Saremal and ors. Vs. the State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jul-27-1992

Reported in : 1992WLN(UC)134

Judge : Rajesh Balia, J.

Appeal No. : S.B. Civil Writ Petition No. 344 of 1989

Appellant : Saremal and ors.

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

Rajesh Balia, J.

1. By this petition, the petitioners have challenged the order Annexure-7 dated December 26, 1988 by which a penalty of Rs. 58, 951.20 has been imposed and demanded from the petitioners on the ground that in pursuance of the Government Circular date July 23, 1987 such penalty is chargeable in respect of the land purchased after August 20, 1981. Annexure-8 is the Circular dated July 23, 1987 issuing direction that if any person or housing society has acquired agriculture land after August 20, 1981 and any construction has been raised thereon unauthorisedly, penalty will be leviable @ 100% and in case no construction is

made, penalty would be levied @ 75% of the conversion charges. The petitioners allege that the agricultural land measuring 5 Bighas 16 Biswas in Khasra No. 225 in Airunpura Panwar area, TehsilSheoganij, District Sirohi was purchased under registered sale deed on November 4, 1985. After the land was mutated in their name, they applied for the conversion of said agricultural land into Abadi. The petitioners were called upon to deposit Rs. 78601/- being conversion charges which were deposited by them on December 4, 1985.and 'no objection certificate' about the conversion of land was issued in favour of the petitioners by the Municipal Board, Sheoganij. After to conversion charges were deposited and agricultural land was converted into abide to be used for residential purposes, the respondents further charged Rs. 22,470.60 as development charges from the petitioners which were also deposited on March 24, 1986. Ultimately 12 different 'pattas' were Issued by the Collector, Sirohi to the petitioner.

2. In this petition, the petitioners allege that they had deposited conversion and development charges and got separate 'pattas' from the competent authorities, no question can arise thereafter for any unauthorised construction or use of agricultural land for other purpose. Yet, the respondent Collector Sirohi has issued the demand notice Annexure-7 In pursuance of Annexure-3 which he has no jurisdiction to issue. It has further been contended hat there being no opportunity of hearing having been given before the penalty was imposed upon the petitioners, the order is void ab initio being violative of principles of natural justice.

3. No return has been filed no behalf of the respondent. The facts that the land was duly converted from agricultural into abadi after depositing all charges and issuance of separate 'patta' are not disputed.

4. It is apparent from the undisputed facts that there is no allegation of unauthorised construction having been made against the petitioners. The land in dispute was duly converted by depositing the conversion charges and separate 'pattas' were issued by the Collector, Sirohi after development charges were deposited by the petitioners. There is no allegation or finding In the impugned order about any unauthorised construction or use of agriculture land for other puipose having been made by the petitioners. In view of these admitted facts no

breach of Section 90A of the Rajasthan Land Revenue Act can be said to have taken place nor it can be said that conditions for invoking provision of Rule 13 of the Rajasthan Land Revenue (Allotment, Conversion & Regularisation of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 existed. No penalty could have been imposed on the basis of executive instructions when the statute does not permit the same. The order is also bad as the same has been made in breach of principles of natural justice. The order resulted in Civil consequences against the petitioners and could have been made only after affording a reasonable opportunity of hearing to the petitioners, which undisputedly has not been afforded to the petitioners in the present case.

5. Consequently, the writ petition is allowed. Annexure-7 dated December 26, 1988 is set aside. There shall be no order as to costs.