

W.R.

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision/LR/1572/2005/Bharatpur

Ganga Sharan S/o. Nathi Jat Resident of Village Bhasina Tehsil
Weir Distt. Bharatpur.

.....**Petitioner.**

VERSUS

State of Rajasthan through Tehsildar Bhusawar.

.....**Non-Petitioner.**

S.B.

Shri Rajinder Kumar, Member

Present:-

Shri Ajeet Lodha, counsel for the Petitioner.

Shri Sunil Pareek, Dy. Govt. Advocate for the Non-Petitioner

JUDGMENT

Date: 29-06-2018

1. This revision petition is directed against the order dated 5-03-2005 of the Revenue Appellate Authority, Bharatpur whereby appeal no. 4/04 filed by the revisionist was dismissed and the order of Additional Collector dated 31-12-2003 passed in appeal no. 60/03 and order of Tehsildar dated 19-03-2003 passed in proceedings under section 91 of the Land Revenue Act, 1956 was confirmed.
2. I have heard learned counsels for the parties.
3. Shri Ajeet Lodha, learned Counsel for the revisionist has argued that the impugned orders have been passed in ignorance of the factual and legal position. The revenue suit filed by the revisionist claiming khatedari rights over the suit land was decreed by the Revenue Appellate Authority, Bharatpur on 21-06-2002. The operation of the judgment and decree passed by the R.A.A. has

been stayed by this Board vide order dated 13-11-2002. Thereafter, the Naib Tehsildar, Bharatpur taking unjust advantage of the order dated 13-11-2002, initiated proceedings under section 91 of the land Revenue Act, 1956 against the revisionist and vide order dated 19-03-2003 passed order of his eviction from the suit land and further ordered to punish him with civil imprisonment of 30 days treating him as a subsequent trespasser. A warrant for his arrest was also issued by the same order. The order of Tehsildar was confirmed by both the courts below in the first and second appeals filed by the revisionist. The courts below failed to take this fact into account that by mere stay of the operation of judgment dated 21-06-2002 by this Hon'ble Board does not entitle the State Government to initiate eviction proceedings afresh against the revisionist. The facts clearly reveal that the revisionist has bonafide claim over the disputed land and in these circumstances, the first and the second appellate courts ought to have stayed the operation of the order dated 19-03-2003 of the Tehsildar till the appeal pending in the Board of Revenue against order of R.A.A is finally decided. It has also been argued that the finding of R.A.A that the second appeal is not maintainable is also perverse and therefore, a request is made to set aside the impugned order of the R.A.A, Bharatpur.

4. Learned Deputy Government Advocate Sh. Sunil Pareek vehemently opposed the above submissions. He submitted that the orders impugned are perfectly justified and the same are based on correct appreciation of the material placed on record. The revisionist is a trespasser and he has rightly been ordered to be evicted from the disputed land. Apart from that, the order of imprisonment passed against him is also valid and no interference is called for in the facts and circumstances of the case.

5. I have given my thoughtful consideration to the above submissions and perused the record carefully.
6. Initially a notice under section 91 of the Rajasthan Land Revenue Act, 1956 was issued by the Tehsildar Weir against the revisionist on 28-01-1991 for making trespass over the government land, namely, "gair-mumkin pokhar" bearing khasra no. 509 (measuring 6 bigha 2 biswa) situated in village Bhasina Tehsil Weir. Despite service of notice, the revisionist did not appear before the Tehsildar. Therefore, a summary enquiry was conducted by him and vide order dated 08-04-1991, the order of eviction from the above land was passed against the revisionist. He was also ordered to pay a sum of Rs. 140/- as penalty. It was also found to be his subsequent act of trespass over the same land, therefore, he was punished with civil imprisonment of 30 days as well. The said order of Tehsildar was challenged by the revisionist by preferring appeal no. 53/91 before the Collector Bharatpur and vide order dated 27-03-1995, his first appeal was dismissed. Thereafter, the revisionist went in second appeal, which was partly accepted by the Revenue Appellate Authority vide judgement dated 03-06-1999 and the order of sentence was set aside provided the revisionist submits an affidavit before the Tehsildar Weir to the effect that he has vacated land in dispute and in future, he will not commit trespass over it. The rest of the order was maintained. It was also made clear that if the revisionist fails to file such affidavit, the orders of both the court below will remain effective. There is no denying the fact that the revisionist submitted an affidavit before the Tehsildar Weir on 5-04-2001.
7. It is pertinent that during pendency of the above proceedings, the revisionist also filed a revenue suit no. 23/97 in the court of Assistant Collector Weir against the State of Rajasthan under sections 88, 89 and 198 of the Rajasthan Tenancy Act, 1955. The

said suit was dismissed by trial court on 31-07-2001. Feeling aggrieved, the revisionist filed an appeal no. 33/2001 before the Revenue Appellate Authority Bharatpur. Vide Judgment dated 21-06-2002, the said appeal was allowed by the appellate Authority, the suit filed by the revisionist was decreed setting aside the judgment and decree of the trial court and the revisionist was declared khatedar in possession of the suit land. It was also ordered that the entries in the name of the State Government be deleted and in its place, the revisionist be entered as khatedar of the suit land in the revenue record. The State of Rajasthan was also restrained by way of permanent injunction to interfere in the peaceful possession of the revisionist over the suit land. The said judgment and decree of the learned first appellate court was assailed by the concerned Gram Panchayat and six other persons of the Village Bhasina by preferring appeal no. 175/2002 in this Hon'ble Board. On 13-11-2002, the Hon'ble Board was pleased to stay the operation of the judgment and decree of the first appellate court till further orders. The said appeal is stated to be pending in this Board till date.

8. The matter, however, did not end here, as the learned Tehsildar Bhusawar again initiated the proceedings under section 91 of the LR Act, 1956 against the revisionist and vide order dated 19-03-2003, he passed the order of eviction against the revisionist from the disputed land and again sentenced him to undergo civil imprisonment of 30 days apart from a penalty of Rs. 300/- The first appeal filed by the revisionist against the order of Tehsildar was dismissed by the Assistant Collector and second appeal was dismissed by R.A.A Bharatpur vide orders dated 31-12-2003 and 5-03-2005 respectively.
9. The above facts reveal that the claim of revisionist throughout has been that the disputed land is his khatedari land whereas resort

has been taken by the State Government to the provisions of section 91 of the LR Act, 1956 on the ground that the disputed land is 'Sawai Chak'. The scope of section 91 of the LR Act, 1956 was examined by the Hon'ble Supreme Court in State of Rajasthan Vs. Smt. Padmavati Devi [1955 DNJ (SC) 208] as under:-

"6. As noticed earlier Section 91 of the Act prescribes a summary procedure for eviction of a person who is found to be in unauthorised occupation of Government land. The said provisions cannot be invoked in a case where the person in occupation raises bona fide dispute about his right to remain in occupation over the land.... Summary remedy available under Section 91 of the Act is not the legal process which is suited for adjudication of complicated questions of title where the person sought to be evicted as an unauthorised occupant makes a bona fide claim regarding his right to be in possession. In such a case the proper course is to have the matter adjudicated by the ordinary courts of law."

In the present case, the revisionist availed the remedy available to him under the provisions of Rajasthan Tenancy Act, 1955 for getting his claim decided by the Revenue Court. Therefore, in the peculiar facts and circumstances of this case, after the passing of judgment and decree by the R.A.A. Bharatpur in favor of the revisionist, the State Government ought to have stayed its hands in initiating the proceedings under section 91 of the LR Act, 1956 and it ought to have awaited till the outcome of the appeal pending before this Hon'ble Board. In my considered opinion, the Assistant Collector and the R.A.A did not consider the matter in right perspective in dismissing the appeals filed by the revisionist against the order dated 19-03-2003 passed by the Tehsildar. Therefore,

both the impugned judgments of the appellate courts are liable to be interfered with.

10. Resultantly, the revision succeeds. The orders under challenge passed by Assistant Collector and R.A.A on 31-12-2003 and 5-03-2005 respectively are set aside. Consequently, the operation of the order dated 19-03-2003 of the Tehsildar Weir is stayed till the final outcome of appeal no. 175/2002 pending in this Board. The copy of this order be immediately sent to the concerned Tehsildar for information and compliance. It is made clear that nothing contained hereinabove shall be deemed to be construed as an expression on the merits of the controversy and the rights of the parties before us. The record of courts below be sent back forthwith.

Pronounced.

(Rajinder Kumar)
Member