
(2007) 09 RAJ CK 0094
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2149 of 1996

Sohan Lal

APPELLANT

Vs

Gram Panchayat and Others

RESPONDENT

Date of Decision : 21-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Panchayati Raj Act, 1994 — Section 124, 97

Citation : (2008) 1 WLN 396

Hon'ble Judges : P.B. Majmudar, J

Bench : Single Bench

Judgement

P.B. Majmudar, J.—This petition is filed by the petitioner under Article 226 of the Constitution of India challenging the order passed by the Additional Collector, Chittorgarh dt. 30.12.1995 by which the Collector has allowed the revision application filed by the respondent No. 2, herein.

2. The dispute in question is with regard to the construction of "Chabutara" (dais) on the part of the petitioner. The petitioner has placed some projection at the front of his house. The son of respondent No. 2 and his relatives instituted a civil suit before the competent Civil Court objecting the said construction. However, the Civil Court prima facie found that there is no substance in the case of respondent No. 2 and the learned Civil Judge, Doongla by its order dt. 22.02.1995 (Annex. 9) by giving detailed reasons rejected the prayer for injunction.

3. It is pointed out that prior to filing of said Civil Suit, earlier also, there spondent No. 2 himself had filed another suit before the Civil Court, Doongla. That suit was withdrawn by respondent No. 2, in order to file revision before the Collector.

4. The respondent No. 2 thereafter preferred a revision application before the Collector, Chittorgarh challenging the decision of the Gram Panchayat granting permission to the present petitioner for constructing the dais. The Collector, by

the impugned order dt. 30.12.1995 at page 61 in the compilation allowed the application submitted by the respondent No. 2 by coming to the conclusion that nobody has right to put dais on the front of the house as the said portion belongs to the Panchayat and the construction of dais is against the rules.

5. Learned Counsel for the petitioner argued that the revision before the Collector was not competent at the relevant point of time as per the provisions of Rajasthan Panchayati Raj Act, 1994 (for short, the Act of 1994)

6. It is further submitted that the civil Court by giving detailed reasons rejected the prayer for interim injunction filed by some of the plaintiffs wherein son of the present respondent No. 2, herein, was also one of the co plaintiffs. He further submits that the Collector should have considered the reasoning given by the trial Court.

7. It is further submitted by the learned Advocate Mr. Mehta that the construction in question is not offending and all the occupants of the premises in the same line have already put similar type of dais and respondent No. 2 who himself has made some construction, should not be permitted to make any grievance in this behalf.

8. It is further submitted that the Gram Panchayat has recorded a conclusive finding to the effect that all the occupants have already put same type of construction and there is no reasons to singled out the present petitioner.

9. It is pointed out to the Court that the respondent No. 2 has also made some construction and has encroached the portion of the land belonging to the Panchayat and considering the said aspect, the Gram Panchayat came to the conclusion that many occupants had made same type of encroachment sand all these houses are on the same line. The Gram Panchayat accordingly found that the construction of the petitioner is not offending. The decision of the Gram Panchayt is placed on record at page 55 in the compilation i.e. dt. 13.08.1992.

10. Considering the aforesaid aspect of the matter, it is submitted by the learned Advocate Mr. Mehta that the construction in question cannot said to be illegal and the Collector has committed error in passing the impugned order.

11. It is further submitted that the Collector has not considered the reasoning given by the trial Court while deciding the application for interim injunction. It is further submitted that the petitioner has not violated any provisions of law.

12. Per contra, learned Advocate Mr. Dilip Kawadia, appearing for the respondent No. 2 submitted that it is true that the respondent No. 2 has put some construction on the Panchayat land but the said construction is only upto 2 ft. height and upto that height, the same is compoundable. As against that, the petitioner has encroached upon the land for more that 2 ft. which is roughly about 4 ft. and therefore, said construction cannot be regularized.

13. It is further submitted by Mr. Kawadia that the State Government was

empowered to delegate the powers to the Collector u/s 98 of the Rajasthan Panchayati Raj Act, 1994. The Collector therefore, was competent to decide such revision application.

14. I have heard both the learned Counsel and have gone through there cord of the case. This matter is argued by the learned Advocate appearing for the petitioner and learned Advocate appearing for respondent No. 2 and both the Advocates have appeared for private parties and none has appeared on behalf of the Additional Collector or for the Gram Panchayat.

15. So far factual aspect of the matter is concerned, it is no doubt true that respondent No. 2 earlier filed a civil suit numbered as 43/1991 which he had withdrawn. He has not pressed the suit on the ground that he wants to file revision application before the Collector and thereafter second suit was filed by his relatives in which injunction application was dismissed and at that stage he filed revision before the Collector. So far revisional powers are concerned, Section 97 of the Rajasthan Panchayati Raj Act deals with the same.

16. As per Section 97, the State Government may, either on its own motion or on an application from any person interested call for and examine there cord of a Panchayati Raj Institution or of a Standing Committee or subcommittee there of in respect of any proceedings to satisfy itself as to correctness, legality or propriety of any decision or order passed therein.

17. Section 98 provides delegation of such powers by which, the State Government may, by notification in the Official Gazette, delegate all or any of its power under this Act to any officer or authority subordinate to it.

18. It is required to be noted that there is nothing on record to show that at the relevant point of time i.e. the date on which the revision was filed on 27.03.1995, the Collector was delegated the powers u/s 98 of the Act. So far as earlier Act is concerned, i.e. the Rajasthan Panchayati Raj Act, 1953, the said provision abrogated and all the provisions were repealed as envisaged u/s 124 of the Act of 1994. Under these circumstances, revisional powers could not have been exercised by the Collector as the said powers were not delegated by the State Govt. to the Collector.

19. Learned Advocate for the respondent No. 2 is also not in a position to point out whether such powers were delegated by the State Govt. to the Collector.

20. Considering the said aspect of the matter the Collector had no jurisdiction to exercise his revisionary jurisdiction as the said revisional jurisdiction at the relevant point of time vests with the State Govt. u/s 97 of the Act and the said powers were not delegated to the Collector. Under these circumstances, the order of the Collector is not sustainable and is accordingly, required to be set-aside.

21. Apart from the aforesaid aspect of the matter, it is not in dispute that son of respondent No. 2 along with others instituted a civil suit which was withdrawn in

which while deciding the interim application, the trial Court had given detailed reasons for coming to the conclusion that there was no prima facie case in favour of the plaintiffs.

22. In that view of the matter, it seems that the respondent No. 2 has tried to abuse the process of law by instituting a revision before the Collector after withdrawing the suit. There is also a decision of the Gram Panchayat on record and as per the same, all the owners of the building in the same have placed similar type of projection which includes the projection/construction made by the respondent No. 2, herein.

23. It is also required to be noted that even though there is statutory remedy provided u/s 61 of the Act by which the decision of the Panchayat can be challenged yet the respondent No. 2 did not avail of such remedy and filed the revision petition after more than two years from the date of decision of the Panchayat.

24. Considering the aforesaid aspect of the matter, the order of the Collector is required to be set aside and even though the Collector was not delegated such powers, he has exercised such jurisdiction and the order of Collector therefore, is without jurisdiction and therefore, on the said ground as well as on merits of the case also, the said order is required to be set aside and same is accordingly set aside.

25. The petition is accordingly, allowed. The order passed by the Collector dt. 30.12.1995 is set aside.

26. It is however, observed that it is the duty of the Gram Panchayat to take action against the concerned person who has made illegal encroachment over the Panchayat land and the Panchayat should take action against all such law breakers by treating them equally and the Panchayat may remove all such illegal construction so made on the street or on the road by following the principles of natural justice. The Gram Panchayat may accordingly take appropriate action for removal of such encroachment if the same is contrary to law and rules in an expeditious manner.