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Court : Rajasthan

Decided On : Sep-02-1997

Reported in : 1998WLC(Raj)UC318; 1997(2)WLN415

Judge : M.P. Singh and; B.S. Chauhan, JJ.

Appeal No. : D.B. Civil Special Appeal No. 2 of 1992

Appellant : Surendra Singh and ors.

Respondent : State of Rajasthan and ors.

Disposition : Appeal allowed

Judgement :

M.P. Singh, J.

1. Appellants filed the writ petition praying for a direction to the respondents, restraining them from changing the use of land reserved as 'open space marked by letters ABCD and EFGH in the plan and that the sale made by the Urban Improvement Trust (In short, 'UIT) in favour of State Bank of Bikaner & Jaipur (In short, the Bank') on 4.12.1989 be declared null and void.

2. The UIT, Bikaner is a body cooperate incorporated under the provisions of Rajasthan Urban Improvement Trust Act, 1959 (referred to as 'the Act). It is empowered to frame schemes for residential purposes. Schemes are sanctioned

by the State Government. Thereafter it is implemented.

3. Framing of scheme is controlled by the provisions of Section 29 of the Act. The relevant portion runs as follows:

29. Schemes; matters to be provided therein:--(1) The Trust shall, on the orders of the State Government or on its own initiative or on a representation made by the Municipal Board and subject to availability of financial resources, frame schemes for the improvement of the urban area for which the Trust is constituted.

(2) such schemes may provide for all or any of the following matters, namely:

(a)... ..

(b)... ..

(c)... .. ,...

(d)... .. :....

(e)... ..

(f)... ..

(g).. ..

(h)... ..

(i) the forming of open spaces for the benefit of the area comprised in the scheme or any adjoining area;

(j)... ..

(k)... ..

(u).... ..

4. The UIT, exercising the power under Section 29(2) (i) framed the scheme known as Sadulganj Scheme. It was duly approved by the Government. According

to the Scheme, a plan was prepared. In the plan, four 'open spaces' were provided towards the eastern and western side of 'panch sati circle'. The plan made provisions for a large number of shops shown in the circle itself. Some space including the two shown by letters ABCD and EFGH had been specifically left as 'open' for the beneficial enjoyment of the inhabitants occupying the residential plots and the shops shown therein. Except these two 'open spaces' other similarly situate open lands have already been developed into parks.

5. All appellants are the residents of plot No. 1 to 10, which are situate towards the southern side of the disputed 'open lands' marked as ABCD and EFGH. These 'open spaces' protect the hygienic environment of the locality. The proposed construction by the Bank may affect the same apart from creating other practical difficulties in the area.

6. The case set up by the appellant was not accepted by the learned Single Judge resulting in dismissal of the writ petition. Thus this special appeal.

7. Section 29(2) of the Act specifically provides that a scheme prepared by the UIT should provide for forming of 'open spaces' for the benefit of the area comprised in the scheme or any adjoining area. The Act thus contemplates of leaving certain area as 'open' for the better use by the persons occupying the residential houses near that area. The purpose of keeping the 'open spaces' was that it can be used as playground, recreation purpose and to maintain the ecological balances.

8. If spaces left as 'open' are utilised for raising buildings, it is bound to cause hygienic pollution affecting the general health of residents of the locality, 'Open space' shown in the Scheme cannot be put to a different use. If it is done, it will not only be violative of the Act and the Rules framed thereunder, but also would violate the constitutional provisions.

9. The 42nd amendment 1976 was brought in the Constitution of India by which Article 48A was introduced for protection of environment. It provides:

the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

10. Though, this Article puts a constitutional duty upon the State but it becomes the duty of every citizen also to protect and improve the environment.

11. Similarly, Article 51A was introduced in the Constitution. According to Clause (g) of Article 51A:

It is the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.

12. It is true that the duties enshrined in the Constitution under Part-IV dealing with the directive principles of the State Policy, are not judicially enforceable by itself but the rights given in the Constitution are directly inter-linked with these duties. One who does not care for duties, is not entitled for the rights provided in the Constitution.

13. Rights and duties dependent on each other. One cannot go without the other. They co-exists. If the legislature brings an Act inconsonance with these provisions, it becomes enforceable. The Supreme Court in the case reported in : [1988]2SCR530 (M.C. Mehta v. Union of India), observed that it is the duty of the State Government to see that the fundamental duties are meant to be effective.

14. Appellants have seriously challenged the jurisdiction of the UIT of changing the use of 'open space' as approved in the Scheme. Their contention is that once the scheme is approved by the State Government, it cannot be changed. It was contended that Scheme has already been executed. Keeping in view the provisions of Sections 29 and 40 of the Act read with Rule 11 of the Rajasthan Urban Improvement Trust (Disposal of Urban Land) Rules, 1974, the UIT could not violate the sanctioned scheme without getting modified in accordance with the law. If the Bank is allowed to raise a building on the open land, it would create ecological imbalances and the residents of the area would face environmental problems as they would be deprived of free and fresh air.

15. In reply, the contention of Shri Shishodia, appearing on behalf of the UIT was that it was within its right to make an improvement in the Scheme. There was no

restriction imposed for selling the land left as 'open' when the scheme was sanctioned. The purpose of keeping that land as 'open' was to provide additional amenities to the residents of the area for their benefit in future. The power has been exercised in the larger interest of the public/residents and to develop the area by providing the possible amenities. Banking is a necessary amenity in the growing banking habits of the citizens. Justifying the sale, it was contended that there had been unauthorised encroachments over lands left open for public purpose, therefore, in order to prevent any unauthorised occupation and to provide amenities this action has been taken by the UIT.

16. In order to examine the merit of the contention of Shri Shishodia regarding the right of UIT to alter the scheme, it is necessary to examine the scope of Section 40 of the Act, which is quoted below:

40. Alteration of scheme after sanction,--At any time after a scheme has been sanctioned by the State Government and before it has been carried into execution the Trust may alter it:

Provided that if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000/- or 5 per cent of such cost, whichever is less, the alteration shall not be made without the previous sanction of the state Government.

17. This provision empowers the UIT to alter a scheme even after the sanction is granted by the State Government but it lays a condition that the power can be exercised only before it is carried into execution. There is denial of the fact in the instant case that the sanctioned scheme has already been executed and in accordance with the same residential buildings have come up and the area has been developed. Markets have been established. Roads have been provided and other amenities have already made available. It is in the execution of that scheme that 'open space' has been left. Thereafter the UIT ceased to have any jurisdiction to make any alteration in the Scheme by permitting the Bank to raise a construction on the 'open space'.

18. Respondents contention that earlier in 1986 also the UIT had allotted a land in similar circumstances, to the Life Insurance Corporation and State Insurance & General Provident Fund Department for construction of its building, without any objection by anybody, has no merit. All those constructions have been made on the reserved spaces, and not in the space shown as open.

19. A perusal of the sanctioned map shows that different areas have been kept as 'reserved' for different purposes, and lands which have been allotted to different corporations, were marked as 'reserved' whereas the land in dispute has been shown as 'open'. Thus the UIT itself has left two kinds of open land in the map i.e. the 'reserved land' which could be used for any purpose to be decided subsequently and 'open land' which is left to remain as 'open' in future and not to be used in any other form.

20. Even Rule 11 of the Rajasthan Urban Improvement. Trust (Disposal of Urban Land) Rules, 1974 provides:

11. Reservation of non-residential land--In the scheme, approved by the Chief Town Planner or his representative authorised by him in this behalf, plot of land indicated for Park & Playgrounds, education institutions, hospitals, dispensaries, cinemas, markets and such other use shall be reserved for the purpose it has been earmarked and shall not be put to any other use.

21. It puts a restriction on the power of the UIT for changing the use of the 'open land' for any other purpose except the one for which it was meant for.

22. Providing 40 foot road on the western side between the houses of the appellants and the 'open land' in dispute, will not make any difference so far the merit of the case is concerned.

23. The learned Single Judge while dismissing the writ petition accepted the respondent's contention that 'open space' in question was never earmarked or reserved for any particular purpose. It can be used in future according to the decision of the UIT for any other purpose. In the instant case it has rightly been done by the UIT.

24. A distinction was drawn between the area 'earmarked' for a particular purpose while sanctioning a scheme which could be used only for that purpose but if it was left open at that time it could be utilised by the UIT for any activity which it may think necessary in future. But it should be in the interest of the public at large. Of course while taking such a decision the UIT would keep in mind that it will not interfere in the environmental conditions and would not cause any pollution in the area. The activity which would be allowed would be conducive to the public health.

25. It was further held that the appellants have failed to place any material that if the building for the Regional Office of the State Bank of Bikaner & Jaipur, is allowed to be constructed in the area, the residents of this area would in any way suffer and it would cause ecological imbalances. Merely because the appellants have a feeling that such construction would create pollution in the area, the action of UIT cannot be held to be illegal. Appellants' apprehension was without any foundation. The land which has been left 'open' at the time of sanctioning the scheme cannot, for all the times to come, be kept as 'open'. We find it difficult to agree with the view expressed by the learned Single Judge.

26. Schemes are framed by the UIT and the same are sanctioned by the State Government as contemplated in Section 29 of the Act. In view of Section 40 of the Act, the same could be altered. But, this power can be exercised only before the scheme is executed. This Section puts a further restriction as contained in proviso mentioned in the Section itself. No alteration can be made without previous sanction of the State Government. After the execution of the scheme, no alteration can be made by the UIT.

27. 'Open space' has not been defined in the Act or the Rules framed there under, but it is defined in Rule 4(5) of the Rajasthan Urban Areas, (Sub-Division, Re-constitution and Improvement of Plots), Rules, 1975.

It means- Park, Garden, Lawn or any form of open space which is intended to be used by the public.

Thus, at the time of sanctioning the scheme, the UIT and the State Government were aware of the fact that these 'open spaces' were to be used by public as 'open

space. Future construction over it was not under contemplation. If the Act and Rules are silent then the Court can always refer to the definition given in the Dictionary or other similar provisions.

28. It is true that the 1975 Rules apply only to the sub- division, re-constitution and improvement of plots by a person or a private individual or a local authority or group of individuals, society including cooperative societies or companies whether incorporated or not, or a colonisor, the State Government Department other than the department of the Government of India.

29. We are not expressing the view that the provisions of 1975 Rules as such are applicable in the instant case but we can examine and refer to the definition of the 'open space' given under that Rule in the absence of any specific provision in the Act or the Rules. There is no bar in doing so. If a land is 'earmarked' then there is no difficulty in examining the scope of conversion of use for any purpose but if the land is left 'open' it means it has to be left 'open' for the benefit of the residents of the locality for all times to come. A perusal of the plan, the copy of which is annexed to the writ petition, shows that some plots have been shown as 'earmarked' for different purposes, but the plots in dispute have been simply left 'open'. Thus, the UIT at the time of framing of the scheme had a clear intention that this land will be kept 'open' in future as well.

30. In the instant case, we are satisfied that the UIT has acted illegally and against the provisions of the Act and Rules in transferring the land in dispute in the year 1989 to the Bank. While doing so, the provisions of Articles 48A and 51A as amended in 1976, have also not been kept in mind. No importance was given to the ecological imbalance and for preserving the environmental conditions. The transaction is about eight years old. Within last few years looking to the enormous increase of environmental pollution, serious thinkings have been given by the Government for preventing it. Courts have also come forward by giving judicial verdicts for providing a pollution free atmosphere for general public to maintain good health.

31. In a very recent judgment reported in : (1995)2SCC577 [Virendra Gaur v. State of Haryana), the Supreme Court considered almost identical question. In that case

an 'open piece of land' vested in the municipality. It was meant for the amenities of the residents of locality to maintain ecology, sanitation, recreation, playground and ventilation purposes. This 'open land' was leased out by the Government in favour of Punjab Samaj Sabha for construction of 'dharmshala'. The action of the Government was challenged on the ground that it would affect the health and the environment adversely and would defeat the purpose of the sanctioned scheme. The purpose of the scheme was to reserve the land as 'open space.'

32. The Court held:

There is a constitutional imperative on the State Government and the municipalities, not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both the man-made and the natural environment.

33. In paragraph 11 of the said judgment, it has been observed:

It is seen that the open lands, vested in the Municipality, were meant for the public amenity to the residents of the locality to maintain ecology, sanitation, recreation, play-grounds and ventilation purposes. The buildings directed to be constructed necessarily affect the health and the environment adversely, sanitation and other effects on the residents in the locality. Therefore, the order passed by the Government and the action taken pursuant thereto by the Municipality would defeat the purpose of the scheme.

34. The fact in the case of Virendra Gaur (supra) to be highlighted is that Punjab Samaj Sabha had even completed the construction of 'Dharmashala' long back by spending huge amount of money but even then the Supreme Court had passed an order for pulling down the building within a fixed period and the land was ordered to be brought back to the condition in which it existed on the date of allotment. In the instant case, only a sale-deed had been executed by the UIT in favour of the Bank on 4.11.1989 but no construction has been done so far.

35. Shri Murlidhar Purohit, supporting the judgment, has referred to a case of this Court reported in 1992 (1) RLR 189 (General Manager Lake Palace Hotel v. Ranjit

Singh), which was upheld by the Supreme Court. But, in our opinion, the fact of the case are entirely different and the question of 'open space' being utilised for the purposes other than for which it was reserved under the sanctioned scheme which has already been executed, was not under consideration. The controversy in hand is squarely covered by the judgment of the Supreme Court in the case of Virendra Gaur (supra).

36. Thus, for the reasons given above, we hold that the action of the UIT transferring the land in dispute to the Bank, was bad and the sale-deed dated 4.12.1989 is void and ineffective.

37. Under these circumstances, we direct the UIT, Bikaner, either to refund the entire amount of sale-consideration alongwith 12% interest per annum to the respondent Bank within a period of two months or if the Bank agrees for an alternative land it may allot the same within the same period.

38. Accordingly, the appeal succeeds and is allowed. The order of the learned Single Judge is set aside without any order as to costs.