

Pritamsingh Vs. Narendra and ors.

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Court : Rajasthan

Decided On : Oct-22-1971

Reported in : AIR1973Raj38; 1971(4)WLN691

Judge : V.P. Tyagi, J.

Acts : Rajasthan Land Revenue Act, 1956 - Sections 23(2) and 83

Appeal No. : Civil Writ Petn. No. 506 of 1970

Appellant : Pritamsingh

Respondent : Narendra and ors.

Advocate for Def. : R.S. Purohit, Adv. for (Nos. 1 and 2) and; S.K. Tewari, Dy. Govt. Adv.

Advocate for Pet/Ap. : S.K. Mall Lodha, Adv.

Disposition : Petition allowed

Judgement :

ORDER

V.P. Tyagi, J.

1. This writ petition filed by Pritamsing raises an important question whether a revision in respect of a dispute relating to the right of way shell be heard by the

State Government under Section 83 of the Rajasthan Land Revenue Act or that being a judicial matter, should be disposed of by the Board of Revenue.

2. The circumstances giving rise to this petition are in a nutshell as follows,--

The petitioner has been, in cultivatory possession of Murrabas Nos. 45 and 48 in S. T. G. 36 for more than 15 years. The petitioner's brothers also owned the two Murrabas in the vicinity of the petitioner's lands and they are numbered as 48 and 68. The petitioner has been enjoying his right of way, to his fields through Murrabas Nos. 50 and 67. This way has been shown in the plan Ex. 1 filed by the petitioner with dark pencil line. Respondents Nos. 1 and 2, who owned Murrabas Nos. 60 and 67 applied to the Collector that the petitioner may be given a different right of way. This application of respondents Nos. 1 and 2 was sent by the Collector to the Tehsildar to examine its merits and make his recommendation accordingly. The Tehsildar, it so appears, recommended to the Collector that a new way as shown in blue lines in plan Ex. 1 may be given to the petitioner. The Collector, however, did not agree with the recommendations of the Tehsildar and passed a final order on the application of respondents Nos. 1 and 2 that the old way shall be kept intact.

This order of the Collector was challenged by the respondents Nos. 1 and 2 before the Revenue Minister by filing revision application under Section 83 of the Rajasthan Land Revenue Act (hereinafter called the Act). The learned Minister after hearing the parties allowed the revision application of the respondents Nos. 1 and 2 and ordered that a new way as recommended by the Tehsildar should be opened for the petitioner to go to his Murrabas. This order of the learned Minister has been challenged by the petitioner by filing this writ petition mainly on the ground that under Section 83 of the Act power had been given to the State Government to call for records and revise orders only in respect of the non-judicial proceedings not connected with settlement held by any officer subordinate to it and since the question raised in this case does not fall within the purview of the expression 'non-judicial proceedings' no revision could lie to the Government.

3. Argument of the petitioner is that Section 23 of the Act provides that the control of all non-judicial matters connected with revenue in the State, other than matters

relating to the settlement is vested in the State Government and the control of all judicial matters and of all matters connected with settlement are under the control of the Board of Revenue. For this purpose my attention is drawn to Sub-section (2) of Section 23 of the Act, which defines the expression 'judicial matter'. According to it 'judicial matter' means a proceeding in which a revenue Court or office has to determine the rights and liabilities of the parties thereto and the proceedings and orders as well as appeals, revisions and references in the cases specified in the First Schedule shall be deemed to be judicial matters for the purpose of this Act. The petitioner's contention further is that the question, which is involved in the present case, directly relates to the right of way between the parties and, therefore, the determination of this question falls within the definition of 'judicial matters' as defined in Section 23 (2) of the Act and hence the revision could lie before the Board of Revenue and not before the Government. It is, therefore, vehemently argued that the order passed by the learned Minister in this case is ex facie illegal as it has been passed without jurisdiction.

4. No reply has been filed by any of the respondents to the writ petition. The Deputy Government Advocate, however, appears on behalf of the respondents Nos. 3 to 6 and Mr. Purohit appears on behalf of the respondents Nos. 1 & 2.

5. It cannot be denied that the question involved in this case relates to the right of the parties about the right of way and, therefore, it cannot be said that this was a non-judicial matter which was within the jurisdiction of the Government under Section 83 of the Act. Definitely the dispute between the parties falls within the expression 'judicial matter' as defined in Section 23 (2) of the Act and, therefore, the revision should have been filed by the respondents Nos. 1 and 2 before the Board of Revenue if they felt aggrieved by the order of the Collector rejecting their application for carving out a new way for the petitioner.

6. Learned counsel for the respondents Nos. 1 and 2 submits that if this writ petition is allowed and the order of the learned Minister is set aside, then his clients will be deprived of their right to file revision application before the Board of Revenue after such a long time and, therefore, he prays that this matter may be remanded to the Minister concerned with the direction that if the respondents Nos.

1 and 2 so, desire he may return their revision application to file it in a proper Court This request of the learned counsel for the respondents Nos. 1 and 2 appears to be genuine and reasonable.

7. The result is that the writ petition is allowed, the order passed by the learned Minister dated December 5, 1969, is hereby set aside and the matter is sent back to the learned Minister to return the revision application to the respondents Nos. 1 and 2, who were the petitioners before him, to file in a proper Court, if such request is made before the learned Minister within a month. Learned counsel for the petitioner, however, argues that the respondents cannot gain time by this procedure. This question shall be determined by a competent Court before whom a revision would lie. No order as to costs.

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