

(2013) 04 RAJ CK 0078

In the Rajasthan High Court

Case No : Civil Special Appeal (W) No"s. 441 of 2013 and 443 of 2013 in Civil Review Petition No. 91 of 2013 in Civil Writ Petition No. 9901 of 2011

Rewadiya and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-04-2013

Acts Referred:

Citation : (2013) 2 WLN 580

Hon'ble Judges : Veerendr Singh Siradhana, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : G.K. Garg and Mr. Banwari Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—As regards Special Appeal-441/2013, leave stands granted. Instant intra Court appeals have been preferred by certain alleged encroachers & also by Gram Panchayat Dalpura who is supporting the cause of alleged encroachers on the pretext that there could be regularization of such persons who are residing over the pasture land for a plenty long time, while there is a mandate of the Apex Court in the judgment of Jagpal Singh and Others Vs. State of Punjab and Others, giving certain directions to the respective State Governments regarding removal of such encroachments and that appears to be the reason adopted by the State Government for taking further steps regarding removal/ejectment of all such alleged encroachers may be residing/occupying for a plenty long time. The Apex Court in the judgment (supra) observed as under:-

Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorized occupants of Gram Sabha/Gram Panchayat/Poramboke/ Shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide

for the speedy eviction of such illegal occupant, after giving him a show cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularizing the illegal possession. Regularization should only be permitted in exceptional cases e.g. where lease has been granted under some Government notification to landless labourers or members of Scheduled Castes/ Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land.

2. As it reveals from the record that one Ex-Sarpanch filed a writ petition before this Court with the grievance that some anti social elements have encroached upon part of khasra No. 110 measuring 5.6 hectares in village Gothara, Tehsil Nadoti, District Karauli and they deserve to be removed.

3. After the notice came to be served upon the respondents including Gram Panchayat Dalpura, objection was raised that the petitioner Nathu Lal Meena Ex-Sarpanch himself is a encroacher over the land of khasra No. 110 which was a recorded pasture land and from the factual report which came up before the Court it transpired that the land allotted to Samudayik Bhawan was also encroached by the encroachers and obviously in the light of judgment of Apex Court, referred to supra, such encroachments could not have been regularized and the learned Single Judge while disposing of the writ petition vide order dt. 11.02.2013 observed that let the Collector, Karauli may depute responsible officer to make enquiry and take steps to remove the encroachments made by anyone in khasra No. 110 measuring 5.6 hectares in village Gothara, Tehsil Nadoti, District Karauli including the encroachment if made by Ex-Sarpanch Nathu Lal (writ petitioner) and further directed to make compliance within three months.

4. As it reveals from the record that Gram Panchayat Dalpura filed DB Civil Special Appeal (Writ) No. 359/2013 and the Division Bench in its order dt. 21.03.2013 observed that after the counsel for appellant argued the case at length on merits sought permission to withdraw the special appeal with liberty to file review application and obviously if somebody asks for withdrawal of the appeal with liberty to file review application the Division Bench grants permission as prayed for. The Gram Panchayat Dalpura in the review petition prayed that there was recommendation of Sub-Divisional Officer for regularization in favour of such alleged encroachers and circular Annx. R/4 has also been issued in this regard. However, the learned Single Judge has not taken cognizance of the report and observed that direction was to the District Collector to hold enquiry and take appropriate steps regarding removal of encroachments over khasra No. 110 which as pointed out is a recorded pasture land and all encroachments be treated with the same standards/yardsticks and whosoever is a encroacher including original writ petitioner shall be removed and as regards procedure being followed for removal of encroachments it was open for the authorities to take steps provided under the law.

5. Mr. G.K. Garg, Ld. Senior Counsel, assisted by Mr. Banwari Sharma, appearing for the appellants vehemently contends that apart from the fact that the appellants in Special Appeal-441/2013 are not heard and even if they are trespassers over khasra No. 110 but part of khasra No. 110 has been regularized in favour of illegal encroachers and the authorities cannot adopt two different standards and in support of submission brought to our notice the land allotment letter issued in 2002 regarding regularization to one of the alleged encroacher over the pasture land and further submits that Rule 7 of Rajasthan Tenancy Rules, 1955 authorises the government for allotment after setting apart pasture land obviously for meeting out exigencies for such of the down trodden persons if they are residing for a plenty long time and circular has also been issued by the State Government to this effect.

6. We may take notice of the judgment, referred to supra, where the Apex Court has heavily come upon the State Governments and laid down mandate that whosoever is a encroacher over the pasture land be removed and such land be restored to the Gram Sabha/Gram Panchayat for the common use of the villagers of the village and in light thereof circular has been issued by the government on 25.04.2011 carrying out the mandate laid down by the Apex Court in the judgment (supra).

7. However, the learned Single Judge has not recorded a finding of fact as to whether any occupant over the subject land is in illegal occupation or an encroacher and that is always supposed to be enquired upon by the authorities with whom power has been vested under the law but observed that after the procedure being undertaken through responsible officer by the District Collector he must take active steps to remove encroachments made by anyone over khasra No. 110 measuring 5.6 hectares in village Gothara irrespective of any individual alleged encroacher they have to be removed obviously in accordance with law.

8. As regards the submission made by Mr. Garg that parity is not being maintained by the respondent, suffice it to say that once it has been observed that encroacher over the land has to be removed no-one could be spared and every encroacher is supposed to be treated by same standards regarding removal from the subject land and so far the submission made in respect of Rule 7 of the Rules, 1955, suffice it to say that power is vested with the Collector for allotment but in the instant case no allotment has been made to the alleged encroachers as prayed and mere pendency of the proposal will not confer right in the light of judgment of Apex Court, referred to supra, and there could not be any further regularization and an illegal encroachment has to be made available to the villagers in general and that being observed by the Apex Court, we do not find any error in the order of learned Single Judge & review order as well, which may require interference. We consider it appropriate to record that the mandate laid down by the Apex Court be made applicable in general and the state authorities must take active steps in compliance thereof.

Consequently, the appeals are devoid of merit and accordingly dismissed.