### IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

#### ORDER

IN

S.B. CIVIL WRIT PETITION NO.2254/2016 (Smt. Geeta Tank & Anr. Vs. State of Rajasthan & Ors.)

S.B. CIVIL WRIT PETITION NO.2151/2016 (Smt. Chhoti Devi Vs. State of Rajasthan & Ors.)

S.B. CIVIL WRIT PETITION NO.1673/2016 (Sohan Lal Vs. State of Rajasthan & Ors.)

## Date of Order:

23.05.2016

# **HON'BLE MR. JUSTICE ALOK SHARMA**

Mr. J.P. Goyal, Sr. Advocate with

Mr. Abhi Goyal, for the petitioners.

Mr. Rajendra Prasad, AAG & Sr. Advocate with

Mr. Jatin Agarwal, for respondent-State.

Mr. B.R. Rana with

Mr. Jagdish Choudhary, for respondent No.4.

### BY THE COURT

All the aforesaid petitions arise out of the impugned order 12.01.2016 passed by the District Collector, Ajmer and are therefore being disposed of together.

Mr. J.P. Goyal, Sr. Advocate appearing with Mr. Abhi Goyal, for the petitioners, has submitted that indeed proceedings were taken against the petitioners under Section 91 of the Rajasthan Land Revenue Act, 1956 (hereinafter "the Act of 1956") in which they were found to be trespassers, indeed the petitioners filed civil suits before the Civil Judge (J.D.), Pushkar and withdrew them but liberty to file afresh and indeed the petitioners Chhoti Devi and Sohan Lal thereafter laid suits for declaration and permanent injunction before the District Judge, Ajmer which on transfer to ADJ No.3, Ajmer entailed their applications under

Order 39 Rule 1 & 2 CPC being dismissed. Mr. J.P. Goyal submitted that however all the aforesaid proceedings are quite irrelevant in view of the fact that the issue agitated before this Court is with regard to the lack of jurisdiction of the Collector in passing the impugned order dated 12.01.2016. It has been submitted that once the land was kept apart for Abadi under the order dated 13.02.2013 relatable to Section 92 of the Act of 1956, the Collector has no jurisdiction to invoke Section 92 of the Act of 1956 afresh qua part of the now "abadi" land. Mr. J.P. Goyal further submitted that the petitioners have been in possession of the plots in issue for the last several decades and obtained electricity and water connection thereon. The impugned order dated 12.01.2016 modifying the earlier order dated 13.02.2013 following which the petitioners had a right to seek regularization of their plots under the Rajasthan Panchayati Raj Rules, 1996 (hereinafter "the Rules of 1996") is on this count wholly arbitrary and unjustly defeats the legitimate expectation of the petitioners' qua regularization of the land of which they are in possession. It has been submitted that in fact applications for regularization have already been filed before the Gram Panchayat in the context of the now modified order dated 13.02.2013 earlier passed by the Collector.

Mr. Rajendra Prasad, Sr. Advocate & AAG appearing with Mr. Jatin Agarwal, for the respondents-State submitted that the petitions are not maintainable inasmuch as the petitioners have no locus standi. He submitted that the petitioners have no manner of legal right to agitate in respect of the land covered by

the impugned order as they are mere trespassers thereon and continuously violating law by holding to the land despite orders of eviction passed by the jurisdictional Tehsildar. It was further submitted that all the petitioners are thus rank trespassers and have been so held to be in proceedings taken under Section 91 of the Act of 1956 passed against the petitioner Smt. Geeta on 02.01.2011 and against the petitioners Chhoti Devi and Sohan Lal on 07.06.2006. It was submitted that even otherwise the purported possession of the petitioners Chhoti Devi and Sohan Lal as trespassers is confined to "Badas" (boundaries of dry branches around open land) where no constructions on the admission of the petitioners themselves have been made. It is further pointed out that Annexure-14 in SBCWP No.2254/2016 filed at the instance of Smt. Geeta indicates that she and Alkesh her son, the copetitioner claims possession in respect of a parcel of land with a damaged brick kiln. The AAG also pointed out that all the petitioners, Smt. Geeta, Chhoti Devi and Sohan Lal had filed civil suits for declaration and permanent injunction before the Civil Judge (J.R.), Pushkar qua the lands in dispute. All the aforesaid suits were dismissed as withdrawn. Subsequent to the withdrawal of the suits before the Civil Judge (J.D.), Pushkar, suits were laid before the District Judge, Ajmer which were transferred to the Additional District and Sessions Judge No.3, Ajmer. Applications under Order 39 Rule 1 & 2 CPC filed by Chhoti Devi and Sohan Lal were dismissed by the trial court (ADJ No.3, Ajmer) on 20.04.2011. Civil Misc. Appeals thereagainst have been filed before this Court and are pending without any relief having been

granted to the petitioners.

It was further submitted by the AAG that the impugned order dated 12.01.2016 has been admittedly passed by the Collector, Dausa in the exercise of his powers under Section 92 of the Act of 1956 modifying the earlier order similarly passed on 13.02.2013 which in turn was an order modifying a prior order thereto on 02.06.1998 also under Section 92 of the Act of 1956 on 12.01.2016. AAG has submitted that the Collector has the power to modify his order under Section 92 of the Act of 1956 with reference to Section 23 of the Rajasthan General Clauses Act, 1955 (hereinafter "the Act of 1955") which provides as under:

**Section 23.** Power to make or issue, to include power to add, to amend, vary or rescind orders, etc. - Where, by any Rajasthan Law, a power to make or issue orders, rules, regulations, schemes, forms, byelaws or notifications is conferred, then that power includes a power exercisable in the like manner and subject to the like sanction and condition (if any), to add, to amend, vary or rescind any orders, rules, regulations, schemes, forms, bye-laws or notifications so made or issued.

The AAG submitted that an order under Section 92 of the Act of 1956 is a non-judicial order which in terms of Section 83 of the Act of 1956 is revisable by the State Government. Section 83 of the Act of 1956 reads as under:

**Section 83**: Power of Government to call for records and revise orders: The State Government may call for the record of any non-judicial proceeding not connected with settlement held by any officer subordinate to it, and may pass thereon such orders as it thinks fit.

The submission therefore is that the writ petition deserves to be also dismissed on the ground of availability of an

alternative remedy.

The AAG further submitted that Gram Panchayat Dev Nagar, to which the land in dispute was inter alia earlier set apart conditionally for abadi purpose, is not before this Court impugning the order dated 12.01.2016. It alone, if aggrieved, could have approached, this Court against the impugned order dated 12.01.2016. Not choosing to have so done, the Gram Panchayat appears to have no grievance.

It is further pointed out from the record with him that the order dated 12.01.2016 impugned before this Court has also been challenged by one Kanaram before the Revenue Appellate Authority. Kanaram is none other then the husband of Chhoti Devi (petitioner in SBCWP No.2151/2016) and father of Sohan Lal (petitioner in SBCWP No.1673/2016). It is submitted that this fact by itself indicates that the petitioners are merely forum hunting to somehow stall the absolutely legal order dated 12.01.2016 passed by the Collector modifying the earlier order dated 13.02.2013 in public interest for use of the land in dispute in Gram Banseli for the purpose of public parking for the Pushkar Fair as it was initially set apart under order dated 02.06.1998.

Mr. Rajendra Prasad has hence submitted that on all the aforesaid grounds, the petitions are not maintainable but a palpable abuse of the process of this Court deserving of dismissal with costs albeit leaving the petitioners free to avail their remedy, if so advised, under Section 83 of the Act of 1956.

Heard. Considered.

From the record, it is evident that the petitioners were

admittedly held to be trespassers under Section 91 of the Act of 1956 by the Tehsildar under the orders dated 12.01.2011 and 23.11.1995. No appeal against the said orders having been filed, finality of the petitioners' status as trespassers over the said land obtained. The petitioners' suits thereafter for declaration and injunction before the Civil Judge (J.D.), Pushkar were dismissed as withdrawn. In the subsequent suits, also for declaration and injunction filed by the petitioners, the District and Sessions Judge No.3 has dismissed the applications for interim injunction under Order 39 Rule 1 & 2 CPC on 20.04.2011. Civil Misc. Appeals thereagainst are pending before this Court. From the record of the petition itself as also from the record of the reply filed by the respondent No.4, the purported possession of the petitioners is at best tenuous. In the case of Chhoti Devi and Sohan Lal the Panchayat records indicate that they claim possession on the basis of a 'Bada' and in the case of Geeta and Alkesh on the basis of a brick kiln in damaged condition.

Be as it may, I am of the considered view that the power of the Collector to set apart land under Section 92 of the Act of 1956 also includes the power to modify such a setting apart with reference to Section 23 of the Act of 1955. This more so when the earlier setting apart was conditional and the conditions remained unfulfilled.

Aside of the aforesaid, the aggrieved party in the facts of the case, if at all ought to have been Gram Panchayat Dev Nagar in whose benefit the order of setting apart was passed on 13.02.2013 and has now been modified on 12.01.2016. The Gram

Panchayat is not before this Court. Instead before this Court are the petitioners, trespassers having no manner of legal right over the land in issue and hence cannot conceivably be aggrieved of any infringement of their legal / fundamental rights or failure of a statutory authority to perform its statutory duty despite notice. They cannot thus invoke the extraordinary jurisdiction of this Court under Section 226 of the Constitution of India. They can, if advised, instead approach the State Government under Section 83 of the Act of 1956 for, admittedly, an order under Section 92 of the Act of 1956 is an executive and hence a non-judicial order. It is well settled that a writ court exercises powers under Article 226 of the Constitution of India as a matter of its equitable discretion—related to the justness of a cause agitated before it and not as a matter of course only for reason of a legal point being made out. On that test, the petitioners on the facts of the case, have no case.

Consequently, for the aforesaid reason I find no force in the petitions. Dismissed.

The petitioners shall however be free, if advised, to resort to the remedy under Section 83 of the Act of 1956. In the event of such a remedy being availed, the revising authority shall be free to address all the aspects of the matter, which aside of merit, would also include the maintainability of the revision petition at the instance of the petitioners.

Stay earlier granted by this Court stands vacated.

A copy of this order be placed in each file.

(ALOK SHARMA), J