

Om Prakash Agarwal and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Jul-14-2015

Appellant : Om Prakash Agarwal and Ors

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR. D.B.Civil Writ Petition (PIL) No.4275/2014 Om Prakash Agarwal & ors. V/s State of Rajasthan & ors. Date of Order:- 14.7.2015 PRESENT HONBLE CHIEF JUSTICE MR.SUNIL AMBWANI HONBLE MR.JUSTICE VIJAY BISHNOI Mr.M.S.Godara) Mr.Sudhir Saruparia)-for the petitioners. Mr.Kailash Joshi) Mr.Sandeep Shah)-for the respondents. Mr.Sachin Acharya) Mr.Anand Purohit,Sr.Advocate) with Mr.Anirudh Singh Shekhawat)-for the applicants.

ORDER

(Reportable) BY THE COURT (Per Hon'ble Sunil Ambwani, CJ) 1. We have heard learned counsel appearing for the parties.

2. By this public interest litigation, the residents of Bhilwara, Rajasthan have made complaints against the officers and employees of the Urban Improvement Trust for 2 making illegal allotments of valuable land to various persons including the owners of press, namely, Dainik Jupiter R.C.Vyas, Saptahik Menal, Astai Samachar Patra, Great Rajasthan, Bhor Tarang, Dainik Lokpida and Bhilwara Gaurav.

3. The Secretary of the Urban Improvement Trust (UIT) in his letter dated 12.4.2012 to the Dy.Secretary-III, Urban Development Department, Government of Rajasthan, Jaipur reported that the owners of the newspapers were allotted plots in accordance with the policy of the UIT on concessional rates, in accordance with the Circular dated 7.3.1998. These plots were to be used for the same purpose for which they were allotted. In all the seven cases, the plots have been used for commercial purposes. The details of the inspection carried out and the user of the premises show that except for Sapthahik Menal, which has used a part of constructed premises for press, none of these Presses were using the premises for running printing press or publishing house. All of them have raised multi-storyed constructions and let out for commercial purposes for shops, show rooms, boutiques, bank offices, hospitals etc. In his letter, the Secretary, UIT, Bhilwara stated that in all the seven cases, the UIT had already taken a decision on 10.11.2010 to take action in accordance with the letter dated 5.4.2007. All these allotments were liable to be cancelled under Circular dated 7.3.1998.

4. By the order dated 23rd February, 2015, this Court directed the State Government to constitute a Committee to consider the averments in the writ petition as well as the reply filed on behalf of the Municipal Council Bhilwara and on behalf of the Urban Improvement Trust, Bhilwara. The order dated 23rd February, 2015 is quoted below:- The petitioners, residents of the town Bhilwara, have preferred this petition for writ to have appropriate writ, order or direction in following terms :- (a) by an appropriate writ, order or direction the respondents may be directed to follow and adhere the provisions of Rules of 1974. (b) by an appropriate writ, order or direction the respondents may further be directed to cancel all the illegal allotment and the allotment of allottee not followed the terms and conditions of allotment and rules of 1974. (c) Respondents may be directed to cancel all the allotment recommended vide letter dated 12.04.2012 (ANNEX-16) and other allotted plots of different area of Bhilwara now, which are under Municipal Council.

. As per the petitioners the Urban Improvement Trust, Bhilwara has allotted residential/commercial plots to several persons without adhering provisions of the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 (hereinafter

referred to as 'the Rules of 1974'). It is also stated that several plots have been allotted to media persons contrary to the rules aforesaid. A reply to the writ petition has been filed on behalf of Municipal Council, Bhilwara stating as under inter-alia:-

G. That in the instant case, whether the disputed land 4 was allotted on the various persons as alleged in Annex.-16 under the provisions of the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974 (for short 'the Rules of 1974' hereinafter) or not; it could be replied by the respondent No.5. H. That it is also relevant to mention here that as per Rule 74 of the Rules of 1974, whether allottee have filed affidavit to this effect that they do not have any land anywhere in the State except allotted such land. However, from perusal of Annexure-16, it is crystal clear that the allotted institution and other allottee have not deposited the amount after the allotment, which was made in the year 2006 on a reserve price, therefore, as per Rule 17(5), allotment deemed to be cancelled automatically. However, for that purpose, a committee was constituted, in which charitable institution was informed that amount can be deposited by the State Level Committee rather than local authority. Further notices were issued to them for recovery of penalty and also in the above letter dated 12.4.2012 regarding seven news-papers position of construction and utility about allotted plot was mentioned, which was made in the year 1991, 1993, 1997, 1998 & 1999 and the Secretary, UIT, Bhilwara informed to the State Government that as per circular dated 7.3.1998 these allotment are liable for cancellation, as such, above allotment/lease deed shall be cancelled because utility of the above land was converted in commercial as per the Rules and law, they are liable to be cancelled.

. A reply to the writ petition has also been filed on behalf of the Urban Improvement Trust, Bhilwara stating therein that the allotment of plots to the Journalists were made as per the instructions received from the State Government, but looking to certain defaults on part of allottees, process was initiated for cancellation of the same. The State Government, however, by an order dated 11.5.2005 directed the Urban Improvement Trust, Bhilwara not to proceed with cancellation of allotment or taking any action against newspapers owners. The Urban Improvement Trust, Bhilwara by a letter dated 8.9.2010 informed the State Government about violation of terms and conditions of allotment of land and also about use of residential premises for commercial purposes. By a

communication dated 11.11.2014 the Urban Improvement Trust, 5 Bhilwara further sought instructions from the Government, response to that is yet awaited. The facts mentioned above indicate that the allottees are not adhering the conditions necessary to retain allotment of plots under the Rules of 1974. By taking into consideration all necessary facts and aspects of the matter, we deem it appropriate to direct the State Government to constitute a committee consisting of Secretary to the Government of Rajasthan, Department of Housing and Urban Development; Secretary to the Government of Rajasthan, Department of Local Self Governance; the Collector, Bhilwara; the Secretary to the Urban Improvement Trust, Bhilwara and the Commissioner, Municipal Council, Bhilwara to examine as to whether the allottees having residential plots being media persons/newspaper owners/ journalists are entitled to retain possession of the plots concerned or deserves to be subjected to cancellation of allotment of land in their favour. The committee shall also consider all the averments contained in the writ petition, reply to the writ petition filed on behalf of Municipal Council, Bhilwara and on behalf of the Urban Improvement Trust, Bhilwara. After necessary consideration, the committee shall submit its report to this Court on or before next date of hearing. Put up on 25.05.2015.. 5. The Urban Improvement Trust, Bhilwara has filed an application to bring on record the minutes of the meeting dated 21st May, 2015 of the Committee headed by the District Collector Bhilwara, including the Joint Secretary-I, Urban Development Department, Secretary, Urban Improvement Trust, Bhilwara, Commissioner, Municipal Council, Bhilwara and Dy.Legal Advisor, Urban Development 6 Department. In the meeting it was resolved that in case after enquiry, it is found that any of the allottees has not complied with the conditions of the allotment or has obtained the allotment by concealing the facts or asserting the wrong facts, the proceedings for cancellation of allotment should be made by the UIT/Municipal Council. The Committee, thereafter, examined the report and found that none of the allottees have used the premises for the purposes for which it was allotted. It has referred to the cancellation of allotment made by the UIT in the year 2004- 05, which has been stayed by the State Government and the proceedings remained pending for a long period of time. The stay orders were subsequently vacated, for which the proceedings for cancellation of allotments were required to be taken in accordance with the Rules. However, no

progress could be made.

6. In paragraph 7 of the minutes of the meeting, it is observed that in the year 1998, para 6A was added on 5.4.2007 in the policy of the year 1998, but after considering whether any relief could be given to the seven allottees, the Committee found that none of these allottees were entitled to the benefit of the newly added para 6A by the Government order dated 5.4.2007. The Committee recommended that all the seven allotments should be cancelled. In the affidavit of Shri Ram Singh Palawat, 7 Commissioner, Municipal Council Bhilwara, the recommendations of the Committee have been referred to in paragraphs 3 and 4 as follows:-

3. That the above committee examined the above matter wherein as per year 1999 to 2000 different- different newspaper reporters allotted a disputed land as per terms and conditions and after perusal of Annex.-16, which was written by Secretary, UIT, Bhilwara to the Deputy Secretary-III, Urban Development Department, Government of Rajasthan, Jaipur, whereby as per circular issued by the State Government dated 2.4.2012, it was decided since allottee has not use the impugned disputed land as per terms and conditions, as such, their allotment should be cancelled for which information may be sent through registered post to them.

4. That the above committee after considering the material on record and perused all the facts and circumstances as per the law and Rule come to the conclusion that it was decided and direction be issued that their allotment of the disputed land shall be cancelled as per Rules and terms and conditions, they have not utilized the above disputed land. A copy of the impugned report dated 21.5.2015 is placed on record and marked as Annexure-A.. 7. We have gone through the report of the Committee and find that the allotments were not made in favour of the allottees in accordance with the Rules. The owners of the printing press obtained the allotments on concessional 8 rates, for the purpose of running publishing house and printing press. The question whether they were entitled for allotment and that the information furnished by them was false, was examined by the Committee. It found that all the allottees have used the premises contrary to the purpose for

which the allotments were made in their favour on concessional rates. Each one of them is defaulter and has made himself liable for cancellation of allotment, which was actually made in the year 2004-2005, but for the reasons best known to the State Government, the cancellation orders were stayed and thereafter, continued till date.

8. The UIT, Bhilwara has got inspection report in which it was found that none of the allottees have utilized the premises for the purpose for which it was allotted.

9. Some of the allottees are represented. They have stated that they have not concealed any facts and that the premises are being used for the purpose for which it was allotted, namely, for running a printing press. Prima facie, we are not satisfied with their defence, as from the inspection report of the UIT, it is clear that none of them except Saphahik Menal, which is reported to be running Bharat Printing Press in Plot No.8 P5 and 6 in a part of the premises, have used the premises for the purpose for which the allotments were made. 9 10. In the facts and circumstances of the case, we find that the petitioners have brought on record and established through the inspection reports and now the decisions taken in the minutes of the meeting of the Committee consisting of the District Collector Bhilwara, Joint Secretary-I, Urban Development Department, Secretary, Urban Improvement Trust, Bhilwara, Commissioner, Municipal Council, Bhilwara and Dy. Legal Advisor, Urban Development Department that all the allottees have rendered themselves liable for cancellation of allotments.

11. We however, in the facts and circumstances of the case, cannot deny an opportunity of hearing to the objectors and for this purpose, we direct that before cancelling the allotments, the UIT will give a notice to all the allottees. The notice will be given through publication in the daily newspapers giving them two weeks time to submit their objections. The UIT will consider the objections in the light of the inspections and deliberations in the meeting convened under the orders of the Court, and subject to the ascertainment of the facts, given in the objections. The notice for submitting reply will be issued within one week; objections will be filed within two weeks time; necessary enquiries will be made within two weeks thereafter and decision will be taken by UIT within five weeks (in all ten weeks) on

the question of cancellation of 10 allotments.

12. We may observe here that no further time will be allowed, considering the facts that the cancellation of allotment was made long ago against which objections are pending for a decade. The decision will be taken within the time given by this Court. The compliance affidavit will be filed in this Court within ten weeks.

13. List on 28th September, 2015. The IAs stand disposed of. (VIJAY BISHNOI),J.
(SUNIL AMBWANI), CJ.

Parmar

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