

Mrs. Dharmi and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-04-1992

Reported in : 1992WLN(UC)305

Judge : Rajesh Balia, J.

Appeal No. : Writ Petition No. 4332 of 1989

Appellant : Mrs. Dharmi and ors.

Respondent : State of Rajasthan

Judgement :

Rajesh Balia, J.

1. The petitioners claim to be Khatetar of the agricultural land measuring 4 Bighas and 13 Biswas in all comprising Khasara Nos. 516, 518, 519 and 520 in village Satpur a part of Revenue Inspectorate, Abu Road. The petitioners further alleged that 1750 Sq. Feet, of land falling in Khasara No. 516 and other measuring 572 sq. feet of land were taken on rent by petitioner No. 2 from Public Works Department Government of Rajasthan out of 2 Bighas 2 Biswas comprising Khasra No. 516. Second petitioner made a construction of restaurant for 'Dhaba' some where in 1970. The said Dhaba is alleged to have been demolished by respondents. Likewise, it is alleged that on another land 520 feet, the petitioner No.2 has constructed a shop on land adjacent to Khasara No. 516 which was taken on rent

on Rs. 3/- per month from Public Works Department.

2. The rent in respect of this land not being accepted upto December 1978, the petitioner was served a notice dated 24.7.79 to the effect that he has encroached upon the land and he should vacate the same. 'This notice was given under Section 91 of the Rajasthan Land Revenue Act. Another notice was given on 11.6.80 to the first petitioner informing her that her husband has encroached upon the land measuring 572 sq. ft. and she was required to give up possession of the unauthorised occupation of land in question. Yet. another notice was given to the petitioner under Sections 90A and 91 on 26.11.82.

3. It is contended by learned Counsel for the petitioners that it is apparent that proceedings initiated against the petitioners and those proceedings have not been concluded, yet the respondents have interfered with this possession and demolished the construction raised on land in dispute. The petitioner contends that he was in lawful possession of the land in question and the construction thereon and he could not have been deprived of the same without due process of law. Respondents having thought that the petitioners have encroached upon the public land, initiated proceedings under Section 91 of the Rajasthan land Revenue Act. The petitioners could have been removed from disputed land only after final orders were passed under Section 91 of the Rajasthan Land Revenue Act. But the respondent have by use of police force dispossessed the petitioner and demolished the construction raised thereon before conclusion of proceedings under Section 91 of the Rajasthan Land Revenue Act.

4. Respondents have filed the return to the petition wherein it is admitted by the respondents that proceedings under Section 91 of the Rajasthan Land Revenue Act was initiated against the petitioner No. 2 and to that effect, on 11.6.80 a show cause notice was issued to the petitioner. It has not been stated in the return, nor learned Counsel for the respondent is in a position to state, whether any final order has been passed in those proceedings.

5. Respondents have further stated that the petitioner was in unlawful possession of 520sq. ft. land of Public Works Department that objectionable construction was made without any permission. The fact that the land was let out to the petitioner

has also been denied.

6. According to the respondents construction of road has been done on 7.71 Bighas of land which is recorded in the record of P.W.D. The petitioner has raised construction on road and road sides therefore proceedings under Section 91 were initiated against the petitioner. It is also denied that land comprising 520 sq.ft. was allotted to the petitioner. Since the encroachment was made by the petitioner on the land belonging to P.W.D. : Assistant Engineer was authorised to remove such encroachments within his jurisdiction.

7. The right of respondents to remove unauthorised encroachment on the public roads or on road side cannot be disputed or doubted. However the question is whether the person in a unauthorised occupation of land can be evicted without following the due process of law, by police force.

8. The law in this regard is well-settled that the State is as much bound by the rule of law as a citizen. No person's right can be put in jeopardy without, due process of law. In the matter of removing unauthorised possession and encroachment the law is well settled that alleged trespass can be dealt with by following the prescribed procedure of law. They cannot be removed by police force on the assumption of encroachment.

9. In *Chandra and Co. v. State of Rajasthan* 1981 RLW 19 this Court noticed the classical dictum of Lord Atkin in *Eshugbayi Eleka v. The Government Nigeria* 1931 A.C. 662. In the said case, Lord Atkin has observed as under:

The Governor acting under the Ordinance acts solely under executive powers, and in no sense as a Court. As the executive he can only act in pursuance of the powers given to him by law. In accordance with British jurisprudence no member of the executive can interfere with the liberty or property that he can support the legality of his action before a court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in face of the executive.

This Court also went on to hold:

The decisions referred to above led to the conclusion that a person who is in peaceful possession of property cannot be deprived of the possession of the same by the State, or its officers, except in accordance with law and in a case, where the State or its officers have dispossessed such a person of the property in his possession without any authority of law it would be open to him to seek redress against the aforesaid unlawful action of the State and its officers by invoking the jurisdiction of this Court under Article 226 of the Constitution therefore said decisions further show that a person who has been dispossessed of the property in his possession by the State or its officers, without the authority of law cannot be non-suited on the ground that he was an authorised occupant of the said property and had no right or title in the same.

For this conclusion the court relied on *Bishon Das v. State of Punjab* : [1962]2SCR69

It is enough to say that they are bonafide in possession of the constructions in question and would not be removed except under authority of law. The respondents clearly violate their fundamental rights by depriving them of possession of the Dharmshala by executive order. These orders must be quashed and the respondent must now be restrained from interfering with petitioners in the management of the Dharmashala temple and shops.

In the said case, the Supreme Court has further observed:

In these circumstances, the action of the Government in taking the law into their hands and dispossessing the petitioners by the display of force, exhibits a callous disregard of the normal requirements of the rule of law apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a Constitution which guarantees to its citizens against arbitrary invasion by the executive or peaceful possession of the property.

10. From the admitted fact of the present case as noticed above the petitioner was in a possession of land in dispute and respondents have taken proceedings under Section 91 for evicting the petitioner in accordance with law. However for some inexplicable reason it appears that authority concerned became impatient and

without awaiting the conclusion of proceedings under Section 91 have decided to remove alleged unlawful construction from the land which was allegedly in unlawful occupation of the petitioner. It was at least expected that once officers, who had taken recourse to due process of law, must await for its legal conclusion. Proceedings under Section 91 envisages in order against the trespasser. Against said order, remedies have been provided in Rajasthan Land Revenue Act to the aggrieved party, where the courts have necessary authority to pass orders with the justice of case may demand. There does not appear any reason for the respondent to have left recourse to due process of law and to take the law in their own hands and dispossess the petitioner from the disputed land by removing so called unauthorised construction. The action of respondents was clearly not justified.

11. This leads me to consider under these circumstances to what relief petitioners are entitled to. From the pleadings of the parties, it is apparent that serious dispute exists between the parties about the nature of unauthorised occupation and construction made thereon. It relates to the sphere of public convenience to have unobstructed road and road side. The objection to construction is admittedly not now in existence on the site and the proceedings under Section 91 are still pending. In these circumstances, while I deem it just and proper that the possession of the disputed land should be restored to the petitioner and they may be allowed to retain the possession until proceedings under Section 91 are finally concluded in one way or the other. However the parties will not be allowed to raise any construction thereon during the pendency of those proceedings. At the end the proceedings under Section 91 the parties will be at liberty to prosecute the remedies and avail such process as may be available to them under law to implement the order.

2. In case it is ultimately found that the petitioners are in lawful possession of the land in question and were not trespassers, they will be free to litigate their rights to suitable compensation against the unauthorised action of the respondents for removing the construction without authority of law by recourse to police force.

13. Petition is accordingly disposed of in terms of observations made above.

14. Petitioner will be entitled to costs of this petition which is quantified at Rs. 1000/-.

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