

(2018) 11 RAJ CK 0030
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 1769 of 2018

**Moolchand S/o Ramchand Tailor and ors @APPELLANT@Hash Rajmata Ji
Sthan Deh, Asinnd and ors**

Date of Decision : 19-11-2018

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 91

Citation : (2018) 11 RAJ CK 0030

Hon'ble Judges : Sangeet Lodha, J;Dinesh Mehta,J

Bench : Division Bench

Advocate : Manas Khatri, Muktesh, Maheshwari

Final Decision : Dismissed

Judgement

1. This intra court appeal is directed against order dated 28.8.18 passed by the learned Single Judge of this court, whereby the writ petition preferred by the respondent no.1-Rajmata Ji Sthan Deh seeking direction for implementation of the order passed by the Tehsildar, Asind, for removal of the encroachment made on the land forming part of the public way, comprising khasra no.3400 of revenue village Asind, has been disposed of with the directions to the Tehsildar, Asind to take appropriate steps for execution of the order dated 16.6.14 within a period of two months from the date of receipt of certified copy of the order, subject to contrary order passed by a superior Court.
2. The appeal preferred by the appellants is accompanied by an application seeking leave to appeal inasmuch as, the appellants though effected by the directions sought were not impleaded party respondents in the writ petition.
3. Taking into consideration the facts and circumstances of the case, the application seeking leave to appeal is allowed.
4. Heard learned counsel for the appellants.

5. Learned counsel appearing for the appellants submitted that in compliance of the order passed by the learned Single Judge, the Tehsildar, Asind has initiated proceedings against the appellants for removal of the construction raised by them over the lands, which were purchased by them from the persons holding valid title and therefore, the order impugned passed by the learned Single Judge straight away directing removal of the appellants from the disputed land is not just and proper.

6. Indisputably, vide orders dated 16.6.14 passed by the Tehsildar, Asind in proceedings under Section 91 of Rajasthan Land Revenue Act, 1956, the encroachment made by the appellants herein over the land in question forming part of the public way was directed to be removed and the penalty was imposed. A bare perusal of the orders passed by Tehsildar, Asind, available on record of Writ Petition No.5393/18, which stands decided by the learned Single Judge by the order impugned, reveal that the order evicting the appellants from the lands in their unauthorised occupation was passed after giving them an opportunity of hearing. It is not the case of the appellants that the legality of orders passed by Tehsildar, Asind was questioned by them by availing the appropriate remedy available under the relevant statute and thus, the orders passed as aforesaid by Tehsildar, Asind have attained finality. Moreover, it is pertinent to note that the learned Single Judge while passing the order under appeal, has issued directions for implementation of the orders passed by the Tehsildar, Asind, subject to contrary order, if any, passed by the superior court. Thus, the appellants are not precluded from questioning the legality of the orders passed by the Tehsildar, Asind by availing the appropriate remedy available under the law.

7. In view of the discussion above, the order impugned passed by the learned Single Judge directing implementation of the orders passed by Tehsildar, Asind subject to contrary order, if any, passed by the superior court, does not warrant any interference by us in exercise of intra court appeal jurisdiction.

8. The intra court appeal is therefore, dismissed.