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Court : Rajasthan

Decided On : Feb-04-1976

Reported in : 1976WLN(UC)45

Judge : C.M. Lodha, J.

Appeal No. : S.B. Civil Writ No. 28 of 1976

Appellant : Bhanwar Lal

Respondent : U.i.T.

Disposition : Petition dismissed

Judgement :

C.M. Lodha, J.

1. By this petition under Article 226 of the Constitution of India the petitioner has prayed that the Urban Improvement Trust, Udaipur be directed to restore possession of the land in question, which had been allotted to him as far back as on 13-2-1962 and illegally taken possession of by it from him on 30th December, 1975.

2. A show cause notice was served on the Urban Improvement Trust, Udaipur, to contest, it the latter so desired, why the writ petition be not admitted.

3. The Urban Improvement Trust, Udaipur, bats filed a return to the show cause notice and I have heard the learned Counsel for both the parties at some length.

4. The main question urged by the learned Counsel for the petitioner is that the Urban Improvement Trust Udaipur (which will hereinafter be referred to as the U.I.T) had no authority or jurisdiction to forcibly take possession of the property in question from him. The question arises in the following circumstances.

5. The plot in question was allotted to the petitioner being the highest bidder by auction for a sum of Rs. 19,000/- on 12-2-1962. 25% of the bid amount of the plot, i.e., Rs. 4, 750/- was paid by the petitioner at once, but as regards the balance of the sale price, it appears, that the petitioner was not able to pay the same within one month of the date of the allotment order, as stipulated, According to the terms of the allotment agreed to between the parties, the U.I.T could have cancelled the allotment on account of the failure of the petitioner to deposit the balance of the sale price within one month of the allotment letter, but the U.I.T. did net do so and allowed indulgence to the petitioner to pay the amount even after the expiry of seven years on condition that interest would be paid on tint amount. The petitioner, it is stated, took advantage of this concession and he deposited the full sale price with interest and got possession of the land on 25th October, 1869 However, the petitioner turned round and filed a suit in Court of Additional Civil Judge, Udaipur, for getting back the amount of into rest from the U.I.T. I am given to understand that suit has been dismissed and the appeal by the petitioner is pending. At this stage it may be mentioned that by its letter dated 8-4-70 the U.I.T. cancelled the allotment of the land in question in favour of the petitioner on account of breach of certain conditions of the allotment and on 11-4.70 the petitioner filed another suit in the same court for injunction restraining the UIT from interfering with his posse, ion. This suit was disposed of by the Addl. Civil Judge, Udaipur, on 6.12.75. The suit in respect of 449 Sq. ft., alleged to be in excess, was dismissed, but regarding the rest of the land it was observed that the UIT would dispossess the petitioner only in accordance with law. I am given to understand that an appeal preferred by the UIT is pending against the decree passed by the Additional Civil Judge, Udaipur.

6. However, in the mean while on 29.12.75 the UIT served a notice upon the petitioner to vacate his possession from the land in question and on the next day, that is, on 30th December, 1975, it actually dispossessed the petitioner In these circumstances the petitioner filed this writ application on 7.1.76 for the relief mentioned above.

7. The writ application has been opposed on behalf of the UIT on number of grounds out of which the principal are that the petitioner has not acquired any right on the land in question inasmuch as no sale deed has been executed in his favour, that he had been held guilty of forgery by the learned Additional Civil Judge, that the matter is sub judice before the civil court and criminal prosecution hap also been launched against the petitioner as well as certain employees of the UIT for having committed the forgery, and lastly there are disputed and controversial facts for which in the circumstances of the case, the writ is not a proper remedy.

8. In support of his contention that the UIT has no authority to dispossess the petitioner by taking law in its own bands, the learned Counsel for the petitioner has placed reliance or : R.C. Indra Kumar P. Ltd. v. State (FB) : AIR1972 Ori40 , Bishan Das v. Stats of Punjab : [1962]2SCR69 . He has also urged that he was not bound to get the order dated 8-4-70, of cancellation of allotment in his favour, set aside, as it was a nullity and thus non est in the eye of law. In support of this contention he has relied upon, State of Madhya Pradesh v. Sayed Qamarali 1967 SLR 228, Sakal Deep Sahai Srivastava v. Union of India : (1974)ILLJ270SC .

9. From the facts narrated above it would be clear that the petitioner has already chosen ordinary remedy under law of filing a suit and has also succeeded in obtaining an injunction against the UIT directing the latter not to dispossess the petitioner except in accordance with law If be thinks that in defiance & disobedience of the decree of the court, the UIT has dispossessed him, he can proceed against the UIT for contempt, if he is advised & can also claim the relief for getting back the possession either by persuading the court to take into consideration the subsequent events or by amending the suit or by filing a fresh suit, if so advised. But in any case I am of opinion that it would not be proper to

adjudicate upon the rights of the parties and to decide controverted questions of fact raised before me, in exercise of the writ jurisdiction of this court. Learned Counsel for the UIT has laid great stress on the conduct of the petitioner in having been adjudged him as a sorcerer by the civil court and had submitted that this should go a long way in tilting the measure of equity against him I do not feel inclined to say anything in respect of either the conduct of the petitioner or the right of the petitioner to the land in question, as the matter, according to me, is very much sub judice in the civil court. Suffice it to say, for the present, that the petitioner has adequate alternative remedy and in the circumstances I am not inclined to exercise the extra ordinary jurisdiction of this Court in favour of the petitioner.

10. With these observations the writ petition is dismissed, summarily.

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