(2011) 10 RAJ CK 0050

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8767 of 2011

Mallinath Singh APPELLANT

Vs

Board of Revenue, Ajmer and Others RESPONDENT

Date of Decision : 21-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226(3)
Rajasthan Tenancy Act, 1955 — Section 188, 212, 88, 91, 92A

Citation : (2011) 10 RAJ CK 0050

Hon'ble Judges : Dinesh Maheshwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Dinesh Maheshwari

1. Though the matter is listed for consideration of an application moved by the contesting respondent under Article 226(3) of the Constitution of India, however, looking to the subject-matter, this writ petition has been heard finally at this stage itself.

2. The short point involved in this writ petition could be noticed on the following background aspects: The plaintiff-petitioner has filed a revenue suit under Sections 88, 188, 91 and 92A of the Rajasthan Tenancy Act, 1955 (''the Act'') that now remains pending before the Sub-Divisional Officer, Marwar Junction. In this suit, the petitioner has also moved an application u/s 212 of the Act seeking temporary injunction. On 11.11.2009, while issuing notices on this application for temporary injunction, the learned Trial Court passed an ad interim order for maintaining status quo. It appears that this ad interim order was extended for some time but no such extension order was drawn beyond 24.06.2010. Even on 03.09.2010, when the lawyers abstained from the work, the matter was simply adjourned by the learned Trial Court without any order regarding extension of the ad-interim order. In relation to the order so passed by the learned Trial Court on 03.09.2010, the petitioner proceeded to prefer a revision petition before the

Board of Revenue that has been dismissed by the impugned order dated 17.08.2011 (Annex.7) with the Board of Revenue observing that the matter had remained pending since the year 2009 with the interim order dated 11.11.2009 having been extended from time to time. It has been deduced from the circumstances, where several adjournments were granted and requisites were not put-in, that the petitioner only intended to prolong the proceedings and was not co-operating in the early disposal of the application u/s 212 ibid. The Board of Revenue rejected the revision petition while imposing costs of Rs. 5,000/- on the petitioner; and directed the parties to appear before the Sub-Divisional Officer, Marwar Junction on 20.09.2011 and to co-operate in disposal of the application for temporary injunction.

3. Against the aforesaid order dated 17.08.2011, this writ petition came to be filed by the petitioner on 15.09.2011 and herein, while issuing the notices on 23.09.2011, this Court directed that the interim order passed upon the application filed by the petitioner u/s 212 ibid in the revenue suit on 11.11.2009 shall remain in force.

4. It is an admitted position that the said application u/s 212 of the Act is pending before the Sub-Divisional Officer, Marwar Junction and the same is yet to be decided in accordance with law. Though some other submissions are sought to be made herein on behalf of the petitioner in relation to the other interlocutory orders passed in the matter, including the one dated 14.06.2010 by the Board of Revenue but it does not appear necessary to enter into any other aspect of the matter herein because all the relevant aspects are to be considered by the learned Trial Court.

5. For the present purpose, only the short point relating to ad interim order during the pendency of the proceedings requires consideration. In this regard, it is noticed that the ad interim order was passed by the learned Trial Court as back as on 11.11.2009 and was extended on a few occasions; lastly on 24.06.2010. The Board of Revenue appears to have taken too rigid and strict a view of the matter while rejecting the revision petition; and this Court is of opinion that the interest of justice would have served if the Board of Revenue directed the learned Trial Court to decide the pending application u/s 212 of the Act but without other comments in the matter. Imposition of heavy costs on the petitioner also does not appear justified.

6. Looking to the overall facts and circumstances of the case, without dilatation on any other aspect of the matter, this Court is of opinion that the interest of justice shall be served if, while setting aside the impugned order and making the interim order dated 23.09.2011 passed in this writ petition absolute until the decision of the application u/s 212 of the Act, the Trial Court is directed to take up the matter for consideration with utmost expediency and to decide the said application, of course, in accordance with law, at its earliest.

7. Accordingly, this writ petition is allowed to the extent indicated above. The

impugned order dated 17.08.2011 (Annex.7) is set aside; and the interim order dated 23.09.2011 passed in this writ petition is made absolute until the decision of the application u/s 212 of the Act. The Trial Court shall be required to proceed expeditiously in the application u/s 212 ibid. and to decide the same at the earliest, of course, in accordance with law. No costs.