
(2016) 01 RAJ CK 0111

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14356 of 2015.

Prabhu Ram

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Rajasthan Tenancy Act, 1955 — Section 251-A

Citation : (2016) 2 DNJ 483 : (2016) RRD 458

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : Sushil Solanki, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Arun Bhansali, J. - This writ petition has been filed by the petitioner aggrieved against the order dated 6.11.2015 passed by the Board of Revenue, Ajmer ("BOR"), whereby the revision petition filed by the petitioner aggrieved against the order dated 16.12.2014 passed by the Revenue Appellate Authority, Nagaur ("RAA") has been dismissed.

2. The petitioner filed proceedings under Section 251-A of the Rajasthan Tenancy Act, 1955 ("the Act") seeking opening of a new way. The SDO by his order dated 3.6.2014, came to the conclusion that there was no alternative way available to the petitioner and the new way sought by the petitioner was the shortest way and directed opening of the new way as sought by the petitioner.

3. Feeling aggrieved, the respondents filed appeal before the RAA. The RAA, after hearing the parties, came to the conclusion that the SDO did not consider objectively the fact that whether alternative way was already available and before the partition which way was being used and consequently set-aside the order passed by the SDO and remanded back the matter to decide the same afresh in accordance with law.

4. Feeling aggrieved, the petitioner filed revision before the BOR. The BOR, after

hearing the parties, came to the conclusion that summary enquiry was indicated by the SDO, but the reasoning given was not objective and the RAA after considering all the aspects has remanded back the case, which does not require any interference.

5. Learned counsel for the petitioner submits that the RAA was not justified in remanding back the matter and the BOR also fell in error in dismissing the revision.

6. It was submitted that the requirements of Section 251-A of the Act were fulfilled and finding in this regard was recorded by the SDO and therefore, the same did not require any interference.

7. I have considered the submissions made by learned counsel for the petitioner and have perused the material available on record.

8. For the purpose of granting an application under Section 251-A of the Act, the SDO after summary enquiry on being satisfied on the following two conditions can direct opening of a new way :-

"(i) the necessity is absolute necessity and it is not for mere convenient enjoyment of holding; and

(ii) particularly in case of a new way through another khatedar's holding, that absence of alternative means of access is proved -

....."

9. A perusal of the order passed by the S.D.O. clearly reveals that the contradictory findings have been recorded, while a finding has been given that no alternative way is available, it has also been indicated that the shortest way available is the new way sought by the petitioner, which are clearly in contrast to each other and does not fulfil the requirements as noticed herein-before and therefore, it cannot be said that the RAA was not justified in setting aside the order and remanding back the matter for deciding afresh in accordance with law.

10. In view thereof, no interference is called for in the order impugned. The writ petition is, therefore, dismissed.