

(1977) 07 RAJ CK 0017

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1584 of 1971

Sheo Karan and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-07-1977

Acts Referred:

Constitution of India, 1950 — Article 226

Rajasthan High Court of Judicature Rules, 1952 — Rule 375

Citation : AIR 1979 Raj 58 : (1977) RLW 364 : (1977) WLN 348

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Advocate : M. Mridul, for the Appellant; B.L. Purohit and M.D. Purohit, Additional Government Advocate, for the State, for the Respondent

Judgement

M.L. Jain, J.—This writ petition comes up today for the decision of two preliminary points raised by the respondents :--

(1) That it is a joint petition by 8 petitioners and is not maintainable in view of Rule 375 of the Rajasthan High Court Rules which was inserted on 9-10-1964 and in view of the decision of the Division Bench of this Court in Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another,

(2) The petitioner has concealed facts and the petitioner having not come with clean hands, the petition should be thrown out.

2. In village Dulmana, Tehsil Suratgarh, District Sri Ganganagar, there is a temple of Thakurji which had a grant of "Muafi" lands in 6 PBN, Square Nos. 44 and 45, measuring 15 Bighas and 17 Biswas. These lands were in possession of one deceased Bhinya Ram, as a "Pujari". The petitioner No. 1 Sheo Karan petitioners Nos. 4, 5, 6 and 7 are his legal representatives. Besides this land, Bhinya Ram also had there 7 Bighas of "lagani" land. After the resumption of "Muafi" land w. e. f. 1-1-1959, though the deity was the Muafi holder, yet Bhinya Ram got an order in his favour from the Collector, Sriganganagar on 13-10-1959

that the land in question was his personal property u/s 23 (2) of the Land Reforms and Resumption of Jagirs Act, 1952. It was then entered as his khatedari land. The petitioners Nos. 2 and 3, namely; Smt. Rami Devi W/o Shri Sheo Karan and Shri Sitaram S/o Sheo Karan purchased certain lands in tehsil Pilibanga in 7 PBN. These lands were reserved for purposes of orchard and Mandi. Petitioners Nos. 2 and 3 were granted lands in exchange in 7 PBN itself. Deceased Bhinyaram also applied for exchange of land for the aforesaid "Muafi" and "Lagani" lands. Exchange was allowed to him and the said former "Muafi" land was put to auction and purchased by the petitioner No. 8 Balbir Singh. The said exchanges were sanctioned by the Deputy Colonisation Commissioner, Hanumangarh. on 20-4-1961.

3. The lands so sold by auction to the petitioner No. 8 were in fact in possession of one Ladhuram who had filed a suit in the court of the Assistant Collector, Hanumangarh against Bhinyaram that Bhinyaram became blind and his son Sheokaran had become a Patwari. Therefore he was appointed a "Pujari" in 1949-50 and he has been cultivating the land in lieu of his services to the temple. Since Sheo Karan was a patwari, he managed a forged girdawari of the disputed land in his favour and thus it was entered in the khatedari of Bhinyaram. Ladhuram prayed for a declaration that the land should be declared as of his khatedari Ladhuram also obtained an injunction from that court against his dispossession on 23-7-1960. Appeal and Revision against the injunction were also dismissed. The suit has had a chequered career and is still pending. Sheo Karan filed this petition and got the suit stayed on the basis that a writ petition has been filed in the matter in this Court. In this writ petition he had also applied for the stay, but that was ultimately rejected.

4. In the revision proceedings against the order of the Deputy Colonisation Commissioner allowing exchanges of land, Shri Manphool Singh, Minister of State put up a note on 31-3-1970 before the Minister concerned about this matter. His view was that the exchange allowed in favour of Bhinyaram, his son and members of his family by the Deputy Colonisation Commissioner by his order dated 20-4-1961 was without jurisdiction and deserved to be cancelled. He also proposed that the Collector, Sriganaganagar be directed to hold complete inquiry and give proper orders. The Minister Shri Shobharam approved the proposal. The Collector, Sriganaganagar heard the parties concerned and made an order dated 13-1-1971 and sent the papers to the State Government for appropriate orders. By then Shri Brij Prakash Goyal became the Deputy Minister for Colonisation. He submitted a note that the land 16 Bighas and 17 Biswas which was in the "Muafi" of Thakurji should remain in possession of the pujari Ladhuram and the land given in exchange thereof to Bhinyaram be cancelled. The sale of the land of the Muafi which was auctioned in favour of Balbir Singh should also be cancelled. He further proposed that whatever land has been allowed to Bhinyaram in exchange of the reserved land, that may be maintained but the views of the Collector be invited in respect of the remaining exchange. This order was approved by the Minister of State Shri Manphool Singh on 2-4-1971.

5. By the present writ petition, the petitioners Nos. 1 to 8 pray that the order of the Ministers dated 21-3-1970 and 26-3-1971 be quashed on the ground that the orders of the Ministers were made mala fide, without any jurisdiction and without hearing the petitioners. Both the Ministers namely; Manphool Singh and Brij Prakash Goyal had a bias and were disqualified from deciding the matter, Shri Goyal was the counsel for Ladhuram in the revenue suit and wanted to oblige his former client. Shri Manphoolsingh was similarly biased because he had at one stage espoused the cause of Ladhuram when he was a member of the Legislative Assembly.

6. In dealing with the preliminary objection, the learned counsel for the respondents relies upon Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, while the learned counsel for the petitioners relies upon Nathmal v. Commissioner Civil Supplies, 1951 RLW 467 and upon Jasraj Vs. State of Rajasthan and Others, In Nathmal's case two persons on whom two different orders were passed had joined in one petition. The Division Bench saw no objection to this course when the case of the two persons was exactly the same. But this case is no more valid as in 1964, Sub-rule (4) was added to Rule 375 as follows :

"An application by more than one person shall not be entertained except when the relief claimed is founded on the same cause of action."

6-A. Now, "An action" is an application to a court by a plaintiff for the grant of specified relief against the defendant. "A cause of action" is a state of facts the existence of which entitles the court to grant to the plaintiff the relief applied for in the action, vide Rediffusion (Hong Kong) v. Att. Gen. of Hong Kong, (1970) AC 1136 PC).

7. In Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, 41 persons filed a writ petition for restraining the respondent State from enforcing the provisions of the Rajasthan Agricultural Produce Markets Act, 1961, the rules made thereunder and the byelaws made by the Krishi Upaj Mandi Samiti, Kishangarh. The office raised an objection that the petition was not maintainable in view of the aforesaid rule, as the relief claimed by the petitioners cannot be said to be founded on the same cause of action. The office pointed out that while the petitioners may have similar or identical cause of action, they cannot be said to have the same cause of action within the meaning of the rule. The Division Bench observed as follows (at p. 22): "The problem to our mind, in short is whether the petitioners can be said to have founded the relief in the writ petition on the same cause of action. It is true the petitioners are challenging the validity of the same law in the same manner, and it may be assumed that they are affected in the same way. But all the same this is not sufficient for holding that they have the same rights which are allegedly infringed by this law. In other words, the injury with which they are threatened or have already suffered cannot be said to be the same."

8. Now, one has only to substitute the words "the impugned order" for the word "law" occurring in the above passage, and one will find the same situation and the same answer as were there in Chandmal's case.

9. A different note appears to have been struck in Jasraj's case (AIR 1977 Raj 350). In that case, the petitioners were the owners and occupiers of certain lands. The Government of Rajasthan acquired these lands. The petitioners made representations asking for their lands to be released from acquisition. The Government issued a notification releasing their lands but the Tehsildar took possession of the lands. Later on, the Government withdrew the notification releasing the lands. The petitioners in a joint petition prayed for quashing of the order of withdrawal of release of the lands. An objection was raised, in view of the Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, that a joint petition by all the petitioners was not maintainable as the causes of action were separate. This objection was rejected by Sachar J. holding that the petitioners community of interest and cause of action arose when the Government directed to release all the lands of the petitioners by a common order. Their community of interest further continued when the Government issued the impugned notification purporting to rescind the earlier order. The claim of the petitioners in short was that the Government having passed an order of release from acquisition, had no jurisdiction to rescind the same by the subsequent order. The petitioners are not raising any separate claim or asking for any separate determination of points with which one may be interested and the other may not be. They were aggrieved by the same common order and the cause of action was thus the same. The learned Judge did not agree that their causes of action were similar but not same. He continued to observe that unlike Chandmal's case, no objection was raised by the office to the maintainability of the joint petition. Had that been done, it would have been open to the petitioners to file separate petitions. That having not been done it would work injustice if the petition was to be thrown out now on a hyper-technical ground. Even if this petition was dismissed on this ground, it would be open to the petitioners to file fresh petitions with the result that all the time which has been spent in filing replies and having the case ready, will have to be gone into again. This time consuming process will serve no purpose. It cannot advance the cause of justice because the petition even if dismissed on this ground, and the petitioners filed fresh ones, they will have to be admitted because they would raise arguable points. He further added that according to Chandmal's case in such a situation the petitioners must be given an opportunity to choose as to on whose behalf the writ petition shall continue. Even if that course was adopted, and the petition was to continue on behalf of one petitioner, the result will be the same, apart from the formality of asking the petitioners to file separate though identical petitions.

10. On the basis of these observations, Mr. Mridul learned counsel for the petitioners now submits that the petitioners in this case were aggrieved by the same orders of the Ministers and their cause of action is the same namely; the offending orders. He further submitted that it will not advance the cause of

justice if after a lapse of 6 years, the petitioners are now told to go and file separate petitions. To my mind, these submissions cannot be allowed to prevail. The criteria laid down in Chandmal's case was not that the petitioners were affected by the same act in the same manner and in the same way. It is further necessary to find whether same rights have been infringed. In Jasraj's case, it appears to me that there being community of interest, the cause of action was held to be the same. But the case before us has quite a different aspect. The last of the orders under challenge as a matter of fact contains the following directions:--

(1) The former "Muafi" land should remain in possession of Pujari Ladhuram and the auction thereof in favour of Balbir Singh be cancelled.

(2) The land which was allotted to deceased Bhinya Ram in exchange of the aforesaid "Muafi" land shall be declared to be Government property and Bhinya Ram shall be evicted therefrom.

(3) An enquiry shall be made and opinion of the Collector obtained in respect of the remaining exchange of land except the land which has been allotted in exchange of the land brought under reservation for Mandi etc.

11. Now, it is obvious that the rights of all petitioners are different, they are affected in different ways, even though the order is common. Interests of Balbir Singh are quite distinct from the interests of the first 7 petitioners. Even amongst them, the petitioners Nos. 2 and 3 who were allotted land in exchange on account of their lands having been reserved do not have any cause of action at all. The impugned order does not affect them adversely at all. In respect of the exchange allowed for Non-Muafi lands of Bhinya Ram, only an enquiry has been directed by the State Government. It is, therefore, a clear case of misjoinder of the parties and causes of action, the state of facts in case of the three categories of the petitioners being not the same. It was urged that the order of the Minister made without hearing the petitioners and mala fide, was the cause of action. This argument cannot be accepted because the order is what is desired to be quashed, and what will entitle the court to grant this relief is not that it was made without hearing or mala fide or without jurisdiction but it is the existence of those facts from which the rights flow and which will make the impugned order bad on account of these reasons and therefore, reversible. The common feature between this case and Jasraj Vs. State of Rajasthan and Others, is only that one order has been made in respect of the matters aforesaid. But that alone is not sufficient. The causes of action do certainly vary and therefore, the petition is in violation of the said R. 375. The objection cannot be got over simply by stating that the office had made no objection or that a long time had passed since the filing of the petition. The reply to the writ petition raising this objection was filed on 1st March, 1972, by respondent No. 6 (though all the petitioners were served only by 9-12-1974). Therefore, it cannot be said that this objection cannot be upheld in the year 1977.

12. The second objection is that the petitioners have concealed material facts relating to the passing of the temporary injunction by the court of Sub-Divisional Officer, Hanumangarh against Sheo Karan and his father Bhinya Ram on 23-7-1960 in suit No. 37/60. They have also concealed the fact that the appeal No. 417/1960 preferred against the said order was dismissed by the Additional Commissioner (Colonisation) Bikaner on 3-2-1961. They also concealed the fact that the revision preferred by Bhinya Ram and Sheokaran against the order of the Additional Commissioner of 3-2-1961 also failed. No rejoinder was filed to this objection.

13. But I do not think that the concealment of these facts has any bearing on the main point in the petition and therefore, it is not possible to say that by concealing the aforesaid facts, the petitioners have tried to mislead the Court and have not come with clean hands.

14. The result of the aforesaid discussions is that the second preliminary objection is rejected. The first objection is upheld and two weeks' time is allowed to the learned counsel for the petitioners to let this Court know as to on whose behalf the writ petition will be continued so that the matter may be heard further. It will be open to the several petitioners to file separate petitions, if they want to do so.