

(2015) 01 RAJ CK 0094

In the Rajasthan High Court

Case No : Civil Contempt Petition No. 414/2013

Navin Bhansali

APPELLANT

Vs

Aslam Mehar

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151
Rajasthan Tenancy Act, 1955 — Section 183, 53, 88, 89

Citation : (2015) 01 RAJ CK 0094

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : R.R. Vyas, for the Appellant; Rajesh Panwar, AAG, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This contempt petition has been filed by the petitioner alleging deliberate disobedience of order dated 22.05.2006 passed by this Court in S.B. Civil Writ Petition No. 2479/2006 by respondent - Revenue Appellate Authority, Jodhpur ("RAA").

2. One Smt. Bhikhi Devi filed suit under Sections 88, 89, 53 and 183 of the Rajasthan Tenancy Act, 1955 ("the Act") against Bhanwar Lal, Ganpat Lal, Likhma Ram, Prem Sukh, Pukhraj and Jai Singh seeking declaration that she had 4/5 share in the land comprised in Khasra No. 149 ad measuring 173 Bigha 15 Biswa situated at village Chopasani Jagir, partition by metes and bounds etc.

3. The plaint was rejected by order dated 26.10.1998 passed by S.D.O., Jodhpur, against which, an appeal was filed by Bhikhi Devi before the RAA, which was dismissed in default on 17.04.2001 as Smt. Bhikhi Devi expired on 09.03.2001 and her heirs did not come on record.

4. A restoration application filed by Kan Singh alias Kana Ram, claiming himself to be adopted son of Bhikhi Devi/Durga Ram, was accepted by the RAA, however,

the appeal came to be rejected on merits by order dated 30.07.2003.

5. Kan Singh alias Kana Ram filed second appeal before the Board of Revenue, Ajmer ("Board"), wherein, based on the compromise, the appeal was allowed by the Board on 31.01.2006 and the suit filed by Bhikhi Devi was decreed providing for 16 Bigha land in share of Kan Singh alias Kana Ram - the adopted son; a review filed by the petitioner among others was rejected by the Board on 22.03.2007.

6. S.B. Civil Writ Petition No. 2479/2006 was filed by Smt. Basanti Devi and others, aggrieved against judgment dated 31.01.2006, wherein, this Court on 22.05.2006 directed as under:--

"Meanwhile, status quo shall be maintained on the spot and the implementation of the impugned order dated 31.01.2006 shall remain stayed." 7. On the other hand, it is claimed that Durga Ram - husband of Bhikhi Devi and his brothers, who were defendants to the suit filed by Bhikhi Devi, said to have partitioned the land comprised in Khasra No. 149 ad measuring 173 Bigha 15 Biswa and mutation in pursuance thereto was effected; Durga Ram got 16 Bigha land, which was recorded in revenue records in his name as Khasra No. 149/1; after death of Durga Ram, the property devolved upon Smt. Bhikhi Devi, who it is claimed constituted and appointed her power of attorney on 17.03.1989, which was duly registered on 25.04.1989; the power of attorney holder executed various sale deeds and it is claimed that possession was handed over to the purchasers; the land was further transferred by the purchasers and some of them applied for conversion and the competent authority passed orders permitting the conversion of lands in their favour; it is the persons, who have purchased the lands in question based on the power of attorney executed by Smt. Bhikhi Devi, who have filed the writ petition against order dated 31.01.2006.

8. One of the orders passed by Additional Collector (Land Conversion), Jodhpur dated 14.09.1989 in favour of Trilok Prakash Gaggar was challenged by Smt. Anupama Purohit and others, who are transferees from Kan Singh alias Kana Ram, in whose favour the judgment dated 31.01.2006 came to be passed by the Board, before the RAA.

9. An application under Order I, Rule 10 CPC read with Section 151 CPC was filed by Navin Bhansali before the RAA, as the respondent Trilok Prakash Gaggar had sold the converted plot in question to the applicant on 02.06.1995; however, the RAA by its order dated 01.06.2006 on noticing the order dated 22.05.2006 passed by this Court in S.B. Civil Writ Petition No. 2479/2006 adjourned the matter; the appeal and application remained pending; the appeal was dismissed in default on 05.01.2010 and was restored on 10.02.2010; again the appeal was dismissed in default on 23.12.2010 and was restored on 10.02.2011; whereafter, it appears that the arguments on application filed by petitioner herein was heard by the RAA and by order dated 20.11.2012 the application was allowed;

whereafter, the arguments on appeal were heard and by order dated 03.05.2013 the same was allowed, the order passed by Additional Collector (Land Conversion), Jodhpur and Patta issued in pursuance to the said order were set aside.

10. The petitioner has alleged that passing of the judgment dated 03.05.2013 by the RAA amounts to deliberate disobedience of the order dated 22.05.2006 passed by this Court and has prayed that the RAA be adequately punished and his action of delivering the judgment dated 03.05.2013 be set aside.

11. It may also be noticed here that the petitioner Navin Bhansali also filed S.B. Civil Writ Petition No. 4974/2007 challenging the judgment dated 31.01.2006 passed by the RAA and in the said writ petition by order dated 20.08.2007 interim order identical to the order dated 22.05.2006, noticed hereinbefore, was passed by this Court.

12. It is submitted by learned counsel for the petitioner that once after noticing that the order dated 31.01.2006 passed by the Board was stayed by this Court on 22.05.2006, the RAA stayed its hands off from further proceeding in the matter after the order was placed before it on 01.06.2006 and the same situation continued thereafter, there was no occasion or change in circumstance for the RAA to proceed with and decide the appeal by its judgment dated 03.05.2013; the action of the RAA in passing the judgment dated 03.05.2013 amounts to deliberate and willful disobedience of order passed by this Court.

13. Learned counsel for the respondent submitted that the action of the respondent cannot be said to be in disobedience of order passed by this Court, inasmuch as, the proceedings before the RAA were not stayed at any stage; though at initial stage on account of pending writ petition and the order dated 22.05.2006 the then RAA did not proceed with the matter, there was no restriction in proceeding with the matter by the RAA; however, while passing the order dated 03.05.2013, the RAA has specifically directed that despite passing of the order, the parties would maintain status quo in terms of the interim order passed by this Court and, as such, it cannot be said that the respondent has disobeyed the order passed by this Court.

14. I have considered the rival submissions made by learned counsel for the parties.

15. A bare look at the order dated 22.05.2006 passed by this Court, contempt whereof is alleged, it is apparent that this Court directed maintenance of status quo on the spot and implementation of the order dated 31.01.2006 passed by the Board was stayed. Interestingly enough, though the petitioner Navin Bhansali also filed S.B. Civil Writ Petition No. 4974/2007 and on 20.08.2007 an order identical to the order dated 22.05.2006 was passed by this Court, he despite being aware of the pendency of appeal before the RAA, did not seek any interim order qua the said proceedings and the present contempt petition has also been filed alleging disobedience of order dated 22.05.2006 in the writ petition filed by

Smt. Basanti Devi and others and not qua order dated 20.08.2007 passed in his own writ petition, for the reasons best known to him.

16. It is also noticed that the petitioner, who had filed application under Order I, Rule 10 CPC before the RAA on 11.05.2006, hearing on which application was also deferred alongwith the appeal over a period of about six years, argued his application on 06.11.2012 before the RAA and the application was allowed on 20.11.2012; if the understanding and contention of the petitioner regarding the order dated 22.05.2006 is accepted, that after the order passed by this Court the RAA could not have proceeded further in the appeal, then how come the petitioner himself pressed, argued his application under Order I, Rule 10 CPC before the RAA; the petitioner cannot be permitted to blow hot and cold in the same breath, inasmuch as, he cannot be heard to say that though disposal of his application under Order I, Rule 10 CPC was justified despite the order dated 22.05.2006, the appeal could not have been heard and decided by the RAA; such a contention is absolutely baseless and cannot be accepted; the petitioner's own conduct is reflective of the fact that the proceedings before the RAA were never stayed by this Court, which aspect is apparent from what has been noticed hereinbefore i.e. the express language of the order dated 22.05.2006 and the fact that the petitioner himself in his writ petition chose not to seek any interim order qua the proceedings pending before the RAA.

17. Besides the above, a look at the order dated 03.05.2013 also reveals that the RAA has essentially decided the appeal based on the procedure adopted by the Additional Collector (Land Conversion) and has also taken care to ensure that the order passed by this Court in S.B. Civil Writ Petition No. 4974/2007 i.e. the writ petition filed by the petitioner is meticulously followed. The operative portion of the order reads as under:--

18. In view of what has been discussed hereinbefore, it is apparent that by passing the order dated 03.05.2013, the RAA did not disobey the orders dated 22.05.2006 and/or 20.08.2007 passed in S.B. Civil Writ Petition No. 2479/2006 and 4974/2007 respectively in any manner.

19. Consequently, there is no substance in the contempt petition, the notices issued are discharged and the contempt petition is dismissed. Record of the RAA be returned back.