

Padma Devi Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Jan-08-1992

Reported in : 1993(3)WLC606; 1992(1)WLN9

Judge : A.K. Mathur and; Milap Chandra Jain, JJ.

Appeal No. : D.B. Civil Special Appeal No. 90 of 1991

Appellant : Padma Devi

Respondent : State of Rajasthan and ors.

Advocate for Def. : Mr. J.M. Bhandari, Mr. Bhandari

Advocate for Pet/Ap. : Mr. Lodha

Disposition : Appeal allowed

Judgement :

A.K. Mathur, J.

1. Heard the learned Counsel.

This appeal is directed against the judgment of learned single Judge dated 1st May, 1991 whereby the learned single Judge has declined to interfere with the order passed by the Collector, Pali under Section 285 dated January 21,1991 (Annexure.-9).

2. Brief facts which are necessary for the disposal of the case are that there is a plot bearing No. 77 in Tilak Nagar, Pali measuring 30' x 40'. The petitioner was residing in this plot since 1970. On account of the Government directions contained in the order dated 5.9.1977 for regularisation of illegal possessions, the petitioner-appellant proceeded to make an application. The application or the appellant was submitted in the prescribed form somewhere in the year 1978. The application of petitioner-appellant was accepted and the Municipal Board directed the petitioner-appellant to deposit a sum of Rs.93.31 by letter dated 5.2.1980. The amount was duly deposited by the petitioner-appellant and the sale-deed was executed by the Municipal Board and same was registered on 10.8.1980 copy thereof has been filed as Annex.-1. Thereafter, the appellant proceeded to demolish the old construction on the said land and wanted raise new construction for which permission was sought from the municipality and the same was given vide order dated 9.10.1980. Suddenly, on 21st January, 1981 an order came to be passed under Section 285 of the Rajasthan Municipalities Act, 1959 (hereinafter to be called the Act') directing the petitioner-appellant not to raise any construction on the land in question and not to enter on the land or alienate the same to anyone. A copy of the said order is placed on record as Annex.-9. It is this order which was challenged by the petitioner-appellant in this writ petition. This order was challenged on the ground that the Collector in the exercise of his jurisdiction under Section 285 has no power to interfere with the permission granted by the municipality for construction on the land as the land was sold by the Municipal Board through a proper sale-deed and as such the Collector had no jurisdiction to interfere with such sale-deed and the permission granted by the municipality. No return was filed by the respondents. A preliminary objection was raised before the learned single Judge that the petitioner should first appear before the Collector and raise the jurisdictional question and if she fails then it is open for her to approach this Court. This objection was upheld by the learned single Judge and the writ petition was dismissed on this count. Aggrieved against this, the petitioner-appellant has filed the present appeal. The appeal was admitted and Mr. J.M. Bhandari, Advocate has appeared in pursuance thereof.

3. Mr. J.M. Bhandari, learned Counsel for the respondents submits that this Court should not interfere with the matter as all the objections which are sought to be

pressed into service by the appellant can be raised before the Collector. It is true that the petitioner-appellant should have first approached the Collector and raise the jurisdictional question there. But, the matter has remained pending here since 1981 and it will not be fair to drive the appellant from pillar to post. Therefore, we over-rule the objection of Mr. Bhandari.

4. Mr. Lodha, learned Counsel for the appellant, submitted that Section 285 of the Act empowers the Collector only to pass an order in a case where any-thing is required to be done in pursuance of any resolution. But, in the cases where acts are completed and nothing more is required to be done in pursuance of that act then those completed acts cannot be interfered with by the Collector under Section 285. Mr. Lodha has invited our attention to the case of *Lakhmichand v. State of Rajasthan and Ors.* 1978 WLN UC 271 wherein a similar question came up before Hon'ble S.C. Agarwal, J. [as he then was) and he referred to an earlier decision of this Court reported in 1955 RLW 517 *Bheron Lal v. Bhagwat Dutt Thakur* in which it was held that when such a permission once granted by the municipality for construction then nothing is to be done and in that situation the powers under Section 285 cannot be invoked. It has been observed in para 9' as under:

The aforesaid case is on all fours with the present case inasmuch as here also after the grant of the permission to the petitioner to make the construction nothing remained to be done by it and, therefore, the powers concerned by Section 285 of the Rajasthan Municipalities Act, 1959 could not be invoked in the present case. The order of the Collector, Churu dated 14th March, 1972 and the order of the State Government dated 14.9.1972/28.9.1972 are, therefore, not sustainable and have to be quashed.

Mr. Lodha, learned Counsel for the appellant, also invited our attention to the decision of Hon'ble Supreme Court in *Municipal Board, Kanauj v. State of U.P. and Ors.* : [1972]1SCR193 . In this case the power of the State Government under the U.P. Municipalities Act, 1916 came up for consideration. This power was almost analogous to the powers under Section 285 of the Act. In that case, an employee who was a sweeper was dismissed by the municipality and the U.P. Government intervened with that order of dismissal. The matter ultimately reached

before the Hon'ble Supreme Court and the Supreme Court examined the power of the Government under Section 34(1)(b) of the U.P. Municipalities Act, 1916 and observed as under:

All that could be done under it is to prohibit the execution or further execution of the resolution or order, or the doing or continuance by any person of any act in pursuance of or under cover of such resolution or order. Where the resolution or order does not require any acts to be performed or steps to be taken for the execution or further execution of the resolution or order of the board of its officer, as in the present case, there is really nothing to prohibit....

It has further been observed that:

We do not, therefore, think that Sub-section (1-b) read with Sub-section (4) applies to any resolution or order which exhausts itself after it is passed or made.

5. Now, adverting to the facts of the present case, it is not disputed that the petitioner's plot of land was regularised by the Municipality and a sale-deed was executed

way back in June, 1980. Therefore, so far as the sale of present land to the appellant is concerned that stood completed and nothing was required to be done in the matter. After the sale was completed the Petitioner-appellant applied for the permission to raise construction. The Collector, in his notice, has said that since the sale in favour of the petitioner was against the notification of the Government No. 105. F-7 (187) LSG/58/1151-1632, therefore, the sale in favour of the petitioner was illegal and the permission granted for raising construction was obviously bad and the same was stayed. Since the permission for raising construction was given by the municipality the order was sought to be stayed on the basis that the sale was in contravention of the agreement Notification (referred to supra) this was not within the jurisdiction of the Collector. Once the sale was completed and the sale-deed has been registered then such a completed action cannot be re-opened by the Collector and on that basis the permission granted by the municipality to raise construction cannot be stayed under the purported exercise of the powers under Section 285 of the Act. Section 285 of the Act also

clearly lays down that if in the opinion of any such officer as may be appointed or authorised by the State Government in this behalf the execution of any order or resolution of a board, or the going of anything which is about to be done or is being done by or on behalf of a board, is causing or is likely to cause injury or annoyance to the public or a breach of the peace or is unlawful, he may, by order in writing under his signature, suspend the execution or prohibit the doing thereof. Then he has to refer the matter to the Government and a final order has to be passed by the Government after hearing the parties.

6. Now, in the present case, since the foundation on which the order granting the permission raising construction is sought to be stayed is wholly beyond the jurisdiction of the Collector as the action of the sale cannot be touched by the Collector Under Section 285 of the Act. If the Collector required the sale to be undone then the only course open for him was to refer the matter to the Government for cancellation of the sale if it was permissible under the Act or he could have taken appropriate steps for cancellation of the sale-deed. But, in any case, he could not have stayed the operation of the order granting permission to raise construction by the Municipal Board under the purported exercise of jurisdiction under Section 285 of the Act. It is true that under Section 285 of the Act the Collector has the power to interfere if anything, is required to be done in pursuance of the resolution which is likely to cause injury or annoyance to the public or a breach of the peace. But, in the present case, the Collector has stayed the permission granted by the municipality to raise construction on the basis which was not open for him as the sale in the present case was completed in the year 1980.

7. Mr. Bhandari, learned Counsel for the respondents, has invited our attention to a decision of this Court given in *Municipal Council, Ajmer v. Narinder Singh*. This case, so far as the present controversy is concerned, has no relevancy in the matter. In this case the interpretation of Section 285 did not directly come up for consideration and Hon'ble Kasliwal, J. (as he then was) only made a reference to the general power to suspend resolutions of the Board. So far as the power of the Collector is concerned the same is not disputed. But, in the present case, the Collector has invoked the power on the basis that the sale was illegal. That was

not open for the Collector by re-opening the question of the legality of the sale under Section 285. Therefore, we are of the opinion that the view taken by the learned single Judge does not appear to be correct.

8. In the result, we allow the appeal and set aside the order of the learned single Judge dated 1st May, 1981 and quash the notice (Annex.9.) dated 21st January, 1981. However, it will be open for the Collector to take appropriate action in the matter in accordance with law. No order as to costs.

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