

Adhunik Grah Nirman Sahakari Samiti Ltd. and Others

Vs

State of Rajasthan and Another

Civil Appeal Nos. 1144-48 of 1987

(G. L. Oza, K. N. Saikia JJ)

28.02.1989

JUDGMENT

OZA, J. –

1. These appeals have come to this Court against the judgment of the Division Bench of the High Court of Rajasthan dated September 29, 1986 wherein the learned Judges disposed of the following appeals by the impugned judgment and against this after grant of leave these appeals are before us :

(1) State of Rajasthan and Another v. Prajapati Grah Nirman Samiti Ltd. (D. B. Civil Special Appeal No. 3 of 1978) (2) State of Rajasthan and Another v. Adhunik Grah Nirman Samiti Limited, (D. B. Civil Special Appeal No. 4 of 1978) (3) State of Rajasthan and Another v. M/s. Jai Marwar Company Pvt. Ltd., (D. B. Civil Special Appeal No. 5 of 1978) (4) Trustees of Major Maharaja Hari Singh Benefit of Defence Service Personnel Charitable Trust v. State of Rajasthan and Others, (D. B. Civil Special Appeal No. 79 of 1981) (5) State of Rajasthan and Another v. Maharaja Gaj Singh Ji, (D. B. Civil Special Appeal No. 354 of 1984)

2. Initially the three writ petitions were filed before the High Court of Rajasthan by (i) Prajapati Grah Nirman Samiti Limited, (ii) Adhunik Grah Nirman Samiti Ltd. and (iii) M/s. Jai Marwar Company Private Limited. It was alleged that these three parties purchased respective areas of land for price by registered sale deeds two dated November 4, 1971 and one dated November 5, 1971 from Shri Gaj Singh, the erstwhile ruler of the Jodhpur State. These lands form part of Khasra No. 421 in the revenue records. There is yet another adjacent land which also was in dispute in other matters than these three which was Khasra No. 426.

3. Facts which are not in dispute are that after attainment of independence on August 15, 1947 the rulers of the erstwhile princely States of Banswara, Bikaner, Bundi, Dungarpur, Jaipur, Jaisalmer, Jhalawar, Jodhpur, Kishangarh, Kota, Mewar, Partabgarh, Shahpura and Tonk entered into a Covenant with the Government of India integrating these States into one. Article 12 of the said Covenant provided for the private properties of the rulers of the Covenanting States. In clause (1) of this article it was prescribed that the ruler of each of the Covenanting States shall be entitled to the full ownership, use and enjoyment of all private properties (as distinct from State properties), belonging to him on the date of his making over the administration of the State. In accordance with the aforesaid clause in the Covenant, a list of private properties of the ruler of the former State of Jodhpur was prepared and it was approved by the Government of India on March 24, 1949. In the said list of private properties the immovable properties were divided into three categories. Category 'A' consists of properties which were to be regarded as the family property of the Maharaja of

Jodhpur and which will not be transferred. Category 'B' consists of properties which were to be regarded as family properties of Maharaja of Jodhpur but which will be disposable by him if he and his heir agree to do so. Category 'C' consists of property which is the absolute property of the Maharaja of Jodhpur with full rights of disposal. In the case in hand we are only concerned with category 'C' property and in this category Umaid Bhawan Palace along with the area as per plan attached including the Chittar Tank and the Bijolai Tank and buildings was included.

4. Maharaja Hanwant Singh who was the signatory to the Covenant died in 1952 and after his death he was succeeded by his son Shri Gaj Singh who was minor at that time. During the minority of Shri Gaj Singh an administrator was appointed for the purpose of administration of the estate of the minor Maharaja.

5. In 1964 the Rajasthan Legislative Assembly enacted the Act which received the assent of the President of India on April 6, 1964 and was published in the Rajasthan Gazette dated April 13, 1964. The Act was enacted to provide for the acquisition of the estates of landowners. Under Section 7 of the Act a provision was made for issuing a notification by the State Government appointing a date for the vesting in the State Government of the estates of all landowners situated anywhere in Rajasthan. In exercise of the powers under Section 7 a notification was issued on August 11, 1964 which was published in the Rajasthan Gazette dated August 13, 1964 and by this notification the State Government appointed September 1, 1964 as the date of vesting of all the estates of landowners situated within the State.

6. Notice under Section 9-A of the said Act were issued on November 19, 1975 to the petitioners by Collector, Jodhpur stating that transfers of the aforesaid lands are null and void and they shall deliver possession before November 29, 1975 or within 10 days of the receipt of the notice whichever is later, to the Sub-Divisional Officer, Jodhpur. It appears that one more notice dated December 8, 1975 was issued by the Sub-Divisional Officer, Jodhpur by which he appears to have taken the possession of the aforesaid lands by affixing a notice was required by Rule 8 of the Rajasthan Land Reforms and Acquisition of Land Owners Estate Rules, 1964.

7. The petitioners' case before the court below was that this land is not liable to acquisition under the said Act and therefore they sought a direction that the said orders and notices be quashed. It was contended before the court below that the definition of 'land' as defined in Section 2(f), after sub-clause (d) provides for properties which shall not be included in the definition of 'land' and as this property fell within the ambit of that property which was excluded from the definition of 'land' it was contended that it could not be acquired under the provisions of Section 7 of the Rajasthan Land Reforms and Acquisition of Landowners' Estate Act.

8. The learned Judge Justice M. L. Jain, after examining the list of private properties and the material placed on record by both the parties came to the conclusion that these lands falling within the Survey No. 421 which fell within the property included in the schedule of private properties in category 'C' and therefore it being a private property included in the inventory prepared according to the Covenant, the acquisition under the provisions of this Act was held to be bad. The learned Judge on the basis of documents also came to the conclusion that on September 1, 1964 which was the relevant date notified as the date of vesting this property was not agricultural land and was also included in the private property of the ruler of Jodhpur shown within the boundary of the site plan of Umaid Bhawan Palace. Consequently, the learned Judge came to the conclusion that the transfer made by the ex-ruler in favour of these petitioners was not bad.

9. The learned Judge considering the submissions came to the conclusion :

Now, Shri Gaj Singh is an ex-ruler and therefore a landowner. The Schedule I of the inventory of his private properties also specified the properties which are his absolute property with full rights of disposal. Item 1(a) relating to Jodhpur is as follows :

(a) Umaid Bhawan Palace as per plan attached including the Chittar Tank.

A plan was attached to the inventory which contains the heading "site plan of Umaid Bhawan Palace. Private property of His Highness and Maharaja Sahib Sahadir, Jodhpur, is shown in the red". It is admitted that the land in dispute to which these writ petitions relate falls within the area bounded by the red line in the said site plan. It is, therefore futile on the part of the State Government to contend that the land though covered by the site plan, is not part of the palace as specified in the inventory. The State maintains that the Umaid Bhawan Palace has its own walled enclosure and further a long line of hills separates the land in dispute from the main palace. The learned Dy. Government Advocate urged that what the law excludes is the palace and not all the lands which are shown in the site plan. The word 'palace' should be construed only to include the area of the palace which is bounded by walls. I do not see any force in this argument because the definition of land excludes the palace as specified in the inventory and the inventory specifies the area of the Umaid Bhawan Palace as per plan attached and the attached plan includes the land in dispute. I am, therefore, unable to give the word "palace" a restricted meaning as canvassed by the learned Dy. Government Advocate. That being so, the disputed land falls outside the estate and has consequently not vested in the State Government.

The learned Judge after considering various documents which were filed and which were the records of the government as regards the nature of the land as to whether it is agricultural land or not came to the conclusion that :

The documents clearly demonstrate that the land in dispute is not agricultural and rather it forms part of the abadi land. In the revenue records, khasra nos. are allotted not only to agricultural plot but they are also allotted to banjar land and to abadi land as well. The copies of the Jamabandi and Girdwari filed by the State shows that the land is padat and does not carry any land revenue. It is, therefore, clear that the land in question being an abadi land is not covered by the provisions of the Act. It appears as has been contended that the land in order that it vests in the State Government, should be an agricultural land. The amended long title of the Act states that it is an Act to provide for the acquisition of the estates of landowners and for other measures of agrarian reforms, removal of intermediaries, allotment of land to landless persons, development of agriculture. If the acquired land is meant for allotment to agriculturist then the land must be an agricultural land as indicated above. The land in question was not an agricultural land and if at all it was so at any time in the past, it long ago ceased to be so at least as early as in 1948, when according to the private property settlement, it was included in the Umaid Bhawan Palace premises.

10. Trustees of Major Maharaja Hari Singh Benefit of Defence Service Personnel Charitable Trust also filed a petition before the Rajasthan High Court. This pertains to Survey No. 426 and this came up for hearing before Hon'ble the Chief Justice of Rajasthan Shri K. D. Sharma who while considering the matter observed :

At the outset, I may observe that it is not disputed before me that Umaid Bhawan Palace situated in Jodhpur is the absolute property of Maharaja Gaj Singh of Jodhpur, who has full rights of disposal thereof. This fact is borne out by the inventory marked Annexure 1 which was prepared and approved by the Government of India in pursuance of Article 12 of the Covenant entered into by late Maharaja Hanwant Singh with the Government of India at the time of accession of the former Jodhpur State to the Union of India. It will not be out of place to mention that the term 'land' defined in Section 2 of the Act as amended by the Amendment Act, 1975, does not include forts, palaces, buildings and building plots specified in the inventory. Hence, Umaid Bhawan Palace of which Maharaja Gaj Singh is the absolute owner, does not fall within the purview of the definition of the word 'land' given in Section 2 of the Act as amended up to date.

11. Misc. Petition No. 1872 of 1975 filed by Maharaja Shri Gaj Singh came up for consideration before Hon'ble the Chief Justice of Rajasthan Shri Justice Banerjee and by order dated December 20, 1983 relying on the judgment passed by Justice M. L. Jain in the case of Prajapati Grah Nirman Samiti Ltd. v. State of Rajasthan allowed the petition of Maharaja Gaj Singh and quashed the notices which were issued.

12. It is thereafter that the State Government in the matters decided by Justice M. L. Jain and by Justice Banerjee and the Trust, in the case decided by Justice K. D. Sharma went up in appeal under Letters Patent and by the impugned judgment, the Division Bench disposed of all these appeals and hence appeals have come before us after grant of leave.

13. Learned counsel for the appellants contended that this Act \i. e. Rajasthan Land Reforms and Acquisition of Landowners' Estate Act, 1963 was brought into force in 1964. According to the definition of 'estate' it could refer to either land or right, title or interest in land held by landowner. Land, according to the learned counsel, is defined in Section 2 clause (f). This definition is an inclusive definition and it first refers to land held for the purpose of agriculture. Thereafter it has been further stated that it does not include forts, palaces, buildings, building plots specified in the inventory and the inventory has also been defined in Section 2 clause (d) which refers to the inventory of the private properties made in pursuance of the Covenant and finally approved by the Central Government. Learned counsel for the appellants mainly raised two questions : that as these lands were not agricultural lands they do not fall within the ambit of this definition of 'land'. It was also contended that in any event as it falls within the boundaries of Umaid Bhawan Palace which is a property included in the inventory as the private property of the rulers of Jodhpur approved by the Government of India, this will not fall within the ambit of the definition of 'land' in Section 2(f). Consequently it could not be said to be an 'estate' as defined in Section 2(b) and as such by application of this Act this could not vest in the State Government and in this view it was contended that the judgment delivered by the Division Bench has omitted to decide this question and for no reason felt that let a reference under Section 12 be decided. It was also contended that the Division Bench could not come to a different conclusion than one which was reached by Justice M. L. Jain and Hon'ble Chief Justice Shri Banerjee.

14. Learned counsel appearing for the State of Rajasthan attempted to contend that that this property falls within the boundary of the Umaid Bhawan Palace according to the site plan could not be conclusively held as an attempt was also made to suggest that the original plan should have been summoned from the Central Government but the learned counsel could not explain the admissions made at the various stages in these proceedings about the plan which was filed in these petitions and

also could not give any explanation as to why when these proceedings have been going on since 1975, the State Government could not obtain an official copy of the site plan from the Government of India and produce it before the High Court. In fact the admissions in the documents and affidavits filed before the High Court and the orders passed by the revenue authorities which have been at length dealt with by the learned counsel and relied upon by the High Court could not be explained by the learned counsel appearing for the State. Similarly the question as to whether this land was agricultural or not also was disputed by the learned counsel on the basis that the revenue record entry showed that this has been agricultural land although the record referred to by the counsel for the appellants also indicated that this area during the State times was included in the development plan of the Jodhpur town.

15. Counsel for parties frankly conceded that if the lands in dispute fall within the boundaries of the Umaid Bhawan Palace as shown in the site plan which was part of the inventory prepared at the time of the Covenant and approved by Government of India, it is clear that these lands will not fall within the definition of 'land' as described in Section 2(g) [(sic 2 (f))] and therefore it could not vest in the State nor it could be acquired under the provisions of this Act and in that event these appellants are entitled to hold their lands and the question whether the lands are agricultural or not is not very material.

16. Learned counsel for the respondent State distinguished the case of Naveen Grah Nirman Samiti on a different footing as they claimed to be the transferees from Jai Marwar Company Private Limited and this transfer was at a time when the transfer was prohibited and that question has not been gone into by the High Court as these petitioners have chosen to come to this Court when in fact they were not parties in the judgment before the High Court. Learned counsel for the petitioner in the petition by Naveen Grah Nirman Samiti in view of the objections raised by learned counsel for the respondent State frankly conceded that this petition was not before the High Court and in view of this he submitted that he may be permitted to withdraw this petition.

17. Learned counsel for the respondent also raised an objection about the transfer of these lands in view of Section 3(2) of Rajasthan Urban Property (Restrictions of Transfers) Act, 1973. Section 3(2) of this Act provided that after August 16, 1971 if any person has transferred any urban property owned by such person such transfer shall be deemed to be a transfer made to defeat the provisions of this Act and the property so transferred shall for the purposes of this Act be deemed to be owned by such person. On this basis it was contended that as the transfers have been effected by Maharaj Shri Gaj Singh after August 16, 1971 they will be void whereas learned counsel for the appellants contended that this Act was enacted in contemplation of the Rajasthan Urban Property Ceiling Act which was to be enacted and it was for the purpose of that Act that Section 3(2) of this Act was enacted to restrict transfer of urban property but it did not declare transfer to be void but said that in spite of the transfer the property will be deemed to be owned by such person i. e. transferor. The idea was that while applying the law of ceiling the holder of the property may not defeat the provisions of that Act by these transfers and ultimately this Act was repealed and the repeal was by Rajasthan Urban Property (Restrictions of Transfers) Repeal Act, 1978 and that Act did not protect any one of these provisions. In fact this question was raised before the Division Bench and the learned Judges of the Division Bench in the impugned judgment observed :

In view of the repeal of 1973 Act the could which has been cast on the title of the petitioners in the writ petitions giving rise to these appeals by Section 3(2) of the 1973 Act, was removed, and, therefore, we are unable to accept the contention of the learned government advocate.

It is apparent that this section prohibiting transfers was enacted keeping in view the Act on ceiling in contemplation and that is why as indicated earlier Section 3(2) did not provide that the transfer will be invalid but it only provided that in spite of the transfer the property will be deemed to be owned by such person thereby meaning the transferor so that when the Ceiling Act is brought into force the transferor may not take advantage of the transfer to defeat the provisions of the Ceiling Act. In fact after the Ceiling Act was brought into force a prohibition was again imposed on the transfer and admittedly the transfers with which we are concerned are not after that as it is clear that the Rajasthan Urban Property Ceiling Act, 1972 when it was enacted provided by Section 5 of that Act that the transfers which were made after the commencement of the Act were declared null and void. In fact the learned Judges of the Division Bench considered this aspect of the matter and negated the contention advanced by the learned counsel for the respondents in the words indicated above and in our opinion that conclusion could not be assailed.

18. As regards the question as to whether the lands in dispute i. e. which fall within Khasra Nos. 421 and 426 fall within the purview of the definition of 'land' as contained in Section 2(f) of the Act is concerned it is consistently held by the High Court that as the land fell within the exception of Section 2(f) it would not fall within the definition of 'land'. Section 2(f) reads :

2. (f) "land" means any land held or let for purposes of agriculture or for purposes ancillary thereto including waste land, forest land, land for pasture or sites of buildings and other structures occupied by cultivators of land, agricultural labourers and village artisans and includes -

(a) tanks, lakes, ponds, river and water channels held for purposes of irrigation. (b) surface of hills, (c) landing grounds or strips, and (d) shikargah but does not include forts, palace buildings and building plots, specified in the inventory.

The last part of this provision "but does not include forts, palace buildings, building plots specified in the inventory" is the relevant portion of the definition which was considered by the court below and is the question which deserves to be considered. The inventory has also been defined in Section 2(d) which means inventory of the private property of the ruler prepared in pursuance of Article 12 of the Covenant and finally approved by the Government of India.

19. In the High Court in all these petitions the plea raised was that the inventory of the private property of the ex-ruler of the Jodhpur State Maharaj Shri Gaj Singh contained an item of property shown as Umaid Bhawan Palace and the boundaries therein were indicated to be in red in the site plan attached along with it. So far as the inventory and inclusion of this property in the inventory of the private property is concerned it is not disputed even before us. In the High Court the site plan and the properties included in the red boundary forming part of the property Umaid Bhawan Palace was also not disputed. All the judgments in the High Court are based on this admission and apparently the affidavits filed on behalf of the State before the High Court clearly and categorically admitted this position and even went to the extent of saying that this was verified and found to be correct and the plan filed with the petition having a red boundary was admitted and therefore it was not disputed that Khasra Nos. 421 and 426 fell within the boundary of Umaid Bhawan Palace which in accordance with the definition of 'land' quoted above will be excluded from the definition and what is excluded from the definition of 'land' in Section 2(f) could not vest in the State in view of language of Section 7. Section 7 reads :

7. Acquisition of estates. - (1) As soon as may be after the commencement of this

Act, the government may for the purpose of carrying out agrarian reform in accordance with the provisions of this Act, by notification in the official Gazette, appoint a date for the acquisition of landowners' estates in the State and for their vesting in the State Government.

(2) The date appointed under this section in relation to the acquisition of landowners' estates in the State is in this Act referred to as the date of vesting of such estates.

This talks of the vesting of the estate and the estate itself has been defined in Section 2(b) which reads :

"estate" means land or right, title or interest in land held by a landowner;

This clearly talks of land or right, title or interest in land held by landowner and land as already discussed above is defined in Section 2(f) it is therefore clear that if this property did not fall within the ambit of the definition of land it could not be said to be estate under Section 2(b) and therefore could not vest in the State under Section 7.

20. It was in this view that counsel for both the parties frankly conceded that if falls within the exception to the definition of 'land' provided in Section 2(f) the further question about the land being agricultural or not is of no consequence.

21. An attempt was made by the learned counsel during the course of arguments to suggest that it is no doubt true that all through the State Government and on behalf of the State Government the affidavits that were filed in the High Court this was admitted that these lands in dispute fell within the red boundary of the site plan and the site plan is the site plan of the Umaid Bhawan Palace which is included in the inventory of the private property of the ruler finally approved by the Government of India. It is also not seriously disputed that there are orders passed by some revenue officers in respect of these matters where it has been held that these lands fell within the red boundary which is the correct boundary of Umaid Bhawan Palace in the inventory approved by the Government of India as the private properties of the ex-ruler. Only an attempt was made by the Additional Solicitor General who appeared for the State to suggest that the Central Government alone may have the original and therefore wanted this Court to summon the original but learned counsel had no explanation why this could not be done in all these years to which he had no answer and therefore it is plain that so far as these facts are concerned the State could not now be permitted to raise any objection in respect of the site plan and the boundary in red of Umaid Bhawan Palace.

22. After the hearing was concluded an attempt has been made on behalf of the State and certain papers have been filed which pertains to some returns filed in connection with the assessment in respect of the building Umaid Bhawan Palace which has been described as Hotel Marudhar and on that basis probably a suggestion is made that in this the ex-ruler has submitted a plan for assessment of the property tax wherein he has not showed this part of the property which is the subject matter of the dispute. Apparently these papers pertain to some proceedings of assessment of property pertaining to Marudhar Hotel with which we are not concerned and on that basis it could not be said that what has been admitted all through as the boundary of the Umaid Bhawan Palace is not correct. No reliance could be placed on these additional papers.

23. Before the High Court in Writ Petition No. 1924 of 1975 Additional Collector Jodhpur who is also described as the officer in-charge of the case has filed a counter in return and in this it is stated :

That the photostat copy and the true copy of the Covenant and the site plan submitted by the petitioner along with the aforesaid application have been got verified to be the true and exact copies of the original Covenant and the plan attached with the inventory of the private properties of the ex-ruler of Jodhpur. The duly verified copy of the plan is being submitted for your perusal.

and the same reply filed by the said Additional Collector has been verified on affidavit by the same officer who in his affidavit states :

That the photostat copy of the Covenant as also the true copy of the plan referred in the Schedule of the inventory of the private properties of ex-ruler Jodhpur supplied to the respondents have been got verified from the Chief Engineer P. W. D. B & R Rajasthan, Jaipur and the office of the General Administration Department, Rajasthan, Secretariat, Jaipur.

In view of these circumstances therefore so far as the land in dispute i. e. Khasra Nos. 421 and 426 is concerned the admission made by the State and which was also clear from various documents which have been considered by the High Court in their judgments in these petitions clearly show that these lands were within the boundaries of the Umaid Bhawan Palace which is the private property in accordance with the inventory prepared and approved by Government of India and therefore which will not fall within the ambit of the definition of the 'land' as defined in Section 2(f) and thus will not fall within the ambit of the 'estate' which could vest under the provisions of this section and in this view of the matter even without going into the question about whether land being agricultural or not the view taken by Justice M. L. Jain is the only view which could be sustained.

24. Even as regards the question as to whether this land is agricultural or not it will be relevant to note (sic). Learned counsel for the State has relied on some Khasra, Girdwari and Jamabandi of Samwat 2030 to 2032 relating to Khasra No. 421. It is described as padat and it is contended that this land will be agricultural land as it also includes waste land. Even on the basis of the record on which reliance is placed by the learned counsel for the State no land revenue is assessed on this land. On the contrary counsel for the appellant referred to a notification published in the Jodhpur Government Gazette dated February 10, 1934 and this notification states that the Development Department shall have control over the disposal of land for building sites and the building regulation shall operate over the area within a radius of three miles from the Sojati Gate and it is not disputed that these lands fell within three miles' radius from Sojati Gate. Learned Counsel also referred to a letter written to Urban Improvement Trust. The Settlement Officer is alleged to have stated that the plan was carefully perused, checked and tallied with the corresponding old settlement record of Samvat 1979 together with the site plan of Umaid Bhawan Palace which indicates the private property of His Highness the Maharaja Sahib Bahadur Jodhpur duly verified on November 12, 1958 by the then Deputy Secretary, G. A. D. and the Commissioner, Jodhpur Division, Jodhpur wherein the said land is included in the premises of Umaid Bhawan Palace. The Settlement Officer further added that the fact that this land had never been assessed to rents, that it never has been cultivated and that it is included within the Umaid Bhawan Palace is sufficient to show that it is "abadi land" within the meaning and definition under Section 158 of the Rajasthan Land Revenue Act, 1956. The view expressed by the government that this land does not appear to be agricultural land is fully established and it was on the basis of these documents that the learned Judge Shri M. L. Jain came to the conclusion that :

The documents clearly demonstrate that the land in dispute is not agricultural and

rather it forms part of the abadi land. In the revenue records, khasra nos. are allotted not only to agricultural plot but they are also allotted to banjar land and to abadi land as well. The copies of the Jamabandi and Girdwari filed by the State shows that the land is padat and does not carry any land revenue. It is, therefore, clear that the land in question being an abadi is not covered by the provisions of the Act.

It is clear that the contention raised by the learned counsel for the respondent that this land is an agricultural land also cannot be accepted and in view of our conclusions reached above it is clear that the view taken by learned Judge Shri M. L. Jain is the only view which could be taken. Consequently the appeals filed by the appellants including Prajapati Grah Nirman Sahakari Samiti Ltd., Jodhpur v. State of Rajasthan are allowed. The judgment passed by the Division Bench of High Court of Rajasthan in the appeals is set aside and it is held that no action under the provisions of Rajasthan Land Reforms and Acquisition of Landowners' Estate Act, 1963 could be taken against the appellants and all notices or actions taken are hereby quashed. The appellants shall be entitled to costs of these appeals. Costs quantified at Rs. 10,000.

25. So far as Civil Appeal No. 1145 of 1987 - Naveen Grah Nirman Sahkari Samiti Ltd. v. State of Rajasthan is concerned we see no reason not to permit the appellant to withdraw. The petition and appeal is therefore permitted to be withdrawn.

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