

Jethmal Vs. State of Rajasthan and ors.

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Court : Rajasthan

Decided On : Apr-06-2009

Reported in : RLW2010(1)Raj391

Judge : Gopal Krishan Vyas, J.

Appellant : Jethmal

Respondent : State of Rajasthan and ors.

Disposition : Petition dismissed

Judgement :

Gopal Krishan Vyas, J.

1. In this writ petition, the petitioner has prayed for quashing orders dated 08.05.1995 (Annex.-8) and dated 10.07.1996 (Annex.-9) and, further prayed that the State Government may be restrained from deciding the matter in pursuance of order Annex.-9.

2. According to the facts narrated in the writ petition, plot No. 86 situated in Ward No. 12 was allotted to the petitioner by the Municipal Board, Nokha on 01.10.1975. After allotment, sale-deed was executed, however, sale of land made in favour of the petitioner was cancelled by the Addl. Collector, Bikaner vide order dated 31.10.1983. The respondent Board sent communication to the State Government

against order dated 31.10.1983 passed by the Addl. Collector, Bikaner; and, in turn, the State Government directed the Board to regularize the allotment. On the direction issued by the State Government to the Board for regularizing the land, the Board made regularization of allotment vide its order dated 05.08.1989 and, further, it was directed that the rate as approved by the Collector be charged and it may be recovered. In pursuance of the order passed by the State Government, the Collector, Bikaner determined the rate of the plots and allotment was made on that basis by the respondent Municipal Board and the petitioner was directed to deposit the amount as determined by the Collector, Bikaner. In pursuance of the notice dated 28.11.1990, the petitioner deposited the amount so demanded for regularization of the plot.

3. After depositing the amount allotment of plot made in favour of the petitioner stood regularized and, during that period, respondent No. 5 wanted to grab the plot in question and got entered his name in the survey register prepared in 1981 and it was shown that land in question is in possession of respondent No. 5 because he has made encroachment upon the municipal land. Respondent No. 5 was already having a house in Ward No. 10 which is ancestral property and respondent No. 5 is living in the said house.

4. After encroachment, respondent No. 5 illegally tried to raise construction upon the plot in question allotted to the petitioner, therefore, respondent Board removed the encroachment made by respondent No. 5 on 23.2.1989.

5. A writ petition was preferred before this Court against his dispossession by respondent No. 5 and the said writ petition was registered as S.B. Civil Writ Petition No. 1207/1989 and, vide order dated 13.02.1990, the same was disposed of, wherein, it was ordered that respondent Municipal Board, Nokha shall dispose of the petitioner's (therein) application Annex.-R/2/1 and Annex.-R/2/4 within three months after notice to the petitioner and Jethmal (the petitioner herein) was given liberty to file an application before the Municipal Board to provide him opportunity of hearing. It is worthwhile to mention here that the petitioner moved application for impleadment in that writ petition but the same was rejected on the ground that the Court was not considering any dispute regarding ownership of the land.

6. The petitioner received a notice from the Administrator, Municipal Board, Nokha in the proceedings for deciding application filed by respondent No. 5, in which, the petitioner also moved an application bringing out the facts to the notice of the Administrator. The Administrator of the respondent Board while deciding the applications filed by respondent No. 5 and petitioner held vide order dated 11.05.1990 that respondent No. 5 is residing in ancestral house and has made an attempt of encroachment upon the plot in question which was rightly removed and further held that amount of the balance determined by the Collector has also been recovered from the petitioner, therefore, the application filed by respondent No. 5 is hereby rejected.

7. Against the said order dated 11.05.1990, respondent No. 5 filed revision application before the Addl. Collector, Bikaner and he has also filed writ petition before this Court being S.B. Civil Writ Petition No. 2939/1990. The petitioner appeared before the Addl. Collector and the Addl. Collector vide its order dated 05.03.1994 allowed the revision petition filed by respondent No. 5 only on the ground that matter of the petitioner has also been decided along with application of respondent No. 5 which is not proper. The petitioner pointed out before the Addl. Collector, Bikaner that he is in possession as owner of the land in question and the petition under Section 285 of the Act is not maintainable. But, Addl. Collector without recording any finding as to what illegality has been committed by the Administrator in rejecting application of respondent No. 5 merely on the ground that the application of the petitioner has also been decided alongwith application of respondent No. 5, therefore, vide order dated 05.03.1994 the Addl. Collector, Bikaner set aside the order passed by the Administrator dated 11.05.1990.

8. Against the order dated 05.03.1994, S.B. Civil Writ Petition No. 1530/1994 was preferred by the petitioner before this Court, in which, this Court granted interim order dated 29.03.1994 for maintaining status quo. During the pendency of the aforesaid writ petition filed by the petitioner, a revision petition was filed by the Municipal Board before the Addl. Collector and the same was decided by order dated 08.05.1995, in which, the Addl. Divisional Commissioner set aside the order passed by the Addl. Collector dated 05.03.1994 which is impugned by the petitioner in the writ petition filed by him before this Court (S.B. Civil Writ Petition

No. 1530/1994).

9. Before the Addl. Divisional Commissioner a specific plea was taken by the petitioner that proceedings under Section 285 is not maintainable and the order of the Addl. Collector is without jurisdiction. But, this was only argument in the alternative that Addl. Collector could not finally dispose of the matter and, at the most, he could refer the matter to the State Government. As per the petitioner, when the matter was remanded to the Addl. Collector, a written submission was filed on behalf of the petitioner that proceedings under Section 285 of the Act of 1959 is not maintainable.

10. The writ petition filed by the petitioner was dismissed as having become infructuous because the order dated 05.03.1994 passed by the Addl. Collector, which was impugned by the petitioner in the writ petition, was set aside by the Addl. Divisional Commissioner, Bikaner vide order dated 08.05.1995. The petitioner has placed on record order dated 16.07.1996 passed by this Court while observing that in view of the order passed by the Addl. Divisional Commissioner the writ petition has become infructuous.

11. This writ petition has been filed by the petitioner on the ground that the sale of land in question was made in favour of the petitioner by the Municipal Board, Nokha and the State Government further directed for its regularization and after determination of the prise possession was given to the petitioner and that order could not be subject-matter of challenge and nothing remained to be done after passing the order, therefore, the provisions of Section 285 could not be invoked. It is, therefore, prayed in the writ petition that the order passed by the Addl. Collector, Bikaner may be quashed and set aside.

12. Learned Counsel for the petitioner vehemently argued that the Addl. Collector, Bikaner as well as Addl. Divisional Commissioner, both have committed error while passing order for referring the matter under Section 285 (2) to the State Government for approval. The main contention of learned Counsel for the petitioner is that nothing further was required after regularizing the land in question by the Municipal Board as per direction issued by the Government. But, both the State Government and Addl. Collector have committed error under Section 285(2)

of the Act. Learned Counsel for the petitioner submits that respondent No. 5 unnecessarily raised dispute, that too, on the basis of illegal encroachment and so called illegal entry in his name in the survey report which was prepared in the year 1981 by the Municipal Board.

13. Learned Counsel for the petitioner vehemently argued that, first of all, the allotment made in favour of the petitioner which is regularized as per direction issued by the Government cannot be questioned by respondent No. 5, so also, admittedly, respondent No. 5 is claiming right on the basis of illegal encroachment made by him whereas the petitioner is in possession as per allotment made by the Municipal Board, Nokha in accordance with law, after depositing the amount as demanded after due determination by the Addl. Collector. But, here in this case, respondent No. 5 is unnecessarily harassing the petitioner by raising his voice and claiming possession over the land in question, therefore, there is no question for referring the matter to the State Government under Section 285 (2) of the Act of 1959 by the Addl. Divisional Commissioner, Bikaner.

14. The Addl., Divisional Commissioner passed an order on 08.05.1995 while quashing order dated 05.03.1994 while accepting the revision petition filed by the Municipal Board and, in pursuance of that, writ petition filed by the petitioner was rendered infructuous and, later on, the Addl. Collector passed order on 10.07.1996 (Annex.-9) whereby in compliance of the order passed by the Addl. Divisional Commissioner, he made reference under Section 285(2) to the State Government for deciding the matter with regard to land in question. Both these orders are illegal and have no foundation to stand in the eye of law. In support of his submissions, learned Counsel for the petitioner cited following judgments:

1. 1978 (1)WLN (UC) 279

2. AIR 1971 SC 2147

3. 1990 (2) RLW 427

15. While citing the said judgments, it is submitted by learned Counsel for the petitioner that the matter has wrongly been referred to the State Government

under Section 285(2), therefore, both the orders may be quashed and the writ petition may be allowed.

16. Per contra, learned Counsel for the respondents Mr. S.L. Jain submitted that respondent No. 5 was in possession of the land in question, therefore, the application was moved by respondent No. 5 for regularization of his land on the basis of his old possession; but, he was illegally removed by the Municipal Board, Nokha and, therefore, in the writ petition filed by respondent No. 5, order was passed while giving liberty to the petitioner (respondent No. 5) to file application before the Municipal Board, Nokha and upon the application, opportunity of hearing was ordered to be granted to him to raise his objections before the Municipal Board. Upon the said direction, the matter was decided vide order Annex.-6 dated 19.02.1998 by the Administrator, Municipal Board, Nokha, whereby, application of respondent No. 5 was rejected and it was ordered that the petitioner's land be regularized after accepting the amount as ordered by the DLC in the order dated 05.09.1989. Aggrieved by the said order, an application was filed by respondent No. 5 under Section 285 of the Act of 1959 before the Addl. Collector (Admn.), Bikaner with the prayer that Administrator, Municipal Board, Nokha has illegally rejected the application filed by respondent No. 5 and, so also, exceeded his jurisdiction to pass order in favour of the petitioner for accepting the amount and granting regularization in favour of the petitioner. The application filed by the petitioner under Section 285 before the Addl. Collector (Admn.), Bikaner was allowed vide order dated 05.03.1994, whereby, the order dated 11.05.1990 was set aside while holding that the application of the petitioner for regularization comes within the purview of Section 285 of the Rajasthan Municipalities Act, 1959. Against the said order, the petitioner filed writ petition before this Court; but, in the meantime, the Municipal Board challenged the said order before the Addl. Commissioner, Bikaner by way of filing revision petition. Upon the said revision petition, on 08.05.1995 the Addl. Divisional Commissioner, Bikaner set aside the order passed by the Addl. Collector dated 05.03.1994 and remanded the case to the Addl. Collector for referring the matter under Section 285(2) of the Municipalities Act to the State Government for deciding the matter finally. In pursuance of that, the Addl. Collector, Bikaner passed an order on 10.07.1996 (Annex.-9) whereby he has referred the matter to the State Government under

Section 285 of the Act of 1959, in which, there is no illegality, so also, the petitioner himself has supported the contention made by the Municipal Board for referring the matter under Section 285(2) of the Act to the State Government, therefore, now the petitioner cannot file this writ petition challenging the validity of orders Annex.-8 and Annex.-9 on the ground that the matter cannot be referred under Section 285 of the Municipalities Act to the Government because he himself has raised this ground before the Addl. Divisional Commissioner, Bikaner, therefore, the petitioner cannot raise any objection on the basis of principle of estoppel, because once he himself raised the plea for referring the matter to the Government under Section 285, upon which, the Addl. Divisional Commissioner passed order impugned dated 08.05.1995, then, there is no occasion for interfering with the said order in this writ petition. Further, the Addl. Collector (Admn.), Bikaner only made compliance of the order passed by the Addl. Divisional Commissioner, therefore, now the petitioner cannot somersault against his own plea taken before the Addl. Divisional Commissioner, Bikaner. In that view of the matter, both the orders impugned were passed by the respective authorities within their jurisdiction with regard to referring the matter under Section 285 to the State Government.

17. Learned Counsel for the respondent vehemently argued that the petitioner himself has waived his right while raising said plea before the Addl. Divisional Commissioner for referring the matter to the State Government under Section 285, therefore, this writ petition may be dismissed and the State Government may be directed to decide the matter referred under Section 285 in compliance of the order passed by the Addl. Divisional Commissioner, Bikaner by the Addl. Collector (Admn.), Bikaner.

18. In the rejoinder, learned Counsel for the petitioner submitted that although even if it is presumed that the plea was taken before the Addl. Divisional Commissioner by the petitioner for referring the matter under Section 285 to the State Government; but, the law permits that still he can challenge the said order passed by the Addl. Divisional Commissioner, Bikaner Division, Bikaner. According to the petitioner, there is no restriction upon him to raise voice against the order which is totally without jurisdiction. Learned Counsel for the petitioner

has invited my attention towards judgment reported in (1976) 1 SCC 766 and submits that there is no provision under Section 285 to refer the matter which has already attained finality as per the decision of the Municipal Board. As such the orders impugned dated 08.05.1994 and 10.07.1996 deserve to be quashed.

19. I have considered the rival submissions made by both the parties.

20. First of all, in this case, for the land in question there are two claimants, one, the petitioner and another is respondent No. 5. Respondent No. 5 is claiming his right on the basis of his old possession whereas the petitioner is claiming his right that earlier the land was allotted to him and sale-deed was executed in his favour; but, later on, sale-deed was set aside by the Addl. Collector, Bikaner vide its order dated 31.10.1983. However, later on, when the matter was referred to the Government, then, the Government directed the municipality to regularize the land of the petitioner after charging the rate as approved by the District Collector and asking the petitioner to deposit the difference of amount. Upon demand as per directives of the Government amount was deposited by the petitioner, therefore, his allotment stood regularized. In my opinion, after direction issued by this Court in the writ petition filed by respondent No. 5, on 13.02.1990 order was made by the Administrator, Municipal Board, Nokha vide Anned.-6, whereby, following order was made:

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meaning thereby, the Administrator, Municipal Board, Nokha while rejecting the application filed by respondent No. 5 passed order that as per direction issued by the Government dated 05.08.1989, the petitioner's allotment made earlier may be regularized after recovering the difference amount of cost determined by the District Collector. Thus, the Administrator passed order on 11.05.1990 for regularization of the land which is said to be allotted to the petitioner earlier. Therefore, the said order was rightly challenged by respondent No. 5 by way of filing application under Section 285 of the Act of 1959 before the Addl. Collector, Bikaner and the Addl. Collector (Admn.), Bikaner rejected the application filed by respondent No. 5 under Section 285 setting aside the order passed by the Administrator, Municipal Board, Nokha against which revision petition was filed under Section 300 by the Municipal Board, therefore, obviously the decision of the Administrator, Municipal Board dated 11.05.1990 was to be challenged by respondent No. 5 under Section 285. Certainly, the decision for regularization of the land in favour of the petitioner vide order dated 11.05.1990 was subject-matter of Section 285 of the Act of 1959. The District Collector (Admn.), Bikaner accepted the application filed under Section 285 of the Act of 1959 by respondent No. 5 against which the Municipal Board, Nokha filed revision petition before the Divisional Commissioner, Bikaner and the Addl. Divisional Commissioner passed order for referring the matter to the State Government under Section 285 (2) of the Act. Before the revisional authority, the petitioner took plea for referring the matter to the State Government; meaning thereby, upon the plea taken by the Municipal Board and petitioner the matter was referred to the State Government under Section 285 (2), therefore, now the petitioner cannot raise voice that the order passed by the Addl. Divisional Commissioner, Bikaner Division, Bikaner was illegal. So also, he cannot raise voice against the compliance order passed by the Addl. District Collector, Bikaner in pursuance of the order passed by the Addl., Divisional Commissioner, Bikaner because obviously order made by the Municipal Board can be challenged under Section 285 of the Municipalities Act and respondent No. 5 has rightly challenged the order passed by the Administrator, Municipal Board, Nokha dated 11.05.1990 before the Addl. Collector, Bikaner. In this view of the matter no case is made out for interference under Article 226 of the Constitution of India.

21. As a sequel to the above discussion, it is held that the order passed by the Administrator, Municipal Board, Nokha dated 11.05.1990 was order of regularization of land of the petitioner which can be challenged under Section 285 of the Act of 1959. Therefore, respondents have rightly exercised jurisdiction under Section 285 of the Act of 1959 and rightly referred the matter to the State Government under Section 285(2) of the Act of 1959. The State Government is under obligation to decide the matter in accordance with law. The writ petition is dismissed with the above observations.

22. There shall, however, be no order as to costs.

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