

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER**Transfer Application No.2926/2016/TA/Nagaur :**

1. Genaram S/o Shri Hajariram, by caste Kumawat
2. Narsiram S/o Shri Hajariram, by caste Kumawat
residents of Village Thanwla, Tehsil Degana, District Nagaur.

... Applicants.

Versus

1. Kamalram Meena, Additional Commissioner, Ajmer and
Officiating Revenue Appellate Authority, Ajmer and Nagaur.
2. State of Rajasthan, through Tehsildar Riyanbadi, District Nagaur.
3. Sarpanch, Gram Panchayat Thanwla, Riyanbadi, District Nagaur.

... Non-applicants.

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S.B.

Shri Satish Chand Kaushik, Member

Present :

Ms. Archana Gautam : counsel for the applicants.

Shri V.P. Singh : Govt.Advocate for the non-applicants.

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Dated : 03.6.2016

J U D G M E N T

In this matter, a transfer application has been moved by applicants Genaram, Narsiram against Shri Kamalram Meena, Additional Commissioner, Ajmer and Officiating Revenue Appellate Authority, Ajmer and Nagaur. The transfer application was moved on 25.4.2016 and after hearing the matter ex-parte, the notice to non-applicants was issued and the comment of the learned lower court was sought and the file was fixed for hearing on 30.5.2016. On 30.5.2016, the advocate for applicants Ms. Archana Gautam and advocate for non-applicants Shri V.P. Singh appeared before the court. During the course of hearing, the learned counsel for applicants Ms. Archana Gautam argued that she is not fully prepared with the matter and as such time to be given to her. However, learned counsel for non-applicants opposed it and thereafter arguments were heard. But at the request of learned counsel for applicants, the matter

was kept open for rehearing as well, if any other submission is there to be made and fixed for 01.6.2016. On 01.6.2016, the Presiding Officer was granted hearing in D.B.-I and II and after completion of D.B. when the Presiding Officer seated in S.B. because this matter was fixed for 01.6.2016 as part-heard matter, then even in spite of repeated calls, the learned counsel for applicants did not appear before the court. The advocate for non-applicants appeared and thereafter the hearing was closed and matter was fixed for orders. However, before dictating the order on 02.6.2016, the Presiding Officer again called for the matter and Ms. Archana Gautam, counsel for applicants was present in the court and she was asked for more arguments if she wants to advance, if any, the court is open to hear. She asked for time that she will argue the matter after lunch and in between, instead of arguing the matter, she moved an application for release of the matter. She alleged in the application that the Hon'ble court has not heard the applicants and kept the matter in part-heard. After that, the court was sitting in D.B. and without hearing the applicants, fixed the matter for orders, which is not justifiable. The counsel for applicants has given her clients another date and the matter to be decided after hearing only. So it was requested that the hearing of the matter to be released. However, it is also pertinent to mention here that this application was moved before the Reader when the Presiding Officer was in lunch. After lunch period, repeated calls were made for the applicants' counsel, but she did not appear even to argue on this application as well.

2. It is very unfortunate to mention here that in the royal and noble profession of advocacy, there are some elements who are applying the AAA Policy means Arrogance, Avoidance, Allegations. First policy is to show arrogance and if this policy fails, then avoid the court and if the court is not being influenced by the same, then make allegations over the court. To my mind, this policy not to be allowed to be continued. It is neither in the interest of society nor in the interest of public at large as well as judicial system. What should be done in such a case when a party is getting injunction order ex-parte and thereafter evading the court proceeding by hook or crook? To my mind, if it is so, then the court is having no option except to hear the parties who are present in the court. Though not connected with the matter but it is relevant to mention here that on 30.5.2016, an other matter bearing no. 753/2016 Chauth Mal Vs. Kesar

Mal was also fixed and Ms. Archana Gautam was non-applicant in that matter. In that matter, she argued and opposed the adjournment and as such the matter was heard. But on the other hand in her matter where she is applicant, evaded the matter and asked for adjournment, which was denied first and on request awarded with reservation that if she wants to advance any more argument, may advance on 01.6.2016. It is also unfortunate to mention here that she has given the date to his clients without appearing in the court and without asking the court for which date the matter has been fixed. It shows her strategy to delay the matter and this court is of the view that this type of practice not to be allowed. If the advocate has been given ample opportunity for arguments and is not arguing the matter, then whether the court is handicapped in deciding the matter? To my mind, it is not so. If a person is not arguing the matter after being given ample opportunities and particularly keeping in hand the order of stay of the proceedings and the non-applicants are there ready to argue, then until and unless any reasonable cause is shown, no adjournment is to be granted and if the party is not arguing the matter even in spite of that, the judge is duty bound to decide the matter on its own merit; and if he is not doing so, he is doing injustice to the other party, which is not expected from a judge.

3. The Hon'ble Supreme Court of India in its recent judgment Writ Petition (Civil) No. 13 of 2015 Supreme Court Advocates-on-Record Association and another Versus Union of India dated 16.10.2015 discussed this problem in detail that if any situation occurs for release/ recuse of the matter, then what has to be done by a judge.

4. As per the factual position discussed above, the Hon'ble Supreme Court of India made the guidelines that if the application has been moved by the advocates for recusion (release) what has to be done - the Hon'ble Apex Court held as under :-

"In my considered view, the prayer for my recusal is not well founded. If I were to accede to the prayer for my recusal, I would be initiating a wrong practice, and laying down a wrong precedent. A Judge may recuse at his own, from a case entrusted to him by the Chief Justice. That would be a matter of his own choosing. But recusal at the asking of a litigating party, unless justified, must never to be acceded to. For that would give the impression, of the Judge had been scared out of the

case, just by the force of the objection. A Judge before he assumes his office, takes an oath to discharge his duties without fear or favour. He would breach his oath of office, if he accepts a prayer for recusal, unless justified. It is my duty to discharge my responsibility with absolute earnestness and sincerity. It is my duty to abide by my oath of office, to uphold the Constitution and the laws."

And as was held by the Hon'ble Supreme Court of India, if I am releasing the matter, it will tantamount to contempt of the authority of the court as well as the oath taken by me at the time of joining the office of the judge. The **application for release** of the matter is mere the abuse of the process; hence **dismissed** and now the **transfer application** is being discussed and decided on its merits as under :-

5. This transfer application has been moved by applicants Genaram, Narsiram against Shri Kamalram Meena, Additional Commissioner, Ajmer and Officiating Revenue Appellate Authority, Ajmer and Nagaur alleging therein that in the matter an appeal was preferred before the Revenue Appellate Authority, Nagaur against the order dated 18.12.2015 passed by District Collector, Nagaur. But so far the post of R.A.A., Nagaur was vacant, the matter was being heard by R.A.A., Ajmer as Link Officer of the R.A.A., Nagaur. In the meanwhile, the post of R.A.A., Ajmer became vacant and the charge of both offices has been given to Additional Commissioner, Ajmer as Officiating Presiding Officer. The Additional Commissioner, Ajmer is not hearing the matter of R.A.A., Nagaur but in this matter he is taking special interest and which is clear from the fact that the matter was fixed for 12.4.2016. Thereafter the matter was fixed for 20.4.2016 and then for 21.4.2016 and thereafter 25.4.2016. As such, he is showing so much personal interest in the matter and in other matters, he is saying that he will not hear the matters because he is having the additional charge. In such a circumstance, the applicant is having no faith in the Presiding Officer because he is not working impartially. In that matter, Kaluram, Mohanlal, Durga Prasad, Labhu Ram and Bhanwar Lal have moved an application under Order 1 Rule 10 of the Code of Civil Procedure and along with the application, an application under Order 39 Rule 4 CPC was also moved on 20.4.2016 and the Presiding Officer made pressure to argue the matter on the same day. The applicant was present in the court. The counsel for the applicant requested for time for filing of

reply and after request, the next day was fixed for reply and argument and as such, it seems that the Presiding Officer will not decide the matter impartially. On 21.4.2016, Presiding Officer was busy in administrative meeting and was not seated in court upto 5.30 p.m. When the applicant asked for the date from the reader of the court, he was told that in this matter, the hearing will be done. However, at 6 p.m., the matter was fixed for 25.4.2016. The Presiding Officer himself told to the applicant that the land in dispute is Shamshan land (Cremation ground) and he will hear the matter positively on 25.4.2016. The applicant has got the knowledge from his sources of the village that the Presiding Officer is in pressure of the Co-operative Minister and will pass the judgment against the applicant. The persons by whom the application under Order 1 Rule 10 has been moved are close to the Co-operative Minister Shri Ajay Singh Kilak and are politically dominated persons. They are having no relation with the land in dispute and having political enmity with the applicant. They have made the political pressure through Co-operative Minister and as such the applicant is having no hope for justice from this Presiding Officer. The conduct of the Presiding Officer is partial and as such this transfer application has been moved.

6. The comment of the non-applicant no.1 was sought for.

7. In his comment, the learned R.A.A., Nagaur has categorically denied the allegations made in the application filed by the applicant. He explained that in this matter, the interest of public at large is involved and as such, the advocate Shri Ajeet Singh Rathore has requested for hearing of the arguments in the matter and in last, however, it was written that if the matter is being transferred in any other court, the Presiding Officer undersigned is having no objection to it.

8. Heard learned counsel for the applicants and learned Govt.Advocate for the State as well and gone through the comment of the learned Revenue Appellate Authority, Nagaur.

9. In my considered view, the application has been made only on the ground that the Presiding Officer is interested in hearing of this matter. The Presiding Officer has explained that the matter is involving public

interest at large and as such the advocate has requested for early hearing and that is why the hearing is being made. The learned Government Advocate and counsel for non-applicants Shri V.P. Singh has mentioned that the land is belonging to Shamshan land (Cremation ground). The present applicant is having no interest in it. He moved the appeal before R.A.A. and an ex-parte order has been granted in his favour and that is the reason he is avoiding the hearing of the matter. When the ex-parte injunction was granted in his favour, then he has not made any comment against the Presiding Officer and when the matter is being heard now he has mentioned such type of allegations with the intention just to get the matter delayed.

10. After hearing the parties and going through the comment of the learned Presiding Officer and allegations made by the learned counsel for the applicants herein, I am of the opinion that the transfer application has no force. The allegations made herein are false and bald allegations. If any matter is being heard on priority basis, it is no ground for transfer of the matter particularly when the matter is in relation to a land involving public interest. Consequently, the transfer application is hereby dismissed. The learned Revenue Appellate Authority, Nagaur is directed to hear the matter immediately as per the provision of law. The copy of the order be sent for compliance as per rules.

Pronounced in open court.

(SATISH CHAND KAUSHIK)
Member

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