
(1979) 01 RAJ CK 0030
In the Rajasthan High Court
Case No : Civil Writ Petition No. 871 of 1976

Shanker Lal	Vs	APPELLANT
The State of Raj. and Others		RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1979) WLN 8

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.C. Agrawal, J.—Shankerlal, the petitioner in this writ petition, and one Sugnaram were neighbours in village Shivbari. In between the house of the petitioner and the house of Sugnaram, there is public land over which the petitioner claims a right of way for the purpose of going to his house. The petitioner had filed a Civil Suit for declaration and injunction in the court of Munsif, Bikaner, against Sugnaram and in the said suit, a decree was passed by the Munif, Bikaner on 29th July, 1969 in favour of the petitioner whereby it was declared that the open land aforesaid is a public way and that the petitioner has a right to use the said way and Sugnaram was restrained from interfering with the petitioner's right over the said land: On 9th August, 1969, Sugnaram applied before the Gram Panchayat, Shivbari, for grant of Patta and the Gram Panchayat by its resolution dated 28th July, 1973 decided to grant a patta to Sugnaram for the land of his house including the open land over which the petitioner was claiming a right of way. The petitioner filed an appeal before the Panchayat Samiti, Bikaner, against the aforesaid resolution of the Gram Panchayat and the Panchayat Samiti, by its order dated 20th April, 1974, set aside the order of the Gram Panchayat regarding the sale of the open land in favour of Sugnaram. In the meantime, Sugna Ram had expired and his legal representatives, respondent Nos. 5 to 9 herein, filed a revision petition before the Collector, Bikaner, against

the order of the Panchayat Samiti dated 20th April, 1974. The Collector, Bikaner by his order dated 29th October, 1974, held that the Panchayat Samiti was not right in holding that Gram Panchayat is not competent to sell the land vested in the Panchayat and he remanded the case to the Panchayat Samiti with a direction that the latter will direct the Gram Panchayat to grant patta only of such land which is not included in the public way as is ordered by the Munsif. After the aforesaid remand, order was passed by the Collector, the Panchayat Samiti, by its order dated 10th July, 1975 held that the Patta granted by the Gram Panchayat in favour of Sugnaram is valid. In the said order dated 10th July, 1975, which was passed after inspecting the site, the Panchayat Samiti has found that the open land between the house? of the petitioner and Sugnaram was not being used by any body except the persons residing in the house of Mst. Leeli, the widow of Sugnaram, (respondent No. 5) and others and that no body was residing in the house of the petitioner and that the petitioner had built another house in Nai Basti. The Panchayat Simiti further found that for going to his house the petitioner could enter from main street towards the east of his house which he has closed by constructing a wall and which can be reopened. The petitioner, thereupon, filed a revision petition before the Collector, Bikaner. and the Collector after inspecting the site, dismissed the said revision petition of the petitioner by his order dated 23rd March, 1976. In his order aforesaid, the Collector has found that the petitioner had unauthorisedly opened a door on the open land towards the house of respondents No. 5 to 9 and there was no public way on that side and that the land over which the petitioner was claiming he right of way was only meant for the house of respondents No. 5 to 9 and that as far as the petitioner is concerned, there is a way, which he has closed. The Collector held that there was no illegality in the sale of the open land by the Gram Panchayat or in the order of the Panchayat Samiti. Aggrieved by the aforesaid order of the Collector dated 23rd March, 1976, the petitioner has filed this writ-petition.

2. Shri R.R. Chacha, the learned Counsel for the petitioner has challenged the order of the Collector mainly on the following two grounds:

(1) The land in dispute had vested in the Gram Panchayat as a public land u/s 88 of the Rajasthan Panchayat Act, 1953 and the Gram Panchayat was not competent to sell the said land.

(2) The order dated 29th October, 1974 passed by the Collector in the revision petition o respondents No. 5 to 9 operates as res-judicata and was binding on the parties and it was not open to the Panchayat Samiti to hold that the grant of Patta in favour of Sugnaram in respect of the entire land, including the public way, was valid and the Collector had erred in affirming the said order of the Panchayat Samiti.

3. As to the first contention urged by the learned Counsel for the petitioner, I find that the said contention has neither been urged before the Panchayat Samiti and the Collector, nor is there is any averment in the, writ petition that the land in

dispute had vested in the Gram Panchayat as a public street and that the Gram Panchayat was not competent to sell the said land. It may be further observed that the Gram Panchayat was not a party to the suit which was filed by the petitioner against Sugnaram and, therefore, the decree that was passed in the said suit cannot bind the Gram Panchayat so as to curtail its right to sell the said land. In the absence of any factual basis that the land in dispute was being used as a public street prior to the establishment of the Gram Panchayat and that it had vested in the Gram Panchayat u/s 88 of the Rajasthan Panchayat Act as a public street, the question whether the Gram Panchayat was competent to sell a land which has vested in it as a public street u/s 88 of the Rajasthan Panchayat Act, does not arise for consideration and the first contention urged by the learned Counsel for the petitioner cannot be accepted.

4. As regards the second contention urged by the learned Counsel for the petitioner that the order dated 24th October. 1974 passed by the Collector in the revision petition filed by respondent Nos. 5 to 9 operated as res-judicata. I find myself unable to agree with the proposition that the principle of res-judicata is applicable to the proceedings before the Panchayat Samiti and the Collector arising from orders of the Gram Panchayat regarding sale of Panchayat property. But without going further into the matter and assuming that the said principle of res judicata is applicable to these proceedings, I am of the view that no case has been made out for interference with the order of the Panchayat Samiti and the order of the Collector in the present case by the issue of a writ of certiorari under Article 226 of the Constitution, in view of the findings recorded by the Panchayat Samiti as well as by the Collector in the orders passed by them that there was another passage for going to the house of the petitioner, which the petitioner has closed and which he can reopen again and that the land in dispute was meant exclusively for the house of Mst. Leeli & others i. e- respondents Nos. 5 to 9 In view of findings aforesaid, it cannot be said that the petitioner has suffered any injury of a substantial nature or that the illegality in the impugned orders has resulted in substantial failure of justice. There is, therefore, no merit in this writ petition.

5. The result is that the writ petition is dismissed. Taking into consideration, the facts and circumstances of the case, I direct that the parties will bear their own costs of this writ petition.