

(1999) 01 RAJ CK 0016
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1624 of 1999

Sua Lal and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-01-1999

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1999) 1 RLW 589 : (1999) 2 WLC 76 : (1999) 1 WLN 1

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—Relying upon the three judgments of this court learned Counsel Shri Kalla for the petitioners submitted that the impugned order Annex.3 dated 31.10.1996 passed by the respondent No. 2, Addl. Collector, Pali dismissing the revision petition filed by the petitioners be set aside, in support of this submission, learned Counsel Shri Kalla has relied upon (i) Single Bench Judgment of this Court in case of Kanhaiya Lal v. Addl Collector. Kota and Ors. reported in 1993 (1) R.L.R. 356 , (ii) Division Bench Judgment in case of Addl. Commissioner of Income Tax Vs. Brahm Swaroop and Bros., and (iii) an unreported Judgment of Division Bench delivered on 14.9.1988 in case of Dhanraj and Anr. v. Addl Collector, Ganganagar and Ors. In case of Kanhaiya Lal (supra), learned Single Judge of this Court refused to exercise his powers under Article 226/227 of the Constitution of India on the ground that court cannot interfere in such matter which would result in restoration of illegality. It was a case where the petitioners were allotted plots without following the due procedure, which was immediately challenged before the Addl. Collector in revision, wherein, the learned Addl. Collector interfered and set aside the same. That order of cancellation was challenged by those petitioners before this Court by filing separate petitions. Under the aforesaid circumstances, the learned Single Judge of this Court refused to exercise his powers under Article 226/227

of the Constitution of India.

2. In case of Kailash Raj (supra), the Division Bench of this Court interfered with the order passed by the Addl. Collector and the learned Single Judge of this Court by partly allowing the special appeal and remanded the case to the Municipal Board for fresh decision on the application made by the appellant Kailash Raj for allotment of land in question in accordance with law. It was a case in which the petitioner applied for plot and by an order dated 6.1.1964 he was allotted plot by way of private negotiation on the ground that said land was in possession of the petitioner since long. Thereafter, the matter was referred to the Panchayat Samiti and one Tara Singh filed an appeal before the Panchayat Samiti against the order of Gram Panchayat dated 6.1.1964. Panchayat Samiti dismissed the appeal and confirmed the order of sale. Thereafter, newly elected Sarpanch filed revision before the Addl. Collector, who dismissed the revision after inspecting the site in 1971. That order was challenged before the learned Single Judge by way of writ petition, which was also dismissed. Against the same, Kailash Raj filed special appeal before the Division Bench and the same was allowed by the Division Bench of this Court as it was of the view that sale made in favour of the appellant was void as his brother was the then Sarpanch of the Gram Panchayat and had taken active part in the sale of plots. Under those circumstances, the order passed by the Addl. Collector, Pali in 1971 and confirmed in writ petition by learned Single Judge in 1983 were set aside and the matter was remanded to the Municipal Board, Sumerpur for fresh decision on the application of the appellant Kailash Raj for allotment of plot of land in question in accordance with law.

3. In case of Dhanraj (supra) the sale was effected in favour of the respondent No. 4 and 5 on 10.1.1974 by the Sarpanch of the Gram Panchayat. The complaint was made thereafter and the Addl. Collector by his order dated March 1, 1979 dismissed the complaint. Aggrieved by that, the writ petition was filed before the Division Bench" of this Court and considering the fact that writ petition was admitted in 1979 itself. The Division Bench of this Court set aside the sale dated 10.1.74 made in favour of respondent Nos. 4 and 5 as it was of the view that no auction is required under the rules was held and the averments made in the writ petition remained uncontroverted.

4. Now, coming to the facts of this case, it clearly appears that the present respondent Nos. 3 and 4 with the help of Ex-Sarpanch got the allotment of plots in their favour on 6.10.1964 and 5.10.1965. The present petitioners, who are villagers, filed revision petition against the allotment of plots before the Addl. collector, Pali, only in 1996 i.e. after more than 32 years of allotment of plots on the ground that the Ex-Sarpanch did not follow the procedure laid down in the Panchayat Rules. In para No. 3 of the petition it has been stated that when the aforesaid facts came to the knowledge they filed revision petition, but when they came to know about the allotment of plots is not at all mentioned. It is very difficult to believe that the present petitioners who are the villagers of the same

village would not come to know about the said allotment for as many as 32 years. In fact, going through the order passed by the learned Addl. Collector, Pali, respondent No. 2 it appears that the matter was first taken to the civil Court then it had come right upto this Court and ultimately when all attempts failed then only the revision petition was filed before the Addl. collector in 1996 after 32 years. However, learned Counsel Shri Kalla tried to explain that it was a suit filed for injunction by one of the villagers and the petitioners were not the party to that proceedings. This is a lame excuse and such excuse cannot be accepted. Considering all the these aspects, if the Addl. Collector, Pali has refused to exercise his revisional jurisdiction then this Court would certainly not interfere with such order. It is to be stated that the impugned order passed on 31.10.1996 was challenged by the petitioners in January, 1997 by filing this petition and today we are in January, 1999 and during this period of two years no sincere attempts were made to get any order from this Court."

5. Under the circumstances, without going into the merits of the case or any other aspect of the matter, this petition is required to be dismissed. This petition is labelled as a petition under Article 226/227 of the Constitution of India, but strictly speaking it is petition under Article 227 of the Constitution of India, wherein, this Court cannot even correct the error on law committed by the courts below. In the instant case, the Addl. Collector has not committed any error in dismissing the revision petition on the ground that it was filed after 32 years, coupled with the facts that prior to filing of the revision petition the litigation was going on regarding the land in question before the civil court and it had come right upto this Court.

6. Under the circumstances, none of the Judgments cited by the learned Counsel Shri Kalla has any application to the facts of this case. Last submission made by Mr. Kalla is that Addl. Collector should have exercised his suo-moto jurisdiction and set aside the same. It is true that the Addl. Collector was competent enough to set aside the same provided he had exercised his powers within reasonable time. When no period of limitation is prescribed then it is always desirable that such powers should be exercised within reasonable time and not after a period of 32 years.

7. In view of the above discussion, this petition fails and is hereby dismissed.