

(2020) 09 RAJ CK 0032

In the Rajasthan High Court

Case No : Civil Writ Petition No. 9652 Of 2020

Pappu Ram Raiger And Ors

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 03-09-2020

Acts Referred:

Citation : (2020) 09 RAJ CK 0032

Hon'ble Judges : Sanjeev Prakash Sharma, J

Bench : Single Bench

Advocate : J.P. Goyal, Ravi Shankar Sharma

Final Decision : Dismissed

Judgement

1. The petitioners, by way of the present writ petition, have challenged the order dated 26.7.2019 passed by the Panchayat Samiti, Virat Nagar, Jaipur and also the order dated 26.11.2019 passed by the Additional District Collector, Kotputali, whereby the interim order passed earlier by it, was vacated and has also challenged consequential notice issued by the Panchayat Samiti, Maid dated 7.7.2020 & 04.08.2020 directing the petitioners to vacate the premises and the shops, which were found to be illegally occupied and encroached upon by them.

2. Learned counsel appearing for the petitioners submits that the petitioners have been running the shops since 2000 and they also had documentation with regard to their continuous possession and had moved an application for regularization of the shops on the land.

3. Earlier the said land bearing Khasra No.1820 was treated as Gair Mumkin Rasta, however, the SDO, Virat Nagar, Jaipur vide its judgment dated 23.6.2009 held the said land to be Gair Mumkin Abadi land and consequently, it also held that the decision regarding Gair Mumkin Abadi can only be taken by the Panchayat Samiti. Learned counsel submits that after the said orders, the petitioners have been continuously running their shops, however, the Panchayat Samiti has taken a decision on 26.7.2019 holding the petitioners as encroachers

on the land, which was a government land and had not been allotted to the petitioners.

4. Learned counsel submits that the petitioners could be allotted the said shops also and therefore, the order passed by the Panchayat Samiti was challenged in the appeal before the Additional District Collector wherein the Additional District Collector vide its order dated 27.8.2019 had granted initially an ad-interim order in favour of the petitioners, but the same was vacated vide order dated 26.11.2019. Learned counsel further submits that the Additional District Collector has held on mere presumption that the petitioners have encroached upon the government land and therefore, the interim order was wrongly vacated. Learned counsel further submits that the appeal is still pending before the concerned Additional District Collector. While the said appeal is pending, notices have been issued by the Gram Panchayat on 07.07.2020 and 04.8.2020 for evicting the petitioners from the said land. Learned counsel submits that such action is illegal and unjustified and the petitioners ought to be allowed continuously to run their business at the shops at Khasra No.1820.

5. I have considered the submissions as above and perused the material available on record.

6. This Court finds that right from 2009 to uptil date, all the Revenue Courts have given a fact finding that the land is a government land bearing Khasra No.1820 (Gair Mumkin Abadi). The dispute whether the government land was a way i.e. Gair Mumkin Rasta or whether it was a public land i.e. Gair Mumkin Abadi was also settled in 2009. Thus, the petitioners had full knowledge that the land did not belong to them and they had no title. Thus, they had encroached on the government land by constructing shops illegally. The Panchayat Samiti, therefore, ultimately took a decision on 26.7.2019 holding them as land encroachers and ranked trespassers and took a decision to evict them at the earliest. The said order was challenged before the Additional District Collector, who also reached to the conclusion after hearing both the parties that the petitioners are ranked trespassers and encroachers on the government land and has, therefore, the interim order passed earlier, vide its order dated 26.11.2019. The said order has now been challenged by the petitioners before this Court by filing the present writ petition when they realized that the Gram Panchayat has issued eviction orders in July, 2020 and 4.8.2020.

7. Apparently, the petitioners have been sitting over the government land illegally for long. No equity lies in favour of any person, who wrongfully and illegally encroaches upon the government land. Thus, an approach has to be adopted by the government authorities to see no person encroaches the government land as it not only effects the general discipline of the society but also encourages others to encroach on the government land and the government property.

8. In view thereof, the submission of the learned counsel for the petitioners that

the petitioners have been doing their business on the said land for several years has no merit.

9. The submission of the learned counsel for the petitioners that as the appeal is pending, the petitioners' right should be protected, is also not found to be having any basis. Apparently, the interim order passed by the concerned Collector has been vacated by him vide order dated 26.11.2019 and the petitioners did not challenge the order in further appeal before any authority and have only challenged the same now after nine months before this Court at the time when impugned notices were issued. Thus, merely because an appeal is pending, no right is created in favour of the petitioners to continue to hold possession illegally.

10. The concerned Authority at Virat Nagar, Jaipur, is now directed to immediately take steps for removing encroachments from the government land/property and make the land available for the concerned Gram Panchayat for public use.

11. In view thereof, the writ petition is found to be without any merit and the same is accordingly dismissed.

12. No costs.