

Devi Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Aug-02-1984

Reported in : 1984WLN(UC)420

Judge : Dwarka Prasad Gupta, J.

Appeal No. : S.B. Civil Writ Petition No. 1604 of 1976

Appellant : Devi

Respondent : State of Rajasthan and anr.

Disposition : Petition allowed

Judgement :

Dwarka Prasad Gupta, J.

1. Learned Counsel for the petitioner contends that the Collector, Bhilwara dismissed the revision petition preferred by the petitioner before him under Section 27A of the Rajasthan Panchayat Act, 1953 (hereinafter referred to as 'the Act') on the ground that the Panchayat Samiti has recorded in its order that the land in dispute formed part of the public way, but no opportunity was afforded to the petitioner to meet such a case.

2. A plot of land measuring 11' 118' situated in village Redwas in Tehsil Kothadi of District Bhilwara was allotted by Gram Panchayat Redwas to the petitioner by its

order dated October 6, 1967, subject to payment of Rs. 100/- as the price thereof. A patta was also issued by the Gram Panchayat on March 31, 1969 regarding the sale of the aforesaid plot of land in favour of the petitioner. One Bansidas filed an appeal against the aforesaid order of allotment of plot of land. The appeal was allowed by the Panchayat Samiti, Kothadi on the ground that the sale of land in dispute in favour of the petitioner was not made in accordance with the relevant rules. An appeal was preferred by the petitioner which was dismissed by the Additional Collector, Bhilwara, by his order dated May 15, 1971 and the case was remanded to the Gram Panchayat with the direction to take proceedings afresh in accordance with law.

3. The Gram Panchayat, Redwas, after the remand, issued notice for the auction of the land in dispute. The petitioner was the higher bidder as he agreed to purchase the land in dispute for a sum of Rs. 121/-. The Gram Panchayat accepted the bid of the petitioner and by its order dated December 18, 1971 decided to sell the plot of land in dispute. Thereafter a patta was again issued by the Gram Panchayat, Redwas in favour of the petitioner in respect of the land in dispute on March 7, 1972. Again one Ram Chandra preferred an appeal before the Panchayat Samiti. The Standing Committee of the Panchayat Samiti by its order dated January 2, 1974 again set aside the sale made in favour of the petitioner on the ground that the land in dispute was part of public way and as such the plot of the land could not be sold at all. As such the plot of land could not be sold at all. An appeal preferred by the petitioner before the Collector, Bhilwara was also dismissed by his order dated December 4, 1974. The petitioner preferred a further appeal before the Revenue Appellate Authority which was dismissed by the order dated September 7, 1976 on the ground that appeal was not maintainable before that Authority.

4. The Panchayat Samiti and the Collector, Bhilwara appear to have held that the land in dispute was part of the public way, without affording the petitioner an opportunity to meet the case set up for the first time before the Panchayat Samiti. It may be observed that the plot of land in dispute was sold by public auction by the Gram Panchayat on December 18, 1971 and no objection to that effect appears to have been raised either by any member of the Gram Panchayat or by any other

person, including the respondent Rim Chandra at the time of sale thereof. It was only after the sale of the plot of land in dispute in favour of the petitioner by the Gram Panchayat had taken place and Ram Chandra preferred an appeal before the Panchayat Samiti, the objection that the land in dispute formed part of the public way was raised for the first time before the Panchayat Samiti. The grievance of the petitioner that he was not afforded any opportunity to meet the case set up before the Panchayat Samiti, for canceling the sale of land in dispute in favour of the petitioner, appears to be well founded. The learned Collector also decided appeal before him on the basis that two members of the Panchayat Samiti visited the site and were of the opinion that the plot of land in dispute formed part of the public way. It would have been just and proper if the petitioner would have been afforded an opportunity to meet the case set up for the first time at the appellate stage, and to produce relevant material before Panchayat Samiti or the Collector, Bhilwara, to rebut the new allegation advanced on behalf of Ram Chandra that the land in dispute formed part of the public way. It is significant that the Collector was requested by the petitioner to inspect the site and a written application was also moved before him for that purpose, but he dismissed the application on the ground that two members of the Standing Committee of the Panchayat Samiti had already seen the site and as such no useful purpose would be served by his inspecting the site again.

5. Learned Government Advocate was unable to say as to whether any site inspection note was prepared by the two members of the Standing Committee of the Panchayat Samiti who allegedly inspected the site. The Collector may be justified in holding that the land which forms part of the public way cannot be sold by the Gram Panchayat because those lands which form part of the public streets and pathways are vested in the Gram Panchayat only as a trustee thereof and the Gram Panchayat has no right to dispose of the same by way of sale or otherwise. However, whether the plot of land in dispute forms part of the public way is a question of fact which should have been decided by the competent authorities after affording the petitioner and other concerned parties a reasonable opportunity of bearing. A perusal of the plan appearing on the book of the patta Ex. 5 issued by the Gram Panchayat to the petitioner shows that 'Aam Rasta' lies towards the north of the plot of land in question, while there is the way towards the south of the

land in dispute. On the eastern and western sides of the plot of land other lands of the petitioner are situated. Thus from the site plan prepared by the Gram Panchayat, it does not appear that the plot of land in dispute formed a part of the public way. Even then, the Panchayat Samiti, and the Collector were bound to make an enquiry into the matter before coming to a proper conclusion as to whether the land in dispute formed part of the public way. Moreover, such a decision should have been arrived at after affording the petitioner a reasonable opportunity of hearing and of producing such material as may be relevant for the purpose.

6. In the result, the writ petition is allowed, the order passed by the Collector, Bhilwara dated December 4, 1974 and the order passed by the Standing Committee of the Panchayat Samiti, Kothadi dated January 2, 1974 are set aside. The Collector, Bhilwara is directed to decide the matter afresh after affording the petitioner a reasonable opportunity of hearing and producing relevant material on the question as to whether the land in dispute formed part of the public way or not. The parties are left to bear their own costs.