

(2023) 07 RAJ CK 0105

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 10090 Of 2023

Nimmba Ram And Others

APPELLANT

Vs

Premaram And Others

RESPONDENT

Date of Decision : 31-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Rajasthan Tenancy Act, 1955 — Section 225, 251A, 229, 230, 251A

Citation : (2023) 07 RAJ CK 0105

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : Indra Raj Choudhary, Pawan Bharti, Rajesh Joshi,, C.V.S. Shekhawat., R.D. Bhadu

Final Decision : Dismissed

Judgement

Dr Pushpendra Singh Bhati, J

1. This writ petition under Articles 226 & 227 of the Constitution of India has been preferred claiming the following reliefs:

"It is, therefore, most respectfully prayed that this writ petition may kindly be allowed and by appropriate writ, order or direction, the impugned Judgement dated 14.06.2023 (Ann.21) passed by Revenue Board, Ajmer in review petition, Judgement dated 28.03.2023 (Ann.20) passed by Revenue Board, Ajmer in revision petition, Judgment dated 03.12.2019 (Ann.18) passed by learned Revenue Appellate authority, Jodhpur and judgment dated 11.09.2019 (Ann.15) passed by learned SDO, Lohawat may kindly be quashed and set aside and the application u/s 251A Rajasthan Tenancy Act filed by the respondent no.01 may kindly be dismissed.

Any other appropriate order or directions which this Hon'ble Court may deem fit in favour of the petitioners, may kindly be passed in favour of the petitioners."

2. Brief facts of the case, as placed before this Court by learned counsel for the

petitioner, are that the respondent no.1 filed an application (registered as Case No.42/2019) under Section 251-A of the Rajasthan Tenancy Act, 1955 (hereafter referred to as 'Act of 1955') before the learned Sub-Divisional Officer (SDO), Phalodi, District Jodhpur, stating therein that he is having a joint khatedari land, comprising khasra no. 935 rakhba 570 bigha situated at Karwasara Nagar, Tehsil Lohawat. It was further stated that to reach the highway, the respondent no.1 requires a 20 feet way through the petitioners' land comprising Khasra no.940 rakhba 42.08 bigha situated at Karwasara Nagar, Tehsil Lohawat; such way, as per the respondent no.1, is required as there is no other alternative way, and that, earlier, the said way was used by the petitioner, but later on, the same was blocked.

2.1. The present petitioners filed a written statement, while denying the averments made by the respondent no.1 in the aforementioned application. Thereafter, the other co-sharer also filed their objection to the application in question. The learned SDO directed the Tehsildar to prepare a site report (mauka report), who in turn, vide order dated 29.05.2019 directed the concerned Patwari to prepare such report; the report was prepared on 01.06.2019 and the same was accordingly submitted before the learned SDO.

2.2. Thereafter, the learned SDO vide order dated 12.07.2019 directed the Tehsildar to seek information regarding the length of the new proposed way in question and DLC rate of the land in question. The Tehsildar submitted a mauka report on 22.07.2019, to which an objection was filed by the petitioners.

2.3. The learned SDO vide the impugned order dated 11.09.2019 allowed the said application, against which the petitioners preferred an appeal (registered as 2019RAAJu225RTA132) under Section 225 of the Act of 1955 before the learned Revenue Appellate Authority (RAA), Jodhpur, which was dismissed vide the impugned judgment dated 03.12.2019. Aggrieved by the same, the petitioners preferred a Revision Petition (registered as Revision/TA/2019/7263) under Section 230 of the Act of 1955 before the learned Board of Revenue (BoR) for Rajasthan, Ajmer, but the same was also dismissed vide the impugned judgment dated 28.03.2023. The petitioners also filed a review petition (registered as No.TA/2156/2023/Jodhpur) under Section 229 of the Act of 1955, before the learned BoR, which too was dismissed vide the impugned judgment dated 14.06.2023.

3. Learned counsel for the petitioners submitted that the respondent no.1 is using katani raasta situated in khasra no. 1002/939 to approach his land from the highway road, and the said raasta is being used by the respondent no.1 for last many years; therefore, as per learned counsel, the claim of the respondent no.1 cannot be sustained in the eye of law.

3.1. Learned counsel further submitted that the impugned judgments were passed without duly examining the objections to the application in question raised by the other co-sharers as well as without duly appreciating the other

material placed on record. It was also submitted that if the way in question, as granted, is sustained, then the pyau (place built for drinking water) constructed by the petitioner, shall be required to be demolished.

3.2. Learned counsel also submitted that the respondent no.1 is presently having a katani raasta, with pucca constructed road and the said road goes to the border of the land in question; therefore, as per learned counsel, on that count also, the claim of the respondent no.1 ought not to have been accepted.

3.3. It was further submitted that the alternative way is to be granted only when there is absolute necessity, and not on the basis of convenience of the party/parties concerned; since the claim of the respondent no.1 does not fall under such criteria as provided under Section 251-A of the Act of 1955, therefore, the petitioner cannot claim grant of the way in question.

3.4. In support of his submissions, learned counsel relied upon the judgment rendered by the Hon'ble Apex Court in the case of Dr. Jagmittar Sain Bhagat Vs DIR., Health Services, Haryana & Ors. (Civil Appeal No. 5476 of 2013, decided on 11.07.2013).

4. On the other hand, Mr. Rajesh Joshi, learned Senior Counsel assisted by Mr. C.V.S. Shekhawat; Mr. R.D. Bhadu, learned Deputy Government Counsel; appearing on behalf of the respondents, opposed the aforesaid submissions made on behalf of the petitioners.

4.1. Learned Senior Counsel for the respondent No.1 submitted that there is no alternative way available for the respondent No.1 to approach his land in question, and therefore, the impugned judgments passed by the learned revenue authorities below are justified in law.

4.2. It was also submitted that as per the mauka report, one way was available from the petitioners' land (khasra no. 940) and the same was not recorded as a way; therefore, as per learned counsel, the respondent No.1 has necessity of the way in question, as a sanctioned way, and the said claim of the respondent No.1 clearly falls under the criteria as prescribed under Section 251-A of the Act of 1955.

4.3. Learned Deputy Government Counsel for the respondent No.2-State submitted that the Tehsildar on 24.07.2023 via phone call (WhatsApp call) directed the Patwari to get the status in regard to the way in question, whereupon it was informed that the pyau would not come in the way in question. Therefore, as per learned Deputy Government Counsel, the impugned judgments passed by the learned revenue authorities below are justified in law.

5. Heard learned counsel for the parties as well as perused the record of the case along with the judgment cited at the Bar.

6. This Court observes that the respondent no.1 filed an application under Section 251-A of the Act of 1955 for grant/sanction of the alternative way to

reach the land in question, which was allowed by the learned SDO vide the impugned order, and the same was also upheld by the learned RAA and BoR vide the impugned judgments.

7. This Court is conscious of the precedent law laid down by a Coordinate Bench of this Hon'ble Court in the case of Dhanna Ram Vs Board of Revenue & Ors (S.B. Civil Writ Petition No.11268/2022, decided on 16.05.2023);

Relevant portion of the said judgment is reproduced as hereunder;-

"8. This Court further observes that the necessary ingredients for sanctioning of a new way under Section 251-A of the Act of 1955, as clearly stated in the said provision of law, are absolute necessity, and not sought for mere convenient enjoyment and there is absence of an alternative way; if such ingredients are satisfied, then only a new way can be sanctioned under that said Section. Since in the present case, all such conditions are satisfied, therefore, the claim of the private respondent fell under the criteria as laid down under Section 251-A of the Act of 1956.

9. This Court is also conscious of the precedent law laid down by this Hon'ble Court in the case of Ramkunwar Vs State of Rajasthan (S.B. Civil Writ Petition No. 19125/2018 decided on 08.12.2021);

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11. This Court also observes that the learned SDO passed the impugned order and the same was upheld by the learned RAA and the learned Board, and therefore, there are concurrent findings recorded by three learned revenue authorities below, which are justified in law, because the same were passed after taking into due consideration all the material placed on record before them.

12. On a bare perusal of Section 251-A of the Act of 1955 and the aforementioned precedent law, as also considering the factual matrix of the present case, this Court does not find any legal infirmity in the three concurrent determinations made by the learned authorities below in the impugned judgments, because the necessary ingredients as contained in Section 251-A of the Act of 1955, for sanctioning of the new way in question, are clearly fulfilled in the present case.

8. This Court further observes that the Tehsildar, Lohawat prepared and submitted the mauka report which clearly reveals that only one way was available to the respondent No.1 to approach the land in question, and that was through the petitioners' land, and that, there was no alternative way available for the said purpose.

9. This Court also observes that the learned SDO passed the impugned order, after duly considering the absolute necessity of the respondent no.1 for the sanctioning of the way in question. This Court further observes that the claim of

the respondent No.1 clearly falls within the criteria as laid down under Section 251-A of the Act of 1955.

10. This Court also observes that as per the mauka report dated 24.07.2023 submitted by the respondent-State, grant/sanction of the new way in question would not cause any harm to pyau (place built for drinking water) in question.

11. This Court thus observes that the concurrent findings, as recorded by the learned revenue authorities below, do not suffer from any legal infirmity so as to warrant any interference by this Court in the instant petition.

12. The judgment cited at the Bar on behalf of the petitioners also does not render any assistance to their case.

13. Thus, in light of the aforesaid observations and looking into the factual matrix of the present case, this Court does not find it a fit case so as to grant any relief to the petitioners in the present petition.

14. Consequently, the present petition is dismissed. All pending applications stand disposed of.