

## **IN THE BOARD OF REVENUE FOR RAJASTHAN AJMER**

**Appeal/LR/4948/2011/Hanumangarh.**

Ramswaroop son of Shri Sahi Ram caste Jat resident of  
Matoriyanwali Dhani Tehsil & Distt. Hanumangarh.

...Appellant.

Versus

1. Natthu Ram son of Kashi Ram
2. Tiloka Ram sn of Kashi Ram  
Both by catse Kumhar residents of Matoriyanwali Dhani Tehsil &  
Distt. Hanumangarh.
3. State of Rajasthan through Tehsildar (Revenue), Hanumangarh.

...Respondents.

**S.B.**

**Shri Bajrang Lal Sharma, Member**

**Present:-**

Shri Pradeep Nehra, counsel for the appellant.

Shri Hagami Lal, counsel for the respondents No. 1 and 2.

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Date: 16.11.2012

### **J U D G M E N T**

This second appeal has been preferred by the appellant under section 76 of the Rajasthan Land Revenue Act, 1956 (in short 'the Act') being dissatisfied by the judgment passed by Revenue Appellate Authority, Hanumangarh on 11.7.2011 in appeal No. 1/2009.

2. The brief facts of the case are that respondents No. 1 and 2 filed an application before Sub-Divisional Officer, Hanumangarh under condition 8(2) of the Rajasthan Colonisation (General Colony) Conditions, 1955 wherein they requested the trial court to cancel the right of way passing through Kila No. 1, 10, 11, 20 and 21 (Murabba No. 23) of Stone No. 146/337 in Chak 18 N.D.R. Their main averment was that the existing way is in disuse for a long time owing to the construction of road. The trial court accepted the application on 20.3.2008 and directed Tehsildar, Hanumangarh to cancel the right of way in aforesaid kila numbers and enter the land as government land. Being aggrieved by the order passed by Sub-Divisional Officer, Hanumangarh on 20.3.2008, an appeal was preferred by the appellant in the court of Revenue Appellate Authority, Hanumangarh which was dismissed on 11.7.2011. Being

aggrieved by the judgment passed by the appellate court, this second appeal has been preferred before this court.

3. Heard the learned counsels of both the parties.

4. The learned counsel for the appellant contended that there is no provision under the Colony Conditions to cancel the existing right of way. He argued that the trial court has passed this order beyond its jurisdiction and without inspecting the site. He further submitted that the existing right of way is a community land and is being used by the appellant and other neighbouring farmers for approaching their respective fields. He also argued that there is no provision to cancel the existing way in the revenue laws, as the existing pathways are the community lands which have been earmarked for larger community use and the court cannot change the classification of existing ways to the government land. He apprised the court that this land classified as 'rasta' will be taken on allotment by the respondents and the community facility will come to an end for good. Therefore, in larger public interest the orders passed by both the lower courts be quashed and set aside.

5. The learned advocate for the respondents contended that the orders passed by both the lower courts are reasoned orders and do not warrant any interference at this stage. He argued that the disputed land classified as the right of way is in disuse and has never been used as a way by anybody in the neighbouring community as the road and other alternative approaches have been constructed. He argued that Sub-Divisional Officer has justifiably acted in larger interest of justice as there are existing roads and other alternatives for approaching the fields. The learned advocate submitted that the appellant has some political acrimony with the respondents. Therefore, he is unnecessarily harassing them. The learned counsel finally urged the court to dismiss the second appeal as it is devoid of any merit.

6. I have given thoughtful consideration to the rival contentions of the parties and also perused the record available on file.

7. The respondents filed the application before the trial court under condition 8(2) of the Rajasthan Colonisation (General Colony) Conditions, 1955. The bare perusal of condition 2 reveals that a right of way can be created by the competent authority under this provision. Provision of condition 8(2) Rajasthan Colonisation (General Colony) Conditions, 1955 is reproduced for convenient reference here:-

**(2) The right to create or reserve a right of way in favour of the Government or any person or persons or any class of persons or of the public generally, and the right to construct inter or intra-village roads, through or across the said land or any part thereof, and not over a strip exceeding at any point 4 gathas in which, as the Collector, may, from time to time, in public interest or for the benefit of any or all land holders of the chak or village or for the protection and maintenance of any property or exercise of any right reserved to the Government, consider desirable and may by an order in writing direct.**

The bare perusal of the above provision explicitly manifests that in larger public interest or for the benefit of cultivators the competent authority can sanction or create a right of way. This court is of the considered view that the existing right of way is a community land which has been classified as 'rasta gair mumkin' in the revenue record and such a classification cannot be deleted on the initiative of the petitioner. The legislature has been silent on this issue that whether any existing right of way can be cancelled by the competent authority. This is a justifiable proposition that when the existing right of way which is recorded as 'rasta' in the revenue record is in disuse for a long passage of time then such a right of way can be cancelled after inspection of the site by the Tehsildar or the Sub-Divisional Officer but only when such provision exists in the Colony Conditions. Presently there is no such provision under the Colony Conditions, therefore, in view of this, the trial court has acted beyond its jurisdiction. Therefore, the order passed by the trial court as well as appellate court suffer from jurisdictional infirmity.

8. As discussed above, the second appeal filed by the appellant is accepted. The impugned orders passed by both the courts below are quashed and set aside. The Additional Registrar (Judicial), Board of Revenue is directed to send a copy of the judgment to the Principal Secretary, Revenue and Colonisation for considering the facts of this case for further examination in order to bring an amendment in the existing provisions of law. The case can be examined with a view that whether an amendment in Colony Conditions can be considered when the right of way is in disuse for a long passage of time and there is no possibility of its use in times to come, such a classified right of way may be cancelled.

Pronounced.

(Bajrang Lal Sharma)  
Member