

Municipal Board, Kishangarh

v.

Chand Mal and Company

(Supreme Court Of India)

HON'BLE MR. JUSTICE S. SAGHIR AHMAD HON'BLE MR. JUSTICE S.
RAJENDRA BABU

Civil Appeal No. 2133 Of 1987 | 11-02-1999

1. The land in question (area 4500 sq. yards), in respect of which the respondent had obtained a decree for permanent injunction against the appellant, was sanctioned for allotment by the State Government on 28-11-1964 and in pursuance thereof the Collector, Ajmer, executed a ninety-nine years' lease in favour of the respondent on 16-12-1964. The appellant, namely, Municipal Board, Kishangarh, claimed the land to have vested in it as it was not cultivated since 1944. The Board claimed to be in possession over the land over which a cattle fair was held every year for one week beginning from the day succeeding Deepawali. The respondent wanted to raise construction on that land, but the Collector restrained him from raising the constructions whereupon the respondent filed Writ Petition No. 763 of 1966 in the High Court which was allowed on 11-11-1966 and it was held that the Collector could not, by a mere executive order, restrain the respondent from raising constructions. The High Court, however, made it clear that it would be open to the Municipal Board to proceed according to law if the constructions were raised in contravention of the provisions of the Rajasthan Municipalities Act, 1959.

2. When the respondent made another attempt to raise constructions, the Municipal Board intervened and prevented the respondent from raising those constructions whereupon the respondent filed a suit for permanent injunction in the Court of Munsif, Ajmer. The suit was decreed on 12-11-1968. The appeal filed by the appellant before the District Judge was dismissed and the decree passed by the Munsif was upheld, but it was observed that if constructions were raised in contravention of the provisions of Section 170 of the Rajasthan Municipalities Act, it would be open to the Board to stop the constructions.

3. Second appeal filed by the appellant Board in the High Court was dismissed on 8-1-1973. The observations of the District Judge with regard to the effect of Section 170 of the Act were not disturbed by the High Court. Consequently, when the respondent started raising constructions on the suit land without obtaining the permission from the Board under Section 170 of the Act, the Board again intervened in the matter. It was at this stage that the respondent put the decree for injunction to execution which was resisted by the appellant who filed objections under Section 47 CPC claiming, inter alia, that the respondent was not entitled to raise any constructions on the land in question without the permission of the Municipal Board, but the objections were dismissed and the order was upheld in appeal by the High Court.

4. During the pendency of the appeal in the High Court, an application under Order 41 Rule 27 CPC was moved on behalf of the appellant in which it was pointed out that the lease in favour of the respondent had since been cancelled by the State Government by its order dated 1-11-1976. It was also stated that by a notification dated 22-1-1976, the whole area including the area where the land in question was situated, had been included in the municipal limits and, therefore, the respondent could not raise any constructions without the permission of the appellant. On the basis of these documents it was contended before the High Court that the decree passed in favour of the respondent could not be executed.

5. When this application was filed, the High Court on 8-2-1977 passed the following order :

"Heard learned counsel for the parties. An application under Order 41 Rule 27 CPC shall be heard and decided along with the appeal.

The learned counsel for the respondent states that the appellant is not maintaining status quo of the property. Arguments were heard. It appears expedient and necessary in the interests of justice that the parties be directed to maintain status quo till the disposal of the appeal. The appeal shall be listed for hearing on March 29, 1977."

6. The appeal was ultimately decided by the High Court by the impugned judgment on 23-7-1986. The High Court held that the subsequent events could not be looked into by the executing court and dismissed the appeal and directed the executing court to dispose of the execution petition expeditiously.

7. Since the High Court was of the opinion that subsequent events cannot be looked into by the executing court, it did not dispose of the application filed under Order 41 Rule 27 CPC by the appellant. The lease in favour of the respondent having been cancelled and the land in question having been included in the municipal area, could the decree be still executed is the question which has to be answered by the executing court.

8. Having regard to the facts and circumstances of this case, we feel that it would be in the interest of justice to remand the whole case to the executing court which would consider the effect of the two documents, namely, the government order dated 1-11-1976 by which the lease in favour of the respondent purports to have been cancelled and the notification dated 22-1-1976 by which the land in question has been included in the municipal limits while rehearing the objections under Section 47 CPC filed by the appellant. The appeal is allowed in the above terms, but without any order as to costs.