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Court : Rajasthan

Decided On : Jul-10-1984

Reported in : 1984WLN(UC)205

Judge : S.N. Bhargava, J.

Appeal No. : S.B. Civil Writ Petition No. 36 of 1979

Appellant : Suraj Mal

Respondent : State and ors.

Disposition : Petition allowed

Judgement :

S.N. Bhargava, J.

1. Petitioner is a registered partnership firm and has filed this petition through its holder of general power of attorney. Petitioner firm was allotted Plot No. 38(A), C-65 and C-67 in class 'A' & 'C' by the City Improvement Committee, Bikaner by Ex I Dated 11th September, 1944. The Petitioner was asked to deposit a sum of Rs. 22, 845/4/ as provisional purchase money and was further asked to deposit 25% of this price amounting to Rs. 5,71 and 5 annas in the State treasury within seven days from the receipt of this letter, where as Shri Chiranji Lal Bajoriya a partner of the firm Surajmal Nagarmal was allotted Plot No. A-39 in class 'A' by the City

Improvement Committee, Bikaner vide Ex. 2 dated 26th January, 1944 and was asked to deposit a sum of Rs. 9,076/- and 6 annas as provisional purchase money and 25% of the amount was to be deposited in the State treasury within seven days. In pursuance of this allotment, the amount was deposited on 19th September, 1944 and 11th April, 1945 vide Exs. 3, 4 and 5, photo state copies of the challan. In all, a sum of Rs. 31, 921 and 10 annas were deposited in the State treasury in lieu of plots No. A-38, A--9, C-65 and C-67. The above four plots were in Sadulganj Scheme. Later on, Sadulganj Scheme was revised by the City Improvement Committee and the City Improvement Committee, instead of the above four plots, allotted the petitioner some alternative land in exchange of these plots and the petitioner selected plot No. 3, situate near Padam Niwas Bikaner. City Improvement Committee, Bikaner on 20th February, 1947 vide Ex 6 asked the petitioner to deposit some more amount of Rs. 18541. Petitioner resented the said demand and submitted a letter to the 3ecretary, City Improvement Committee, Bikaner on 16th June, 1947 requesting to re-consider the whole matter and to hand over the possession of the land to him at an early date. The matter could not be finalised and the possession was not handed over to the petitioner. Mean while, State of Bikaner merged in the State of Rajasthan and Rajasthan Improvement Act 1959 also came into force and the Urban Improvement Trust was constituted for the City of Bikaner. The matter was considered in the meeting of the UIT held on 28th April 1957. A copy of the resolution passed by the UIT has been annexed to the writ petition and marked as Ex. 8, wherein it was decided that if Chiranjilal agrees to construct his residential house on the said plot, it can be given to him, otherwise some other area may be given to him. Thereafter, the matter was considered again by the land Management Committee and UIT Bikaner in its meeting held on 14th August 1969 vide Ex. 9. There also it was decided that since on account of some road, the area of plot No. 2 has decreased, a residential house may be allowed to be constructed in plot No. 1 and for the remaining area, more suitable land in exchange may be considered and in agreement, an undertaking may be taken in that connection. Thereafter, the matter again came up before UIT Bikaner on 27th July 1970. It was decided that the office should prepare a detailed note and circulate the same to its members and the matter may be placed before the next meeting of the UIT. The UIT in its meeting held on 21st

August, 1970 again observed and asked the office to prepare a detail note in this connection and circulate to all the members and the matter may be considered in the next meeting. According to the petitioner, he is not aware as to what happened thereafter as to whether the matter was considered by the finally or not. The UIT has also filed a reply to the writ petition, but therein also it is not clear as to whether the matter ever came before the UIT, Bikaner or not, what decision was taken by the Trust. The petitioner having waited for a pretty long time made enquiries from the UIT Bikaner and came to know that Collector and Chairman of the UIT, Bikaner passed an order on 18th July, 1975 on a note prepared by the Secretary that the amount deserted by

2. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the respondents.

3. Learned Counsel for the respondents have taken a preliminary objection that the writ petition is very much belated and should be dismissed, as it has been filed after a very long delay. They have submitted that the petitioner wants to challenge the order of the Collector dated 18th July, 1973 by filing a writ petition in the year 1979 after nearly six years. Their case is that the decision of the Collector dated July 1973 was communicated to Shri Chiranji Lal Bajoriya vide letter dated 4th September, 1973 and since Chiranji Lal Bajoriya has not taken any steps nor has filed any affidavit that he did not receive the communication dated 4th September, 1973 and now the petitioner wants to get this order set aside after more than five years, he cannot be permitted to do so. Their second objection is that the writ petition is not maintainable by the petitioner as one of the plots, according to his allegations in the petition plot No A 39 was allotted in the name of Chiranji Lal Bajoriya vide his application dated January 25, 1945. Rule 1 and only three plots A-38 C-65 and C-67 were allotted in the name of Surajmal Nagarmal and after the revised scheme the whole correspondence is by Chiranjilal Bajoriya and not by the petitioner - firm Surajmal Nagarmal and hence, the petition is not maintainable and should be dismissed. On the other hand, learned counsel for the petitioner has submitted in the reply that respondent No. 1 has not filed any copy of the letter dated 4th September, 1973 alleged to have addressed to Shri Chiranji Lal Bajoriya nor any proof has been furnished that any such letter was in fact despatched by UIT and

since the petitioner denied on oath that he did not receive any such letter, there is no delay. He has further submitted that even the order of the Collector dated 18th July 1973 has not been acted upon, the UIT never refunded the deposit made by the petitioner. As regards other objections of maintainability of the petition, learned Counsel for the petitioner, replied that Shri C.L. Bajoriya was a partner of the firm of Surajmal Nagarmal and has annexed a copy of the partnership deed as Anx.7 and, therefore, even if plot No. A-39 was allotted in the name of Shri C.L. Bajoriya, it was for the benefit of the partnership firm Surajmal Nagarmal. I have considered the arguments of both the learned Counsel for the parties and in my view, both the preliminary objections have to be over ruled. Respondent No. 2, if he was really serious about the objection of delay, ought to have produced a copy of the letter dated 4th September, 1973 alleged to have been sent to Shri C.L. Bajoriya and also produce some record from the Post Office or even from the UIT itself showing the said letter was in fact despatched and received by Shri C.L. Bajoriya. Having failed, I do not find any substance and the writ petition cannot be dismissed on the ground of delay. Second objection about the maintainability is also without any force, in view of Anx partnership deed, showing that Shri C.L. Bajoriya was a partner of the firm Surajmal Nagarmal and assertion made by him that he was acting on behalf of the firm Surajmal Nagarmal. Now coming to the merits, learned Counsel for the respondents have ultimately urged that there was no concluded contract no final allotment was made in favour of the petitioner nor any possession was handed over to the petitioner. The amount was deposited by the petitioner before the merger of Bikaner State and formation of the State of Rajasthan and therefore, the UIT cannot honour the commitments or the obligations of the erstwhile of State of Bikaner. I am afraid, this point has also got no substance because I find that even after the formation of the that of Rajasthan and coming into force of the Rajasthan Urban Improvement Act, 1989, the UIT in its meeting held as late as on 28th April, 1967 and later on by the land Management Committee on 14th August, 1969 has considered this matter and even the UIT in 1970 wanted that the matter should be considered by the Board after a detailed report prepared by the office and circulated to the members of the Board. Therefore, it cannot be said that the UIT is not bound to honour the commitments made by it earlier. More so in view of Section 106 of the Rajasthan Urban Improvement Trust

Act 1959 wherein it has been specifically said that all the actions in the act of law or jTJe shall stand repealed by the Act of 1959. Section 106(2)(f) provides the all debts, obligations and liabilities, incurred, all contracts entered into and all matters and things engaged to be done by with or for the former Trust immediately before such establishment for or in connection with such area shall be deemed to have been incurred, entered into and engaged to be done by with or for the Trust so established. The word 'ormer Trnst' has been defined by Section 2 Sub-section A.I.R. 1968 S.C. 169 and in view of this, I am of the view that UIT cannot escape to its liability and obligation, which were entered into by the former Trust, the City Improvement Committee Bikaner.

4. Another objection taken by the learned Counsel for the respondent was that since during this period, the situation of the plot has been changed and a Tourist Bungalow has already been constructs d. Petitioner cannot be granted relief sought by him in the petition. This objection is also of no avail. Even before the admission of the writ petition, the petitioner vide proceedings dated 8th March, 1979 has offered through his counsel that be does not insist on the allotment of plot No.3 situated near the Padam Niwas and he may be allotted some other suitable land of equal value. More over, in the prayer clause also, it has been specifically mentioned that any other appropriate writ, order or direction, which may do complete justice to the petitioner, may be issued and therefore, in my view merely because prayer No. 1 sought by the petitioner cannot be granted, the writ petition cannot be rejected on this ground. This is an admitted fact and has not been disputed nor could have been challenged that the, petitioner deposited a sum of Rs. 3l,92l and 10 annas in the year 1944-45 by way of price for the plots of land No. A-38.A-29, C, 55 and C-67 and that latter on when the scheme was revised, hi was allotted some other land is lieu thereof and so it has not been finally allotted or hand as over possession of any land what so ever by the City Improvement Committee, Bikaner or by the UIT, Bikaner. This is also admitted that that the amount still remiins deposited and has not been refunded so far to the petitioner. Petitioner's request that he should be allotted some suitable land, cannot be said to be unreasonable. It is a duty and obligation of the UIT, Bikaner to honour the commitments and the obligations of the former Trust of City Improvement Committee, Bikaner. Petitioner cannot be said to be a defaulter that

he did not take possession of the property so far or they did not pursue the matter. Even after the formation of the State of Rajasthan and coming into force of the Rajasthan Improvement Act, 1959, the UIT in two of its meetings held on 27th July, 1970 and 21st August, 1970 has observed that a detailed report in this connection should be submitted and circulated to all the members before they could take a final decision and if the UIT has not, thereafter, considered this matter and taken any final decision in this regard, petitioner never cannot be blamed for the inaction of the UIT. Now coming to the objection of the petitioner that the appointment of the Collector as a Chairman of the was in violation as it was not in his personal name, but designation. 7 order of the Collector-Chairman UIT dated 18th July cannot stand and to be quashed and set aside as the same was passed without affording opportunity of hearing to the petitioner and as such being in utter disregard and patent violation of principles of natural justice. I need not decide this objection raised by the petitioner.

5. In the result, the writ petition is allowed. The respondent UIT Bikaner is directed to consider the whole matter with regard to the allotment of the suitable land of equal value to the petitioner within six months from today. The writ petition is allowed with costs.