

Rajkumar Vs. State of Raj. and ors

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Court : Rajasthan Jodhpur

Decided On : Feb-26-2013

Appellant : Rajkumar

Respondent : State of Raj. and ors

Judgement :

SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 1/20 S.B.CIVIL WRIT PETITION NO. 342/2013 (Raj Kumar vs. State of Rajasthan & Ors.) DATE OF ORDER :

26. 2/2013 HON'BLE DR.JUSTICE VINEET KOTHARI Mr. M.R.Singhvi, Sr. Advocate assisted by Mr. Dharma Ram, for the petitioner. Mr. B.S.Charan, for the respondent Municipal Council, Udaipur Mr. G.R.Punia, Sr. Advocate assisted by Mr. Rajesh Punia, for Mohanlal Sukhadia University, Udaipur Mr. Sandeep Bhandawat, for applicant Mr. Vivek Vyas. Mr. S.R.Choudhary & Mr. Avinash Acharya for applicants Bhuvnesh Maneshwari & Suresh Mal Mehta.

1. By this order, I.A.No.674/2013 filed by one Vivek Vyas, I.A.No.855/2013 filed by Mohanlal Sukhadia University, Udaipur and I.A.No. 858/2013 filed by one Bhuvnesh Maheshwari and Suresh Mal Mehta seeking impleadment in the present writ petition as respondents are being disposed of.

2. Mr. G.R.Punia, Sr. Advocate assisted by Mr. Rajesh Punia represents the Mohanlal Sukhadia University, Udaipur, Mr. Sandeep Bhandawat appears Mr.

Vivek Vyas and Mr. S.R.Choudhary & Mr. Avinash Acharya represent applicants, Mr. Bhuvnesh Maheshwari & Suresh Mal Mehta. SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 2/20 3. The petitioner Raj Kumar Taya s/o Amrit Lal Taya has filed this writ petition on 8/1/2013, inter alia, seeking a direction against the Municipal Council, Udaipur to grant the registration to the petitioner to run the Marriage Vatikas under the Marriage Place Registration Bye-laws, 2010, which was published in Rajasthan Gazette on 13/5/2010, as the said request was earlier rejected by the impugned orders Annex.18 dated 2/11/2012 and Revisional Authority, Director, Local Self Govt. Department vide Annex.20 dated 12/12/2012 remanded the case back to the Municipal Council, Udaipur and the prayer to quash these earlier orders was also made in the present writ petition.

4. Since the application under the new By-laws of 2010 was not being decided by the Municipal Council upon remand by the Director, Local Self Government Department, this court directed the Municipal Council to take decision in the matter and accordingly, the Municipal Council, Udaipur by order dated 4/2/2013 running into 17 pages concluded that since the Commissioner, Municipal Council in the revision petition filed before the Director, Local Self Department, had opposed the grant of registration to the petitioner's Marriage Vatikas, therefore, he was unable to take a decision in the matter and all the pleadings, evidence on record was thus transmitted back SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 3/20 to the Director of the Local Self Government Department, Rajasthan, Jaipur himself.

5. Later on, the Commissioner, Municipal Council, Udaipur appears to have passed another order on 13/2/2013 granting such registration to the petitioner subject to certain conditions & both these orders dated 4/2/2013 and 13/2/2013 have been placed on record by the petitioner.

6. The aforesaid I.As were filed by the various applicants seeking impleadment in the present writ petition & they have opposed the grant of registration in favour of petitioner by the impugned order dated 13/2/2013, even though subject to certain

conditions and their contentions, briefly, can be summarized as under:- 6.1. That the said the 'Marriage Vatika' is situated upon the part of land comprising of Araj No. 1025 and 1026 known as Champa Bagh and Araj No. 1017, 1018, 1021 and 1022 known as Niranjini Akhara Hast Mata, which entire land was acquired for the public purposes for development of Udaipur University, now known as Mohanlal Sukhadia University, Udaipur, applicant in I.A.No.855/2013, way back by issuing notice under Section 4(1) of the Rajasthan Land SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 4/20 Acquisition Act, 1953 on 3/10/2081. The said land acquisition was challenged before this Court in SBCWP No. 5103/1994 by Ashok Kumar Mehta & ors and that batch of writ petitions came to be decided by the learned Single Judge on 10/4/2007, whereby, the writ petitions were partly allowed to the extent of subsequent Notifications under the Land Acquisition Act came to be quashed, however, Notification under Section 4 (1) of the Act was not so quashed and the petitioners were asked to raise their objections before SDO, Girwa, Udaipur under Section 5A of the Act. Against the judgment of learned Single Judge, the Division Bench Appeals were filed by Kalyan Singh Chordia and 13 others impleading Ashok Kumar Mehta and 8 others (writ petitioners), namely; DBSAW No. 697/2007 in which the Division Bench by an interim order dated 5/3/2008 is said to have stayed the further proceedings in pursuance of the judgment and order of learned Single Judge dated 10/4/2007 & thus, litigation in this regard is pending before this Court in those cases. 6.2 The other applicants, namely; Vivek Vyas, Bhuvnesh Maheshari & Suresh Mal Mehta etc. have urged that they have purchased the plots of land in the same area of Araj from the colonizer, who are family members of the petitioner Raj Kumar Taya, SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 5/20 who under the power of attorney from the Ex-Ruler of Udaipur & who claimed to have developed the said colony and sold the plots to these applicants and, thus, civil suits filed by these applicants against them is also pending before the competent civil courts and one such order passed on Temporary Injunction application under Order 39 Rule 1 & 2 CPC in Misc. Case No.125/2005 (Vivek Vyas & Shyam Lal vs. Amrit Lal Taya, Raj Kumar Taya (the

present petitioner) and Krishan Gopal Gattani) has been placed on record of this Court and the order adted 21/3/2006 passed by Civil Judge (Jr. Div.) North, Udaipur has been filed the petitioner himself as Annex.P/1, by which the trial court rejected the temporary injunction application of the plaintiffs on 21/3/2006 and the appellate court of ADJ.

No.1, Udaipur partly allowed the appeal No. 41/2006 (Vivek Vyas & anr. vs. Amrit Lal Taya & Ors.) on 1/5/2009 and setting aside the order of trial court dated 21/3/2006 directed the parties to maintain status quo of the suit land as per the Commissioner's report.

7. Learned counsel for the applicants, therefore, urged that in view of the pendency of this litigation, the present petitioner Raj Kumar Taya, who is very much a party to the litigation, cannot be permitted to run the Marriage Vatikas on the land belonging to the SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 6/20 applicants and even though the litigation in that regard is pending in competent courts, the concerned Bye-laws of 2010 under its clause (6) specifically requires the competent authority to reject such applications for registration in case the title of the application is not clear. The said clause (6) of the Bye-laws is reproduced hereunder for ready reference:

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"8. Learned counsels for the applicants also urged that the present petitioner has no locus standi to file the present writ petition as he has failed to establish any title over the land in question on which the `Marriage Vatikas' are said to have been established by him and they further urged that since the `Marriage Vatikas' are a huge nuisance on the main road of the Udaipur causing several traffic jams, therefore, no such registration could be granted to the SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 7/20 petitioner. They had also raised objections before the Commissioner, Municipal Council, Udaipur but they were not heard and the order

dated 13/2/2013 has been passed by him giving the conditional permission & registration to the petitioner.

9. Mr. G.R.Punia, Senior Advocate, Mr. Sandeep Bhandawat and other counsels appearing for the applicants, therefore, vehemently urged that the petitioner is not entitled to any relief in the present writ petition and his application for registration of 'Marriage Vatikas' was clearly required to be rejected by the Municipal authorities and the same appears to have been allowed by the impugned order dated 13/2/2013, even though with certain conditions, under some pressure and, therefore, the operation of that order dated 13/2/2013 deserves to be stayed by this Court.

10. Per contra, Mr. M.R.Singhvi, Sr. Advocate assisted by Mr. Dharma Ram vehemently opposed the applications for impleadment filed by Mohanlal Sukhadia University, Udaipur, Mr. Vivek Vyas and others relying upon the several decisions of this Court and Hon'ble Supreme Court and submitted that the said applicants have no cause to join the present lis of the petitioner in which no relief has been claimed against them and only relief claimed is against the SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 8/20 Municipal Council, Udaipur and the State and, therefore, the present applications deserve to be rejected by this Court as it is within the 'Dominus Litis' of the petitioner to choose the defendants against whom he wants to seek the relief from the Court.

11. Learned counsel for the petitioner, Mr. M.R.Singhvi, Sr. Advocate also submitted that since the litigation with regard to the land acquisition is admittedly pending before this Court in Division Bench, the right, title and interest of petitioner can at best be said to be subject matter of that litigation and same cannot be decided here in the present writ petition. Therefore, the applicants, who are claiming through a title passed on to them for the part of the land in question, on the basis of land acquisition proceedings or conveyance deeds executed in their favour by persons other than the petitioner, cannot object to the grant of registration of the 'Marriage Vatikas' constructed by the petitioner and which are being run by the petitioner as per the Regulations & Bye-laws of 2010.

12. Referring to Clause 6 of the Bye-laws of 2010, quoted above, learned counsel for the petitioner, Mr. M.R.Singhvi submitted that it is not necessary for the Municipal Council, Udaipur to reject the said application in all such cases where a bonafide dispute about title SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 9/20 exists and he submitted that since the learned Single Judge of this Court had quashed the Notifications under Section 6 and 17 of the Land Acquisition Act and Notification under Section 4 of the Act has also, therefore, became otiose, the original khatedar of the land in question i.e. ex-ruler of Udaipur had rightly given power of attorney to father of the petitioner, Shri Amrit Lal Taya & Kailash Gattani and, therefore, the 'Marriage Vatikas' have been legally constructed by him and the petitioner's fundamental right to carry on such business under the Regulations enacted by the Municipal Council cannot be challenged by the applicants and, therefore, the grant of registration ultimately by the Commissioner, Municipal Council, Udaipur by the order dated 13/2/2013 is correct.

13. Learned counsel for the petitioner, Mr.M.R.Singhvi, Sr. Advocate, therefore, submitted that, as a matter of fact, after passing of the said order by the Commissioner, Municipal Council, Udaipur on 13/2/2013, even though with certain conditions, which, if the petitioner so likes, would challenge before appropriate forum, the present writ petition has really become infructuous. On the Court question whether the petitioner would still like to press the present writ petition or same may be dismissed as having SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 10/20 become infructuous, learned Senior Advocate Mr. M.R.Singhvi could not take any categoric stand in the matter.

14. He relied upon the following judgments in support of his principal contention that the applicants have no locus to be impleaded in the present lis under Order 1 Rule 10 CPC, which judgments though enumerated below, need not be discussed in detail for the reasons stated hereinafter. (i) Surendra Kumar Garg & Ors. vs. State of Raj. & Ors. - 2005 (1) WLC 243.(ii) Union of India & Ors. vs. Krishan Lal

Arneja & Ors. - (2004) 8 SCC 453.(iii) Ramesh Hirachand Kundanmal vs. Municipal Corporation of Greater Bombay & Ors. - (1992) 2 SCC 524.(iv) Ramji Lal vs. State & Ors. - 1985 RLR 644.(v) Fateh Raj & Anr. vs. Suraj Roop & anr. - AIR 196.Raj 252; (vi) Mumbai International Airport Pvt. Ltd. vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. - (2010) 7 SCC 417.

15. I have given my thoughtful consideration to the rival submissions made at the bar and gone through the documents and Bye-laws of 2010, particularly clause 6 thereof. SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 11/20 16. This Court is of the opinion that though the said applicants, namely; Mohanlal Sukhadia University, Udaipur, for whose benefit land in question was acquired under the provisions of Rajasthan Land Acquisition Act vide Notification under Section 4 dated 3/10/1981, Mr. Vivek Vyas, Mr. Bhuvnesh Maheshari & Mr. Suresh Mal Mehta are not necessary parties in the present writ petition filed by the petitioner against the Municipal Council, Udaipur & the State of Rajasthan but at the same time their right to have a say in the matter by intervention in the present writ petition also cannot be ruled out.

17. The intention of Clause 6 of the Bye-laws of 2010 is very clear that if there is a serious dispute about the title of the person running the 'marriage place' or 'marriage vatika' or he is simply an encroachee without any right, title or interest in the land in question, has no right to carry on the business of marriage place under the Regulations framed by the Municipal Council in 2010, which itself have been framed under the directions of this court in PIL jurisdiction to regulate the mushroom growth of such 'marriage vaticas' causing serious traffic hazards in some cities. The intention of Clause 6 appears to be where serious disputes as to title of the land in question exists, the application for registration should not be granted SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 12/20 and it should be rejected, therefore, the illegality of possession of a person concerned is not given the legal clothing or legal cover by its registration.

18. In the face of this restriction on the discretion of the concerned Municipal Authority, the grant of registration to the present petitioner under order dated

13/2/2013 does not appear to be in order. The pendency of aforesaid litigations in the courts of law and the foundation of possession of the present petitioner over the land in question, which is admittedly situated in Arajis under acquisition by the State Government for the purpose of expansion of Mohanlal Sukhadia University versus the right of the power of attorney holder of the Ex-Ruler of Udaipur, of having sold the plots to various persons like Mr. Vivek Vyas and Bhuvnesh Maheshwari etc. and the litigation in that regard also is pending in civil courts against the family members of the present petitioner himself, it is clear that the petitioner, Raj Kumar Taya does not hold a clear title & undisputed over the land in question, where 'marriage vatikas' are situated. Admittedly, therefore, the petitioner could not produce any document of title in support of its application under which he applied for registration under the Bye-laws of 2010 and having contested the matter upto the level of Director of Local Self Government SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 13/20 Department, Jaipur by filing revision petitions, which were disposed of by the said authority vide Annex.20 dated 12/12/2012 by remanding the matter back to the Municipal Council, Udaipur in which proceedings also the pendency of these disputes was also noticed by the concerned authorities, it cannot be said that the present applicants have no right or say in the matter. They not only have an interest over the land in question, they have also objected seriously against the grant of registration in favour of petitioner even before the Municipal Commissioner, who in an inconclusive manner by-passing such objections, has granted the registration upon certain conditions in favour of the petitioner by order dated 13/2/2013. It may be of some relevance to extract some portion of the order dated 13/2/2013, which is as under:- 4 .2 " ?/ /) % ? 70 E F

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4. :- 13.02.2013 4 ./ . () 4 , 4 " 19. From the above extracted portion of the order
dated 13/2/2013, it is clear that the learned Commissioner was fully aware of the
pending litigations between the parties and about the disputed title of the present
petitioner & the objections of the present applicants, still he concluded to grant
such registration in favour of petitioner, subject to certain conditions, which are
also extracted SBCWP No. 342/2013 Raj Kumar vs. State & Ors. Order dt:

26. 2/2013 20/20 above, & the same cannot be said to be justified in the present circumstances.

20. Thus, this court is of the considered opinion that the applicants should be allowed to intervene in the matter so as to have a right of say in the present lis at the time of final hearing of the writ petition but they will not have any right to file any pleadings and they may not be impleaded as respondents in the present writ petition, expanding its scope unnecessarily.

21. The writ petition itself may be listed for final hearing in the month of May, 2013.

22. Till the decision of the writ petition, the operation of the order passed by the learned Commissioner, Municipal Council, Udaipur on 13/2/2013 shall remain stayed and the fate of the same would abide by the result of this writ petition. I.A.No.674/2013, I.A.No. 855/2013 and I.A.No. 858/2013 are accordingly disposed of. (DR.VINEET KOTHARI),J.

Item no.s/79 baweja

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