



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Civil Writ Petition No. 9500/2018

Bot Lal

-----Petitioner

Versus



1. The State Of Rajasthan, Through The Chief Secretary, Government Of Rajasthan, Jaipur.
2. The Secretary, Department Of Rural Development And Panchayati Raj, Government Of Rajasthan, Jaipur.
3. The Director, Department Of Elementary Education, Bikaner
4. The District Collector, Chittorgarh, District- Chittorgarh
5. The Sub-Divisional Officer, Nimbahera, District- Chittorgarh.
6. The Tehsildar, Nimbahera, District- Chittorgarh
7. The District Education Officer, Elementary Education, Chittorgarh
8. The Sarpanch Through Its Gram Panchayat Nimbahera, District- Chittorgarh
9. Shri Shyam Lal S/o Shri Devi Lal, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
10. Ram Chandra S/o Narayan, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
11. Kishan Lal S/o Shri Jai Raj, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
12. Shanti Lal S/o Shri Jai Raj, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
13. Mathura Lal S/o Shri Narayan, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
14. Babru S/o Shri Moti Lal, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
15. Nanu Ram S/o Shri Tolli, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh
16. Mathura Lal S/o Shri Ratan Lal, B/c Dhakad, Resident Of- Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh



17. Moti Lal S/o Shri Tolly Ram, B/c Dhakad, Resident Of-
Unkhaliya, Tehsil- Nimbahera, District- Chittorgarh

----Respondents

For Petitioner(s) : Mr. Bharat Devasi
For Respondent(s) : Mr. Sunil Beniwal, AAG with Mr.
Saransh Viz.
Mr. Abhinav Jain.

HON'BLE ACTING CHIEF JUSTICE MR. MANINDRA MOHAN SHRIVASTAVA

HON'BLE MR. JUSTICE MADAN GOPAL VYAS

Order

08/03/2022

Heard.

This petition, styled as public interest litigation, has been filed by the petitioner seeking issuance of directions to the authorities to remove encroachments from the disputed land, which, according to the petitioner has been recorded in Jamabandi as playground of the school.

According to the petitioner, the playground of the school has been illegally leased out to large number of the persons by the Gram Panchayat without any authority of law and when complaints were made, the competent authority initiated proceedings under Section 91 of the Land Revenue Act (for short, 'the Act') and orders of eviction have been passed and appeal has also been dismissed. Even then, it is contended, the State authorities are sitting over the matter and not removing the encroachments despite the orders of eviction passed against many persons including those in respect of whom eviction orders have been passed and appeal has been dismissed.



Learned counsel for the State referring to avements made in the reply, submits that the proceedings in all the cases have not been brought to an end. He would submit that in as many as 13 cases, proceedings under Section 91 of the Act have been initiated, which are stated to be pending. He would also submit that as far as the use of land recorded as playground of the school is concerned, the Sub-Divisional Officer has opened an inquiry and till filing of the reply, such inquiry is also pending with regard to the existing use of the land and other aspects of the matter.

Learned counsel appearing for the private respondents 9 to 11 would submit that the petitioner has filed this petition seeking direction against answering respondents on misleading facts. He would submit that as far as Mohan S/o Narayan, Mathura Lal S/o Shri Ratanlal, Mathuralal S/o Narayan, Dhanna S/o Onkar, Babru S/o Moti, Mathura Lal S/o Shri Keshuram, are concerned, certain orders have been passed but their right to defend against those orders by taking appropriate remedy before appellate forum or proper courts in law is still open to them. He would further highlight that application under Section 136 of the Act has been made before the Sub Divisional Officer by the private respondents and in compliance of the directions issued by this Court earlier in these proceedings, the application was though considered but illegally rejected on the technical ground that all affected persons have to be impleaded as party. Thereafter, a fresh application under Section 136 of the Act has been filed before the SDO, which is still pending.

We have heard learned counsel for the parties and perused the record.



In the writ petition, the petitioner without naming any person, has placed on record certain orders passed under Section 91 of the Act and also one order passed in appeal. These orders relate only to Mohan S/o Narayan, Mathura Lal S/o Shri Ratanlal, Mathuralal S/o Narayan, Dhanna S/o Onkar, Babru S/o Moti, Mathura lal S/o Shri Keshuram. Annex.A/5 is an order passed in appeal filed by Dhanna.

The respondents No.9 to 17 while seeking to raise certain defences against the orders of eviction passed in respect of those who have been named herein submit that law entitles them to take proper remedy against adverse orders and in fact they have afresh moved application under Section 136 of the Act before the SDO which is pending in the second round.

The stand of the State Government shows that against 13 persons, whose names have not been disclosed in the return filed by the State, proceedings under Section 91 of the Act have been initiated, which are said to be pending.

From the averments made in the petition, reply, return, rejoinder and the documents annexed therewith and as also from the submissions advanced before us, we find that the eviction orders have been issued against Mohan S/o Narayan, Mathura Lal S/o Shri Ratanlal, Mathuralal S/o Narayan, Dhanna S/o Onkar, Babru S/o Moti, Mathura lal S/o Shri Keshuram and Dhanna's appeal has also been dismissed. They have not placed before us any order of any appellate authority or any other court of law though proceedings under Section 136 of the Act are said to be pending before the SDO. We do not find that SDO has also passed any order protecting possession of the respondents named above.



Therefore, subject to any remedy that the aforesaid respondents may have taken against the orders of eviction including order passed in appeal, the State authorities are duty bound to remove them from the land in question as they all suffer orders of eviction passed by an authority constituted under the law. Unless the orders of eviction are set aside or stayed in any proceedings, eviction must follow.

Except the persons who have been named as above, there is no material before us to issue any direction as against Shyamlal, Ramchandra, Kishanlal, Shantilal, Nanuram and Motilal. Therefore, this petition against them is dismissed.

The State authorities shall take appropriate action for eviction against those whose orders of eviction had attained finality. The limited opportunity of hearing shall be afforded only to place before the competent authority orders passed by any appellate forum or any court of law either setting aside the order of eviction or staying the same or protecting possession.

The writ petition is partly allowed.

(MADAN GOPAL VYAS),J (MANINDRA MOHAN SHRIVASTAVA),ACJ

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