

Mool Chand Vs. Competent Officer, Zone-b-1, Jaipur Development Authority and ors.

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Court : Rajasthan

Decided On : May-30-2008

Reported in : RLW2008(3)Raj2544

Judge : Narendra Kumar Jain, J.

Appellant : Mool Chand

Respondent : Competent Officer, Zone-b-1, Jaipur Development Authority and ors.

Disposition : Petition dismissed

Judgement :

Narendra Kumar Jain, J.

1. Heard learned Counsel for the parties.
2. Petitioner has preferred this writ petition challenging the order dated 18th February, 2005 (Annexure-4), passed by the Divisional Commissioner, Jaipur, dismissing his appeal against the order dated 23rd June, 2001 (Annexure-3) passed by the Authorized Officer, Zone-B-1, Jaipur Development Authority, Jaipur, whereby, the Authorized Officer passed an order under Section 90B of the

Rajasthan Land Revenue Act, 1956 (hereinafter shall be referred to as the Act of 1956') read with Section 63(1)(ii) of the Rajasthan Tenancy Act, 1955 (hereinafter shall be referred to as 'the Act of 1955') terminating the tenancy rights and resumption of the disputed land.

3. The Tehsildar, posted for Zone-B-1 of Jaipur Development Authority and duly authorized by the State Government, vide Notification dated 23.09.1999, filed an application with affidavit before the Authorized Officer that over the land situated in village Manoharpura, Tehsil Sanganer bearing Khasra Nos. 194 to 202, 204 to 210, 244, 247, 249, 259, 260, 104 to 107, 138, 139, 127 to 131, 135, 136, 203A, 118 to 122, 114/681, 116/682, 117/683, 123, 126, 261 to 264, 132 to 134, 137, 143, belonging to non-applicants No. 1 to 8, the recorded tenants, a residential scheme in the name of Siddharth Nagar 'H' has been chalked out by the New Pinkcity Grah Nirman Sahakari Samiti (hereinafter shall be referred to as 'the respondent No. 2 housing society') and the said land is being used for nonagricultural purpose, therefore, the rights and interest of these persons in the said land may be terminated and the said land may be resumed under Section 90-B of the Act of 1956 read with Section 63(1)(ii) of the Act of 1955. The respondent No. 2 housing society also submitted copies of the agreements whereby it is clear that the recorded tenants of the land are not in possession of the land.

4. Case was registered and notices were issued by the Authorized Officer to the, recorded tenants of the land. The notices were published in a daily newspaper 'Dainik Navjyoti' dated 10th May, 2001.

5. The non-applicants/recorded tenants, namely, Laxman Singh, Nopat Singh, Onkar Singh, Shivraj Singh (All sons of Daulat Singh) appeared through Laxman Singh and admitted that their land is being used for non-agricultural purpose; they have also constructed five houses and also got the entire payment of their lands from the housing society, and at present the housing society is in possession of the land; the housing society has constructed boundary wall on the land and they have no objection in case the land is regularized by the JDA. The other non-applicants - Kana, Ramgopal (both sons of Shri Nanga), Laxminarain S/o Baksharam, Lekhraj S/o Lallu, Moolchand S/o Bannaram, Damodar S/o

Baksharam did not appear in spite of service of notice, therefore, ex-parte proceedings were ordered to be drawn against them.

6. The non-applicants - Tejaram S/o Baksharam and Moolya S/o Kalu (present writ petitioner) appeared through their Advocate Arvind Kumar Sharma and contested the matter. Application dated 17.05.2001 was filed on their behalf to summon inspection-report of the site again. The housing society filed its reply to the said application on 24th May, 2001 contending therein that Tehsildar had already inspected the site and prepared a site- report on 16th April, 2001, which clearly shows that the land is being used for non-agricultural purpose. The land was sold by Moolchand S/o Baksharam adopted S/o Kaluram (present petitioner) vide agreement dated 18th May, 1988; the entire amount of sale- consideration was paid mostly by Cheques and it was also agreed upon that the land measuring 2302 square yard will also be allotted by the housing society to the members of the khatedar families. The Authorized Officer, after hearing the parties, rejected the application of Moolchand vide order dated 31st May, 2001.

7. Thereafter arguments were heard in respect of application under Section 90-B of the Act of 1956. The Authorized Officer, vide its order dated 23rd June, 2001 (Annexure-3) recorded a finding that recorded tenants of the lands had sold their lands to the respondent No. 2 housing society and handed over the possession thereof to the said housing society; the recorded tenants have already received the entire payment of sale consideration from the housing society and the housing society is in possession of the land at the spot; the housing society has also constructed boundary wall, chalked out a residential scheme and plots have been allotted to its members, who are in possession of the land; the land is not being used for agricultural purpose but it is being used for non-agricultural purpose, therefore, the khatedari rights are liable to be extinguished and the land is liable to be resumed-under Section 90-B of the Rajasthan Land Revenue Act, 1956 read with Section 63(1)(ii) of the Rajasthan Tenancy Act, 1955. The Authorized Officer directed to open mutation in the name of the JDA, which shall have all powers under Section 54-B of the Jaipur Development Authority Act for allotment, regularization, etc. of the land.

8. Being aggrieved with the same, only two persons, namely, Tejaram S/o Baksharam and Moolchand S/o Baksharam preferred two separate appeals before the appellate authority i.e. the Divisional Commissioner under Sub-section (7) of Section 90-B of the Act of 1956. The Divisional Commissioner dismissed both the appeals vide judgment dated 18th February, 2001 (Annexure-4).

9. Learned Counsel for the petitioner, Shri Rajendra Prasad, contended that the petitioner is in possession of his land and the said land is being cultivated by him. He has not sold the land to anyone. He also contended that original agreement to sell was not produced by the housing society before the Authorized Officer. He moved an application for site inspection, which was wrongly rejected by the Authorized Officer. He also contended that the application under Section 90-B of the Act of 1956 was filed by the Tehsildar and not by the land-holder. He, therefore, contended that the impugned orders passed by the Authorized Officer as well as the Divisional Commissioner may be set-aside.

10. The learned Counsel for the Jaipur Development Authority, Shri Mahendra Goyal, contended that the land, in question, was subjected to proceedings under Section 90-B of the Act of 1956 inasmuch as the same was put to nonagricultural purpose and has vested in the JDA. The land, in question, has been resumed in favour of the JDA. He contended that as per the provisions of the land, if in the urban areas the agriculture land has been used or has been allowed to be used for non-agricultural purpose, it can be requisitioned under Section 90-B of the Act of 1956. He contended that the Authorized Officer has recorded a finding that the land was sold by the petitioner to the respondent No. 2 housing society after receipt of the entire amount of sale consideration and also handed over its possession thereto; the housing society constructed boundary walls and chalked out a residential scheme and allotted the land to its members; the Tehsildar visited the site and prepared a site inspection- report from which it is clear that the land was being used for non- agricultural purpose i.e. residential. The said fact is a question of fact and Authorized Officer as well as the appellate authority both have recorded a concurrent finding of fact in this regard, therefore, no interference should be made by this Court in the said finding of fact.

11. The learned Counsel for the respondent No. 2 housing society, Shri S.N. Kumawat, contended that the order dated 23rd June, 2001 passed by the Authorized Officer has already been examined by the appellate authority and the appeal preferred by the petitioner has been dismissed, therefore, both the authorities have recorded a concurrent finding that the land had been sold by the petitioner to respondent No. 2 housing society and the land was not being used for agricultural purpose; the respondent No. 2 housing society has already chalked out a residential scheme - Siddharth Nagar 'H', and the land is in possession either of the housing society or its members; the Authorized Officer rightly terminated the khatedari rights and land has rightly been resumed. He contended that the present writ petition under Article 227 of the Constitution, under supervisory power, is not maintainable because orders have been passed within the parameters of the Act of 1956, therefore, the present writ petition is nothing but only a misuse of process of law and is liable to be dismissed summarily. The petitioner was neither having actual physical possession over the land since the day of agreement-to-sell nor was he utilizing the said land for the agricultural purpose and this fact has been established in the site-inspection-report of Tehsildar in which it has specially been established that the land, in question, is being utilized for non-agricultural purpose and there were boundary walls and roads constructed on the site, therefore, the Authorized Officer had no option except to pass the order under Section 90-B of the Act of 1956 and to resume the land after termination of tenancy rights for the purpose of allotment to concerned persons. He also contended that the land of the petitioner was purchased by the respondent No. 2 housing society vide agreements dated 12.02.1976, 19.07.1981 and further additional agreement dated 18.05.1988, and possession of the land was handed over by the petitioner to the respondent No. 2 housing society, on which the housing society has developed a residential scheme, namely, Siddharth Nagar 'H', and the same has been allotted to its members. He contended that factual controversy raised by the petitioner has been examined and decided by the Authorized Officer and the appellate authority, and the same cannot be reexamined in the writ jurisdiction by this Court. In support of his contention, the learned Counsel for the respondent No. 2 housing society relied upon *Shama Prashant Raje v. Ganpatrao and Ors.* JT 2000 (Suppl. 1) SC 59.

12. I have considered the submissions of learned Counsel for the parties and examined the impugned orders passed by the Authorized Officer as well as the appellate authority.

13. From the orders passed by the Authorized Officer as well as the appellate authority and other documents annexed with the writ petition, reply filed on behalf of the respondents, it appears that the land of the petitioner was purchased by the respondent No. 2 housing society vide agreements dated 12.02.1976, 19.07.1981 and additional agreement dated 18.05.1988; a sum of Rs. 6,70,000/- was paid by the respondent No. 2 housing society to petitioner Moolchand S/o Baksharam adopted S/o Kaluram in the following manner - through Cheque No. 420935 dated 05.12.1987 of Rs. 1,25,000/-, Cheque No. 425878 dated 14.06.1988 of Rs. 2,5,0,000/-, Cheque No. 826189. dated 08.08.1988 of Rs. 2,94,750/-, and Rs. 250A in cash as advance on 15.07.1981. The order dated 31.05.2001 (Annexure-2) shows that Shri Arvind Sharma, Advocate, for petitioner himself, admitted the execution of agreement by petitioner in favour of respondent society in respect of disputed land. Shri Arvind Sharma did not file any review petition before authorized officer or his affidavit before appellate authority or this Court to the effect that execution of agreement was not admitted by him. During the course of arguments, the learned Counsel for petitioner admitted that the petitioner has not filed any suit for cancellation of agreement also. The said fact has been examined by the Authorized Officer as well as the appellate authority, in detail.

14. So far as the site-inspection-report dated 16.4.2001 prepared by Tehsildar is concerned, the same speaks that the land was being used for non-agricultural purpose; the Tehsildar also examined the facts relating to agreement-to-sell of land on payment of sale consideration, physical possession of the land handed-over by the recorded tenant to the respondent No. 2 housing society. Apart from above, it is also clear from the order of the appellate authority that the appellate authority itself also inspected the site and observed in its order that the boundary walls and houses have been constructed at the spot. The appellate authority has also observed that the Urban Development and Housing Department, Government of Rajasthan, vide its letter dated 24th January, 1990, has also sanctioned the change of land use. There is reference in this letter that 'pattas'/allotment letters

have also been issued, therefore, a finding has been recorded by the appellate authority that the land was in possession of the respondent No. 2 housing society since before 1990 and it had already been allotted to its members.

15. So far as production of original agreement is concerned, the appellate authority has observed that the original agreement was produced before the Authorized Officer on 28th May, 2001, and photo copy thereof was compared from it and thereafter original agreement was returned to society, which is clear from the order-sheet dated 28th May, 2001 of the Authorized Officer, therefore, the contention of the petitioner is not tenable that the original agreement was not produced. The appellate authority has also observed that khatedar tenant (petitioner herein) was present on that date and his signature is also there and he admitted the execution of agreement also. The appellate authority has also examined that payment of the amount of sale consideration has been made to the petitioner. The copy of the Bank Account of the society was placed on the record, reference of which has been made by the appellate authority in its order.

16. So far as Filing of application under Section 90-B of the Act of 1956 is concerned, it is relevant to mention that as per Sub-section (3) of Section 90-B of the Act of 1956, it is clear that an application can be made by tenant or the holder of such land or any person duly authorized by him, as the case may be. The appellate authority has examined this contention also and has observed that Tehsildar was authorized as an authorized agent by the State Government vide Notification dated 23.09.1999 and this fact was mentioned by authorized officer in Para 1 of its judgment dated 23.06.2001. The provisions of Section 90-B of the Act of 1956 makes it clear that if any person, holding any land for agricultural purposes in such urbanisable limits, of an urban area, as may be notified from time to time by the State Government by notification in the Official Gazette, has used or has allowed to be used such land or part thereof, as the case may be, for non-agricultural purposes or, has parted with possession of such land or part thereof, as the case may be, for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or will or in any other manner, for purported non-agricultural use, the rights and interest of such a person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and

such land shall be liable to be resumed. Section 90-B of the Act of 1956, reads as under:

90-B Termination of rights and resumption of land in certain cases.-

(1) Notwithstanding anything to the contrary contained in this Act and the Rajasthan Tenancy-Act, 1955 (Act No. 3 of 1955) where before the commencement of the Rajasthan Laws (Amendment) Ordinance, 1999 (Rajasthan Ordinance No. 3 of 1999) any person, holding any land for agricultural purposes in such urbanisable limits, of an urban area, as may be notified from time to time by the State Government by notification in the Official Gazette, has used or has allowed to be used such land or part thereof, as the case may be, for non-agricultural purposes or, has parted with possession of such land or part thereof, as the case may be, for consideration by way of sale or agreement to sell and/or by executing power of attorney and/or will or in any other manner, for purported non-agricultural use, the rights and interest of such a person in the said land or holding or part thereof, as the case may be, shall be liable to be terminated and such land shall be liable to be resumed.

(2) Where any land has become liable to be resumed under the provisions of Sub-section (1), the Collector or the officer authorised by the State Government in this behalf, shall serve a notice, calling upon such person to show, cause why the said land may not be resumed summarily, and among other things, such notice may contain the particulars of the land, cause of proposed action, the place, time and date, where and when the matter shall be heard.

(3) ...

(4) ...

(5) ...

(6) ...

(7) The person, aggrieved by the order made under Sub-section (5), may appeal to the Divisional Commissioner or the officer authorised by the State Government

in this behalf within thirty days of passing of order under Sub-section (5).

(8) ...

(9) ...

(10) ...

(11) ...

(12) ...

17. If the impugned orders, dated 23.06.2001 (Annexure-1) passed by the Authorized/Competent Officer and dated 18.02.2005 (Annexure-4) passed by the Divisional Commissioner, are examined in the light of provisions of Section 90-B of the Act of 1956 then there appears to be no illegality in the said orders. The arguments of the learned Counsel for the petitioner are based on factual aspect, which have been examined by the Authorized Officer as well as appellate authority and there is concurrent finding of fact in this regard, which can not be interfered with in supervisory jurisdiction of this Court under Article 227 of the Constitution.

18. The Hon'ble Supreme Court in Shama Prashant Raje v. Ganpatrao and Ors. JT 2000 (Suppl.1) SC 59 (supra), while considering the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, observed that jurisdiction of the High Court is supervisory and not appellate. Consequently, Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decided what is the proper view to be taken or order to be made. The relevant portion of Para 5 of the aforesaid judgment, reads asunder:

5. ...Undoubtedly, in a proceeding under Articles 226 and 227 of the Constitution the High Court cannot sit in appeal over the findings recorded by a competent Tribunal. The jurisdiction of the High Court, therefore, is supervisory and not appellate. Consequently, Article 226 is not intended to enable the High Court to convert itself into a Court of Appeal and examine for itself the correctness of the decision impugned and decided what is the proper view to be taken or order to be

made....

19. In view of the above discussions and reasons, I do not find any merit in any of the submissions of the learned Counsel for the petitioner and the writ petition deserves dismissal.

20. The Writ petition, being devoid of merit, is hereby dismissed with no order as to costs.

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