
(2007) 01 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4554 of 1996

State of Rajasthan

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 16-01-2007

Acts Referred:

Rajasthan Land Revenue Act, 1956 — Section 9, 91

Citation : (2007) 2 WLN 51

Hon'ble Judges : Asok Parihar, J

Bench : Single Bench

Judgement

Ashok Parihar, J.—Application for regularization of encroachment on Government land was submitted by one Jagannath since deceased, now been represented by his legal heirs as respondents in the present writ petition, before Naib Tehsildar on 03.07.1969. The order of regularization was passed by the Naib Teshildar on 14.07.1969 itself. Though necessary directions were sought by the District Collector from State Government for seeking reference u/s 83 of the Land Revenue Act, however, as per directions so issued, action was taken by the District Collector under the Rajasthan Land Revenue (Agricultural Land Allotment) Rules of 1970. The order dt. 14.07.1969 passed by the Naib Tehsildar was set aside by the District Collector vide order dt. 19.12.1972.

2. The above order passed by the District Collector came to be challenged by the contesting respondents before the Revenue Appellate Authority. While allowing the appeal vide order dt. 31.01.1987, the Revenue Appellate Authority set aside the order dt. 19.12.1972 passed by the District Collector. The Revenue Appellate Authority held that since the regularization has been made prior to the Rules of 1970 came into force, as such, the regularization made earlier could not have been cancelled by the District Collector under the Rules of 1970.

3. Subsequently, it appears that the matter was referred to the Board of Revenue u/s 9 of the Rajasthan Land Revenue Act, however, the application filed by the State was rejected by the Board of Revenue vide order dt. 27.07.1993. Hence,

the present writ petition challenging the order of Board of Revenue.

4. It has been submitted that the regularization could not have been made by the Naib Tehsildar as per Circulars issued by the State Government from time to time u/s 91 of the Rajasthan Land Revenue Act in regard the regularization of encroachment on the Government land. Admittedly, the land in dispute was within the limits of Municipal Council and, therefore, within 12 miles of the Municipal Council and, therefore, within 12 miles of the Municipal limits no such regularization could not have been made. It has further been submitted that as per circular issued in March, 1968, the regularization could be made only as per recommendations of the Land Allotment Advisory Committee. No such procedure has been followed in the present matter.

5. After hearing Counsel for the parties, I have carefully gone through the material on record as also the relevant provisions of the Act, Rules and the Circulars issued by the State Government from time to time.

6. The Revenue Appellate Authority as also the Board of Revenue have heavily relied upon the Circular issued on 05.10.1967 as also the Rules of 1970 with further observation that the State could have filed an appeal against the order of Revenue Appellate Authority. In my opinion, the observations made by Revenue Appellate Authority as also the Board of Revenue are wholly misconceived. Admittedly, the regularization was made in July, 1969. The land in dispute situated within 12 miles of the Municipal limits. Even as per Circular issued on 05.10.1967, the regularization could not have been made for the land situated within the prescribed limit. That apart, in view of the Circular issued in March, 1968, the regularization could only be made as per recommendations of the Land Allotment Advisory Committee. Since the regularization made in the year 1969 could not have been set-aside under the Rules of 1970 as has been held by the Revenue Appellate Authority, as such, there was no question of filing any further appeal against the order of the Revenue Appellate Authority which was passed on the basis of the Rules of 1970. However, if the regularization itself was void, ab initio and against the provisions of law, the Board of Revenue had the jurisdiction u/s 9 of the Rajasthan Land Revenue Act to set aside such regularization/allotment. Having considered entire facts and circumstances, the impugned order passed by the Board of Revenue cannot be sustained in the eyes of law since the Board has failed to exercise proper discretion in the present matter.

7. Accordingly, the writ petition is allowed. The order dt. 27.07.1993 passed by the Board of Revenue is set aside. On admitted facts, since the regularization could not have been made under the relevant Circulars issued u/s 91 of the Rajasthan Land Revenue Act in regard to regularization of encroachment on Government land, the order dt. 14.07.1969 passed by the Naib Tehsildar also cannot be sustained and the same is hereby set aside. The petitioner may now take necessary action against the contesting respondents in accordance with law.