

Jafar Mohammad. Vs. Sirajuddin and ors.

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Court : Rajasthan Jaipur

Decided On : Mar-29-2011

Judge : Mahesh Bhagwati, J.

Acts : [Constitution of India](#) - Article 226, 227.

Appeal No. : S.B. Civil Writ Petition No. 6248/2008.

Appellant : Jafar Mohammad.

Respondent : Sirajuddin and ors.

Advocate for Def. : Mr. Shobhit Vyas; Mr. Ajay Gupta, Adv.

Advocate for Pet/Ap. : Mr. Vimal Kumar Jain, Adv.

Judgement :

1. By way of the instant writ petition, the petitioner has sought the following relief:
 - (i) By issue an appropriate writ, order or direction, the order dated 27.3.2006 (Annexure-3) passed by respondent no. 6 Municipal Board, Sambharlake and order dated 23.3.2007 (Annexure-4) passed by respondent no. 7 Additional Divisional Commissioner, Jaipur be quashed and set-aside.
 - (ii) Any other appropriate relief which this Hon'ble Court may deem just and proper in the facts and circumstances of the case in favour of the petitioner.

(iii) The cost of this writ petition may also kindly be awarded in favour of the petitioner.

2. Contextual facts of the case depict that the property situated at Chhota Bajar, Sambharlake was entered in the name of Khudabux. The respondents no. 1 and 2, who are the legal representatives of Khudabux, submitted an application to the Nagar Palika, Sambharlake for entering their name in place of Khudabux. The petitioner filed the objections before the Nagar Palika, Sambharlake. Executive Officer, Nagar Palika, Sambharlake, directed the parties to get the right of ownership decided from Civil Court. Thereafter Sirajuddin deposited the house tax of the property-in-dispute with Nagar Palika, Sambharlake, which was accepted by the Executive Officer. Being aggrieved by the order of the Executive Officer, the petitioner preferred revision petition before the Additional Divisional Commissioner, which came to be dismissed vide order dated 23.3.2007.

3. Heard learned counsel for the parties and carefully perused the relevant material on record including the impugned order.

4. Learned counsel for the petitioner canvassed that the disputed property was in the name of Khudabux. The Executive Officer, Nagar Palika decided the rights and title of the parties over the disputed property, who was not competent to do so. It was the Civil Court only, which could decide the right and title of the parties over the disputed property. The respondents, instead of filing application before the Executive Officer, ought to have filed a civil suit for getting declaration of civil or legal right over the disputed property. Thus, the order passed by the Executive Officer is arbitrary and illegal and the same deserves to be set-aside.

5. E contra, learned counsel appearing for the respondents has defended the order passed by the Executive Officer and contended that Sirajuddin only deposited the house tax of the disputed property and no rights of any of the parties have been decided by the Executive Officer.

6. Having heard the learned counsel for the parties, it is noticed that if Sirajuddin deposited the house tax with regard to a property which was in the name of Khudabux. That does not entitle him to be the owner of the property nor ousted the

civil rights of the petitioner for getting declaration with regard to disputed property. Depositing the house tax is one thing and getting declaration of right and title over the disputed property by way of filing civil suit is different thing. The impugned orders are found to be just and apt. They do not call for any interference by this Court under Article 226/277 of the [Constitution of India](#).

7. For the reasons stated above, I find no merit in this writ petition and the same being bereft of any merits, deserves to be dismissed, which stands dismissed accordingly.

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