
(2016) 01 RAJ CK 0121

In the Rajasthan High Court

Case No : Civil Writ Petition No. 12850 of 2015.

Suleman

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-01-2016

Acts Referred:

Constitution of India, 1950 — Article 227
Rajasthan Tenancy Act, 1955 — Section 63(1)(8)

Citation : (2016) 2 DNJ 475

Hon'ble Judges : Gopal Krishan Vyas, J.

Bench : Single Bench

Advocate : Rakesh Arora, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J. - The instant writ petition has been filed by the petitioner for the following reliefs:

"It is, therefore, most respectfully prayed that this writ petition may kindly be allowed with costs and by issuing an appropriate writ, order or direction the impugned orders dated 02.08.1975 02.08.1975 (Annex.-4), 30.03.2012 (Annex.-8) and 23.07.2015 3.07.2015 (Annex.-11) may kindly be quashed and set aside and the judgment dated 26.09.2012 (An 26.09.2012 (Annex.-10) may be restored.

Any other order favourable to the petitioner may also be passed."

2. As per the facts of the case, an application was moved before the SDO, Barmer by the Tehsildar, Barmer under Section 63(1)(8) of the Rajasthan Tenancy Act in which it was pleaded that petitioner Suleman went Pakistan without passport illegally, therefore, his rights in the land in question may be extinguished and land may be transferred in the name of the State Government. In the proceedings upon application filed by the Tehsildar, a reply was filed by one Mohd. S/o Saddq in which he has prayed that part of the land of Suleman

was purchased by him and he never went to Pakistan but he went Sri Ganganagar for earning his livelihood. The Sub-Divisional Officer after recording evidence of both the parties passed an order on 2.8.1975 whereby the application was partly allowed and it was ordered that to the extent of share of Mohd. S/o Saddq the application is hereby rejected but to the extent of remaining share of Suleman (petitioner) his rights are extinguished and land in question may be transferred in the name of State.

3. As per contention of the petitioner, no notice was received to him prior to passing order dated 2.8.1975. The notice was pasted on the notice board of Gram Panchayat, Anadara, therefore, an application was moved by the petitioner under Order 9, Rule 13 CPC for recalling the order but SDO, Barmer rejected the application vide order dated 19.4.1989.

4. The contention of the petitioner is that after rejection of the application for recalling the order, an appeal was preferred by the petitioner before the Revenue Appellate Authority, Jodpur and in that appeal, the Revenue Appellate Authority, Jodhpur passed an order on 28.11.1991 whereby the order dated 19.4.1989 was quashed and case was remitted to the subordinate court with direction to decide the same afresh after providing an opportunity of hearing on the ground whether SDO is having jurisdiction to decide the application or not.

5. In pursuance of the said order, the SDO, Barmer again decided the case vide order dated 30.3.2012 and held that there was no error in the order dated 2.8.1975, therefore, the application of the Tehsildar, Barmer filed under Section 63(1)(8) of the Rajasthan Tenancy Act is hereby accepted and it is ordered that land situated in Khasra No.340/151 ad measuring 34.5 bighas land may be entered in the revenue record in the name of State of Rajasthan.

6. Against the said order passed by the SDO dated 30.3.2012 an appeal was preferred before the Revenue Appellate Authority, Barmer in which the Revenue Appellate Authority, Barmer quashed the order dated 30.3.2012 and declared petitioner Suleman as Khatedar-tenant of the land in question vide judgment dated 26.9.2012.

7. Against the said order, the Tehsildar preferred an appeal before the Board of Revenue, Ajmer. The learned Board of Revenue, Ajmer vide judgment dated 23.7.2015 quashed the order dated 26.9.2012 and upheld the order passed by the Assistant Collector, Barmer and upheld the judgment and decree dated 30.3.2012 passed by the Assistant Collector, Barmer.

8. The learned counsel for the petitioner submits that all the orders passed by the SDO as well as by the Board of Revenue suffer from illegality because orders have been passed without application of mind. It is also argued that there is no evidence on record to prove the fact that petitioner went Pakistan without any passport illegally. Therefore, all the orders impugned in this writ petition may kindly be quashed and set aside.

9. After hearing the learned counsel for the petitioner, I am of the opinion that orders impugned are based upon factual finding, therefore, no interference is warranted under Article 227 of the Constitution of India because the orders are based upon factual aspect of the matter. In view of the above, no interference is called for in this writ petition.

10. Hence, this writ petition is hereby dismissed.