

(2013) 05 RAJ CK 0100
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7319 of 2013

Shiv Kumar and Others

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 31-05-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Rajasthan Land Revenue Act, 1956 — Section 75, 9
Rajasthan Tenancy Act, 1955 — Section 183B

Citation : (2013) 05 RAJ CK 0100

Hon'ble Judges : Alok Sharma, J

Bench : Single Bench

Advocate : Yash Sharma, for the Appellant; S. Zakawat Ali, Dy. G.C. for the State, for the Respondent

Judgement

Alok Sharma, J.—This is a shocking case of Government's inaction leaving the petitioners no remedy except to approach this Court in spite of having succeeded in proceedings u/s 183B of the Rajasthan Tenancy Act, 1955 (hereinafter "the Act of 1955") before the Tehsildar, Jhunjhunu and thereafter in appellate proceedings before the Collector, Jhunjhunu. The facts of the case are that the petitioners claim khatedari of khasra Nos. 1320, 1321, 1322 admeasuring 9 bighas 6 biswas situate at village Jhunjhunu, Tehsil and District Jhunjhunu as successors of one Jadav Bai as per the provisions of Hindu Succession Act, 1956.

2. Following the death of Jadav Bai as her successors in interest, the petitioners filed an application u/s 183B of the Act of 1955 before the Tehsildar, Jhunjhunu for ejectment of those in unauthorized occupation of the land in issue in view of the specific provision of law that non-schedule caste persons cannot be in possession, in any manner whatsoever, of land in the recorded khatedari of schedule caste persons as the petitioners are. It was stated in the application that without any right, non-schedule caste persons had come into possession of the said land and even unauthorizedly made construction thereon. It was prayed that such persons be evicted and the petitioners be put in possession. The

Tehsildar, Jhunjhunu allowed the application vide his order dated 31.03.2010 holding that those who were in unauthorized possession of agricultural land in khasra Nos. 1320, 1321, 1322 at measuring 9 bighas 6 biswas were liable to be ejected. Aggrieved of the order dated 31.03.2010, an appeal was filed by those, in unauthorized occupation in khasra Nos. 1320, 1321, 1322, before the District Collector, Jhunjhunu. Vide order dated 09.05.2012, the said appeal was dismissed. A further appeal against the order dated 09.05.2012, passed by the Collector, Jhunjhunu appears to be pending before the Board of Revenue. However no interim directions for the protection of the appellants before the Board of Revenue have been passed, nor the order dated 09.05.2012, passed by the Collector, Jhunjhunu upholding the order dated 31.03.2010, passed by the Tehsildar, Jhunjhunu, stayed.

3. In these circumstances, the petitioners, moved an application on 11.06.2012 before the Tehsildar, Jhunjhunu for execution of the order dated 31.03.2010. It is relevant to record that the land in dispute presently stands in the name of the petitioners in the revenue records effective 12.06.2006 vide mutation No. 92. An appeal u/s 75 of the Land Revenue Act, 1956 (hereinafter "the Act of 1956") has also been dismissed by the Collector, Jhunjhunu on 09.05.2012.

4. The petitioners appear to have moved, in the circumstances, a representation before the Collector, Jhunjhunu on 01.06.2012 stating that in spite of the order of eviction of the trespassers passed by the Tehsildar, Jhunjhunu on 31.03.2010 and upheld by the Collector, Jhunjhunu on 09.05.2012 and the land standing to their name in the revenue records effective 12.06.2006, they were not being put in possession and the unauthorized occupants not being evicted. It was prayed that steps be taken to ensure that the trespassers did not continue encroaching over the petitioners' agricultural land in issue and making construction thereon. A further representation was made to the Collector, Jhunjhunu on 22.06.2012 praying that the Tehsildar, Jhunjhunu be directed to comply with his own order dated 31.03.2010 as upheld by the Collector in appeal on 09.05.2012 and put the petitioners back in possession of land in issue after dispossessing the trespassers thereon. The Tehsildar, also addressed a communication to the Land Inspector as well as Patwari for compliance with the judgment dated 31.03.2010 on 10.07.2012 and further directed that the encroachers from the land in issue be dispossessed. It is submitted that yet no action has been taken.

5. The agreement of the petitioners in the present petition is thus that in spite of orders of the Tehsildar, Jhunjhunu u/s 183B of the Act of 1955 passed on 31.03.2010 as upheld by the Collector, Jhunjhunu in appeal on 09.05.2012 and in spite of the mutation of the petitioners' name in the record of rights establishing the factum of the petitioners khatedari over the land in issue and in spite of there being no order to the contrary by the any competent court, the petitioners continue to be deprived of their lawful possession and enjoyment of the land in dispute and use thereof. Mr. Yash Sharma, appearing for the petitioners, submits that in the event the orders passed by statutory authority

are not to be implemented, the whole structure of the Rule of Law would collapse. It has been submitted that the populism and lack of will have to cede to the compelling necessity for implementing the Rule of Law. It is further submitted that in spite of there being no order by any competent court staying the order dated 09.05.2012, passed by the Collector, Jhunjhunu upholding the order dated 31.03.2010, passed by the Tehsildar, Jhunjhunu, the petitioners continue to run pillar to post without any avail. In these circumstances, it has been prayed that the Collector, Jhunjhunu as also the Tehsildar, Jhunjhunu and Patwari, Jhunjhunu be directed to address the petitioners' representations and act upon the pending execution petition forthwith to ensure that the rule of law is upheld and the possession of the land in the khatedari of the petitioners is handed over to them.

6. Mr. S. Zakawat Ali, appearing for the State along with the Tehsildar, Jhunjhunu was not in a position to state that the Board of Revenue has stayed the order dated 09.05.2012, passed by the Collector, Jhunjhunu upholding the order dated 31.03.2010, passed by the Tehsildar, Jhunjhunu under the petitioners' application with reference to Section 183B of the Act of 1955. Mr. S. Zakawat Ali has however submitted that the respondent-State be allowed to file reply to the writ and bring on record the facts owing to which the orders dated 31.03.2010 passed by the Tehsildar as upheld in appeal by the Collector on 09.05.2012, are not being complied with. As instructed by the Tehsildar, it is submitted that the said land in issue is presently in the occupation of various persons whereupon dwelling units have been constructed and in this view of the matter there are difficulties in the execution of the order passed by the Tehsildar as upheld in appeal by the Collector. It has been further submitted that this Court should not invoke its extraordinary jurisdiction under Article 226 and 227 of the Constitution of India inasmuch as the petitioners have the alternative remedy u/s 9 of the Act of 1956 wherein they can approach the Board of Revenue which is presently seized of an appeal against the order dated 09.05.2012 by the Collector.

7. Heard and considered.

8. First, dealing with the objection of Mr. S. Zakawat Ali, with regard to the petitioners' alternative remedy u/s 9 of the Act of 1956, it is settled that statutory alternative remedy never forecloses the jurisdiction of this Court in exercising its extraordinary, equitable, discretionary power under Article 226 of the Constitution of India and for that matter supervisory power under Article 227 of the Constitution of India where the facts of a case are extraordinary and shocking crying for immediate succour as they appear to be in the present case. It is noteworthy that orders of the Tehsildar and the Collector passed in their capacity as quasi judicial authorities are not being complied with taking out the very bottom of the structure of Rule of Law on which the entire society sustains. In my considered opinion, there is no force in the contention of the counsel for the respondent-State on this count. It is not in dispute that the order passed by the Tehsildar u/s 183B of the Act of 1955 on 31.03.2010 has been upheld by the

Collector vide order dated 09.05.2012. It also not in dispute as of today that there is no stay of the order dated 09.05.2012 passed by the Collector, Jhunjhunu upholding the order of Tehsildar, Jhunjhunu passed on 31.03.2010. It is also admitted that the petitioners are recorded in the record of rights as the khatedars of the land in dispute.

9. In the circumstances obtaining, I deem it fit and proper to direct the Collector, Jhunjhunu as also the Tehsildar, Jhunjhunu to ensure compliance with the order 31.03.2010 passed by the Tehsildar as upheld by the Collector in appeal on 09.05.2012 within a period of four weeks from the receipt of a certified copy of this order subject however to any order by the Board of Revenue in the appeal filed by the encroachers against the order passed by the Collector, Jhunjhunu on 09.05.2012 or any other order of a competent court. The writ petition stands disposed of accordingly. Stay application needs no address in view of the petition having been disposed of.