner Mr. S.S. Purohit that the petitioner has applied for allotment of land in question and vide order dated 19.6.89 Ex. 10A to the writ petition he was directed to deposit price of the land in question at the rate of Rs. 350/- per Bigha. Learned Counsel for the petitioner also invited my attention towards Ex. 11 to the writ petition in order to demonstrate that in pursuance of the order dated 19.6.89, the petitioner has deposited a sum of Rs. 3,500/- on 18.3.1990.

8. The aforesaid argument of the learned Counsel for the petitioner is refuted by learned Counsel Mr. M.R. Singhvi appearing on behalf of the respondents. Learned Counsel for the respondents Mr. M.R. Singhvi invited my attention towards the application Ex.R/1 moved by the petitioner, wherein at Column No. 11 it is stated by the petitioner, that he has already obtained a Mining Lease for extracting stones. It is also urged by learned Counsel for the respondents that after receiving application from the applicant-petitioner Ex.R/1, it was sent for enquiry to the Mining Department and in its turn, Assistant Mining Engineer, Jaisalmer informed to the Collector (respondent No. 2) that Mining Department has not granted any lease or quarry licence for extracting stones to the petitioner. A copy of the report submitted by the Assistant Mining Engineer on 10.4.90 is filed and marked as Ex.R/2 to the reply. When the Collector, Jaisalmer (respondent No. 2) came to know about mis-representation and fraud played by the petitioner in furnishing incorrect information in his application Ex.R/1, he immediately rejected his application for allotment of land in question and also directed him to remove the crusher from the land in dispute vide his order dated 20.6.90 Ex.R/3 to the reply.

9. It is made clear that extra-ordinary discretionary equitable relief can be granted only to those citizens who approach this Court with clean hands.

10. Here in the present case, the petitioner having full knowledge about ejectment order dated 25.9.89 passed by Naib Tehsildar, Jaisalmer u/s 91 of the

Act of 1956 against him, no steps were taken by him and he allowed the said ejectment order to attain finality. Reasons for the aforesaid conduct of the petitioner is not far to seek. In fact, the order of ejectment dated 25.9.89 Ex.R/4 to the reply passed by Naib Tehsildar against the petitioner was indefeasible.

11. Second conduct of the petitioner in moving application Ex.R/1 for allotment of land in question making fraudulent representation to the effect that he has obtained a lease-deed for extracting stone over the land in dispute which after inquiry was found to be false by the Collector, Jaisalmer is also demurrable. The Order dated 19.6.89 Ex.10A to the writ petition passed by the Collector, Jaisalmer (respondent No. 2) and deposits of Rs. 3500/- Ex. 11 emanating from fraudulent mis- representation of the petitioner do not confer any right, title or interest to him over the land in dispute.

12. Consequently, the instant writ petition is dismissed with costs assessed to Rs. 10,000/ with a direction to the Collector, Jaisalmer (respondent No. 2) to get the vacant possession restored in favour of the State preferably within one month from the date of receipt of a copy of this order.