

Sukha Singh Vs. State (Uit) and ors

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Court : Rajasthan Jodhpur

Decided On : May-30-2012

Appellant : Sukha Singh

Respondent : State (Uit) and ors

Judgement :

1 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. 1 D.B. Civil Review Petition No.43/2012 Sukha Singh Vs. State of Rajasthan & Ors. DATE OF ORDER:

30. h May 2012 HON'BLE MR. JUSTICE DINESH MAHESHWARI HON'BLE MR. JUSTICE NARENDRA KUMAR JAIN-II Dr. P.S. Bhati, for the petitioner. <><> BY THE COURT: After having heard the learned counsel for the petitioner and having perused the material placed on record, we are unable to find any ground for review of the order dated 26.03.2012 whereby the intra-court appeal filed by the petitioner-appellant (SAW No.191/2012) was dismissed in limine for being devoid of merit in relation to the claim for allotment of the referred piece of land but with the observations and liberty to the petitioner for applying for allotment of any fresh piece of land as per Rules. Shorn of unnecessary details, suffice is to notice for the present purpose that the petitioner filed a writ petition (CWP No.6009/2011) seeking directions against the respondents for issuance of allotment letter and lease deed for plot No.7, Gordhan Vilas, Udaipur on the suggestions that the said plot was allotted to him by the Urban Improvement Trust, Udaipur ('UIT') after removal of encroachment on the land situated near Octroi Post, Gordhan Vilas,

Udaipur. It was noticed by the learned Single Judge while dealing with the writ petition in the order dated 08.02.2012 that the petitioner failed to fulfill the conditions referred in the allotment order dated 08.09.1992 and hence, the allotment made in his favour was 2 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. cancelled. The learned Single Judge further noticed that a decision was again taken by the Land Allotment Committee of the UIT for making fresh allotment after charging market rate while forfeiting the earlier deposit; but the petitioner failed to avail this opportunity too and did not deposit the then existing market rate for the purpose of allotment. Thereafter, a civil suit (No.195/2007) was filed by the petitioner seeking the relief in the nature of mandatory injunction for issuance of lease deed in his favour. The suit was dismissed by the District Judge, Udaipur by judgment and decree dated 16.01.2009 with the following observations:

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5. 5 3 & 1 It appears that the UIT did move the State Government in its Urban Development Department for sanctioning the allotment in favour of the petitioner as is borne out from the letter dated 30.03.2009 (Annex.7). The Government, however, rejected the claim of the petitioner by the order dated 01.03.2011 for the reason that the matter had been a stale one. After considering all the facts and circumstances of the case, the learned Single Judge found no reason to issue any writ, order or direction in favour of the petitioner and proceeded to dismiss the writ petition while observing that if the petitioner makes a representation for refund of the deposited amount, the same be considered sympathetically. The learned Single Judge said,- The respondent-Urban Improvement Trust, Udaipur proposed for allotment of a plot to the petitioner in lieu of encroachment made by him on a public land. A 3 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. letter of allotment was issued on quite a reasonable rate, but the petitioner failed to deposit the entire amount within the period prescribed. Subsequent thereto, a resolution was undertaken to allot piece of land on deposition of then

existing market rate and by confiscating the amount earlier deposited in pursuant to order dated 18.1.1992. The petitioner failed to avail the second opportunity also. As a consequent to it, the allotment made under the order dated 18.1.1992 stood cancelled. The Civil Court, therefore, rejected the suit preferred by the petitioner. The Urban Improvement Trust, Udaipur referred the matter to the State Government for seeking guidelines for allotment of the land even on non-compliance of the resolution dated 4.6.2004. The State Government reached at the conclusion that the entire dispute is quite a stale one and, therefore, no allotment of land now is required to be made. It is not in dispute that the encroachment of the petitioner on public land was removed in the year 1992, then in the month of September, 1992 in lieu of the encroachment removed a piece of land was allotted to him but the petitioner failed to deposit the amount required for such allotment. A second opportunity was given to him in 1996 but that too was not availed by him. The State Government, therefore, rightly reached at the conclusion that a stale matter cannot be reopened. The petitioner as a matter of fact was not having any right for claiming allotment. Whatever claim was made by him is on the basis of equity, which as a matter of fact by flux of time does not lie in his favour. The petition for writ is, therefore, dismissed. However, if the petitioner submits a representation to the Urban Improvement Trust, Udaipur for refund of the amount deposited by him in pursuant to the allotment letter dated 18.8.1992, that shall be considered sympathetically. Aggrieved by the order so passed by the learned Single Judge, the petitioner preferred the intra-court appeal that was considered and dismissed in limine on 26.03.2012 after a co-ordinate Bench found it difficult to accept the submissions of the appellant about his entitlement to the piece of land as claimed. The other submission with reference to some other allotments made in relation to other persons was also rejected. The Division Bench however and yet, observed that the appellant would be free to apply for allotment of any fresh piece of land as per the Rules; and upon making of such an application, the same could always be considered 4 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. strictly on its merit as per the rules by the UIT. The Division Bench dismissed the appeal with such observations in the following: In our considered opinion, when even according to the appellant (writ petitioner), he was neither a lessee nor licensee of the land qua UIT (owner of

the land) and that he was essentially in possession of land as a rank trespasser, then in such event, he had no legal right to claim any right much less enforceable right to get any alternative land in lieu of the land in question. That part, the appellant did not place reliance on any legal provision in any Act or Rule or bylaw of the UIT nor even written agreement with UIT in relation to any other land, which would have enabled him to claim any relief in relation to land in question or alternative one. In the absence of any legal right, or contractual right emanating from any statutory provision or contract, it is difficult to accept the submission of the learned counsel for the appellant that appellant was entitled to get any other land only because he claimed to be in illegal possession of the land belonging to UIT. It is trite principle of law, that in order to enforce any right under civil law or under the constitution, the writ petitioner must show his legal right under the Act, or contractual right, based on, concluded contract. Failure to show either, the action has to fail. We are not impressed by the submission of the learned counsel for the appellant that since some other persons got the alternative land and hence appellant should also get it. This is not a case, where he can perhaps successfully rely on principle enshrined in Article 14 of the Constitution of India. The case of every person varies. It is not in dispute that appellant had filed a civil suit to claim a relief but it was dismissed way-back in the year 1992. Even if he had come earlier, then also the writ petition was not the remedy. In the light of foregoing discussion, we are of the opinion that the learned Single Judge was right in granting an indulgence to the appellant to claim back some money if deposited by him from UIT. Before parting with the case, we are inclined to observe that appellant would be free to apply for allotment of any fresh piece of land as per the Rules made in that behalf by the UIT for such allotment and if such application is made then it can always be considered strictly on its merit as per the rules by the UIT. It is with these observations and liberty, the appeal is found to be devoid of any merit. It fails and is accordingly dismissed in limine. The principal submission of the learned counsel for the petitioner is that the writ Court and the Division Bench have not 5 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. considered the basic grievance of the petitioner as against the cryptic order dated 01.03.2011 whereby the State Government rejected his claim as being a stale one. The learned counsel contended that the case of the petitioner was always

alive and pendency of the matter with the State Government was even suggested before the Court dealing with the civil suit. According to the learned counsel for the petitioner, the authorities could not have considered the matter to be a stale one only by keeping the same pending for long nor could have declined the relief only for passage of time. The learned counsel has strenuously argued that the basic and core issue having not gone into consideration, the matter calls for review of the order passed in the intra-court appeal. We are afraid, the submissions remain devoid of merit and do not make out the case for review as there is nothing of an error apparent on the face of record in this matter. From the observations made by the Division Bench, it appears that the basic aspect of the matter about entitlement to the claimed piece of land was considered, dilated upon and pronounced against the petitioner by the Division Bench. Once the Court came to the conclusion about want of legal right in the petitioner-appellant, the only consequence could have been of declining issuance of any writ, order or direction. Of course, the aspect relating to the questioned order as passed by the State Government has not been dealt with in detail by the Division Bench in the order dated 26.03.2012 but thereby, the substance of the matter is not taken away that the Court pronounced against existence of any right in the petitioner in relation to the relief as claimed. This apart, it had been an intra-court appeal 6 DB Civil Review Petition No.43/2012 Sukha Singh Vs. State & Ors. and the Court found no reason to consider interference in the order as passed by the learned Single Judge; and it is noticed that the learned Single Judge dealt with the aspect relating to the order as passed by the State Government also and pronounced that the Government had rightly reached to the conclusion that a stale matter could not be reopened. In an overall comprehensive of the matter, it cannot be said that the submissions of the petitioner have not gone into the consideration of the Courts while dismissing the appeal and the writ petition. No case for review is made out. The review petition fails and is, therefore, dismissed. (NARENDRA KUMAR JAIN-II), J.

(DINESH MAHESHWARI), J.

cpgoyal/-