

Municipal Board Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-16-2010

Judge : Jagdish Bhalla, C.J. and; Dinesh Maheshwari, J.

Appellant : Municipal Board;babu Lal and ors.

Respondent : The State of Rajasthan;The State of Rajasthan and anr.

Disposition : Petition dismissed

Judgement :

1. These two matters: CWP No. 332/1999, filed as a Public Interest Litigation, and SAW No. 1224/2000, filed against the order dated 05.04.1999 as passed in CWP No. 5117/1994, being related to the same dispute, have been considered together; and are taken up for disposal by this common order.

2. The dispute relates to allotment of land at Pipar City, Tehsil Bilara to the two communities for the purpose of construction of hostels. The appellant in SAW No. 1224/2000, the Municipal Board, Pipar City filed the writ petition (CWP No. 5117/1994) with the submissions that some part of the land comprised in khasra No. 2310 and recorded as gair-mumkin nadi was earlier encroached over by certain persons and in apprehension of breach of peace, proceedings under Section 145 Cr.P.C. were initiated wherein the land in question was attached. The petitioner stated the apprehension that some persons were making efforts to get the land allotted in their names though the land could not be so allotted as the

same was being used by the public at large and the petitioner intended to develop the same as a play ground and park.

3. During the pendency of the aforesaid writ petition, the Government in its Revenue Department proceeded to issue an order dated 30.12.1997 conveying the sanction that from out of the land comprised in khasra No. 2310, 5 bighas each may be allotted to Jat Samaj and Mali Samaj for the purpose of construction of hostels under the Rajasthan Land Revenue (Allotment of Unoccupied Government Agricultural Lands for the construction of Schools, Colleges, Dispensaries, Dharamshalas and other Buildings of Public Utility) Rules, 1963. Pursuant to the said order dated 30.12.1997, the Collector, Jodhpur proceeded to issue the order dated 26.03.1998 making allotment of the land to the said two communities.

4. With reference to the said order dated 30.12.1997 and with reference to the order dated 10.02.1998 issued by the Tehsildar for site inspection report, the petitioner-appellant got the writ petition amended seeking the relief, inter alia, of quashing of the order dated 30.12.1997. During the pendency of the aforesaid writ petition (CWP No. 5117/1994), the other writ petition being considered herein (CWP No. 332/1999), came to be filed by certain individuals as a Public Interest Litigation with the submissions that the allotment as made in favour of the two communities was liable to be quashed.

5. The writ petition filed by the appellant Municipal Board (CWP No. 5117/1994) came up for consideration before the learned Single Judge of this Court on 05.04.1999 and after considering the nature of dispute and after noticing the submissions made, the learned Single Judge proceeded to dispose of the writ petition with the following order:

The dispute in the present writ petition relates to allotment of five bighas of land to two communities, out of a total open chak of about more than 50 bighas. The case of the Municipal Board is that out of this land, eight bighas of land is of perpetual use for Dashahara Mela and other community purposes annually. After allotment, land has so far not been handed over to the communities. The Municipal Board in all fairness has not opposed to the aspect of allotment but it insists that land should be given to the two communities so that perpetual use of the land for public

purpose does not get frustrated. This Court deems it fit that both the communities and the Municipal Board should appear before the Collector, Jodhpur and submit their respective claims. After judging merit of the respective claims of the parties and keeping in mind the fact that there had been a perpetual use of a part of land for social functions and the communities at large might have some sentiments attached to it, the Collector would decide as to which part of this land would go to the two communities under the orders of allotment and which part would be used for social and cultural activities of the town. The order of the Collector if infringes rights of any of the parties, the parties will be at liberty to approach this Court again.

With these observations, the writ petition is disposed of. Parties will appear before the Collector, Jodhpur on 19.4.99.

6. The writ-petitioner Municipal Board has preferred intracourt appeal against the order aforesaid and it has, inter alia, been submitted that at the time of the hearing of the writ petition on 05.04.1999, the instructing officer did not understand the implications and carried the impression that if any other good land was allotted elsewhere to the communities involved, the Municipal Board would have no objection and conveyed accordingly. It has been contended on behalf of the petitioners in CWP No. 332/1999 that the land being of public utility, could not have been allotted and in any case, the allotment could not have been made in the name of two castes who had been extended benefit in exclusion of all other residents of Pipar City; and such an allotment remains illegal, arbitrary, and unfair.

7. Having examined the record, we find little a reason to show interference in these matters particularly looking to the fair and equitable order passed by the learned Single Judge in CWP No. 5117/1994.

8. So far the suggestions on the nature of submissions made before the learned Single Judge are concerned, we are clearly of the opinion that such suggestions, if at all, were required to be made in appropriate manner before the learned Single Judge only and immediately after passing of the said order dated 05.04.1999. In this appeal, the appellant cannot be permitted to take a shift in stand or to suggest anything contrary what has been recorded in the order dated 05.04.1999 so far the

submissions before the learned Single Judge are concerned.

9. Moreover, in the present case, what we find is that the learned Single Judge, in all fairness, directed both the communities and Municipal Board to appear before the Collector, Jodhpur to submit their respective claims and directed the learned Collector to decide as to which part of the land would go to the two communities under the orders of the allotment and which part would be used for social and cultural activities of the town. The learned Single Judge has further left it open that in case of the order of the Collector infringing the rights of any of the parties, they would be at liberty to approach this Court again.

10. We are of the considered view that the order as passed by the learned Single Judge essentially subserves the cause of justice; and in the given set of facts and circumstances, we do not find any reason to show interference in the other writ petition filed purportedly as Public Interest Litigation either. The appeal and the writ petition before us, therefore, deserve to be dismissed.

11. However, the submissions sought to be made on behalf of the petitioners and the appellant are that a large part of the land in question is being used for other public purposes and that there is situated a girls hostel nearly. Further, it is noticed that the Government permitted allotment of land for the purpose of construction of hostels. In the circumstances, it appears appropriate to observe that while taking up consideration of the respective claims pursuant to the order dated 05.04.1999, it would be open for the learned Collector to take all the relevant facts and factors into account and to pass appropriate order keeping in view the totality of the circumstances. It is also considered appropriate to observe that when the allotment has been permitted by the Government for the purpose of construction of hostels, may be in the name of any particular community, in keeping with the principles enshrined in Article 15 of the Constitution of India, use of the hostels proposed to be constructed would not be restricted for any citizen only on the ground of religion, race or caste.

12. With the observations aforesaid, the appeal and the writ petition stand dismissed but with no order as to costs.

13. A copy of this order be sent to the Collector, Jodhpur who shall proceed in accordance with law keeping in view the observations made in this order; and shall take final decision in the matter expeditiously but after due notice to the concerned parties.

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