

Pawan Kumar and 6 ors. Vs. Jaipur Development Authority

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Court : Rajasthan

Decided On : Sep-08-1993

Reported in : 1994(1)WLC132; 1993WLN(UC)475

Judge : V.K. Singhal, J.

Appeal No. : S.B. Civil Writ Petition No. 3805, 3827, 3804, 3828, 3803, 3975 and 3826 of 1993

Appellant : Pawan Kumar and 6 ors.

Respondent : Jaipur Development Authority

Judgement :

V.K. Singhal, J.

1. The above writ petitions and stay applications are being disposed of by this common order since common question of law is involved in all these writ petitions.

2. Brief facts of the case are that the petitioners have submitted that they are members of Jai Chamunda Grah Nirman Sahkari Samiti Ltd., Jaipur, which has allotted the land. It has been submitted that the construction have already been made and the Jaipur Development Authority has no jurisdiction to issue notices for demolition after expiry of 3 years in accordance with the provisions of Section 32 of the Jaipur Development Authority Act and since construction is prior to 3 years'

period, the show cause notices issued are without jurisdiction. Another point which has been raised is that since the J.D.A. is not claiming any right, interest or title in the property and the only objection which has been taken is with regard to the constructions, than instead of demolishing the houses, regularisation of construction should be done.

3. On 29th June, 1993, it was directed by this court that the J.D.A. with the help of the petitioners would prepare a report with regard to the entire plots in dispute to show as to how much constructions are existing there. The report along with constructions made thereon and even the photographs were submitted before this court.

4. The relevant facts are that a Notification under Section 4 of the Land Acquisition Act was issued in 1967 for acquisition of the said piece of land. It was represented by the owner of the land Smt. Kalwati Airen that the said piece of land is being used as Nursery and, therefore, another Notification dated 15.5.1971 was issued releasing the said land from acquisition, which is reproduced as under:

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vr% ;g vH;kosfnr fd;k x;k gS fd Jherh dykorh ,sju us yky dksBh ;kstuk t;iqj es [kljk ua- 258] 259] 262] 263] ,oa 265 dh Hkwfe ij tks vkuUn ulZjh ds uke ls tkuh tkrh gS ftles ,d fo'kky Qy]'kkd] lCth ,oa iq'iks o vaxwjsk dh [ksrh dh ulZjh LFkkfir dj fy;k gS tks dkQh ykxr ls fuekZ.k dh xbZ gS ;g vkn'kZ ulZjh lkoZtfud mi;ksx ds fy, j[ku vko;'d gS rFkk bl izLrkfor ykydksBh ;kstuk vkokl ds fy, voklr vftZr ugh fd;k tkuk pkfg, A

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5. It is alleged that the said owner contrary to the conditions for which the land was released, entered into an agreement with one Ram Swaroop on 8th April, 1981. Thereafter another agreement was executed between Ram Swaroop Soni and Chamunda Grah Nirman Sahkari Samiti Ltd. through its Secretary Shri Anand Singh Rathore. It is mentioned that the land of 2063 Sq. yards was left for Smt. Kalawati Airen and the balance land 4 bighas 6 biswas was sold for Rs. 10,65,000/- and a sum of 5000/- has been paid as advance and the balance amount was to be paid till 31st December, 1982. In the agreement entered into on 8th April, 1981, it has been mentioned that the said land has been released from acquisition as per Notification dated 15th May, 1971. The agreement dated 8th April, 1991 was for a sum of Rs. 10,25,000/- and an advance of Rs. 5,111/- was given.

6. An application was moved for conversion of the land use and a representation was also submitted to the then Minister concerned on 25.1.1985. The Jaipur Development Authority has written a letter on 21.3.1985 that the land cannot be converted for residential purposes as it is reserved for Nursery.

7. In the present matter, in accordance with the provisions of the J.D.A. Act, it has been provided that any person can file an appeal before the Tribunal Constituted under the Act. Few of the persons have already filed appeals and it appears that these writ petitions have been filed for immediate action relief which was being taken by the respondents restraining demolition of constructed property.

8. After looking to the photographs and the report, I am of the view that the J.D.A. and the Government alone are responsible for such type of illegal activities. A society can enter into an agreement without any stamp as a result of which number of cases have come, wherein on pie papers the agreements have been entered into in back dates. The purpose of cooperative movement frustrates if power is in the hands of few who in the garb of society earn profit even out of books and therefore, the Government is expected to find out ways for providing land and houses for the needy persons. The cooperative movement had been successful in Gujarat, Maharashtra and even in other States because real cooperative societies are formed, abuses are being constructed and on 'no profit no loss' basis the work is being carried on. The Cooperative Department and the Income Tax Department are equally responsible for not lifting the veil of cooperative in the garb of which few interested persons are carrying on their business showing that the transactions are on no profit no loss basis, whereas either under hand practice is adopted or on papers it is shown that there is no profit and no loss in the transactions. No steps are taken even to verify the vouchers where normally the payment is being shown on the basis of cash alone. The time has come where the Government should form a policy and enact a law, as a result of which the land is being allotted to the needy persons who form a society in the real sence. It is not a case of perpetual society which acquires the land, so that it could be allotted to its existing members and future members, which gives temptation for the irregularities which are being committed. The work of acquiring the land and allotting the same to the members even traps the

innocent persons in purchasing such land which is not permitted for residential purposes. A formula should be evolved by which existing members could be adjusted and the transfer of plot by one member to another should only be permitted if necessary permission is being given by the authority, which may be appointed for the purpose. They should eliminate the back date transfers of plots from one member to another. Even at the time of hearing of the writ petitions, it was argued on behalf of the learned Counsel for the respondents that the transfers on the plots have been made recently and the constructions have been made recently.

9. From the various documents, it is evident that the conversion charges of Rs. 93,603.51 were paid on 24.8.1983. From the report it is evident that on Plot No. 1 there is one weighing bridge with Latrine and bath-room. One room is constructed. Plot Nos. 2 and 3 are vacant. The report dated 29th June, 1993 further shows that as regards plot No. 4, in the basement there is no flooring, plaster or partition and the electric connection is temporary. Even the doors and windows have not been affixed. There is no wiring. On Plot No. 5, basement was constructed without flooring and in the ground floor there are 4 bed rooms, dining kitchen, W.C. and bath room. Out side plaster has not been done. Flooring over room above garrage has also not been done. There is no window affixed to the said room. In the balcony, the railing has not been affixed and on the roof, shuttering material for construction is lying and the projected column have the iron rods duly died. It has been mentioned that this is one of the plots where the petitioner is living. Plots No. 6, 7, 8, 9, 10-A, 11, 13, 15, 16, 17, 20, 21 and 23 are having only boundary walls and in plot No. 10 B there is one room. Roof over the room is of stone slabs. In plot No. 12 basement has been constructed without plaster, flooring and electricity. The work of doors windows and finishing have not been done. On the ground floor there is no plaster, doors and windows. Electricity or toilet fitting has not been done. Out side fitting has not been done. Four bed rooms with longi and kitchen have been constructed. In plot No. 14, the basement has been constructed, which is having electricity and the water is through boring. Ground floor has been constructed with two bed rooms, with dinning kitchen. Roof is of R.C.C. The floor is of marble and Kota stones. Granite is affixed in the kitchen. The petitioner is also living therein. In plot No. 18, the basement has been constructed and on the

ground floor, there are two-three rooms with kitchen and garrage. Doors and windows have also been affixed. The petitioner's family is also living therein. In plot No. 19, half portion of the ground floor is constructed having 2 rooms, kitchen and bath room. The floor is of Kota stones. In plot No. 22, there is one room of stone slabs having windows and iron gate with one W.C. On plot No. 24, there is construction up to plinth level with stones and breaks. The roof has not been constructed. On one room, only stone slabs are lying. There is a clinic in the name of Udai Clinic, which is made of Tins.

10. I have considered over the matter. In *Banwarilal v. State of Rajasthan and Ors.* 1986 R.L.R, 964, it has been held by this court that under Section 90-A of the Land Revenue Act, 1953, no person holding any land for the purposes of agriculture and no transferee of such land or any part thereof shall use the same or any part thereof by the construction of buildings thereon or otherwise for any other purpose except with the written permission of the State Government obtained in the manner laid down therein and otherwise than in accordance with the terms and conditions of such permission. It was held by this Court that the agricultural land cannot be used for non-agricultural purposes. The provisions of Section 42 of the Rajasthan Tenancy Act, 1955 were also taken into consideration and it was held that the sale could be of whole of the survey number prior to amendment and not a part thereof. In this case, the petitioner had purchased 400 Sq. yards of land which was a portion of survey and Khasra and had deposited conversion charges. It was held by this court as under:

In my opinion, it is discretionary with the court to invoke its jurisdiction under Article 226 of the Constitution. Before the court can be asked to invoke the jurisdiction, the person must come with clean hands. The relief under Article 226 of the Constitution of India is an equitable relief. As per the averments contained in the writ petition, Khasra No. 1937 measures 17 bighas and 14 biswas and the petitioner purchased only 3600 Sq. feet i.e. only a portion of the land under Section 42 of the Rajasthan Tenancy Act, 1955 (For short, 'the Tenancy Act') the sale, gift or bequest by a Khatedar tenant of his interest In the whole or part of his holding shall be void, if it is not of survey number except when the area of survey number so sold, gifted or requested is in excess of the minimum area prescribed

for the purpose of Sub-section (1) of Section 53 In which case also the area not transferred shall not be a fragment. The case of the petitioner does not fall under any of the Proviso to Section 42(a) of the Tenancy Act Thus the sale of 3600 Sq. feet agricultural land of Khasra No. 1937 measuring 17 bighas 14 biswas is in contravention of Section 42(a) of the Tenancy Act and as such is void. It is a case where no right or title or interest in the land vests in the petitioner.

It was also found that since the construction was without the permission of the Gram Panchayat/Notified Area Committee and the agricultural land was used for non-agricultural purposes against the provisions-of the Act, the petitioner has no case and the court declined to invoke extra ordinary jurisdiction under Article 226 of the Constitution. It was further observed that transferee and the transferrer in such a case become trespasser and cannot be said to be a person entitled even to claim compensation.

11. In Govind Murari v. State of Rajasthan it was held that the transfer of agricultural land for house purposes is illegal unless the same is first recognised in accordance with law.

12. In Vijay Kumar Chadha v. State of Rajasthan and Ors. S.B. Civil Writ Petition No. 374/87, decided on 27th March, 1990, it was held by this court that even the society cannot claim any right or interest on the basis of agreement to sale itself said to have been executed by the tenant. The agreement to sale does not create any right or interest except the right of enforcement of agreement within the stipulated time.

13. So far as the argument of the learned Counsel for the petitioners that the construction is more than 3 years old and, therefore, the power for demolition cannot be exercised is concerned, the J.D.A. - Act has provided remedy of appeal before the Jaipur Development Authority Tribunal and few of the petitioners have already availed it. It will not be proper for this court to give a finding and entertain the writ petition directly on that point and it is directed that the petitioners may, if not already availed of the remedy on the point file appeals before the Tribunal within a period of 15 days and the Tribunal shall pass appropriate order and till then the construction, already made shall not be demolished.

14. It is very surprising that the respondents at one point of time have said that the entire constructions have been made illegally and, therefore, intend to demolish the same. On the other hand, construction has been allowed by the officers and persons responsible, without any written permission. So far as the power of J.D.A. to demolish the illegal constructions is concerned, if it is more than 3 years' old, it can be exercised except by due process of law. The point which has to be observed is that the location of the scheme is at such an area where number of officers/staff members of the J.D.A. are residing in the nearby scheme and there remains a Zonal Officer and Inspector to check illegal construction. The constructions which have been carried on can not be without the connivance of these, officers and the staff members and, therefore, it would be proper that the Chairman of the J.D.A. should initiate action against all such persons who are responsible for the constructions which have been alleged to be illegally made. It is further directed that F.I.R. should also be lodged against the persons/officials who have committed offence in the matter.

15. If the land is intended to be acquired and is de-acquired for a particular reason or purpose, then status of the land cannot be changed without the permission of the authorities. It is not in this manner that firstly the agreement to sale could be effected and then permission is to be taken. It is the permission which has to be taken first and, therefore, defrauding the public by itself is an offence. The various provisions which have been contravened should be kept in view and a complete F.I.R. should be lodged so that the public should have respect for law rather than taking it for granted that they have right to break the law and then apply for regularisation of it.

16. The problem of houses and availability of land being acute in Jaipur and it is only because of the policy of the Government that they have not been either effectively taking any steps for acquiring the land and to allot it to the needy persons. The innocent persons have to suffer in the hands of few who can fearlessly break the law. The Government should make a law in the manner that the legislation should provide that the land should vest with the Government and those members to whom it has already been allotted are accommodated and those members who have purchased the land from the society which is not under

acquisition or under some restrictions are accommodated. If the respondent wants to acquire the land or to keep it for green belt only, they will be authorised for the same. A proposal was made that the J.D.A. is ready to offer houses in 4 cases at reserved price of Rs. 58,000/- of the tenements which is having one room, toilet on the land of around 50 Sq. mtrs. to accommodate and adjust those 4 families where the houses have been constructed and they are arising. This exercise shall also be done by the J.D.A. Tribunal. If the construction is more than 3 years old then the said construction shall not be demolished, but if the construction is less than 3 years old then in that case, these 4 families shall be adjusted in the houses which are being offered as a special case.

17. The submission of the learned Counsel for the respondent that in respect of violation of the provisions of Section 32(3), the only set backs or other deviations in the construction is compoundable shall also be open to be raised before the Tribunal besides the argument that the agreement of the owner is with an individual and not with the society and it has lapsed long back and it is fictitious agreement. On 30.6.1993 directions were given by this court that further constructions/ modification/repair/ alteration shall not be carried by the petitioners on the basis of the representations given by them and the constructions which have already been made shall not be demolished till the pronouncement of the order. Now 15 days time is farther given to the petitioners to file appeals and the stay order shall continue for a further period of 15 days. The Tribunal would be free to pass appropriate orders on the stay application after hearing the parties. In respect of other plots, the respondents shall be entitled to carry on work of demolition by following the procedure established by law and this judgment is not applicable to them. Action in respect of these petitioners shall be taken in accordance with the directions which may be given by the J.D.A. Tribunal. A copy of this judgment may be sent to the Secretary, Town Planning and the Chief Commissioner of Income-tax, Rajasthan, Jaipur for necessary action.

18. The writ petitions stand disposed of as indicated above. Parties are left to bear their own costs.