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Court : Rajasthan

Decided On : Aug-29-1978

Reported in : 1978WLN(UC)265

Judge : S.C. Agrawal, J.

Appeal No. : S.B. Civil Writ Petition No. 1927 of 1972

Appellant : Padma Ram

Respondent : The Revenue Appellate Authority and ors.

Disposition : Petition dismissed

Judgement :

S.C. Agrawal, J.

1.This writ petition Under Article 226 of the Constitution has been filed by the petitioner Padmaram for the issue of a writ of certiorari to quash the order dated 14th August. 1969, passed by the Addl. Collector, Nagour and the order dated 28th October, 1972 passed by the Revenue Appellate Authority, Jodhpur.

2. The petitioner owns a house in village Kuohera, Teh: Nagour and in front of the said house there is a strip of land measuring 15-1/2 ft x 4ft on which there is a raised platform. The petitioner applied to the Gram Panchayat. Kuchera on 9th January, 1964 for the issue of a patta in respect of land above mentioned and the

Gram Panchayat be its order dated 20th May, 1964 directed that a patta be issued in favour of the petitioner for the said land. In pursuance of the order of the Gram Panchayat dated 20 the May, 964, the petitioner deposited a sum of Rs. 112/- on 21st May, 1964 and a that was issued in his favour on the same day i.e. 21st May, 1964. Gigaram, respondent No. 3 herein, who is a neighbor of the petitioner filed an appeal before the Panchayat Samiti against the order of the Gram Panchayat dated 20th May, 1964 and the Panchayat Samiti by its order dated 30th December 1965, dismissed the said appeal of respondent No. 3 and affirmed the order of the Gram Panchayat regarding the grant of patta in favour of the petitioner. Against the aforesaid order of the Panchayat Samiti dated 30th December 1965, respondent No. 3 filed a revision petition which was allowed by the Addl. Collector, Nagour by his order dated 14th August, 1969, on the view that the land in respect of which patta had been granted in favour of the petitioner was part of the public thorough fare and as a result of the grant of patta and raising constructions over the said land, inconvenience could be caused to the public. In view of the finding aforesaid the Addl. Collector set aside the order of the Gram Panchayat as well as the Panchayat Samiti. Aggrieved by the order of the Addl. Collector, the petitioner filed an appeal before the Revenue Appellate Authority which was dismissed by the order of the Revenue Appellate Authority dated 28th October, 1972 on the view that no appeal was maintainable against the order of the Addl. Collector passed in exercise of his provisional jurisdiction. The petitioner thereupon filed this writ petition to challenge the orders of the Addl. Collector, Nagour and the Revenue Appellate Authority, Jodhpur.

3. In support of the writ petition, the counsel for the petitioner has submitted that the revision petition filed by respondent No. 3 was not competent and that under the provisions of the Rajasthan Panchayat Act and the rules framed there under as they stood at the relevant time, the Addl. Collector, Nigour had no jurisdiction to interfere with the order of the Gram Panchayat, Kuchera as well as the order of the Panchayat Samiti. In support of his aforesaid submission, the learned Counsel has pointed out that under the provisions of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as the Act) and the Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 (hereinafter referred to as the Rules) the only three modes by which Panchayat can transfer its property are.

(i) by auction under Rule 265 ;

(ii) by private negotiation under Rule 266; and

(iii) by allotment free of charge under Rule 267.

4. The counsel submits that prior to 11th December 1969 an appeal had been provided under Rule 270 only against the order of the Panchayat confirming the sale of adadi land under Rule 265 and no appeal was provided against transfer of abadi land under Rule 266 or allotment of land under Rule 267, and similarly under Rule 272 a revision petition lay only against an order passed under Rule 265 and no revision was provided in Sec of orders passed under Rules 266 and 267. The case of the petit one of that the order dated 20th May, 1964 regarding the grant of patta in his favour was passed by the Gram Panchayat in exercise of its powers nadir Rule 266 and that no appeal lay against the said order before the Panchayat Samiti under Rule 270 and similarly no revision lay against the said my to the Collector under Rule 272. The submission of the counsel for the petitioner is that the appeal filed by the respondent No. 3 before the Panchayat Samiti as well as revision petition filed by him before the Collector were incompetent.

5. The writ petition is opposed by respondent No 3 The counsel has raised a preliminary objection with regard to the maintainability of the writ petition on the ground that admittedly the petitioner has sold his house inclusive of the land in dispute to one Champalal and his minor son on 4th Nov. 1966 and that thereafter the petitioner has no interest left in the properly and, therefore, he has no locus stand to challenge there order of the Addl. Collector an of the Revenue Appellate Authority. In reply to the aforesaid preliminary objection raised by respondent No. 3, it has been pointed as on behalf of the petitioner that if the impugned orders in the writ petition are not set aside, the petitioner would be called upon to pay damages to the purchaser in as much as he had sold the house along with ,he land and the Sat form which has been allotted to him by the Gram Panchayat which of dated 20th May, 1964 and thus the petitioner has locus standi lo maintain the writ petition I think there is merit in this intention urged on behalf of the petitioner and objection raised on behalf of the respondent No 3 is therefore rejected.

6. With regard to the merits of the case the counsel for respondent No. 3 has conceded that under the provision of Rule 270 and 272 of the rules as that stood at the relevant time I.e. prior to the amendments made on 11th December 1969, it was not competent to file an appeal against the order of the Gram Panchayat made under Rule 266 or to file a recession petition against such an order under 272 .The counsel , however submits that the revision petition of respondent No. 3 was maintainable under Clause (b) and (c) Sub-section (1) of Section 27A of the Article . It is submitted that the revision power conferred by Section 27a are wade enough to cover Panchayat Samiti and all order passed by the Panchayat in administrative matter from which no appeals lies under Section 26a of the Article and that the order dated 20th May1964 passed by the from Panchayat regarding sale of abadi land was not an order passed under chapter II And no appeal lay against the said order under Section 26a of the article and, therefore the Addl. Collector was competent to revision the said order in exercise of his revisional jurisdiction under Section 27A of the Article. In support of his a foresaid submission, the counsel for respondent No. 3 has placed reliance in as earlier judgment of a leavened single judge of this court Jagmal Singh v. collector Ganganager S.B Civil writ petition No 531/1972 Decided on 31st January 1974 wherein it has been held that the power to sell Panchayat land is not contained in Section 88 (VI) which falls under chapter VII and that no appeal lies under Section 26A Against the order of the Panchayat relation to the sale of Abadi land. In the said case in has also been held that the collector had power to revision 27a of the Panchayat ACT

7. In reply to the aforesaid contention, urged on behalf of respondent No. 3, it has been submitted by the counsel for the petitioner that the. revisional powers confirmed under Section 27A of the Act are confirmed to administrative matters, as enumerated in Section 26 of the Act and that the order regarding sale of land by the Panchayat betting, an order which does not fall; under any of the administrative powers enumerated in Section 26, it could not be revised in exercise of the powers under Section 27A of the Act. It was. further contended on behalf of the petitioner that the revision petition filed by respondent No. 3 was directed against the order of the Panchayat Samiti dated 30th December, 1963 which was an order passed without jurisdiction and the no revision petition had

been filed against the order of the Gram Panchayat to dated 20th may, 1964, and therefore, it was not competent for the Addl. Collector, Nagour to interfere with the said order of the Gram Panchayat.

8. In my view the contention of the counsel for the petitioner that the revision petition of Respondent No. 3 was not competent under Rule 272 must be accepted for the reason that prior to the amendment of Rule 272 with effect from 11th December, 1969, the revisional power conferred by Rule 272 was confined to orders of the Gram Panchayat passed under Rule 265 and no revision was provided as against the order of a Gram Panchayat regarding transfer of property by private negotiation passed under Rule 266. In the present case the order of Gram Panchayat dated 20th May, 1964 regarding allotment of land in favour of the petitioner was neither a transfer of land by auction under Rule 265, nor was it an allotment of land free of charge under Rule 267. It could only be regarded as a transfer of land by private negotiation covered by Rule 266. The order of the Addl. collector can not, therefore, be sustained under Rule 272 of the Rules. In taking this view, I find myself for Se by am earlier judgment of this Court in Chigan v. the Revenue Appellate. Authority Japur on S.B. Civil Writ Petition No 863 1965. decided on 6th September I957 therein in the context of Rule 272, as it stood prior to the amendment made with effect from I the December, 1969, it has been held by a learned Single Judge of this Court that there to no provision for a revision to the Collector in a matter arising under Rule 266 of the Rates. The learned Judge has however, clarified that his remarks were limited to the revisional jurisdiction under Rule 272 only and that he was not pronouncing on tree against as to whether the Collator could not he been asked to therefore any other jurisdiction of his. It is, therefore, necessary to consider whether the revision petition filed by respond in No. 3 was maintainable under Section 2 7A of the Act.

9. Section 27A of the Act reads as under:

Section 27A - Power to call for record. - The State Government may for the purpose of satisfying itself as to the correctness legality and propriety of-

(a) Any order passed by the collector or the officer-in charge of Panchayat under provision of this Act, or

(b) any order passed by a Panchayat Samiti in administrative matters by a Panchayat from which no appeal lies under Section 26A of otherwise or

(c) any order passed under this act in administrative matters by a Panchayat from which no appeal lies under Section 26A Call For and Examine the connoted records and may confirm vary of rescinded such order.

(2) The state Government may by notification in the official gazette delegate its powers under Section (1) to any officer or authority subject to such restrictions if any as may be specified in the notification.

10. A perusal of the aforesaid provisions shows that Clause (b) of Sub-section (1) is wide enough to cover all orders passed by a Panchayat Samiti in administrative matters. Similarly Clause (c) of Sub-section (1) covers every order pissed by a Panchayat in administrative matters from which no appeal hiss Under Section 26A of the Act. A perusal of Section 26A show that it confers a light of appeal to the Panchayat Samiti against orders passed by a Panchayat under Chapter III of the Act. Thus the sham 2 of Section 26 A and 27A is that in so far as orders of the Panchayat Samiti in administrative matters are; concerned there is no limitation whatsoever on the revisional powers and is so far as the order the panchayat are concerned the revisional jurisdiction is restricted to orders against which no appeal lies the reason for imposing this restriction on the revision jurisdiction appears to be that it would not have been practical to provise for concurrent remedies of appeal as well as revision against the same order this is more so when the appellate order of the Panchayat Samiti is subject to the revision jurisdiction and while exercising the revision powers against the appellate order passed by the Panchayat Samiti it would be open to the revisional authority to examine the correctness legality & propriety of the original order passed by the Panchayat merely because Section 27A finds place in chapter III of the Act does not mean that the scope of the revisional jurisdiction conferred in the said section should be confined to administrative matters referred to in chapter III only. An Examination of the varies provision of the Act shows that apart from the provision contained in chapter III there are other provision in the act which relate to administrative matters. It is difficult to divide the administrative matters into two categories for the

purpose to superintendence by subjecting some of the administrative matters i.e. those referred to in chapter III to the revision jurisdiction and leaving rest of the administrative matters completive free from superintendence by the revision authority the language an intention to the legislature or the imposing of such a restriction on the revision jurisdiction.

11. The result is that all orders of the Panchayat Samiti in administrative matters and all orders of the Panchayat in administrative matter which have not been passed under chapter III are subject to the revisional jurisdiction under Section 27A.

12. In the present case the order of the Panchayat Samiti dated 30th December, 1965, dismissing the appeal of respondent No. 3 cannot be regarded as an order passed under Section 26A of Act in as much as no appeal lay before the Panchayat Samiti against the order of the Gram Panchayat dated 20th May, 1964 under Section 26A of the Act. But Clause (b) of Sub-section (1) of Section 27A by using the word 'or otherwise' after the words 'any order passed by the Panchayat Samiti in administrative matters under Section 26A' has conferred revisional jurisdiction in respect of all orders of the Panchayat Samiti in administrative matters The revision petition of respondent No. 3 for revision of the order of the Panchayat Samiti dated 30th December, 1965 was, therefore, maintainable.

13. Now the question arises whether it was open to the Addl. Collector to interfere with the order of the. Gram Panchayat dated 24th May 1964, even though no revision petition had been filed by respondent No. 3 against the said order. It cannot be disputed that the order of the Gram Panchayat dated 20th May, 1964, was an order falling within the ambit of Clause (c) of Section 27A in as much as no appeal lay against the said order under Section 26A of the Act. The Additional Collector was, thus, competent to examine the correctness, legality and propriety of the said order. The mere fact that no revision petition had been filed by respondent No. 3 against the order of the Gram Panchayat dated 20th May, 1964 is of little consequence as much as the revisional jurisdiction under Section 27A can be exercised suo moto and no period of limitation is prescribed for the exercise of this jurisdiction. In my view, while dealing with the revision petition of

respondent No. 3 against the order of the Panchayat Samiti dated 30th December, 1965, it was open to the Addl. Collector, Nagour to examine, suo moto, the correctness, legality or propriety of the order of the Gram Panchayat dated 20th May, 1964 and if he found that said order of the Gram Panchayat required to be set aside, it was competent for the Addl. Collector to set it aside in exercise of his revisional jurisdiction under Section 27(1)(c) of the Act. It has, therefore, to be held that there was no infirmity in the order of the Addl. Collector, Nagour, dated 14th August, 1969 setting aside the order of the Gram Panchayat Kuchera dated 20th May, 1964.

14. In so far a3 the order of the Revenue Appellate Authority, Jodhpur dated 20th October, 1972 dismissing the appeal of the petitioner on the ground that the said appeal was not maintainable is concerned, the counsel for the petitioner has not been able to show any infirmity in the said order.

15. The writ petition is therefore dismissed. The parties are left to bear their own costs of this petition.

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