

(1978) 08 RAJ CK 0011

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1682 of 1972

Sarupa

APPELLANT

Vs

The Addl. Collector and Others

RESPONDENT

Date of Decision : 29-08-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) WLN 249

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Agarwal, J.—In this writ petition under Article 226 of the Constitution the partition is challenging the order dated 30th September, 1972 whereby the additional collector, Pail rejected the revision petition filed by the petitioner against the order of the panchayat swami on the ground that the said revision petition was barred by limitation. The circumstances relating to the passing of the order aforesaid are briefly as under.

2. The petitioner Sarupa and his brother Roopa have a house in village Khundawas which falls in the jurisdiction of Panchayat Sadariya and Panchayat Samiti Rohat there is Bara" (enclosure) surrounding the land over which the houses of the petitioner and his brother Roopa are situated.

3. On the basis of the complaint of one Sevaram, respondent No. 4 the gram Panchayat Sadariya on 7th April 1971 issued a show cause notice to the petitioner requiring him to show cause why a way should not be opened through the "bara" of the petitioner. In response to the said show cause notice, the petitioner appeared before the gram Panchayat Sadariya on 15th April, 1971 and submitted that no right of way could be claimed through the bara of the petitioner the gram Panchayat after recording the statements of the witnesses produced by respondent No. 4 and after recording the statements of the petitioner passed an

order dated 15th April 1971 whereby it ordered the petitioner to open the way through his Bara on the view that there was a preexisting right of way which had been locked by the construe moon of the bara by the petitioner aggrieved by the order of the gram Panchayat Sadariya dated 15th April, 1971 the petitioner filed an appeal before the Panchayat Samiti Rohat but the said appeal was dismissed by the Panchayat Samiti by its order dated 30th August, 1971 Aggrieved by the aforesaid order of the Panchayat Samiti, the petitioner on 1st June, 1972 filed a revision petition before the additional collector, Pali the case of the petitioner is that he learnt about the order of the Panchayat Samiti dated 30th August, 1971 only on 2nd May, 1972 when he was served with notice dated 26th April, 1972 issued by the Sarpanch gram Panchayat Sadariya directing him to open the way and depots a fine Rs. 254/- as his appeal had already been dismissed by the Panchayat Samiti on 30th August, 1971. The case of the petitioner is further that immediately on the receipt of the notice dated 26th April, 1972, the petitioner applied for a certified copy of order of the Panchayat Samiti, dated 30th August, 1971, and the certified copy of the said order was received by the petitioner on 21st May, 1972 and soon thereafter he filed a revision petition on 1st June, 72, before the Additional Collector, Pali. The Additional Collector, Pali, by his order dated 30th September, 1972 dismissed the revision petition of the petitioner on the ground that it was barred by limitation In taking the aforesaid view the Additional Collector, Pali has observed that an appeal u/s 26A of the Rajasthan Panchayat Act, has to be filed within a period of 30 days and that even though no period of limitation has been prescribed for filing a revision petition u/s 27A of the Rajasthan Panchayat Act, it does not mean that an aggrieved party can move the revision petition at any time he likes. The Additional Collector, Pali has further observed that any person aggrieved by an order should file the revision petition with the least possible delay and that in the present case the revision petition had been filed against the order dated 30th September, 1971 after lapse of the considerable time on 1st June, 1972 and that permission could not be granted for filing revision petition after expiry of the period prescribed for filing an appeal.

4. The learned Counsel for the petitioner has submitted that even though the legislature has not prescribed any period of limitation for filing a revision petition u/s 27A of the Rajasthan Panchayat Act, the Additional Collector Pali has erroneously proceeded on the footing that such revision petition should normally be filed within the period of 30 days, the period prescribed for filing an appeal u/s 27A of the said Act.

5. Even though the respondent have been served with the notice of the writ petition, no reply has been filed on their behalf. Nor has any counsel appeared on behalf of the respondent at the time of the hearing of the petition.

6. I am in agreement with the contention of the counsel for the petitioner that the Additional Collector, Pali was not justified in rejecting the revision petition of the petitioner on the view that it was barred by limitation. It has to be noticed that although the legislature has taken care to prescribe a period of limitation for

filing an appeal u/s 26 of the Rajasthan Panchayat Act, 1961, it has restrained from doing so in respect of a revision u/s 27A of the Act. This indicates that the legislature did not intend to put such a fetter on the revisional jurisdiction. There was, therefore, no warrant for the Additional Collector, Pali to hold that the period of 30 days prescribed for filing a appeal u/s 26A of the said Act should be treated as the normal period for filing a revision petition and that a revision petition filed after the lapse of the said period of 30 days could be entertained only if the petitioner was in the position to explain the delay satisfactorily.

7. The writ petition, is, therefore allowed and the order of the Additional Collector, Pali dated 30th September, 1972 is quashed and it is directed that the revision petition of the petitioner should be disposed of in accordance with law. The parties are left to bear their own costs.