

Rustam Vs. State of Rajasthan and ors.

Rustam Vs. State of Rajasthan and ors.

SooperKanoon Citation : sooperkanoon.com/764308

Court : Rajasthan

Decided On : Nov-06-1996

Reported in : 1997(1)WLC196; 1996(2)WLN424

Judge : R.R. Yadav, J.

Appeal No. : S.B. Civil Writ Petition No. 976 of 1990

Appellant : Rustam

Respondent : State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

R.R. Yadav, J.

1. Instant writ petition has been filed by the petitioner for issuing direction to respondents No. 2 and 3 to execute a registered lease-deed in his favour in pursuance of allotment order dated 18.8.89 Annx.2 to the writ petition. After filing of reply, the writ petition was amended and a further relief was added in the writ petition to quash the order dated 21.4.90 Annx.R/5 to the reply passed by the Director, Local-self Bodies, Rajasthan, Jaipur.

2. Brief facts for disposal of the instant writ petition are that the petitioner applied for allotment of strip of land which is just adjacent to his residential house. It is

further stated that in pursuance of the application of the petitioner, a general notice was issued by respondent No.3, whereby, objections were invited, a copy whereof is filed and marked as Annx. 1. It is also stated that no objection was received within the time stipulated in the notice Annx.1 to the writ petition, therefore, after completion of all necessary formalities, the strip of land was allotted to the petitioner vide order dated 18.8.89 with a direction to him to deposit cost of the said land amounting to Rs. 4360/- within three days, a copy whereof is filed and marked as Annx.2 to the writ petition.

3. After service of notice on respondents No. 2 and 3, they have filed a return to the writ petition admitting the averments made in paragraphs 2 and 4 of the writ petition.

4. In view of the admission made in paragraphs 2 and 4 of the reply, it goes without saying that the land in dispute falls within the definition of 'Strip of land' as envisaged under Rule 23 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short 'the Rules of 1974'), therefore, no error was committed in allotting the land in question in favour of the petitioner.

5. Learned Counsel Mr. R.L.Jangid, appearing on behalf of respondents No. 2 and 3 invited my attention towards the order dated 23.5.89 Annx.R/4 to the reply, whereby, the Assistant Regional Director, Local-self Bodies, Rajasthan, Jaipur has refused to accord sanction prior to registration of the lease deed in favour of the petitioner. As a matter of fact, in view of the mandatory provisions contemplated under Rule 30 of the Rules of 1974, the Assistant Regional Director, Local-self Bodies, Rajasthan, Jaipur has no authority to accord sanction as registration of lease-deed is within the power of the Board itself as price of the land in dispute is less than Rs. 10,000/-

6. For the reasons stated above, refusal to accord sanction dated 23.5.89 Annx.R/4 to the reply is nullity having been passed by an authority who has no jurisdiction to pass such order.

7. Learned Counsel Mr. R.L. Jangid appearing on behalf of respondents No. 2 and 3 also invited my attention towards the order dated 21.4.90 Annx.R/5 to the reply,

by means of which, the Director, Local-self Bodies, Rajasthan, Jaipur has cancelled the sanctioned order dated 18.8.89 Annx.2 to the writ petition in purported exercise of his power under Sub-section (2) of Section 80 of the Rajasthan Municipalities Act, 1959 (hereinafter referred to as 'Act No. 38 of 1959'). The allotment order/sanction order dated 18.8.89 Annx.2, which is cancelled vide Annx.R/5 is also sought to be quashed by the petitioner on the ground that it has been passed by an authority who lacks inherent jurisdiction to pass such order.

8. For deeper understanding of the aforesaid competing contentions, the provisions contained under Sub-section (2)(a) of Section 80 of Act No. 38 of 1959 are quoted hereinbelow for ready reference:

80. Provisions relating to transfers of property and contracts:

(1)...

(2)(a) The State Government or any officer authorised by it in this behalf may, for the purpose of satisfying as to the correctness, legality or propriety of any proposal to lease, sell or transfer any Government land made by or on behalf of a Board or by any Member, Chairman, Vice-chairman or officer of the Board call for the relevant record and may while doing so direct that pending the examination of the matter, the proposal to lease, sell or transfer of the Government land shall remain in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government or of the authorised officer under Sub-section (2)(b).

9. I have given my thoughtful consideration to the arguments advanced on behalf of respondents No. 2 and 3. It is to be noticed that power under Sub-section (2)(a) of Section 80 of Act No. 38 of 1959 is to be exercised by the State Government or any officer authorised by it. It goes without saying that the State Government has issued a notification dated 27.2.75 in exercise of its powers conferred by Sub-section (1) of Section 299 of Act No. 38 of 1959 in supersession of departmental notification dated 12.3.69 to the effect that power of the State Government envisaged under Sub-section (2) of Section 80 of Act No. 38 of 1959 shall be exercised by the Collector of each District within his jurisdiction in all matters covered by Sub-section (2) of Section 80 of the said Act.

10. In view of the aforesaid mandatory provisions envisaged under Sub-section (2)(a) of Section 80 of the said Act read with notification dated 27.2.75 mentioned above, only Collector of the petitioner's District where land in question exists has jurisdiction in all matters covered under Section 80(2)(a) of the said Act and not Director Local-self Bodies who has passed the impugned order dated 21.4.90 Annx.R/5 to the reply. Therefore, the order dated 21.4.90 Annx.R/5 passed by the Director, Local- self Bodies is without jurisdiction and the same deserves to be quashed.

11. Consequently, the instant writ petition is allowed and respondents No. 2 and 3 are hereby directed to execute a registered lease-deed in favour of the petitioner in pursuant to allotment order dated 18.8.89 Annx.2 to the writ petition within three months from the date of receipt of a certified copy of this order. The order dated 21.4.90 Annx.R/5 to the reply passed by the Director, Local-self Bodies, Rajasthan, Jaipur and order dated 23.5.89 Annx.R/4 to the reply passed by the Assistant Regional Director, Local-self Bodies, Rajasthan, Jaipur are hereby quashed. Both the parties are directed to bear their own costs.