
(2019) 05 RAJ CK 0088

In the Rajasthan High Court

Case No : Civil Writ Petition No. 17900 Of 2018

Raghunathdas Vaishnav And Ors

APPELLANT

Vs

Municipal Board And Ors

RESPONDENT

Date of Decision : 10-05-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 39 Rule 1, Order 39 Rule 2
Rajasthan Municipalities Act, 1959 — Section 107, 203
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 05 RAJ CK 0088

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

Bench : Single Bench

Advocate : Bhavit Sharma, Hukam Singh, Suresh Shrimali, Geeta Shrimali

Final Decision : Dismissed

Judgement

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

"i. the impugned order dated 16.08.2018 (An.1) passed by the learned Trial Court in Misc. Civil Case No.112/2018 and the order dated 12.10.2018 (An.2) passed by the learned Appellate Court in Civil Misc. Appeal No.20/2018 (CIS No.20/2018) - Raghunathdas Vaishnav & Anr. Vs. Municipal Board, Nathdwara & Anr. may kindly be quashed and set aside and;

ii. the application (An.4) filed by the petitioners under Order 39 Rules 1 & 2 r/w 151 CPC may kindly be allowed with costs throughout;

iii. any other order or direction, which this Hon'ble Court may deem just and proper in the facts and circumstances of the case, may be passed in favour of the petitioner;

iv. writ petition of the petitioners may kindly be allowed with costs."

2. Brief facts of this case, as noticed by this Court are that the petitioners claim

that they were in possession of a property situated at Sukhadia Nagar, Near Narayan Chowi, opposite Housing Board, Nathdwara, District Rajsamand. The petitioners further claim that they have possession over the said property for past twenty years without any interference by any other person, and they were peacefully enjoying their property on the said plots; however, while they had made a very small room called kotadi, the respondents came to the plots on 23.07.2018 and dispossessed the petitioners from the property in question.

3. The petitioners thereafter filed a civil suit before the Court of learned Civil Judge, Nathdwara and sought restraint of the respondents from interfering with the peaceful possession of the petitioners over the property in question. For the said purpose, alongwith the said suit, an application for temporary injunction under Order 39 Rules 1 & 2 read with Section 151 CPC was also filed alongwith certain documents by the petitioners, which included applications for regularization moved by the petitioners on 23.12.2013 seeking regularization of their possession over the property in question, which were registered at Serial Nos.2297 and 2296 dated 01.01.2014 with the Municipal Board, Nathdwara.

4. The aforementioned applications for regularization were moved to seek benefit of the notification dated 09.05.1993, which provided for regularization of the old possessions, and the petitioners claimed their entitlement for such regularization under the said notification. The documents filed by the petitioners also included a No-objection Certificate dated 23.07.2018 issued by the Municipal Board, Nathdwara for obtaining an electricity connection. The petitioners claimed that their boundary wall and kotadi was being demolished by the private respondents, thereby disturbing their peaceful possession over the said plots, which they were enjoying for last twenty years..

5. The petitioners, as per their pleaded case, have placed strong reliance upon the notice dated 30.03.2002, which was issued by the Municipal Board, Nathdwara under Sections 203 and 107 of the Rajasthan Municipalities Act, 1959, which has been placed on record as Annexure-11 of the writ petition.

6. The learned trial court has dismissed the application for temporary injunction filed by the petitioners vide order dated 16.08.2018, against which the petitioners preferred Appeal No.20/2018 before the Court of learned Additional District Judge, Nathdwara praying for temporary injunction, but the same was also dismissed vide order dated 12.10.2018.

7. Learned counsel for the petitioners submitted that the basic principles of Order 39 Rules 1 and 2 CPC required that the status quo regarding the property in question be maintained till disposal of the suit, as it would otherwise be detrimental to the cause of justice.

8. Learned counsel for the petitioners further submitted that the three issues of prima facie case, irreparable loss and balance of convenience, upon which the orders have been passed, have been wrongly construed by the learned court below, as all the three issues were in favour of the petitioner. As per learned

counsel for the petitioners, the petitioners were already having a No-objection Certificate issued by the Municipal Board, Nathdwara for the purpose of obtaining the electricity connection on the plots in question, and they already had applied for regularization of their possession over the said plots, in accordance with the aforementioned notification dated 09.05.1993.

9. Learned counsel for the petitioners also submitted that the kotadi, which was a small room, was being constructed and the learned court below has proceeded on the fact that the said construction is not so old, whereas the petitioners themselves had claimed that it was not an old construction, but was recently constructed by them to protect their possession.

10. Learned counsel for the petitioners demonstrated that the locations of the plots in question were also properly demarcated and were properly submitted before the Municipal Board, Nathdwara alongwith the applications for regularization, and once the No-objection Certificate for the electricity connection was in place, then, there was no reason why the regularization could not have been made or why the petitioners' old possession could be disturbed.

11. Learned counsel for the petitioners also submitted that the kotadi in question was a new construction and the neighbourhood was well described in the details given by the petitioners before the learned court below.

12. Learned counsel for the petitioners also showed the maps of the plots in question alongwith the photographs which reflected a small kotadi.

13. Learned counsel for the petitioners heavily emphasized upon the document dated 30.03.2002 (Annexure-11) stating that it was a notice issued by the Municipal Board, Nathdwara, and which showed the old possession of the petitioners over the property in question, as the Municipal Board itself had recognized their encroachment on 30.3.2002, which shows that the issue was being taken up by the petitioners since then.

14. Learned counsel for the respondents however, submitted that the petitioners' first and foremost main thrust was on the notice dated 30.03.2002 (Annexure-11), which was said to be issued by Municipal Board, Nathdwara under Sections 203 and 107 of the Rajasthan Municipalities Act, 1959 is a concocted document.

15. Learned counsel for the respondents further submitted that the aforementioned notice dated 30.03.2002 was neither submitted before the learned court below nor at the appellate stage, and which shows that the notice dated 30.03.2002 has been made retrospectively, and that, the said notice, which is the best proof, on which the petitioners have based their case for temporary injunction is in fact a document, that has been produced for the first time before this Hon'ble Court. Learned counsel for the respondents has even refuted the existence of such document.

16. Learned counsel for the respondents also submitted that in the outward

register of the Municipal Board, Nathdwara, it has been mentioned that serial No.2471 is the last number therein at page no.165, whereas the document Annexure-11 produced by the petitioners shows serial Nos.2472 and 2473 at page Nos.85 and 86 respectively, which do not even exist.

17. Learned counsel for the respondents thus demonstrated before this Court that Annexure-11, which was the best document available with the petitioners to seek temporary injunction, was in fact not only fraudulent document, but the same did not even exist, so much so that it was never produced before the learned trial court alongwith the suit or with the application for temporary injunction or with the pleadings of the appeal preferred against rejection of the temporary injunction application before the learned appellate court.

18. Learned counsel for the respondents further submitted that the aforementioned applications dated 23.12.2013 for regularization, which were registered on 01.01.2014, have been specifically denied by the Municipal Board, Nathdwara in its reply to the temporary injunction application in para No.5 and in its written statement in para No.4.

19. Learned counsel for the respondents also submitted that the petitioners had produced a photocopy of the ration card in relation to Sukhdia Nagar, Ward No.10 and serial number mentioned in the said ration card was 390 dated 07.07.2008, whereas the respondents submitted that the competent authority i.e. Municipal Board, Nathdwara has mentioned that in the said Ward No.10 from the year 2001 to 2013, the final serial number of the ration card issued was only upto 340, and thus, the ration card No.390, as produced by the petitioners, was forged and fabricated.

20. Learned counsel for the respondents further submitted that no injunction could be passed in favour of a trespasser as against the true owner, and that, the non-petitioner No.2 was the holder of a lease deed, which was executed in his favour and also registered by the competent authority.

21. Learned counsel for the respondents also submitted that before execution of the lease deed, the respondent No.2 had examined the place in question and has produced photographs dated 14.12.2017, which shows that the kotadi in question was not there and the said photographs do not reflect any possession of the petitioners over the land in question.

22. Learned counsel for the respondents has also shown to this Court the lease deed issued in favour of respondent No.2 after payment of the necessary dues.

23. Learned counsel for the respondents has further shown to this Court that the respondent No.2 had deposited an amount of Rs.80,70,000/- as lease and ownership amount with the Municipal Board, Nathdwara on 27.06.2010 and also the registration fee to the tune of Rs.6,78,180/- paid by the respondent No.2 on 19.07.2018 to get the lease deed registered in his own name.

24. Learned counsel for the respondents has thus tried to demonstrate true

ownership of the respondent No.2 over the property in question.

25. In support of his submissions, learned counsel for the petitioners relied upon the precedent law laid down by the Hon'ble Supreme Court in Premji Ratansey Shah & Ors. Vs. Union of India & Ors., reported in (1994) 5 SCC 547, relevant para 5 of which reads as under:-

"5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner."

26. After hearing learned counsel parties as well as perusing the record of the case, alongwith the precedent law cited at the Bar, this Court is of the opinion that that any minor factual error would not entitle the petitioners to get the relief of temporary injunction, as the petitioners have miserably failed to point out their prima facie regarding their ownership over the land in question.

27. This Court finds that the only old document that the petitioners had with them was Annexure-11, which showed the encroachment notice issued by the Municipal Board, Nathdwara in the year 2002; but the learned counsel for the petitioners failed to refute the fact that details of the said document Annexure-11 were neither produced by the petitioners at the time of filing of the suit or even at the time of filing of the application for temporary injunction nor at the time of preferring appeal against the order rejecting their application for temporary injunction.

28. This Court thus concludes that the said document Annexure-11 has been produced for the first time before this Court. Moreover the ration card shown by the petitioners also seems to be forged and fabricated one, in light of the aforementioned information given by the Municipal Board, Nathdwara to the effect that in Ward No.10 from year 2001 to 2013, the final serial number of the ration card issued was only upto 340, whereas the ration card produced by the petitioners bear serial No.390.

29. Learned counsel for the petitioners has not been able to explain non-existence of the document dated 30.03.2002 in his pleadings so far before the learned court below and also has not been able to establish that the petitioners were in actual possession of the plots in question, which would entitle them to seek regularization or at least the protection against their immediate dispossession.

30. This Court further finds that the submission of the applications for regularization and registration thereof by the Municipal Board, Nathdwara

pertained to the year 2013 and 2014 respectively, when the new, namely, the Rajasthan Municipalities Act, 2009 was in place, and as per the Repeal and Savings Clause in the Act of 2009, the old notification dated 09.05.1993 was no more in existence, which would not entitle the petitioners to any right being claimed by them.

31. This Court also finds that once the documents of execution of lease deed and registration thereof, coupled with the necessary payments, as above, made by respondent No.2 to the tune of Rs.80,70,000/- alongwith the registration charge of Rs.6,78,180/- prima facie clear the title of the respondent No.2, and thus a true owner cannot be saddled with the temporary injunction in favour of an encroacher, who has no prima facie being made out in his favour at the stage of temporary injunction.

32. In light of the aforesaid observations, the present writ petition is dismissed. Stay Application No.17831/2018 also stands dismissed accordingly.