

State of Rajasthan

Vs

Bhawani Singh and others

Civil Appeal No. 5747 of 1983

(CJI M. H. Kania, B. P. Jeevan Reddy JJ)

06.03.1992

JUDGEMENT

B. P. JEEVAN REDDY, J.:-

1. This Civil Appeal is preferred by the State of Rajasthan against the judgment of the Division Bench of the Rajasthan High Court in Special Appeal No. 41 of 1978: (reported in 1980 WLN 295). The Special Appeal was directed against the judgment of the learned single Judge in Writ Petition No. 1739 of 1973. The Writ Petition was filed by the second respondent in this Civil Appeal, Mrs. Mani Devi Ojha. The State of Rajasthan was the first respondent in the said writ petition. For the sake of convenience, we shall refer to the parties with reference to their ranking in the writ petition.

2. The writ petitioner Mrs. Mani Devi Ojha filed the writ petition with the following averments:

She has purchased a plot of Land, No. A-9, admeasuring 1066.2/3 sq. yards situated on the south of Bhawani Singh Marg in Jaipur city, under a sale deed dated July 18, 1965 executed by Maharaja Mansingh of Jaipur for a consideration of Rupees sixteen thousand. She was placed in possession thereof on the same day. In September, 1966, she applied to the Secretary, Urban Improvement Trust and the Municipal Commissioner for permission to construct a boundry wall on all the four sides of the said plot and for raising certain other constructions. The application was accompanied by a copy of the sale deed among other documents. There was no response from the Municipal Commissioner. The petitioner reiterated her request in September 1972. Certain information was asked for from her which she furnished. Still there was no reply from the Commissioner. She has reasons to believe that the Government of Rajasthan, the Urban Improvement Trust, Jaipur and other authorities have taken a stand that petitioner and similar purchasers of plots from Maharaja Bhawanisingh have no right to said plots and cannot be granted any permission to make constructions thereon. She, therefore, approached the High Court of Rajasthan by way of the said writ petition. The petitioner asked for several reliefs in the writ petition viz., to recognise her as the full owner of the said Plot No. A-9; to declare that the said plot is a part of the abadi land; to declare that she has a right to construct buildings thereon and for a further direction to the respondents to grant her the requisite permission for construction. She impleaded Maharaja Bhawanisingh as the second respondent to the writ petition. The State of Rajasthan and its officers opposed the writ petition.

3. The learned single Judge who heard the writ petition allowed the writ petition with the following findings:

In the year 1944, an extent of 134 bighas and 4 bighas was acquired by the then Ruler of the State of Jaipur for construction of a palace for his eldest son Maharaja-Kumar Bhawanisingh. Parts of said land have been acquired by the Government from time to time. The plot purchased by the writ petitioner is a part of the said land. She is, therefore, entitled to claim to be the owner thereof. Further, the land not being agricultural land on 1-9-64, (the date specified as the date of vesting under the Rajasthan Land Reforms and Acquisition of Land Owners Estates Act, 1963) the land did not vest in the estate, as contended by the State. The relief granted finally in the writ petitions reads thus :

"In the result the writ petition is allowed. The respondents are hereby directed to consider the building plans submitted by the petitioner for making constructions over the plot of land No. 9-A specified in the writ petition, in accordance with the rules framed by the Municipal Council, Jaipur in that behalf and to decide the matter of sanction thereof within a period of three months, keeping in view the findings arrived at by this Court. In the circumstances of the case, the parties are left to bear their own costs."

4. Against the judgment of the learned single Judge, the State of Rajasthan filed Special Appeal No. 41 of 1978. It would be appropriate to notice the relevant findings of the Division Bench; (i) there is nothing on record to hold that 134 bighas and 4 biswas of land out of Bhojpura village, stood vested in the Estate of Jaipur or Maharaja Bhawanisinghji in the year 1944. Under the Jaipur Land Acquisition Act, 1943 the land vested in the Government only on the determination of compensation and making of the award. There is no material to establish the said facts :

(ii) the plot purchased by the writ petitioner forms part of Khasra Nos. 5, 6,7,95, 93, 92, 8 and 94 measuring 14.3 bighas, marked in red in Annexures B-4 B-5. This extent of 14.3 bighas was reserved by late Maharaja of Jaipur, prior to the formation of the united State of Rajasthan for construction of a palace for his son Col. Bhawanisinghji. He had authority to convert agricultural land into abadi land by a specific order, which he did;

(iii) The said extent of 14.3 bighas, having thus ceased to be an agricultural land, did not vest in the Government under and by virtue of the provisions of the Rajasthan Land Reforms and Acquisition of Landowners Estates Act, 1963, though the same cannot be said with respect to the remaining portion of the said extent of 134.4 bighas. With the aforesaid findings the ultimate direction granted by the learned single Judge was confirmed.

5. In this appeal it is contended by learned counsel for the appellant (State of Rajasthan) that a writ petition is not the proper proceeding for determining questions of title and, therefore, the very writ petition was misconceived. In any event, there is nothing to show that the said extent of 134.4 bighas was acquired in the year 1944 by the then Ruler of Jaipur. This fact is affirmed by the Division Bench. If so, the title to the said land never did vest in the then Ruler or in Maharaja

Bhawanisingh. The said Maharaja, therefore, could not confer any title upon the writ petitioner by executing a sale deed in respect of the said plot. Moreover, there is nothing to show that the said extent of land has ceased to be agricultural land on the relevant date (1-9-64). The mere declaration of intention to construct a building on the said land does not have the effect of converting agricultural land into an abadi land. The findings of the Division Bench are mutually contradictory. It is accordingly contended that no directions could have been given to consider the writ petitioner's application for permission to construct in the writ petition.

6. Learned counsel for the writ petitioner on the other hand, supported the reasoning and conclusion of the learned single Judge, though he did dispute certain findings recorded by the Division Bench. Learned counsel for the second respondent (Maharaja Bhawanisingh) complained that even though only the plot purchased by the writ petitioner was the subject-matter of the writ petition, the High Court of Rajasthan has proceeded to record findings with respect to title of the second respondent pertaining to the entire extent of 134.4 bighas which was wholly uncalled for. The second respondent was not given an opportunity of placing all the material in support of his title in this writ petition nor could his title to the entire extent be put in issue in the said writ petition.

7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.

8. We must, however, say that the land comprised in the plot concerned herein did not vest in the State under the provisions of the Rajasthan Act of 1963 (Act 11 of 1964) for more than one reason: (a) if the said land was or had become the property of the then Ruler of Jaipur and/ or Maharaja Bhawanisinghji, it could not vest in the State for the simple reason that on 1-9-64 it was not an agricultural land. The definition of 'land' in clause (f) of Section 2 expressly excludes "Forts, old buildings and building plots specified in the inventory" from the ambit of 'land'. We may point out the judgments of the High Court do contain acceptable material to show that on 1-9-64 the area included in the plot purchased by the writ petitioner was no longer an agricultural land but had become an abadi land. (b) If the said extent did not become the property of the then Ruler, then the Act itself does not apply to it; there could have been no question of 'the same vesting in the State.

We make it clear that we express no opinion on the question of title put forward either by writ petitioner or his predecessor-in interest Maharaja Bhawanisinghji, either in respect of the Plot No. A-9 or with respect to the said extent of 14.3 bighas (covered by Khasra Nos. 5, 6, 7, 93, 95, 92, 8 and 94 and delineated in red in Annexures B-4, B-5) or for that matter, with respect to the total extent of 134.4 bighas. That question will have to be agitated and adjudicated in an appropriate forum if and when the occasion arises. So far as the application filed by the writ petitioner for grant of permission to make certain constructions on Plot No. A-9, submitted before the Municipal Commissioner (Secretary, Urban Improvement Trust, Jaipur) is concerned, all that we can and do hereby direct that it shall be considered in accordance with law. If such consideration involves examination of the applicant's title, it is for the Municipal Commissioner or the other appropriate/competent authority, as the case may be, to go into the said question for the limited purpose of disposing of said application. Any person aggrieved by such decision shall be free to establish his claims and contentions in an appropriate Court of law or forum as the case may be. The appeal is accordingly allowed in the above terms. The judgment of the learned single Judge as well as the judgment of the Division Bench of the Rajasthan High Court are set aside accordingly. There

will be no order as to costs. Order accordingly.

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