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Court : Rajasthan

Decided On : Apr-21-1982

Reported in : 1982WLN(UC)41

Judge : M.C. Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 1913 of 1976

Appellant : Ram Chandra

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

M.C. Jain, J.

1. This writ petition can be disposed of on a short point.

2. As per the petitioner's case the petitioner had a right to cultivate over 2 1/2 'bighas' land comprised in 'Aaraji' No. 837, 838 and 906, which was a 'mnuafi' land of one Ganesh Dholi. The petitioner sought permission for construction of a 'sarai' over this land from the Mewar Government. The Mewar Government there upon gave permission to the petitioner for construction of 'sarai' subject to the condition that the 'sarai' would remain a public property and the State will have a right of supervisor. It was also directed by the Mewar Government that the 'Muafidar' be

given some other land in lieu of the above 2 1/2 'bighas' land. The petitioner constructed the 'sarai' over the middle portion of the land in question leaving vacant space on either side of the 'sarai' on east and west. The petitioner averred certain facts with regard to the management and control over the 'sarai' and he further averred that all of a sudden without any previous notice, the Sub-Divisional Officer, Chittoregarh and the Tehsildar, Chittoregarh, purporting to act under the orders and directions of the Collector, forcibly entered into the 'sarai' and took possession of the same. The action is said to have been taken in pursuance of the order of the Collector dated 16-11-1976 (Annexure 6), by which the Tehsildar, Chittoregarh, was directed to take over the management of the 'sarai', shop; of the 'sarai' and the vacant land. The petitioner challenged the order of the Collector and execution of this order by the Tehsildar inter alia on the ground that the executive action was wholly arbitrary and was in disregard of principles of natural justice.

3. Counter to the writ petition has been filed in which the petitioner's claim has been denied and action of the Collector has been defended as legal and justified.

4. The question that arises for consideration is as to whether the action of the Collector in directing the Tehsildar to take over the management of the property in question was justified. The learned Deputy Government Advocate submitted that the Urban Improvement Trust (for short 'the U.I.D.') issued notices Exs. R/3, R/4 and R/6, but when no heed was paid to the notices, issued by the U.I.T., the Collector issued the order dated 16-11-1976 and action was taken by the Tehsildar in pursuance of the order of the Collector on the same day and possession was taken over by the Tehsildar and the tenants were directed not to make payment of rents to the trustees of the property and execute the rent notes in favour of the Government. As per the petitioner's case, the petitioner was not completely deprived of the entire property. Some vacant piece of land is still in possession of the petitioner in pursuance of the order issued by this Court. The learned Deputy Government Advocate submitted That the permission for construction of 'sarai' was accorded with very clear and specific condition that the property would remain public property and it would remain under the control of the Government. In order to exercise control over the public property, the Collector was justified to direct the Tehsildar to take the management of the property. It may

be stated that admittedly after the construction of the 'sarai' and shops the property continued to remain under the management and control of the petitioner and almost three decades have passed. Before the petitioner could be deprived of the management and control over the property in question, it was elementary that the petitioner ought to have been served with a notice to show cause as to why the management and control be not taken over by the State. Without giving any opportunity of hearing to the petitioner, it appears that the Collector issued the impugned order dated 16-11-1976. The notices, said to have been issued, are issued by the U.I.T. These notices are only in the nature of finding facts about this property. They are investigative in character. Action has not been taken by the U.I.T. and it has not been pointed out that the communications sent by the U.I.T. were sufficient in the eye of law for the action, which has been taken by the Collector vide order Annexure 6. I need not go into the question as to what is the nature of the property, whether it is a public trust or a property of the Government and I also need not go into the question as to what are the implications of the word 'Nigrani' occurring in the order of the Mewar Government dated 6-12-1947. What sort of rights can be exercised by the Government, would be a question, which may require consideration. As the petitioner has been deprived of the management of the property in question without being afforded an opportunity of hearing, the action of the Collector deserves to be quashed on this ground alone. The order was issued on 16-11-1976 and without service of the order, the order was executed. As per the averment of the petitioner the order was executed at about 2.00. p.m., where as the order is said to have been served on him at 2.10. p.m., and the order was executed in his absence, as admittedly the petitioner was not present on the spot. Only his Munim was present. As the petitioner has been dispossessed of the property in question without giving an opportunity of hearing to him, he is entitled to be restored back the possession over the property.

5. Thus, the writ petition deserves to be allowed on the ground that the order of the Collector dated 16-11-1976 is violative of principles of natural justice.

6. Accordingly, the writ petition is allowed, the order of the Collector dated 16-11-1976 (Annexure 6) is quashed and set aside and it is directed that the petitioner shall be put back into possession of the property of which he was deprived of on

16-11-1976. In the facts and circumstances of the case, there will be no order as to costs,

7. However, it would be open to the Government to initiate fresh proceedings in accordance with law, if so advised.

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