

Moolchand and anr. Vs. State of Rajasthan and Nine ors.

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Court : Rajasthan

Decided On : Jul-28-1977

Reported in : 1977WLN(UC)372

Judge : A.P. Sen, J.

Appeal No. : S.B.C. Writ Petition No. 1225 of 1973

Appellant : Moolchand and anr.

Respondent : State of Rajasthan and Nine ors.

Disposition : Petition allowed

Judgement :

A.P. Sen, J.

1. By this petition under Article 226 of the Constitution, the petitioners Mool Chand, son of Khamma Rain, and Mst. Jawahari, widow of Khamma Ram, seek a writ of Certiorari for quashing the resolution of the Municipal Board, Neemka thana, dated July 21, 1972, the order of the Collector, 226dated December 18, 1972, and the order of the Director, Local Bodies', Rajasthan, Jaipur, Dated April 26, 1973 in so far as it maintains the allotment of certain plots of land out of Khasra Nos. 1014, 1015 & 1016 in favour of the respondents Nos. 5 to 10; & for a writ of Mandamus, for directing the Municipal Board, Neem-Ka-Thana, to make allotment of a plot of

land in their favour out of land bearing khasra Nos. 1014, 1015 and 1016, as directed by the Land Acquisition officer by this order dated December 3, 1963. The facts are that predecessor-in title of the petitioners, namely, Khamma Ram, was the Khatedar tenant of Khasra Nos. 1014, 1015 and 1016 situate at Neem-Ka-thana. In 1963, the said land was acquired by the State Government of Rajasthan for the Municipal Board Neem-Ka-Thana. for extension of abadi under Section 6 of the Rajasthan Land Acquisition Act, 1953. The Land Acquisition Officer, by his order dated December 3 1963, made a conditional award for payment of compensation depending on classification of soils Rs 200/-, Rs 160/- and Rs. 450/- per Bhgha, on condition that out of the land acquired a big plot shall be allotted to Khamma Ram for his residential purposes at half the price of the other plots. In case Khamma Ram did not want to take a plot, he was to be paid an amount equal to half the price. Thus the award of the Land Acquisition Officer for compensation, was a conditional award, and in terms thereof, the Municipal Board, Neem Ka-Thana, was bound to allot a big plot to Khamma Ram before making allotment of plots to others. The Land Acquisition Officer has indeed mentioned in the award that the fact that Khamma Ram was to be allotted one of the plots, had been taken into consideration in determining the market value of the land acquired. Thai being so, the Municipal Board was bound to allot a big plot to Khamma Ram before making allotment of plots to others.

2. Contrary to the condition imposed by the Land Acquisition Officer, the Municipal Board, by its resolution Dated July 21, 1972, made allotment of plots in favour of the respondents Not. 5 to 10, by ignoring the condition imposed by the Land Acquisition Officer. The petitioners, there fore, went up in appeal to the Collector, but the Collector, by his order dated December 18, 1972, maintained the resolution of the Municipal Board Thereafter, they preferred a revision to the State Government under Section 300 of the Rajasthan Municipalities Act, 195. The Director Local Bodies, Rajasthan, Jaipur, to whom the revisional powers had been delegated, parth allowed the revision preferred by the petitioners, by his order dated April, 26. 1973 to the effect:

ekeys es vkt fnukad 26&4&73 dks lquokbZ dh xbZ A izkFkhZx.kks dk izkFkZuk&i;= bl dnj eatwj fd;k tkrk gS A fd Lo0 [kEHkkjke ds voklr 'kqnk tehu es ls budks ,d lykV

Hkwfe vokflr vf/kdkjh ds fu.kZ; ds vuqlkj fn;k tkos mldks o ysus dh lwjr es fudyh dher nh tkos A vkoaVu tks uxjikfydk }kjk fd;s x;s gS vkSj ftlds Lohd`fr ftyk/kh'k egksn; us ns nh gS] og cjkj jgsxh A

It appears that the second part of the order made on a representation by the Municipal Board before the Director, Local Bodies, Rajasthan, a here, that vacant plots were still available for allotment. It now appears that no such plots are available. When the petitioner applied for gram of ad-interim writ, the Municipal Board, in its reply dated December 3, 1973, stated in paragraph No. 1 of the additional pleas:

The Municipal Board at this stage is prepared to keep a vacant piece of land for the allotment of a plot to petitioner succeeds....

In their rejoinder dated January 4, 1974 the petitioners disputed the fact that any plots are available. The rejoinder was supported by an affidavit. Learned Counsel appearing for the President Municipal Board, addressed to them (sic) that there are no plots.

3. A preliminary objection to the maintainability of the writ petition has been raised by Shri Datt, learned Counsel appearing for the Municipal Board. It is pointed out that the petitioners had filed a suit for perpetual injunction being civil suit No. 27 of 1973 against the Municipal Board, Neem-Ka-thana, in the court of Munsif Magistrate, Neem-ka-thana, on January 19, 1973, under Order 23 Rule 1 of the Code of Civil Procedure, 1908, and they having withdrawn the suit on February 22, 1973 without leave to file a fresh suit they are precluded from bringing a fresh suit on the same cause of action and thus they are also precluded from filing this writ petition. It is admitted that no leave to file a fresh suit on the same cause of action was granted by the court. These facts have given rise to two objections: Firstly, it is contended that the petitioners are guilty of *supprasio veri* i.e., of having concealed a material fact, in as much they kept back from this Court the fact of filing of this writ petition. The writ petition has been filed on August 25, 1973. Secondly, it is urged that the dismissal of the suit should be held to disentitle the petitioners from claiming the same reliefs on the same grounds in a petition under Article 226 of the Constitution, on general principles of *res judicata* and the

principles under Order 3 Rule 1 of the Code of Civil Procedure, 1908. Reliance is placed on the decision in Ram Kishan and Ors. v. Secretary to Government, State of Haryana, Co-operative Department Chandigarh and Ors. . I am afraid the preliminary objection is not well founded.

4. The decision in Ram Kishan and Ors. laying down the principle error crated that the dismissal of a suit as withdrawn disentitles the plaintiff to claim the relief from the same grounds in the writ petition, on general principles of res judicata at d on the principles of Order 23 Rule 1 of the Code of Civil Procedure, 1908, can hardly be disputed. The difficulty, however, lies in the application of those principles to the present case. In Ram Kishan's case , the writ petitioner claimed the same reliefs as in the suit based on the same grounds whereas here, the petitioner claims an altogether different relief. I have gone through the plaint in civil suit No. 27 of 1973. The suit brought by the petitioners was essentially a suit for perpetual injunction to restrain the Municipal Board from making any allotments, and in the event of such allotment for cancellation of them. There was no relief of mandatory injunction claimed by the petitioners directing the Municipal Board to allot a plot of land to them in conformity with the order of the Lalit Acquisition Officer dated December 3, 1963. When the petitioners found that allotments had already been made, they withdrew the suit as the relief claimed could not granted. That being so I fail to see how the withdrawal o the civil suit operates as a bar to the maintainability of the present writ petition.

5. The matter can also be viewed from another angle Subsequent to the withdrawal of the suit on February 22, 1973, the Director, Local Bodies, Rajasthan, Jaipur, by his order dated April 26, 1973 issued a direction to the Municipal Board to make allotment of a plot to the petitioners out of the land acquired. That was clearly a direction made in terms of Section 300 of the Rajasthan Municipalities Act 1959. Under Section 300 of the Act, the State Govt., has general supervision and control over the affairs of the Municipal Board. It implies that where the State Govt. is not satisfied about the legality or property of any order passed, it can make suitable directions to the Municipal Board to act in conformity with the law. The petitioners want a writ of mandamus against the Municipal Board directing due compliance of the orders of the State Government.

6. Having heard the parties at length, I am satisfied that the petition must succeed & should be allowed. The order of the Land Acquisition Officer dated December 3, 1963 was nothing but a conditional award. The acquisition of the petitioners' land was conditional upon their being allotted a plot of land out of the land acquired. The fact that such allotment was to be made in favour of Khamma Ram, was taken into consideration by the Land Acquisition Officer in determining the market value of the land to be acquired. The Municipal Board was, therefore, bound by the condition imposed by the Land Acquisition Officer, and it could not go behind the condition and to allot plots of land to others, totally ignoring the petitioner's claim.

7. The case is squarely covered by the decision of their Lordships of the Supreme Court in *Union of India and Ors. v. Messer Anglo Afghan Agencies* AIR 1968 Supreme Court 718. The Municipal Board is clearly bound by the doctrine of equitable estoppel. It has taken the land by payment of compensation to an amount lower than the market value, on condition that a big plot of land out of the land acquired, shall be allotted to Khamma Ram. The Municipal Board cannot resile from that condition and make allotment of the land to others without making provision for the allotment of a plot to the petitioners.

8. The petition, therefore, succeeds and is allowed. A writ of mandamus shall be issued against the Municipal Board, Neem-ka-thana, directing it to comply with the order of the Land Acquisition Officer by allotting a plot of land to the petitioners out of the acquired land. The allotment in favour of the respondents Nos. 5 to 10 may not be disturbed, if there is any other land available for allotment to the petitioners out of the acquired land. Hearing fee Rs. 250/-.