

Gopal Dutt Vs. State and ors.

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Court : Rajasthan

Decided On : Jan-04-1983

Reported in : 1983WLN76

Judge : G.M. Lodha, J.

Appeal No. : S.B. Civil Misc. Stay Petition No. 1019 of 1982

Appellant : Gopal Dutt

Respondent : State and ors.

Advocate for Def. : Dr. Tewari

Advocate for Pet/Ap. : Mr. Sharma

Judgement :

G.M. Lodha, J.

1. Mr. Sharma, learned Counsel for the petitioner has prayed that the interim stay order dated 19.8.82 passed by this Court should be confirmed.

2. Mr. S.K. Tewari, appearing for respondent No. 6 and Mr. Garg, appearing for respondents No. 5, have prayed that the stay order should be modified, and that they should be allowed to compete the construction with the condition that in case the writ petition is accepted, they would themselves demolish the entire

construction and would not claim any rights what-so-ever on account of the construction made during the pendency of the writ petition. Mr. N.L. Jain, Advocate General appearing for respondents 1 to 3 has stated that so far as the State of Rajasthan, the Jaipur Development Authority and the Competent Authority of the Land Ceiling Laws is concerned, they will have no objection either way, which means that the respondents 1, 2 and 3 have got no objection, if either the stay order is continued, or it is vacated or modified.

3. Arguments in this case were heard at length. On 6.1.82, after hearing the arguments at length, some points were mentioned in the order and the respondents 1 to 3 were required to submit the particulars and information. In pursuance of that, information has been furnished to this Court. Thereafter, arguments were again heard.

4. The principle contention between the parties is, that whereas according to Mr. Sharma, learned Counsel for the petitioner, in the city of Jaipur about fifty thousand houses have been constructed in violation of relevant laws about ceiling, Land Revenue Laws, and provisions about permitting constructions by the U.I.T. as it was then, and now the Jaipur Development Authority, and things have been done by a racket of corruption in which high officer & authorities are involved, &, therefore, in the interest of public litigation, this court should put a halt on it by restraining constructions, directions demolition of unlawful constructions and directing respondents Nos. 1 to 3 to function according to law by not permitting such corrupt officers to carry on nefarious activities in the corruption rackets, the contention of respondents 5 and 6 is that so far as they are concerned, they have purchased the land by agreement to sell, as copy of which has been filed, and before the stay order was issued, the construction has been upto roof level, and at the moment the construction is standing in an unsecured risky condition, because of lack of plastering, and the same should be allowed.

5. In order to understand the controversy in little details, it may be mentioned that the plot of land in dispute is alleged to have been purchased by respondents 5 and 6 from one Rao Raja of Uniara, whose name is Rajendrasingh. The plot is situated and popularly known to be in Uniara Gardens of Jaipur City, where more such

plots are in existence, either in constructed or unconstructed form. The writ petition has been filed by one citizen of this city of Jaipur, who claims to be interested in seeing that the laws are properly obeyed & corruption rackets are not allowed, & corrupt officers are properly dealt with by the courts of law v they are asked to behave properly according to law. In the writ petition, allegations have been made in this respect, & the prayer clause contains the prayer in the following form:

It is, therefore, most respectfully prayed that your lordships may be pleased to allow this writ petition and may be pleased:

(a) to issue suitable direction to respondents 2 and 3 for performance of their legal duty so much so that they must immediately enter on the plot No. 41 and prevent the encroachment upon it;

(2) to issue suitable direction to respondent Nos. 2 and 3 to prevent the other public property similarly situated within the Jaipur City from their illegal encroachment and also be pleased to direct that the surplus land so declared on account of ceiling laws be distributed amongst the landless poor persons;

(c) to declare the action of respondent No.4 entertaining the suit of Plot No. 41 situated in Uniara Garden, Jaipur is without jurisdiction and any order passed and any action taken on the ground of such order is illegal and void and of no consequence;

(d) to issue any other writ, order or direction and or declaration which may be considered just and proper under the circumstances of the case.

(e) to award cost of this writ petition.

6. Along with the writ petition, stay petition was filed, and a Commissioner was appointed by this Court, who inspected the site. The report of the commissioner Shri A.S. Chaturvedi dated 15-9-82 reads as under:

In accordance with the order of the Hon'ble Chief Justice dated 15-9-82. I went to the spot which is situated near Police Memorial at 4.30 P.M. I had informed S.D. Sharma, Advocate counsel the petitioner as well as B.P. Agarwal counsel for the

nor petitioners No. 5 & 6 as well as Advocate General, about my programme I made a thorough enquiry at the plot in the presence of the petitioner Gopal Dutta Vyas and non petitioner No. 5 & 6 and their counsel. Nathulal Jain Advocate General and Prem Asoffa Advocate were also present besides some persons of the locality. I went inside of the rooms. I went upstairs and saw the roofs. I used a wooden ladder to see myself by touching walls and the roof I found that there was no plaster on the walls of any rooms as well as of the roofs. I also did not find any constructions which can be said new.

2. I saw some small stones and Bajjris in heap lying inside as well as outside the boundary walls of front portion. I saw one Tagar containing some portion of Bajri mixed with lime water and it was somewhat wet and complete dry & water in another TAGAR. AS regards electrification there were some wiring only fitted on the walls. But there was no switch Board and the Holders. I cannot say whether they were old or new. There was only one water tooti near the boundary wall, the house in question was only in construction stage and it cannot be said that any construction is going on for the last few days. On the two gates of the boundary wall some iron angle was fixed but there was no wooden or iron gate.

On the floors of the rooms Rories were lying spread which I think was soling, i.e. the first stage of the cement flooring. The petitioner termed it is Kharanja and non-petitioner termed it is soling.

The earlier stay order passed by this Court on 19.8.82 directs non-petitioners 5 & 6 to maintain status quo, and not to raise any further construction of any kind over plot No. 41 in Uniara Gardens, Jaipur.

On 6.11.82 the following order was passed by this court:

After completion of the arguments on behalf of the petitioner, Dr. Tewari learned Counsel for the respondent commenced his reply in the matter of stay application. During the course of arguments, it became necessary to find out from the State of Rajasthan and the Competant Authority under the Urban Ceiling Law, precise information on the following points:

1. Whether the land in dispute Plot No. 41 of Uniara Gardens of Jaipur City has been declared as surplus land under the provisions of the Urban Ceiling Law.
2. In case it has not been declared surplus so far, whether the owner of this land Shri Rajendra Singh has shown it as surplus land in his return if filed before the competent authority?
3. What is the precise stage of decision of the ceiling case in respect land?
4. What is the extent of the area declared to be surplus area in Jaipur City under the provisions of Urban Land Ceiling and Regulation Act, 1976 so far. The ceiling authorities should provide the details?
5. Whether under Section 20 of the Urban Land Ceiling and Regulation Act, 1976, the Government has taken any decision to exempt the agricultural land to be converted as Urban Land from the provisions of the above Act of 1976, as argued by Dr. Tewari?

Since the above information could not be given by the Government record, the Advocate General is out of station and Mr. Khan appearing for him prays for time.

In view of the prayer of Mr. Khan it is ordered that the learned Advocate General appearing for the State no other functionaries of the State may be allowed time to produce the above information after obtaining the same from the authorities concerned. 'Put up on 11.11.82.

7. In compliance this order, the respondents 1, 2, and 3 have furnished the following Information by application, dated 7.12.82 signed by the Competent Authority of Urban Land Ceiling which; reads as under:

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1- jko jktk jktsUnzflag iq= Jh jko jktk ljdkj flag us uxj Hkwfe vf/kdre lhek ,oa fofu;eu vf/kfu;e 1978 dh /kkjk 61 dh fooj.kh nkf[ky dh ftlds micU/k ^d^ ftles dqy /kkfjr Hkwfe dk mYys[k gksrk gS] lyk WV ua0 41 dks ugh n'kkZ;k gS Abl lyk WV ua0 41 dk mYys[k Jh jko jktk jktsUnz flag us mica/k M ftues fd ^vU; O;fDr;ks dk dCtk^ n'kkZ;k tkrk gS] mYys[k fd;k gS blh izdkj lyk WV ua0 41 dks micU/k Nes ftles fd

/kkjk 20 ds vUrZxr NwV pkgh tkrh gS] n'kkZ;k gS A

jko jktk jktsUnzflag dh /kkjk 61 dh fooj.kh ij tkap tkjh gS Aftles vkxkeh rkjh[k 13&12&82 fu;r gS A

2- jko jktk jktsUnzflag t;iqj }kjk izLrqr /kkjk 61 dh fooj.kh ds micU/k /kkjk 2 es vizkFkhZ ds vuqlkj dksbZ HkwHkkx ljlyl ugh crk;k gS A

3- ;g fd jko jktk jktsUnzflag }kjk izLrqr uxj Hkwfe vf/kdre lhek ,oa fofu;;e vf/kfu;e 1976 dh /kkjk 61 dh fooj.kh ij tkap tkjh gS A ftles vkxkeh rkjh[k is'kh 13&12&82 fu;r gS A

4- ;g fd t;iqj flVh es l{ke U;k;ky; uxj ldqyu t;iqj }kjk ekg vDVwcj 82 rd 1295492 16 oxZehVj Hkwfe voklr dh xbZ gS A

5- ;g fd jkT; ljdkj ds vkns'k dzekad ,Q 9205 ;wMh ,p @ 82 fnukad 19&10&82 dh izfr layXu gS A

izkFkhZ,IMh @ l{ke vf/kdkjh f}rh; uxj ladqy uxj Hkwfe ,oa Hkoudj foHkkx] t;iqj

8. The respondents Nos. 1 to 3 have further submitted a notification dated 9-10-82 issued under Section 20(1) of the Urban Land Ceiling and Regulation Act, 1976 exempting all agricultural vacant lands held in excess of calling limit in Jaipur, Ajmer, Jodhpur, Kota and Bikaner, which have been transferred for the purpose of construction of residential, houses under sale deeds executed before 26th August, 1981 or in respect of which agreement to be sold to be used for such purpose provided that these, these lands, are otherwise eligible for regularization. The notification dated 19-10-82 reads as under:

Whereas the State Government is satisfied having regard to the purpose for which such land is being or is proposed to be used that it is expedient in the public interest so to do.

Now therefore, in exercise of the powers conferred by Sub-section (1) of Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976, (Central Act, 33 of 1976) the State Government hereby exempts all agricultural vacant lands held in excess of ceiling limit in the five urban agglomerations viz. Jaipur, Ajmer, Jodhpur, Kota

and Bikaner to which the said Act applies and which have been transferred for the purposes of construction, of residential houses under sale deeds executed before 20th August, 1981 or in respect of which agreements to be sold to be used for such purpose provided that these lands are otherwise eligible for regularization under the Rajasthan Land Revenue (Allotment, Conversion and Regulation of Agricultural lands for Residential & Commercial Purpose in Urban Areas) Rules, 1981.

9. The respondents Nos. 5 & 6 have produced a photo stat copy of the agreement to sell dated 16-8-69. In addition to it, they have produced a show cause notice of the Urban Lands and Building Tax Depart. dated 24-12-80 issued to Nandlal Sharma for showing cause why penalty under Section 16 be not levied Another notice dated 19-5-79 has been produced issued to Shri Madan Lal mentioning the date of hearing for conversion of land proceedings The third notice dated 22nd July, 1978, issued by the authority of agricultural land conversion at Jaipur.

10. Mr. Sharma has submitted on the basis of production of a photo stat copy of the Vakalatnama given by Shanti Sarup, and further a copy of the plaint produced in the lower court by Shanti Sarup that the agreement signed by Shanti Sarup is forged and not genuine, because there is a glaring variance between the signatures of Shanti Sarup in the two documents. Mr. Sharma's case is that this is a case of forgery, which is visible to an open eye. Mr Sharma submitted that even in the lower court a civil suit was filed and for that purpose Shrikishan Agarwal a faked person was put as defendant in order to obtain jurisdiction and now the suit has been allowed to be dismissed in default. Mr. Sharma submits that so far as no permission has been granted by any authority and this Court should confirm the stay order, as otherwise it would result in indirectly putting a premium over nefarious activities of corrupt officers, who are involved in corruption rackets.

11. Dr. Tewari and Mr. Garg appearing for Madanlal and shanti Sarup both brothers, who are co-owners of this plot, on the contrary plead that it has been made clear by the papers, filed by respondents 1 to 3 that the land in question has not been declared surplus land under the Urban Land Ceiling laws and even otherwise according to the notification of exemption under Section 20 of the Land

Ceiling Law submitted by respondents 1 to 3, this particular plot of land is exempted from rigour of provisions of the Land Ceiling Laws and construction, is permissible. Therefore, there is no basic infirmity attached to the constructions, and that being so, this court should not stop one single construction of the respondents 5 & 6 only, more so when the petitioner himself alleges that fifty thousand houses have been constructed in the city, of Jaipur. Mr. Tewari and Mr. Garg argued that if one isolated case of this type where construction has already been completed to roof level is considered, and stay order is continued, it would result in irreparable severe loss to respondents Nos. 5 and 6 only, and the objection of the petitioner either for demolition of fifty thousand houses illegally constructed, and restraining the alleged officers from permitting constructors, would not be fulfilled. It was pointed out that according to the Commissioner's report, when roof level construction has been completed, there should be no difficulty in permitting the respondents from completing the constructions, when they are prepared to give an undertaking, as mentioned above.

12. during the course of arguments, I have enquired from Mr. Jain, the learned Advocate General, to {in-pointedly state the precise stand, which the respondent No. 1, State of Rajasthan, Jaipur Development Authority, Jaipur and the Competent Authority, Land Ceiling of Jaipur, want, to take in respect of the above important controversy raised. Mr. Jain, to state with submitted that the present one is not a form of public interest litigation and the petitioner has got no locus standi to bring this writ petition. I am not inclined to accept this contention at this stage, for the simple reason that the writ petition has been admitted, and at this stage it would be difficult and premature to decide whether the petitioner has got no locus standi to bring this writ petition. Prima facie, the petitioner is a citizen of Jaipur City, and nothing has been shown which disentitles him from his legal right as a citizen for enforcing of the laws of land Under the Constitution where the rule of law is supreme, prima facie a citizen can point out, if there are serious violations of law, by which the citizens in general are affected. Without giving a conclusive finding on this point, I am inclined to think that if the Land Ceiling Laws are flouted and violated, and actions are taken in utter disregard of them either in spite of the order of the competent officers or by the connivance of the competent officers, then it can be a matter of serious concern for every citizen who is vigilant about

the rights of the community at large. In a democratic set up, in which rule of law is supreme, a citizen can certainly point out to the courts, who are supposed to act as watch dogs of the Constitution, and laws of land, that laws are not frequently disregarded & violated and they are obeyed by all concerned. In that view of the matter, without adjudicating the question of locus standi, I am inclined to reject for the purpose of stay matter, the objection of Mr. Jain, Advocate General, that the petitioner cannot maintain this writ petition. My observations, mentioned above of course would not debar the respondents from challenging this point at the final hearing when a detailed probe can be made in the matter, and the final adjudication would be done.

13. After rejecting the above contention of Mr. Jain, Advocate General now the question remains as to what the respondents have to say about the important aspect of the case, whether the land in question is a surplus land under the Ceiling Law. Prima facie, if this land would have been declared as surplus land under the Ceiling Law, the objection of the petitioner would assume great importance. Mr. Jain submits that so far till today, this land has not been declared as surplus land under the Ceiling Law. Mr. Jain further submits that under Section 20, the notification dated 19-10-82 applies to this plot of land also. Mr. Jain further submits that so far as the matter in respect of the State is concerned, respondent No. 1 the State of Rajasthan, respondent No. 2 the Jaipur Development and respondent No. 3 the Competent Authority under the Ceiling Laws, have got no objection either way, if the stay order is continued or the order is vacated.

14. In the face of the above stand of respondents 1, 2 and 3, it is now to be seen whether the stay order, as it has been granted, should be continued or vacated or modified.

15. It is not without significance that the respondents 5 and 6 have not been able to produce any permission from Jaipur Development Authority for raising this construction. It is the case of Mr. Sharma that in the civil suit, which was filed in the lower court, the plaintiffs themselves alleged that the Jaipur Development Authority came with a bulldozer to demolish this house, and, therefore, they prayed for injunction before the lower court. In view of the above, I am of the

opinion that petitioner for whom I have found that prima facie he has got locus standi to bring this writ petition has also got a prima facie case to be considered by this Court, and on that count fait stay application cannot be dismissed nor the stay order can be vacated.

16. The second important ingredient which mostly overlaps the ingredient is regarding balance of convenience, and the third being, whether a party would suffer irreparable loss. I would, therefor, like to deal with those two together, because it is established law that a stay order or an injunction plaintiff or the petitioner satisfies the Court that all the three ingredients are fulfilled and established. It is here that the report of the Commissioner assumes importance. Mr. Sharma, also very fairly and frankly submitted that so far as the actual situation regarding the construction is concerned, he would not deny that the underground construction has been completed and the ground floor has been completed till the roof level, and the roofs have been laid, but neither any plastering has been done, nor any electricity connection, water-connection, salutary fittings or wood work has been done. In substance, Mr. Sharma's contention is, that brick wok, or stone work is complete, but the plastering work, cementing work, wood work, electricity and water connection and sanitary fitting work, has not either been started or completed The earlier order was parsed for maintenance of status quo and for not raising of further constructions.

17. The respondents Nos. 5 and 6 offer to give an undertaking that in case the writ petition succeeds, they would demolish the construction themselves and would not claim any legal right whatsoever on account of constructions having been raised, now deserves to be considered. Admittedly, in the background of the above discussion, where it has been made clear by the repondents 1, 2 and 3 that they will not have any objection either way, it is obvious that the Jaipur Development Authority & the Competent Authority under the Ceiling Law, are not concerned, if either the stay order is confirmed or vacated or modified. In other words, if the constructions which have been made so far, are allowed to be completed by finishing work, the Jaipur Development Authority or the Competent Authority under the Ceiling Law, have got no objection whatsoever. In this background, it is to be considered whether this Court should confirm the stay order without any

modification or some modifications, is required to be done.

18. Undoubtedly, the petitioner did not come to this Court when the foundation of this building was being laid by the digging work. As per the Commissioner's report, the construction was completed, and Mr. Sharma, himself agrees that so far as the underground work and the ground floor is concerned, they were complete except for the paltering portion of it. Would it meet the ends of justice, and the balance of convenience lies in keeping the Skelton building in this form till the matter is decided by this Court, or the petitioner or the respondents will suffer irreparable loss, in such a situation, which is governed by the final decision of this stay application. Mr. A.S. Chaturvedi in his report has mentioned that he went inside the rooms and up stairs and saw the roofs, and for that he used a wooden ladder by touching the walls and the roof. (sic) that being so, the respondents Nos. 5 and 6, who prima facie have got possession of this property, along with an alleged agreement to self, the genuineness of which I would not adjudicate at this stage, want to complete the plastering and other finishing work.

19. I am of the opinion that though the stay order passed by this Court deserves to be confirmed, so far as the question of any further construction is concerned, and the parties must maintain status quo in respect of any future construction of any new rooms, or second floor or any other apartments, but it deserves to be modified by granting permission to complete the plastering work, sanitary work, electricity and water connections and wooden work, in case the other respondents 1, 2 and 3 raises no objection to it in future also.

20. In other words, it is ordered that the stay order passed by the Court on 19-8-1982, is confirmed, but with the following modification:

1. That the respondents 5 and 6 would not make any construction by digging new foundations or by constructing any new rooms or apartments, or the first floor or any other additional floor, but the order of this Court would not come in their way in getting finishing work done by way of plastering or cementing or wood work, or electricity and water connections or sanitary fittings.

2. The above would not mean that the respondents 1, 2 and 3, or any other authorities, who are Concerned with enforcing the laws regarding constructions, are restrained from raising any objection In other words, to make explicitly, what is implicit above, I must add that the respondents 1, 2 and 3 or any other authorities would be at liberty to restrain the petitioner from doing any work whatsoever, if under the law they are competent to do so.

3. The above work of finishing would also be done only after the respondents 5 and 6 submit written undertaking to the Registrar of this Court in clear, unabiguous, unconditional, unequivocal and categorical words that they would demolish the entire Construction and remove the construction without claiming any right whatsoever, in case the writ petition is accepted by this Court and directions are given in that respect.

4. The undertaking should be filed within a period of 15 days from today, and a copy of the undertaking be given to Mr. Sharma, who would be entitled to raise any objection about the language of this undertaking and the Registrar would verify the same after allowing opportunity to Mr. Sharma and after hearing him.

5. The respondents 5 and 6 are further restrained from alienating these premises to anyone either by way of sale, tenancy, sub-letting, mortgage or any form of transfer, and they would not create any third party's interest & would not utilise these premises for any other purpose except the limited purpose of their own.

6. It is further made clear that this order would come into effect on expiry of 15 days, so that the petitioner, if he wants to file any appeal, or obtain any stay order from a higher forum, if permissible under the law, can avail of that remedy.

21. Mr. Sharma, submitted, after the above order was dictated that this permission should be granted to all these persons in the city of Jaipur. I am afraid that the Court has not granted any such permission as such. The Court has modified its stay order only. The grant of permission or refusal is the work of legal authorities, including Municipal Council, Development Corporation, and Competent Authority under the Ceiling Law, as the case may be.

22. In the above order, this Court has not granted any permission as such for making constructions. Contrary to it, it has restrained the respondents from making any further construction by creating or digging any foundation or apartments or floor. But, all that has been done by modification is, that limited permission has been given for the finishing work, and that too subject to the decision of the writ petition on an express written undertaking by respondents 5 and 6. Even then, and there also this Court has made it clear that this order should not be treated as a permission, because the respondents 1, 2 and 3, or any other authorities concerned are free in enforcing the laws of the land & will have ample authority to restrain the respondents 5 and 6 irrespective of and in spite of the order of this Court, if the law so permits by a valid and patent order.

23. The stay application is partially accepted as indicated above. However, since I have found that the petitioner has got a prima facie case, the slight modification has been done on account of the legal and factual stand of respondents 1 to 3 and in order to strike a balance for deciding equitable balance of convenience and by appreciating the irreparable loss which would otherwise be caused to the respondents 5 and 6.

24. The result of the above discussion is, that the stay order dated 19-8-1982 is confirmed, but subject to the above little modifications with no order as to costs.

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