

(2000) 04 RAJ CK 0077

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3164 of 1998

Satya Narayan Sharma and Others

APPELLANT

Vs

Sarpanch Gram Panchayat Kerap and Others

RESPONDENT

Date of Decision : 27-04-2000

Acts Referred:

Citation : (2000) 2 WLN 209

Hon'ble Judges : Rajesh Balia, J; Mohd. Yamin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the parties.

2. The petitioners, number in seven, alleging themselves to be the permanent residents of village Ransisar, has filed this petition for restraining respondent Gram Panchayat, Kerap, Tehsil Deedwana, District Nagaur from raising construction of Samaj Kalyan Bhawan on any part of Khasra No. 450 of village Ransisar and also direct demolition of any construction which may be made in this respect.

3. Annexure-1. which is alleged to be a map, only a blank paper has been filed without there being any map. A reply has been filed in response to the notice showing that 52 feet wide public way is existing near the building of Samaj Kalyan Bhawan which has already been constructed. According to the reply filed on behalf of the respondent No. 1 in which it has been stated that Khasra No. 450 has been recorded as gair mumkin and which has also been shown as a way. However, it has a very big area in which lot of Baras and Pakka Houses are in existence for a long period and the way is still being used by all heavy and light vehicles and the villagers without any impediment. In such circumstances, we are of the opinion that in absence of exact location and size of the public way alleged to be existing and the existing situation about which there existed dispute between the parties, it is not possible to adjudicate upon in dispute. The

dispute between the parties appears to be eminently suitable to be tried as a civil suit for injunction restraining the respondents from making encroachment on any part of the public way in which an inquiry can be made by holding a regular trial to find the exact nature of existence of the public way and the extent of encroachment, if any, made on the public way, which can be appropriately dealt with by the court.

4. This petition must, therefore, fail and is hereby dismissed without prejudice to the right of the petitioners to prosecute their remedy in the civil court, if so advised.