

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

1. CIVIL WRIT No. 3584 of 2004

PARAS RAM & ORS
V/S
B.O.R.& ORS

2. CIVIL WRIT NO.3567 OF 2004

DILIP SINGH & ORS
V/S
B.O.R.& ORS

3. CIVIL WRIT No. 3586 of 2004

KISHORE SINGH
V/S
B.O.R.& ORS

Mr. GR PUNIA, for the appellant / petitioner

Date of Order : 25.8.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the petitioners.

These three writ petitions arise in identical circumstances.

It is contended by the learned counsel for the petitioners that proceedings were initiated against the petitioners u/s 91 of the Rajasthan Land Revenue Act, 1956 in the year 1992, which was dropped vide Annexure 1 dated 30.3.1994. Thereafter, again proceedings were initiated in the year 1999 vide Annexure 2, which have culminated into the order Annexure 5, whereby the petitioners were ordered to be dis-possessed and penalty was imposed. Against this order, the appeals have successively failed.

It is contended by the learned counsel for the petitioners firstly, that in view of Annexure 1, whereby the proceedings u/s 91 had already been dropped, initiation of fresh proceedings u/s 91 is barred

by res judicata . The other submission made is that since the land, which is recorded for way , is not used for way, as the way passes through Khasra Nos.65 and 68 for last so many years and there is no way on the spot.Rather, the petitioners are in old possession; they have their Barra and Pakka houses and are residing there; the petitioners' possession is not causing inconvenience or grievance to any of the inhabitants of the locality or other public. In such circumstances, when the petitioners are in possession for the last decades, they could not be dispossessed u/s 91. It is also contended that proceedings for regularisation of their possession are already pending with the competent authorities.

I have considered the submissions.

So far as the first submission is concerned, a look at Annexure 1 shows that thereby it was not found that the petitioners have any right, title or entitlement to remain in possession . Rather, thereby it was recommended that it would be proper on practical considerations, that the possession be regularised and thereby only the recommendations were made.

In my view, this obviously means, that thereby the petitioners' possession were found to be a tress-pass, and recommendations were made for their regularisation. It is not shown that till date any order for regularisation has been passed in favour of the petitioners. In that view of the matter, I am not inclined to accept the contention of the initiation of proceedings to be barred on the principles of res judicata .

So far as the contention about the non-existence of the way

on the site, and the way being there in other khasra numbers is concerned, without going into the questions on factual matrix, the fact remains that the petitioners had no right to tress-pass over the land simply because it is not used as way, and thus, they are not entitled to remain in possession of the land, simply because, they happen to have tress-passed over it for whatever reasons or whatever considerations.

May be that the villagers may have a different way for ingress and regress, and may be that this land was once upon a time used for way but, thereby it cannot confer any right on the petitioners to tress-pass over the land and resist the proceedings u/s 91 of the Land Revenue Act. As appears from the judgment of the Board of Revenue that the petitioners have already initiated some other litigations for correction of revenue entries but, then it is not shown that as on the date, the petitioners have any subsisting legal right to remain in possession of the land so as to successfully resist the proceedings u/s 91.

So far as the contention about the matter of regularisation of petitioners' possession being pending, suffice it to say, that in the moment, nothing has been placed on record to show that such proceedings are pending. However, it is made clear that if any proceedings are pending, those proceedings will be decided on their own merits, and the disposal of this writ petition will not come in the way adversely against the petitioners in disposal of those proceedings.

The writ petitions are disposed of with the aforesaid observations.

(N P GUPTA), J.

