

Rajvaidya Gune's Shahu Aryoushadhi Karkhana Ltd. and Another

Vs

Collector of Kolhapur

Civil Appeal No. 12954 of 1996

(K. Ramaswamy, G. B. Pattanaik, Faizanuddin JJ)

11.09.1996

ORDER

1. Leave granted.

2. This appeal by special leave arises against the judgment dated 31-8-1990 made in WP No. 3278 of 1981 by the High Court of Bombay. The admitted facts are that the appellants had from the Government 4 acres of land on 5-4-1946 for construction of Ayurvedic Karkhana in the industrial zone subject to the following conditions :

"(a) The land (and the building to be constructed thereon) should be used for the purpose for which it is granted, viz. manufacture and sale of Ayurvedic Medicines, and conducting an Ayurvedic School or College, and an Ayurvedic Hospital.

(b) The management of the Shahu Aryoushadhi Karkhana should agree to abide by all the building rules and regulations of the Kolhapur Municipal Borough; and

(c) The management should also agree to purify its discharges to such extent as may be laid down by the Municipality from time to time and let them out in the Municipal drains and sewage at such intervals and at such times as may be fixed by the Municipality from time to time."

3. On inspection made by the Collector, he found that 1 hectare 29 acres of land allotted to him was to be vacant; that he had the information that the appellant was attempting to alienate the property; and that the appellants had not used the assigned land in compliance of the three conditions enumerated hereinbefore. Therefore, notice was given to the appellant as to why the land could not be resumed; if no reply was received within 10 days from the date of the receipt of the letter, it was to be presumed that the appellants had no cause or grievance for resumption of the land by the Government. After passage of two years, they gave reply on 5-2-1980. An order came to be passed after consideration of the submissions made by the appellants on 5-9-1981 rejecting the contentions opposing resumption of the land. Calling that order in question, they filed a writ petition in the High Court. The High Court in the above writ petition has dismissed the same.

4. Shri V. N. Ganpule, learned Senior Counsel appearing for the appellants, contended that under the provisions of the Maharashtra Land Revenue Code, the Collector has no power to resume the land and that, therefore, the action taken by the Collector is without authority of law. We find no force in the contention. Admittedly, the Collector being the Chief Executive, Revenue Head of the District and the property being situated within Kolhapur District, he had the competence to inspect the land;

he found that the land was not used for the purpose for which the grant was made under the Government Grants Act, 1895. Consequently, when he noticed that there was a breach of the covenants in the grant, a notice was issued to the appellants as to why the lands granted in their favour should not be resumed. He had power and competence to initiate the action for cancellation of grant and for resumption thereof. Even belated show-cause notice was duly considered by the District Collector who refused to accede to the request made to him. Consequently, the resumption became valid. The High Court, therefore, has not committed any error of law in this behalf.

5. It was also contended in the High Court that subsequent to the resumption order passed by the Collector followed by actual resumption, the Government have passed a resolution on 21-11-1987 for re-grant subject to the conditions mentioned thereunder. We do not have the advantage to see the grounds on which the re-grant was sought to be made etc. However, the High Court refused to go into that question. It may be open to the appellants to make an application to the District Collector and it is for the District Collector to consider and dispose it of according to law. It is stated by the appellants that they had already made a representation before the Commissioner and it was not considered. It is seen that the direction was to make representation before the Collector and not the Commissioner. It was a misconceived action taken by the appellants. He did not avail of the remedy as directed by the High Court. Therefore, we cannot go into that question.

6. The appeal is accordingly dismissed. No costs.