

(2011) 02 RAJ CK 0083

In the Rajasthan High Court

Case No : Civil Writ Petition No. 8194 of 2007

Nand Lal Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Rajasthan Forest (Settlement) Rules, 1958 — Rule 12(3)
Rajasthan Forest Act, 1953 — Section 29(1), 29(4)

Citation : AIR 2011 Raj 94

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—All these writ petitions are directed against common judgment passed by Board of Revenue dated 30.11.2005 whereby revision petitions filed by Petitioners were rejected and order dated 28.02.2006 by which their review petitions were dismissed.

2. It may be noted that Petitioners were earlier granted khatedari rights of the lands, which were in fact part of notified protected forest area, by order of Assistant Forest Settlement Officer dated 30.04.1975. The Government filed appeals against aforesaid order before District Collector, who allowed the same holding that Assistant Forest Settlement Officer had no competence to confer khatedari rights of lands of protected forest. It is against those two judgments, Petitioners approached Board of Revenue which rejected their revision petitions and also review petitions.

3. Learned Counsel for Petitioners have argued that Assistant Forest Settlement Officer rightly allowed claim of Petitioners because they were in possession of the land even prior to the land in dispute was notified as protected forest by notification dated 09.01.1969. Learned Counsel in this connection referred to order dated 30.04.1975 of Assistant Forest Settlement Officer and argued that in these cases, the Assistant Forest Settlement Officer took into consideration

copies of girdawaris and revenue receipts and also inspected the sites. He, at the time of inspection, found possession of Petitioners and also noticed that some of Petitioners had been cultivating the land and crop was standing, there were wells on such lands and in fact some such lands were subsequently sold by original owners. The Assistant Forest Settlement Officer had rightly excluded the lands from purview of protected forest in exercise of his powers under Rule 12 (3) of the Rajasthan Forest (Settlement) Rules, 1958.

4. It is alternatively argued that if according to what learned Counsel for Respondents submits that it is only the State Government which can, by virtue of Section 29 (4) of the Rajasthan Forest Act, 1953, denotify any such land declared as protected forest, then Petitioners may be given liberty to approach the State Government.

5. Shri S.D. Khaspuria, learned Additional Government Counsel appearing on behalf of Respondent State, opposed writ petitions and submitted that District Collector and Revenue Board have in detail noticed the law; both the authorities have rightly held that Assistant Forest Settlement Officer has no power to exclude any land from purview of protected forests. Rule 12 (3) of Rules of 1958 has wrongly been invoked whereas that Rule merely provides procedure for determination of rights and concession, which is a process to be held prior to issue of notification under Sub-section (1) of Section 29 by the State Government, by which certain lands are declared to be protected forest. The learned Counsel submitted that at the time of declaring such lands as protected land, notification was duly published in the gazette showing intention of the Government that it could declare the said land as protected land and all claims and objections were heard and decided. Only the State Government itself could again denotify a protected forest land or any part thereof declared as a protected forest by notification dated 07.01.1959 (supra). The Assistant Forest Settlement Officer acted wholly illegally in assuming the power of the State Government. The orders passed by Board of Revenue and that of District Collector are perfectly legal and justified.

6. Upon hearing learned Counsel for parties and perusing material on record, I find substance and force in what has been argued by learned Additional Government Counsel. Once a particular land has been declared as a protected forest and notified as such by the State Government by issue of notification under Sub-section (1) of Section 29 of the Act, the only way by which it could be denotified was issuance of another notification under Sub-section (4) of Section 29. The Assistant Forest Settlement Officer had no legal authority whatsoever to denotify such land from purview of protected forests or otherwise confer khatedari rights on Petitioners. Even otherwise the kind of evidence or documents that have been relied on by him, raises doubt about their correctness. No such document or record has been produced before this Court to show that any of the Petitioners had any khatedari rights prior to issuance of notification dated 09.01.1969 by which land was notified as a protected forest.

7. In view of above, all the writ petitions are dismissed. So far as the alternative submission that liberty be given to Petitioners to approach State Government, it goes without saying that it is always open to Petitioners to approach the State Government, which may take any decision on such question in accordance with law.