

RAJASTHAN HIGH COURT

Municipal Corpn. Jodhpur

Vs.

Rajendra Bhandari

Civil Spl. Appeal No. 592 of 1999
(N.N. Mathur and Amaresh Ku. Singh, JJ.)

22.05.2000

JUDGEMENT

Amaresh Ku. Singh, J.

1. Heard the learned counsels for the appellants and the respondents.
2. This appeal is directed against the order dated 4-3-1999 passed by the learned single Judge in S. B. Civil Writ Petition No. 2918/97. By the aforesaid order, the writ petition filed by the respondent No. 1 Rajendra Kumar was allowed and the appellants as well as respondent No. 2 were directed not to insist for payment of conversion charges under Section 173-A of the Rajasthan Municipalities Act.
3. The only question which arises for decision is whether the State Government, can demand any conversion charges under Section 173-A of the Rajasthan Municipalities Act in respect of a land, which was neither allotted nor sold by the Municipality or the State Government. The respondent No. 1 (petitioner), owned shops which are constructed on land measuring 3199 sq. ft. in area. He submitted an application before the Municipal Corporation, Jodhpur and the permission was granted to him by the Commissioner vide letter dated 10-10-1979 (Annexure 1). Thereafter the petitioner moved another application seeking permission to raise construction and permission was granted to him vide order dated 5-1-1988 (Annexure 2). After obtaining the permission vide Annexure 2, the petitioner raised construction on the land belonging to him. After some time, he wanted to make further alterations and, therefore, he moved another application on 29-12-1995 seeking permission to raise construction. On submission of this application, he was required to submit some documents which were submitted by him but permission was not granted. He, therefore, served a notice

on the Municipal Corporation through his counsel on 22-7-1996. After the service of notice, the petitioner was informed that a technical report was being called and, after submission of the technical report, the matter would be placed before the building committee for consideration and after the submission of the technical report, the building committee, considered the application of the petitioner and, by resolution No. 15, granted permission. The Commissioner, in view of the decision of the building committee, accorded his approval on 14-2-1997 but added a condition that commercial charges be realized. The letter dated 14-2-1997 demanding commercial charges was sent to the petitioner. The petitioner was also served with notice dated 18-6-1997 asking him to deposit the conversion charges within a period of 7 days. The amount of conversion charges demanded from the petitioner was Rs. 11,00,011.90. The land on which the petitioner had constructed shops in which he wanted to make alterations was neither sold nor allotted by the State Government or the Municipality to him or to his ancestors. According to the averment made in the petition, the land on which the shops were constructed forms part of the ancestral property situated in Moti Chowk, Jodhpur. A dispute regarding the title and possession over that land arose and a regular suit No. 11/1962 was filed which was dismissed by the trial Court but by judgment and decree dated 9-3-1993, passed in D. B. Civil Regular First Appeal No. 30/67, the suit was decreed in accordance with the decree passed by the High Court and the property was delivered to the petitioner's ancestors and blue print had been prepared at the time of delivery of possession. In para No. 3, it is also mentioned that the State had filed an appeal against the decree but that appeal had been dismissed. Thus, the petitioner's case was that the land was his ancestral property which came into possession of his ancestors in accordance with the decree passed by the High Court. It is also stated in the writ petition that Shri Oswal Singh Sabha had instituted a regular civil suit against Sri Sire Chand Bhandari, Manak Chand, Rajendra Bhandari and Raj Kumar Bhandari and that suit was ultimately disposed of by compromise and in accordance with the compromise, the petitioner got two pieces of land measuring 62' x 62' and 53' x 56', total area 3199 sq. ft. It is also stated in the writ petition that when this land came into possession of the petitioner, shops were already standing on them.

4. Feeling aggrieved by the demand of conversion charges, petitioner (respondent No. 1) filed the writ petition. The reply was filed on behalf of the respondents. The averments made in paras Nos. 2 and 3 of the writ petition have been admitted in the reply filed by the respondents. It is thus, not disputed that the land on which the shops of the petitioner have been built, was neither sold nor allotted by the State Government

or the Municipality but was the ancestral property which came to the possession of the petitioner in pursuance to the decree passed by the High Court and the compromise decree passed in the civil suit filed by Oswal Singh Sabha. In order to bring the land belonging to the petitioner within the purview of Section 173-A of the Rajasthan Municipalities Act, in para No. 35 of the reply, the respondents pleaded : In the present case also the source of the land in possession of the petitioner must be by the Government of the day which has merged into State of Rajasthan and it will be taken that at that time also the land was allotted and it remained in possession of the person and ultimately when the land came into the ownership of the present petitioner and he is contemplating to raise the commercial complex then under the Act of 1959 he is duty bound to make the payment of conversion charges as per the notification dated 16-12-1991 issued under Section 297 of the Act of 1959."

5. When the arguments were addressed before the learned single Judge, the petitioner's counsel confined his arguments to the challenge to demand raised by the Municipal Corporation wherein the Municipal Board demanded conversion charges in the shape of commercial charges. The learned single Judge held that the land was neither sold nor allotted to the petitioner by the Municipal Corporation or the State Government on any condition and, therefore, the provisions of Section 173-A of the Rajasthan Municipality Act, 1959 did not apply and no conversion charges would be demanded by the Municipal Corporation, Jodhpur. Consequently, the writ petition was allowed and the respondents were restrained from asking for deposit of any amount of conversion charges under Section 173-A of the Rajasthan Municipalities Act.

6. The learned counsel for the appellants has submitted that the view taken by the learned single Judge is not correct and that the provisions of Section 173-A of the Rajasthan Municipalities Act, 1959, apply to all lands, use thereof is sought to be changed by the owner irrespective of the fact whether the land had been allotted or sold to them by the State Government or the Municipality or they had purchased the land from any private person. It is further submitted by the learned counsel for the appellants that the notification No. F.16(46) Stha.Ni./91/422004411 dated 16-12-1991 (Annexure 10) expressly empowers the Municipal Board and the Municipal Corporation to demand conversion charges from those persons who have converted the residential land into commercial land and no distinction has been made in the notification between the land sold or allotted by the State Government or the Municipality and the lands which have not been allotted or sold by the Municipality or

the State Government.

7. The learned counsel for the respondent No. 1 has supported that the impugned order passed by the learned single Judge.

8. We have carefully considered the submissions made by the learned counsel for the parties. We have carefully read the notification dated 16-12- 1991 on which reliance has been placed by the learned counsel for the appellants. A bare perusal of this notification shows that several Municipal Boards/Municipal Corporation sought guidance from the State Government as to the manner in which the land which had been converted for commercial purposes should be regularized and, as an interim measure, by this notification guidance was given by the State Government and it was ordered that conversion charges should be calculated at the rate of 20% of the difference between market value of the residential land and the market value of commercial land and if any person intends to pay conversion charges in installment then the conversion charges should be calculated at the rate of 25% and interest at the rate of 15% should be taken from him. The notification, on the face of it is confined to cases in which the use of land from residential to commercial was converted unlawfully. This notification, therefore, has no application to the cases in which the use of the land was changed in an lawful manner. Besides, no notification can be issued contrary to the provisions of the Rajasthan Municipality Act, 1959. Therefore, the notification dated 16-12-1991, cannot go beyond the scope of Section 173-A of the Rajasthan Municipalities Act so far as the right of the owner of a land to change its use from residential to commercial or commercial to residential purpose is concerned. We deem it fit to clarify that so far as change in use of land is concerned, the Municipality have two rights : (1) the right to grant permission for change in use of land, if the land had been sold or allotted by the State Government or the Municipality for a specific purpose only and (2) the right to grant permission to construct plot in accordance with the plan approved by the Municipality. The former right is an incident of the property rights vested in the State Government or the Municipality and, therefore, this right can be availed of by the Municipality only in those cases where land had been allotted or sold by the State Government or the Municipality for a specific purpose only. The second right, namely, the right to insist that no construction shall be made except according to plan of construction approved by the Municipality, is not an incident of the property rights vested in the Municipality, it is an incident of

the police power of the State delegated to the Municipality to exercise control on the right of the land in the matter of construction of building on the land belonging to them. The object behind the exercise of this power can only be to regulate the construction of plot in such a manner as to ensure that the development of land is in accordance with the approved land and is not injurious to any one. The object behind the use of police power is only to regulate the use and enjoyment of property rather than to deprive any persons of his right to property in any manner. If the exercise of the power to regulate construction of building is exercised in unreasonable manner, it would be open to challenge on the ground that it is unreasonable and interfere with the fundamental rights of the citizens. The police power of the State must be exercised in conformity with the fundamental rights as well as right to property conferred by Article 300A of the Constitution. In our opinion, it would be fallacious to assume, that the power to insist of construction according to the plan approved by the Municipality, includes the power to deprive any person of his right in the property.

9. We now propose to consider the provisions of Section 173-A of the Rajasthan Municipality Act, in detail.

10. Section 173-A of the Rajasthan Municipalities Act reads :

"173-A. Power of the State Government to allow change in the use of land.- (1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a Municipality or the State Government subject to the condition of restraining the use for a particular purposes, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed :

Provided that the rates of conversion charges may be different for different areas and for different purposes.

(2) The conversion charges so realised shall be credited to the Consolidated Fund of the State or to the fund of the municipality as may be determined by the State Government.

(3) Such charges shall be the first charge on the interest of the person liable in the land the use of which has been changed and shall be recoverable as arrears of land revenue."

11. A bare reading of Section 173-A shows that for the application of this section, two conditions are necessary : (1) that the land has been allotted or sold to any person by the Municipality or the State Government and (2) that the allotment or sale of land by the Municipality or the State Government was subject to the condition of restraining its use for a particular purpose. If either of these two conditions is not fulfilled, the provisions of Section 173-A will not apply. In other words, the provisions of Section 173-A have no application to the land which had been obtained by a person otherwise than by allotment or sale by the State Government or the Municipality and in case of land allotted or sold by the Municipality or the State Government, the power to demand conversion charges would be exercisable only in those cases in which the land was allotted or sold subject to the condition that the land would be used for a specific purpose only.

12. The provisions of Section 173-A of the Rajasthan Municipalities Act were considered by this Court in several cases. In *Hot Chand v. Municipal Council, Ajmer*,¹ a learned single Judge of this Court held :-

"A careful reading of this Section shows that the provisions will apply only with regard to that property which has been allotted or sold to any person by a Municipality or the State Government and unless these ingredients are attracted, the provision of Section 173-A will not apply."

13. In D. B. Civil Special Appeal (Defect) No. 2295/98, decided on 1-2- 1998, the Division Bench considered the provisions of Section 173-A of the Rajasthan Municipalities Act and observed :-

"The learned single Judge has observed that under Section 173-A, the Government could not claim conversion charges. We also find that it is an 'abadi' land allowed to be converted from agricultural to 'abadi'. When no restrictions are put on how the 'abadi' land will be used and to what purpose it can be put, it will not be a case covered by Section 173-A of the Rajasthan Municipalities Act as it applies in cases where a land has been allotted subject to the condition of restraining its use for a particular purpose."

14. There is yet another reason for the conclusion that the provisions of Section 173-A

of the Rajasthan Municipalities Act do not apply to lands which have not been allotted or sold by the State Government or the Municipalities and to lands which are allotted or sold by the State Government or the Municipalities without imposing any condition restraining its use for a specific purpose.

15. The transfer of property is governed by the Transfer of Property Act and Section 8 of the Transfer of Property Act reads :

"8. Operation of transfer.- Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth the movable parts thereof;

and, where the property is a house, the easements annexed thereto the rent thereof accruing the transfer, and the locks, keys, bars, doors, windows and all other thing provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

16. Section 10 of the Transfer of Property Act reads :

"10. Condition restraining alienation.- Where property is transferred subject to a condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void except in the case of a lease where the condition is for the benefit of the lessor or those claiming under him : Provided that property may be transferred to or for the benefit of a woman (not being a Hindu, Muhammadan or Buddhist), so that she shall not have power during her marriage to transfer or change the same for her beneficial interest

therein."

17. Section 55 of the Transfer of Property Act deals with rights and liabilities of buyer and seller. Section 55(6)(a) reads :-

"(55)(6)(a)- The buyer is entitled-

(a) where the ownership of the property has passed to him, to the benefit of any improvement in, or increase in value of, the property, and to the rents and profits thereof."

18. A bare reading of Section 8 of the Transfer of Property Act shows that unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of being passed in the property and in the legal incidents thereof and Section 55(6)(a), shows that where the ownership of the property has passed to a buyer, he is entitled to the benefit of improvement in or increase in value of, the property and to the rents and profits thereof.

19. The provisions of Section 173-A of the Rajasthan Municipalities Act must be read with the provisions contained in Section 8 and Section 55(6)(a) of the Transfer of Property Act. Where a person has purchased the plot of land from private citizen who was the owner of the land and by such purchase of land all the rights of the former owner have been transferred to the purchaser, the provisions of Sections 8 and 55(6)(a) of the Transfer of Property Act would apply and the purchaser would be entitled to all the rights referred in Sections 8 and 55(6)(a) of the Transfer of Property Act. Unless the rights, in the immovable property, are acquired by the State Government or by the Municipality, as the case may be, the purchaser cannot be deprived of the rights which are available to him under Section 8 and Section 55(6)(a) of the Transfer of Property Act. The submission of the learned counsel for the appellants that the provisions of Section 173-A of the Rajasthan Municipalities Act apply to all lands situated within the municipal limits irrespective of the fact whether the land was sold or allotted by the State Government or the Municipality or it was transferred by sale or gift by a private citizen or was inherited in accordance with the law of succession, cannot be accepted in view of the Article 300A of the Constitution. Section 173-A of the Rajasthan Municipalities Act cannot be interpreted in such a manner as to deprive the owners of immovable properties situated within municipal area of the rights which are

available to them under Section 8 and Section 55(6)(a) of the Transfer of Property Act. Even in the case of land sold or allotted by the State Government or the Municipality, the provisions of Section 8 and Section 55(6)(a) of the Transfer of Property Act are applicable and, therefore, if the sale or allotment of land by the Municipality or the State Government was without any condition, restraining the purchaser from using the land for a specified purpose only, no question of demanding any conversion charges under Section 173-A of the Rajasthan Municipalities Act would arise if the purchaser wants to change the use of the land.

20. For the reasons mentioned, there is no merit in this appeal. It deserves to be dismissed and is hereby dismissed with costs.

Appeal dismissed.

Cases Referred.

1. (1996) 1 WLC 300 (Raj)