(2015) 05 RAJ CK 0165

In the Rajasthan High Court

Case No : Civil Writ Petition No. 68/14, Civil Writ Petition No. 66/14, Civil Writ Petition No. 67/14, Civil Writ Petition No. 69/14, Civil Writ Petition No. 781/14, Civil Writ Petition No. 980/14 and Civil Writ Petition No. 981/14

Regional Forest Officer, Shri Doongargarh APPELLANT

Vs

Amra Ram and Others RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Rajasthan Land Revenue Act, 1956 — Section 76, 91

Citation : (2015) 05 RAJ CK 0165

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Sanjay Raj Paliwal, Deputy Government Counsel, for the Appellant; Pradeep Shah and Trilok Joshi, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sangeet Lodha, J.

1. These petitions filed by the State of Rajasthan, are directed against common order dated 5.4.13 passed by the Board of Revenue, dismissing the revision petitions preferred by the State, against the order dated 14.3.11 passed by the Revenue Appellate Authority, (''RAA''), Bikaner. By order dated 14.3.11 passed by the RAA, the appeals preferred by the Regional Forest Officer, Shri Doongargarh, under Section 76 of the Rajasthan Land Revenue Act, 1956 (''the Act'') against the order dated 9.4.10 passed by the Additional District Collector, Bikaner, setting aside, the orders dated 8.8.08 passed by the Assistant Conservator Forest, Bikaner were dismissed, whereby while declaring the respondents herein, as trespasser over the land in question and imposing the penalty, the land in question was directed to be taken in possession of the Department of Forest.

2. The relevant facts are that the proceedings under Section 91 of the Act, were initiated against the respondents for their eviction from the land comprising Khasra No. 428/15 of Revenue Village-Sri Doongargarh, occupied by them unauthorizedly, which is alleged to be forest land, notified vide notification dated 3.3.78. In response to the notice issued, the respondents produced on record the documents showing their title over the land in question, however, the Assistant Conservator Forest, opined that the land in question having been notified as forest land and entered into the revenue record in the name of Department of Forest, the respondents are trespasser over the land in question. Accordingly, vide orders dated 8.8.08, while declaring the respondents as trespasser over the land in question and imposing the penalty, the land was directed to be taken possession of by the Department of Forest.

3. Aggrieved by the orders dated 8.8.08, the respondents preferred separate appeals before the Additional District Collector, Bikaner. After consideration of the rival submissions, the Additional District Collector, arrived at the finding that the land in question occupied by the respondents forms part of the land measuring 19200 sq. yard in respect whereof a patta was issued by Tehsildar, Sri Doongargarh in favour of one Shri Birdi Chand Pungalia on 6.9.66, however, inadvertently only 2140 sq. yard land was entered into the revenue record as land comprising Khasra No. 428/1. The Additional District Collector observed that even in the map prepared by the Department of Forest the said land is separately shown as land forming part of Khasra No. 428/1. Accordingly, vide order dated 9.4.10, the Additional District Collector held that the land in question is abadi land and the proceedings taken under Section 91 of the Act, is not in accordance with law. The Additional District Collector directed the Tehsildar to record 19200 sq. yard land in the name of subsequent purchasers inter alia the respondents herein.

4. Aggrieved by the order dated 9.4.10 passed by the Additional District Collector, the Regional Forest Officer preferred appeal under Section 76 of the Act before the RAA, Bikaner, which stood dismissed vide order dated 14.3.11. Aggrieved thereby, the revision petitions preferred by the Regional Conservator Forest, Sri Doongargarh, also stand dismissed by the Board of Revenue vide order impugned. Hence these petitions.

5. Learned counsel appearing for the petitioner contended that the order impugned passed by the Board of Revenue is contrary to the provisions of the Forest Conservation Act, 1980 (''the Act of 1980''). Learned counsel submitted that admittedly the land comprising Khasra No. 428 min ad measuring 268 1/2 bighas was notified as forest land vide notification dated 3.3.78 and accordingly, the land was entered in the revenue record in the name of Department of Forest. Learned counsel submitted that the land occupied by the petitioner is not covered by the patta of the land measuring 19200 sq. yard alleged to have been issued by the Tehsildar, Sri Doongargarh, in favour of Birdi Chand, the predecessor-in-title of the respondents. Learned counsel submitted that the

order dated 30.6.86 relied upon by the appellate authorities passed after coming into force of Act of 1980, is void ab initio. Learned counsel submitted that no patta of the land measuring 19200 sq. yard could have been issued by the Tehsildar in favour of Birdi Chand and the patta issued being void ab initio, no right is created in favour of the respondents, the subsequent purchasers. Learned counsel submitted that in the garb of the sale deed executed in favour of the respondents by Birdi Chand, they have encroached upon the forest land and therefore, the order passed by the Assistant Conservator Forest under Section 91 of the Act, was absolutely in accordance with law and thus, the Board of Revenue has seriously erred in dismissing the revision petitions preferred by the Regional Forest Officer.

6. On the other hand, learned counsel appearing for the respondents submitted that it is a matter of record that the patta of the land measuring 19200 sq. yard was issued by the Tehsildar, Sri Doongargarh on 6.9.66, in respect whereof the requisite charges were deposited on 22.9.42. Learned counsel submitted that in respect of the said land an order dated 1.11.85 passed by the Tehsildar, Sri Doongargarh, under Section 91 of the Act, stood set aside by the Additional District Collector, Churu, vide order dated 30.6.86 and the land in question measuring 19200 sq. yard was directed to be entered in the name of Birdi Chand Pungalia in the revenue record, however, inadvertently only the land purchased by the purchasers measuring 2140 sq. yard was entered in the revenue record vide entry No. 890 dated 9.7.91. Learned counsel submitted that the respondents are claiming title over the land in question as purchasers from the patta holder of the land and therefore, the question of treating the respondents as trespasser over the land in question does not arise and thus the proceedings initiated under Section 91 of the Act were absolutely without jurisdiction. Learned counsel submitted that on the facts and in the circumstances of the case, the directions issued by the Additional District Collector, affirmed by RAA and Board of Revenue, directing the Tehsildar to enter the land in the revenue record in the names of the purchasers of the land, covered by the said patta, cannot be faulted with.

7. I have considered the rival submissions and persued the material on record.

8. Indisputably, a patta of the land ad measuring 19200 sq. yard was issued by the Tehsildar in favour of one Shri Birdichand on 6.9.66 and the respondents herein are the subsequent purchasers, who have purchased the plots forming part of the said land by way of registered sale deeds. It is also not in dispute that vide order dated 1.11.85 the Tehsildar directed eviction of the respondents from the land in question alleged to be in their unauthorised occupation, which stood set aside vide order dated 30.6.86 passed by the Additional Collector, Churu and the directions were issued to enter the land in the revenue record in the names of the respondents. Pursuant thereto, vide order dated 9.7.91, land measuring 2140 sq. yard was entered in the name of the subsequent purchasers instead of the land measuring 19200 sq. yard covered by the patta issued in favour of the

respondents'' predecessor in title Shri Birdichand. Be that as it may, the order dated 30.6.86 passed by the Additional Collector has attained finality and therefore, if the respondents are in possession of the land covered by said patta, they cannot be evicted by taking the proceedings under Section 91 of the Act. It has come on record that even in the map prepared by the Department of Forest, a portion of the land has been separately shown as the land comprising khasra No. 428/1.

9. Coming to the contention of the petitioner that the respondents are in possession of the land other than the land covered by the said patta, if it is so, the State Authorities are always at liberty to take appropriate proceedings and pass appropriate order after giving the respondents an opportunity of hearing. Further, if the patta issued in favour of respondents'' predecessor-in-title Birdichand is illegal or without jurisdiction, nothing precludes the competent authority from taking the appropriate proceedings for cancellation of patta issued by the Tehsildar, as aforesaid. But then, without determination of controversy sought to be raised as aforesaid by taking proceedings in accordance with law, straight away the order passed by the Assistant Conservator of Forest directing eviction of the respondents treating them to be trespasser in unauthorized occupation of government land has rightly been set aside by the Appellate Authority.

10. For the aforementioned reasons, the concurrent findings arrived at by the Appellate Authorities after due consideration of the material on record in its entirety and objectivity, cannot be said to be capricious or perverse so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226/227 of the Constitution of India.

11. In the result, the petitions fail, the same are hereby dismissed with the observations as above. No order as to costs.

