
(2014) 01 RAJ CK 0221
In the Rajasthan High Court
Case No : Civil Writ Petition No. 18056/2011

Santosh Lal Meena

APPELLANT

Vs

District Judge Sawaimadhopur

RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 27

Citation : (2014) 3 WLN 299

Hon'ble Judges : Mohammad Rafiq, J

Bench : Single Bench

Advocate : Santosh Kumar Jain, Advocate for the Appellant

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—This writ petition has been preferred by the petitioner against the judgment of the District Judge Sawaimadhopur Dt. 15.09.2011 whereby, his appeal preferred against the judgment of the Estate Officer Dt. 20.05.2009 has been dismissed. The Estate Officer by the aforesaid judgment has directed eviction of the petitioner from the land belonging to Indian Railways in the size of 77.32 square meter holding that petitioner had encroached upon such land of the railways and directed his eviction. Shri Santosh Kumar Jain, learned counsel for the petitioner has argued that the Courts below have committed material irregularity in exceeding their jurisdiction by entertaining the eviction petition filed by respondent No. 3 in regard to a land of the Municipal Board, Gangapurcity and not of the Railways and therefore the Railways cannot claim right, title or interest of the aforesaid land. This land is situated away from the railway land. This land is part of the municipal land for which petitioner is paying the house tax. Reliance is placed on the receipts of house tax Dt. 29.12.2005 and 09.12.2009 (Ann. 3). It was argued that no evidence was produced by the railways showing title of the land. Petitioner had been having in possession of the aforesaid land for last several decades. He cannot be therefore evicted from the said land. It is argued that the Estate Officer has committed

serious error in proceeding with the matter ex-parte against petitioner. The principles of natural justice thus have been violated. The petitioner was not provided opportunity of hearing. The provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1971 were not attracted in the present situation. Even otherwise, provisions of Sections 4 and 5 of that Act were not strictly followed. The notice that was served upon the petitioner by the railways was for eviction of the land measuring 90x90 square meter, whereas actually the eviction has been directed to be made for the land measuring 77.32 square meter of land. The appellate Court has failed to consider all these aspects of the matter. Petitioner filed an application under Order 41 Rule 27 CPC seeking to place on record certain evidence, which the appellate Court has failed to appreciate.

2. Upon hearing learned counsel for the parties and perusing the impugned-order, I find that the petitioner was served a notice by the Estate Officer therefore I do not find any merit in the argument that petitioner was not afforded any opportunity of hearing. The notice was issued by the Estate Officer on 15.11.2004 calling him to appear on 06.12.2004. The notice was accepted by the petitioner and his thumb impression was obtained on the receipt and when he failed to appear, again notice was issued on 22.12.2004 calling him to appear on 14.02.2005. Though he did not appear but he sent reply to the notice through his representative Shri Lekhraj Meena on 12.02.2005 contending that his house was situated in the land of Municipal Board and was thus situated within the main road. His house was also situated within the street light set up by the Rajasthan Vidyut Vitran Nigam Ltd. and his telephone cable was also installed by the Bharat Sanchar Nigam Ltd. within the municipal limits. His representative Shri Lekhraj Meena appeared and he noted the next date to be 25.04.2005. In view of the dispute raised by the petitioner, the Estate Officer sent the Commissioner to inspect the site on 11.03.2005 while directing parties or their representatives to remain present on the site on 17.03.2005. That notice was received by the son of petitioner Ajay Pal Meena but no one appeared on their behalf at the time of site inspection. Notice was again issued on 17.02.2005 for appearing before the Estate Officer on 10.06.2005, which was received by Ajay Pal Meena but no one again appeared. Reply was sent by the petitioner through his representative Ajay Pal Meena on 05.01.2006 again reiterating his arguments previously made. It was in these facts, the Appellate Court did not accept the argument that Estate Officer has passed the order without opportunity of hearing to the petitioner.

3. Fact that the notice was given for removing the encroachment over 90x90 square meter of land and actually the possession was sought to be required for 77.32 square meter of land; it was done by the Estate Officer because reduction in the size was based on the report of the inspection carried out by the Commissioner. This Court did not take it an illegality. Petitioner was issued notices on number of occasions but he failed to appear before the Estate Officer to show his right, title or interest over the land in dispute. The land belonging to

the Municipal Board is always taken to belong the Municipal Board and since petitioner paid the house tax, he should be taken as lawful owner of the land, cannot be countenanced. The railway land wherever situated even within the municipal limit has to be accepted as railway land. Encroacher does not become owner just by paying the house tax and it does not vest any right, title or interest in the railway land in his favour as, the petitioner taking advantage of the vicinity of the railway land, made encroachment over the railway land. I do not find any infirmity in the impugned orders as well as any merit in this writ petition, which is accordingly dismissed.