

**Arjun Ram Vs. Additional Collector and ors.**

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**Court :** Rajasthan

**Decided On :** Jan-05-1987

**Reported in :** 1987(1)WLN453

**Judge :** Ashok Kumar Mathur, J.

**Appeal No. :** S.B. Civil Writ Petition No. 2192 of 1984

**Appellant :** Arjun Ram

**Respondent :** Additional Collector and ors.

**Advocate for Pet/Ap. :** Mr. Shishodia

**Judgement :**

**Ashok Kumar Mathur, J.**

1. The petitioner by this writ petition has challenged the orders Annx. 4 and 5.
2. The petitioner has a patta sud plot of land, which was purchased by him. It was situated at Satimata Colony, Ratanada known as Karamchari Colony, near Residency Road, Jodhpur. The petitioner constructed a house on the ground floor with the permission of the Urban Improvement Trust, Jodhpur, Thereafter, the petitioner applied for permission for construction of the first floor before the Urban Improvement Trust, Jodhpur vide his application along with a plan before the Urban Improvement Trust on 23-12-1983. While the construction was going on the

petitioner submitted a revised plan for the first floor. After 2-1/2 months a report was made that in the northern side there is 10 ft. lane and there is a plot which belongs to others and hence no windows can be sanctioned to be opened. Meanwhile a notice under Section 91 of the Urban Improvement Trust Act was issued by the Secretary, Urban Improvement Trust, Jodhpur the petitioner appeared before the Secretary, Urban Improvement Trust, Jodhpur and submitted that his plan may be sanctioned. At this stage, one Manoharsingh filed an application that the petitioner has opened windows towards his lands and has put projection towards his land. A notice of the application was issued to the petitioner to show-cause as to why an order for closure of windows and removal of projection be not made. On 27-3-1984 it was recorded that the petitioner has not appeared in spite of service and hence a notice under Section 91-A of the Urban Improvement Trust Act be issued. Ultimately, on 28-4-1984 the Secretary, Urban Improvement Trust, Jodhpur ordered that since the petitioner has raised construction on the first floor without permission of the Urban Improvement Trust and has also opened windows on the back side which was objected by the neighbour. Hence, it was ordered that such illegal construction and windows be removed. The copy of the order dated 28-4-1984 is placed on record as Ex. 4. The Secretary, Urban Improvement Trust, Jodhpur purported to exercise his powers under Section 91-A ordered the petitioner to remove the construction and windows threatening further that in case, of failure the Urban Improvement Trust would remove the same at the risk and cost of the petitioner. Aggrieved against this order, the petitioner preferred an appeal before the Additional Collector and the same was disposed of by the Additional Collector under Section 91-A(2) of the Urban Improvement Trust Act. Learned Additional Collector by his order dated 28-7-1984 confirmed the said order. The same is placed on record as Ex. 5. Aggrieved against this order, the petitioner preferred the present writ petition before this Court.

3. Mr. Shishodia, learned Counsel for the petitioner has invited my attention to item No. 15 of the proceedings before the Urban Improvement Trust. At item No. 15 an order has been passed permitting the petitioner to construct the first floor but the permission to open the windows was not given. The item No. 15 of the proceedings dated 6-4-1984 reads as under:

15. ukFkZ lkbM+ es ekSds ij 10 fdeh dh ysu ugh gS rFkk nwljs dk lyksV gS ftles fo UM+ks ugh [kksyh tk ldrh Fkh A vr% nwljs tehu es fo UM+ks ugh fudkyus dh vLohd`fr nsrs gq, uD'ks Lohd`r fd;s tk ldrs gS A bl vk'k; dk 'kiFk lk= izkFkhZ ls ys fy;k tkos A

Mr. Shishodia, learned Counsel for the petitioner submits that in fact the permission for construction of first floor, was given but the only rider put was that windows will not be permitted to be opened in the northern side. He submits that without looking to this permission an order has been passed for demolition of whole of the construction of first floor. Likewise, the learned Additional Collector, Jodhpur has also not cared to look into the permission and has confirmed the order of the Secretary, Urban Improvement Trust.

4. A return has been filed by the respondent Urban Improvement Trust and grant of this permission has not been disputed except that the petitioner was not permitted to open windows in the northern side.

5. After having considered the matter, I am of the view that the order of demolition of whole of the construction of first floor is not warranted in the present case. As a matter of fact from the proceedings of the Urban Improvement Trust it clearly transpires that permission was granted to the petitioner for construction of the first floor, but it was made clear to the petitioner that he shall not be permitted to open the windows in the northern side. This, the Urban Improvement Trust can direct the petitioner to close the windows as the same has been opened without permission of the Urban Improvement Trust and if he fails to do so then proper action can be taken against the petitioner in accordance with Jaw. But it is not proper to demolish the whole of the first floor at the outset.

6. Mr. Mehta, learned Counsel for the Urban Improvement Trust also submits that the petitioner may be asked to close the windows and for the rest of the order Mr. Mehta does not dispute the contention of Mr. Shishodia.

7. In the result, the writ petition is allowed in part and the orders Annx. 4 and 5 are set aside to the extent of demolition of whole of, the first floor. But the petitioner shall close the windows within a period of two months from today otherwise it will

be open for the Urban Improvement Trust to pass fresh orders in accordance with law.

8. The parties are left to bear their own costs.

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