

(2014) 11 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4023/2008

Ranveer

APPELLANT

Vs

Additional District Collector, Churu and Others

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120-B 420 465 468 471
Rajasthan Panchayati Raj Act, 1994 — Section 97

Citation : (2015) 3 WLN 296

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : K.R. Saharan, Advocate for the Appellant;

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.

1. This petition is directed against order dt. 29.2.08 passed by Additional Collector, Churu, allowing the revision petition preferred by the respondent No. 3 against the resolution dt. 17.6.04, adopted by the Administration and Establishment Committee of Panchayat Samiti, Taranagar, holding that the disputed plot belongs to the petitioner herein. The relevant facts are that the petitioner herein purchased a plot situated at Hamirawas Bada, Tehsil-Rajgarh, District- Churu on 16.11.96 by way of sale deed executed on a stamp of Rs. 20/- by one Shri Mahavir S/o. Chandu Ram and Sukh Ram S/o. Richhpal. However, a patta of the said plot being patta No. 5 dt. 7.3.97 was issued by the Gram Panchayat, Hamirawas Bada in favour of the respondent No. 2-Shrichand. The petitioner questioned the legality of the patta issued in favour of the respondent No. 2 before the District Collector, Churu. It appears that the matter was referred by the District Collector for disposal as an appeal to the Administration & Establishment Committee ("Establishment Committee") of Panchayat Samiti, Taranagar, which in its turn considered the matter in its meeting held on 17.6.04.

2. The Establishment Committee opined that the plot in question belongs to the petitioner herein inasmuch as, the same was sold in his favour by Sukhram S/o. Richhpal and Mahavir S/o. Chanduram by way of a document executed on 16.11.96 and he is in the possession thereof.

3. The legality of the resolution adopted by the Establishment Committee as aforesaid, was questioned by the respondent No. 3 herein, the patta holder, by way of revision petition under Sec. 97 of Rajasthan Panchayati Raj Act, 1994 (for short "the Act").

4. After due consideration of the rival submissions, the revisional authority found that the document alleged to have been executed by Mahavir S/o. Chanduram and Sukhram S/o. Richhpal on stamp of Rs. 20/- does, not create any title in favour of the petitioner and therefore, the resolution adopted by the Establishment Committee is not in accordance with law. The revisional authority observed that while passing the resolution, the matter with regard to grant of patta in favour of the respondent No. 2 was not even inquired into by the Establishment Committee. The revisional authority further observed that as a matter of fact, the appeal preferred by the petitioner herein questioning the legality of the patta was liable to be rejected as barred by limitation. Accordingly, the revision petition preferred by the respondent No. 2 has been allowed by the revisional authority by the order impugned. Hence, this petition.

5. Learned counsel for the petitioner contended that the order impugned has been passed by the revisional authority without considering the material on record objectively. Learned counsel submitted that the relevant legal aspects of the matter have also not been considered by the revisional authority in correct perspective, which has resulted in erroneous finding being arrived at. Learned counsel submitted that admittedly, the petitioner is in possession of the disputed plot and therefore, the Establishment Committee had committed no error in holding that the plot in question belongs to the petitioner. Learned counsel submitted that the petitioner was in possession of the disputed plot prior to issuance of patta in favour of the respondent No. 2 and therefore, the petitioner had preferential right for issuance of patta in his favour. On being asked by the Court whether the persons transferring the plot in question in favour of the petitioner by way of alleged sale deed dt. 16.11.96 had any title over the property, learned counsel had no answer.

6. On the other hand, the counsel appearing for the respondent No. 3 submitted that as a matter of fact, the sale deed dt. 16.11.96 alleged to have been executed by Mahavir and Sukhram in favour of the petitioner is a forged document and in this regard, FIR No. 73/99 was lodged by the petitioner at the Police Station concerned,, wherein after investigation, the police has filed charge sheet against the petitioner for offences under Sections 420, 465, 468, 471 and 120-B IPC. It is submitted that the Additional Chief Judicial Magistrate, Rajgarh, District Churu, took cognizance for the aforesaid offences against the petitioner and aggrieved thereby, a revision petition preferred also stands dismissed by the

Additional Sessions Judge, Rajgarh vide order dt. 10.2.2000. Learned counsel submitted that a suit preferred by the petitioner for declaring the patta dt. 7.3.97 issued in favour of the petitioner as null and void as also for seeking permanent injunction, stands dismissed by the Civil Judge (S.D.), Rajgarh, District-Churu vide judgment and decree dt. 8.4.13. It is submitted that the respondent No. 3 was in possession of the disputed plot and therefore, the patta was issued by the Gram Panchayat in his favour, which stands duly registered. Learned counsel submitted that the respondent No. 3 is holding valid title over the disputed plot and therefore, the order impugned passed by the revisional authority setting aside the resolution adopted by the Establishment Committee of Panchayat Samiti, Taranagar, does not suffer from any infirmity or illegality, warranting interference by this Court in exercise of its extra ordinary jurisdiction.

7. I have considered the rival submissions of the learned counsel for the parties and perused the material on record.

8. It is not the case of the petitioner that the alleged sellers Mahavir and Sukhram were holding any title over the disputed plot and therefore, on the strength of the said sale deed alleged to have been executed by Mahavir and Sukhram, the petitioner does not acquire any title over the property in question. A perusal of the resolution adopted by the Establishment Committee, reveals that the matter with regard to the grant of patta by the Gram Panchayat in favour of the respondent No. 3 was not taken note of and the petitioner was declared to be rightful owner of the disputed property solely on the basis of the alleged sale deed executed in his favour and his possession over the disputed plot. It is pertinent to note that while adopting the resolution as aforesaid, the patta issued in favour of the respondent No. 3 is not resolved to be cancelled and thus, ignoring the patta issued in favour of the respondent No. 3, the action of the Establishment Committee in declaring that the disputed plot belongs to the petitioner herein was ex facie illegal and arbitrary and the same has rightly been set aside by the revisional authority.

9. For the aforementioned reasons, no case for interference by this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India is made out. The writ petition is therefore, dismissed. No order as to costs.