
(2015) 05 RAJ CK 0142

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 13661 of 2014

Shree Veer Tejaji Sarva Dharm Vikas Samiti

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-05-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 116(3)
Penal Code, 1860 (IPC) — Section 143, 323, 341, 379

Citation : (2015) 05 RAJ CK 0142

Hon'ble Judges : Sunil Ambwani, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : P.C. Bhandari and Rakesh Chandel, for the Appellant; A.K. Bhandari, Senior Counsel assisted by A.S. Rathore, Parag Rastogi, Ashish Sharma on behalf of Rajendra Prasad, A.A.G., Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. We have heard learned counsel appearing for the parties.

2. On 18.02.2015, we had passed the following interim order:--

"In this writ petition filed in public interest, it is stated that having obtained permission to make constructions in khasra No. 396, the respondents are making constructions on khasras No. 535, 536 and 536/1112 in revenue village Kotda, which is recorded as property of a school, and used as playground by the children studying in the School. The Sahayak Nagar Niyojak, Ajmer Development Authority had, after carrying out the measurements, given a notice to the persons making unauthorized constructions on 23.7.2014. The notice has been stayed by the State Government, with a direction to send copy of the representation, which was made against the order dated 23.7.2014, for sanction of the building plans.

It is submitted that State Government has mechanically, without taking notice of the survey report, on which the constructions of school playground were

stopped, given an interim order.

It is further submitted that under the garb of the interim order, the respondents are continuously making constructions, appropriating the playground of the school, and that, despite the first information report and the notice by the Ajmer Development Authority, no efforts have been taken to stop the constructions. It is alleged that the nature of the land will be destroyed, if the constructions are allowed to be completed.

Issue notice to the respondents. Steps for service may be taken within one week.

Until further orders, the private respondents are estopped from making constructions on the playground of the school on plots in khasras No. 535, 536 and 536/1112 in revenue Village, Kotda.

The Joint Secretary-III, Urban Development and Housing Department, Government of Rajasthan will file his personal affidavit to show cause as to why, despite the office order, which was passed by Sahayak Nagar Niyojak, Ajmer Development Authority on 23.7.2014, after spot inspections, he has made orders, which has allowed the respondents to complete the constructions. He will, in the meantime, decide the matter pending before him.

List on 16.03.2015.

The formal defects in the writ petition will be removed within a week."

3. A reply has been filed on behalf of respondent No. 4 in which it is stated in paragraph 2 as follows:--

"2. That out of the contents of Para No. 2 of the writ petition, it is not disputed that Government School is situated at Kotda, Ajmer. Out of the contents of Para No. 2 of the writ petition it is not admitted that the said Government School is having 5 Bigha land of Khasara No. 536/1112 of Revenue Village Kotda on which play ground of the said Government School is situated. It is noteworthy that Copy of allotment letter of 5 Bigha land of Khasara No. 536/1112 of Revenue Village Kotda for play ground of the said Government School or Certified Copy of the Record of Rights, which may be admissible in evidence, has not been placed on record by the petitioner and on the Copy of the Jamabandi (Annexure 3) placed on record by the petitioner it is clearly mentioned that it will not be admissible in evidence. Out of the contents of Para No. 2 of the writ petition it is not admitted that in the year 1989 one Rampal encroached on the land of Khasara No. 536/1112 of Revenue Village Kotda. Out of the contents of Para No. 2 of the writ petition it is not admitted that on 19.12.1989 encroachment on the land of Khasara No. 536/1112 of Revenue Village Kotda were removed by the Patwari in the presence of the Head Master of the said Government School as well as in the presence of the villagers. From Mouka Parcha (Annexure 4), which was prepared by the Patwari in the presence of the Head Master of the said Government School as well as in the presence of the villagers on 19.12.1989, it is apparent that encroachment made on the school boundary were removed by

the Patwari in the presence of the Head Master of the said Government School as well as in the presence of the villagers on 19.12.1989. In that Mouka Parcha (Annexure 4), which was prepared by the Patwari on 19.12.1989, it was also mentioned that 5 Bigha land out of Khasara No. 536 has been given to school, but the Patwari was not competent to give any land to the school in such manner. Out of the contents of Para No. 2 of the writ petition it is not disputed that the Answering Respondent No. 4 stopped construction, which was being raised by the Respondent No. 8 to 10 on the land in question, taking the stand that they are raising construction on the land of Khasara No. 396 of Revenue Village Kotda owned by them. Out of the contents of Para No. 2 of the writ petition it is not admitted that the Jamabandi (Annexure 3) shows that on 22.08.1985 the land in question was allotted to the said Government School in the year of 1972 for school play ground. It is note worthy that the District Collector, Ajmer vide order No. 8030-34 dated 24.11.1997 has transferred total 753-12-00 Bigha Siwai Chak land, including the land of Khasara No. 396 Min. Rakba 01-05-00 Bigha, Khasara No. 396 Min. Rakba 20-14-00 Bigha, Khasara No. 396 Min. Rakba 05-12-00 Bigah, Khasara No. 396 Min. Rakba 09-05-00 Bigha, Khasara No. 535 Rakba 15-00-00 Bigha, Khasara No. 536 Min. Rakba 10-07-10 Bigha, Khasara No. 536 Min. Rakba 39-18-10 Bigha and Khasara No. 536/1112 Min. Rakba 05-00-00 Bigha of Revenue Village Kotda, to the erst while Urban Improvement Trauast, Ajmer. Similarly the District Collector, Ajmer vide order No. 19 dated 25.02.2004 has transferred apart from other land total 204-09-00 Bigha Siwai Chak land of Revenue Village Kotda, including the land of Khasara No. 396 Rakba 01-06-00 Bigha and Khasara No. 536 Min. Rakba 07-12-00 Bigah of Revenue Village Kotda, to the erst while Urban Improvement Trust, Ajmer and same was mutated in the name of the erst while Urban Improvement Trust, Ajmer in the Record of Rights, so the land of Khasara No. 536/1112 Rakba 05-00-00 Bigha of Revenue Village Kotda is being owned and possessed by the Answering Respondent No. 4."

4. The respondent No. 4 has further stated in the reply that the respondent No. 5 and other Officers asked the respondent No. 6 for demarcation of the land of Khasara Nos. 396 and 536/1112 of Revenue Village Kotda at the spot, apart from the land of other Khasara Numbers and, accordingly, Mouka Parcha Seema Gyan and Site Plan were prepared by the team constituted by the respondent No. 5 on 09.05.2014. As per the measurements taken at the spot, a report along with Mouka Parcha Seema Gyan and Site Plan, was submitted by the team to the respondent No. 5. A compliance letter was sent to the Land Settlement Officer, Ajmer. In paragraph 6 of the reply, it is denied that school's playground is situate in Khasara No. 536/1112 of Revenue Village Kotda. The constructions, however, have been stopped in pursuance to the order of this Court.

5. In the reply filed by the private respondents, it is stated that a civil suit being Misc. Case No. 34/2014- M/s. Satguru Arcade Pvt. Ltd. and Ors. v. Ajmer Development Authority, Ajmer and Anr., was filed by the respondents, impleading Ajmer Development Authority, Ajmer and the Tehsildar, Ajmer Development

Authority, Ajmer, in which an order of status-quo was passed on 20.05.2014. M/s. Satguru Arcade Pvt. Ltd.- the plaintiff-appellant, filed Civil Misc. Appeal No. 67/2014, in which the interim order has been modified on 13.06.2014, to the extent that the appellant will be allowed to continue with constructions, in accordance with the building plans.

6. It is submitted by learned counsel appearing for the respondents that the dispute relates to a plot, measuring 3111 sq. yds. A patta of 519 sq. yds. of land was also issued by the UIT, Ajmer, and thus, the total area of 3630 sq. yds. of land was transferred to the respondents, and on which they got the building plans approved and started constructions.

7. In paragraph 1 of the reply given by the respondent Nos. 8 to 10, it is stated that the petitioner has filed this writ petition in private interest to vindicate personal grudge and enmity. Criminal cases are pending between the members of the petitioner-Society and the respondent No. 7. Shri Poonam Chand is the President of the petitioner-Institution, Shree Veer Tejaji Sarva Dharm Vikas Samiti. Shri Govardhan is the Vice President and Shri Mishri Lal is the Secretary of the petitioner-Society. One Shri Kamal Bairwa, the Municipal Councilor of Kotda, is hand in gloves with these persons. A report was filed by Shri Shanker Singh Rawat, the predecessor in title of the petitioner-Society against them at Police Station Christian Ganj, Ajmer on 23.03.2014. An FIR was also lodged by Shri Ashish Singh, predecessor of Shankar Singh against Shri Goverdhan, Vice President of petitioner-Society and other persons on 05.06.2014. On 05.12.2014, another FIR was lodged against Shri Goverdhan, Vide President of the petitioner-Society, his two brothers, namely Sohan and Nankya, and Tejpal for the offences under Sections 143, 341, 323 and 379 IPC at Police Station Christian Ganj, Ajmer. A complaint under Section 107, 116(3) Cr.P.C. against Shri Kamal Bairwa, Poonam Chand Prajapat, Manvar Khan, as also against Shankar Singh and Shaitan Singh was also filed before the Additional District Collector, Ajmer City.

8. It is submitted by learned counsel appearing for the private respondents that the Supreme Court has strongly deprecated the filing of the Public Interest Litigations", where civil suit is pending. In Santosh Sood Vs. Gajendra Singh and Others, AIR 2010 SC 593 : (2009) 13 JT 536 : (2009) 8 SCALE 489 : (2009) 7 SCC 314 : (2009) 9 SCR 470 , the Supreme Court had observed in paragraphs 6 and 14 as follows:--

"6. A civil suit being No. 178-A of 2006 is pending before the Civil Judge, Class II, Sheopur with regard to the property involved in the present case in which the Nagar Palika, one of the parties in the instant appeal had filed a reply and written statement on 12-10-2006. In the said suit, the petitioners herein had obtained an injunction in their favour and the same is in operation till the pendency of the suit.

14. Admittedly, the appellant was not given any notice in the PIL. According to her, the dispute between the appellant and the Nagar Palika is only in respect of

the boundary wall and not for the entire building. Had an opportunity of hearing been given to the appellant, it could have shown that the public interest litigation was uncalled for, particularly having regard to the admission made by the Nagar Palika in its written statement filed in the earlier suits. It is beyond any doubt or dispute that the parties are on litigating terms. Two rounds of litigation have come to an end. Admittedly, another suit has been filed by the appellant in the Court of the Civil Judge, Sheopur. Whether such a suit is maintainable or not or whether in effect and substance it is an abuse of the process of the court will have to be determined by the civil court itself."

9. We find that this writ petition, in public interest, has been filed by concealing the relevant facts. The State Government has clearly stated in its reply that the land does not belong to school. There is litigation pending between the private respondents and the State, and several criminal cases have been lodged in the affairs of the Society against Shri Mishri Lal, claiming to be the Secretary of Shree Veer Tejaji Sarva Dharm Vikas Samiti, which is involved civil and criminal litigation. The State Government has clearly stated that the land was not allotted to the school, and that the entire case, set up by the petitioner, is false.

10. We find that the petitioner has, without disclosing all these facts, filed this writ petition allegedly in public interest, and has obtained an interim order, by which the constructions raised by the private respondents in accordance with sanctioned building plans were stopped. A fraud has been played with the Court in concealing all the facts, which were very well in the knowledge of the petitioner.

11. Now since the civil suit is pending, in which an interim order is operating, there is no good ground to allow this Public Interest Litigation to be heard.

12. The writ petition is dismissed with the cost of Rs. 25,000/- (Rs. Twenty five thousand), imposed on the petitioner, to be paid to private respondents to meet the cost of litigation. If the cost is not paid within a period of one month from today, the District Collector, Ajmer will recover the amount as arrears of land revenue and pay the same to the private respondents. The interim order is discharged.