

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Special Appeal (Writ) No. 1377/2018

Ashok Vihar Vikas Samiti

----Appellant

Versus

Mohan Singh (Deceased) Son Of Late Shri Ram Singh Khatri &
Ors.

----Respondents

Connected With

D.B. Special Appeal (Writ) No. 1378/2018

Ashok Vihar Vikas Samiti

----Appellant

Versus

State of Rajasthan & Ors.

----Respondents

For Appellant(s)	:	Mr. Saransh Saini along with Mr. Sanjeev Kumar & Mr. Vinod Kumar
For Respondent(s)	:	Mr. R.K. Mathur, Sr. Adv. assisted by Mr. Rajesh Kumar Parashar & Mr. Hardev Puri Goswami Mr. Rishi Parashar Mr. Shailesh Prakash Sharma Mr. G.S. Gill, AAG with Mr. Manoj Kumar & Ms. Shikha Sharma Mr. Amit Kuri

HON'BLE MR. JUSTICE PANKAJ BHANDARI
HON'BLE MR. JUSTICE PRAVEER BHATNAGAR

Order

11/07/2024

1. Matter comes up on application (1/2024) filed by respondent Nos.3 & 4 in D.B. Special Appeal (Writ) No.1377/2018 and application (1/2024) filed by respondent Nos.4 to 10 in D.B. Special Appeal (Writ) No.1378/2018, wherein it is mentioned that

Tehsildar is bent upon taking possession of land which is in possession of respondent Nos.3 & 4 and respondent Nos.4 to 10.

2. It is contended by Mr. R.K. Mathur, learned Senior Counsel that respondent Nos.3 & 4 in D.B. Special Appeal (Writ) No.1377/2018 and respondent Nos.4 to 10 in D.B. Special Appeal (Writ) No.1378/2018 have been in possession of the premises from time immemorial. There was a stay order passed by the Court, wherein both the sides were directed to maintain the status quo with regard to land in dispute which status quo is still in operation. Tehsildar in utter disregard of the stay order has issued the notice for removal of encroachment. Prayer is made that operation of the order dated 02.07.2024 passed by Tehsildar be kept in abeyance and Tehsildar be directed not to interfere in the peaceful possession of respondent Nos.3 & 4 in D.B. Special Appeal (Writ) No.1377/2018 and respondent Nos.4 to 10 in D.B. Special Appeal (Writ) No.1378/2018.

3. Counsel appearing for the appellant as well as respondent No.1 have opposed the applications. It is contended that respondent Nos.3 & 4 and respondent Nos. 4 to 10 were never in possession of the land in dispute. They were subsequently added as respondents in these appeals. They were not even party before learned Single Judge. It is also contended that as per the site report dated 05.08.1987, on the disputed land, colony was existing and some plots of the land were vacant. There was no possession of respondent Nos.3 & 4 and respondent Nos.4 to 10. It is also contended that Tehsildar, who is appointed as the receiver is within his right to remove the encroachment, as it is

the duty of the receiver to maintain the property in the position in which he had received the possession.

4. We have considered the contentions.

5. This Court had directed both the sides to maintain status quo with regard to land in dispute. As per the site report dated 05.08.1987, there was a residential colony existing and some of the plots were vacant. There was no report with regard to any possession of respondent Nos.3 & 4 and respondent Nos.4 to 10.

6. Since Tehsildar was appointed as a receiver, it is his duty to maintain the property in the condition in which he received the possession and he cannot be restrained to proceed in accordance with law if any encroachment has been made on the land in dispute.

7. Consequently, we do not find any force in the application (01/2024) filed by respondent Nos.3 & 4 in D.B. Special Appeal (Writ) No.1377/2018 and application (1/2024) filed by respondent Nos.4 to 10 in D.B. Special Appeal (Writ) No.1378/2018 and the same are accordingly, dismissed.

8. List after four weeks.

(PRAVEER BHATNAGAR),J

(PANKAJ BHANDARI),J