

RAJASTHAN HIGH COURT

Udit Gopal Beri

Vs.

State of Rajasthan

Civil W.P. No. 95 of 1997

(R.R. Yadav, J.)

05.09.2000

ORDER

R.R. Yadav, J.

1. The instant writ petition has been filed by the petitioners seeking relief to direct respondents Nos. 1 and 2 to make allotment in view of Rule 1 (A) of the Government Order No. P-2 (8) Revenue/Land Conversion dated 18-2-94 and till then petitioners should not be dispossessed from the land in dispute.

2. Mr. Bharat Vyas learned counsel appearing on behalf of Jaipur Development Authority, Jaipur raised a preliminary objection to the maintainability of the present writ petition on the ground that the instant writ petition is barred by principle of res judicata. Mr. Vyas invited my attention to the judgment given by learned single Judge in S.B. Civil Writ Petition No. 2090/87 decided on 29th August, 1996 Annexure R-4 to the reply filed by respondent No. 2 wherein the plea of conversion and regularization of the land in dispute was raised before the learned single Judge but it was negatived by speaking order. It is submitted that aggrieved against the judgment passed by learned single Judge on 29th August, 1996, the respondent No. 3 Hathroi Garhi Grah Nirman Sahkari Simiti Ltd. filed a special appeal wherein question relating to conversion and regularization was again re-agitated before the Division Bench but it was again negatived by the learned Judges constituting Division Bench in D.B. Special Appeal No. 926/96 by speaking order on 16-9-96. The order passed by learned Judges constituting Division Bench on 16-9-96 Annexure R-5 to the reply filed by respondent No. 2, indisputably had attained finality on the question of conversion and regularization of the land in dispute, therefore, the present writ petition is liable to be dismissed as barred by principle of res judicata.

3. The aforesaid preliminary objection raised by Mr. Bharat Vyas learned counsel appearing on behalf of Jaipur Development Authority, Jaipur has been adopted by Sri S. C. Mittal learned counsel appearing on behalf of respondent 3 and Mr. N. L. Pareek learned counsel appearing on behalf of respondent No. 1.

4. In reply to the aforesaid preliminary objections raised by learned counsel appearing on behalf of respondent No. 2, it is submitted by learned counsel for the petitioners Mr. Dilip Singh with emphasis that the aforesaid writ petition was filed in the year 1987 and the rule under which they are claiming regularization after payment of conversion charges was introduced on 18-2-94, therefore, the question of *res judicata* is not applicable in the present case. The aforesaid arguments raised by learned counsel for the petitioners is merely raised to be rejected and it is hereby rejected. It is held that legal and illegal orders both which attained finality operate as *res judicata* in writ jurisdiction under Article 226 of the Constitution. In the present case, findings recorded by learned single Judge on the question of conversion and regularization on 29th August, 1996 Annexure R-4 to the reply filed by respondent No. 2 have admittedly affirmed by speaking order of learned Judges constituting Division Bench on 16-9-96 vide Annexure R-5 to the reply filed by respondent No. 2. In order to demonstrate that the present writ petition is barred by principle of *res judicata* the relevant paragraph from the judgment rendered by learned single Judge and learned Judges constituting Division Bench are quoted herein below. The learned single Judge while deciding S. B. Civil Writ Petition No. 2090/87 on 29-8-96 ruled in Paragraph 7 of his order which reads thus:

Paragraph-7.

"In the present case the agreement was entered into on 5-7-1973 and the notification under Section 4 was issued on 26-7-1969. In view of this legal position, the petitioner has no legal right. Similar view was taken by this Court in the case of *JDA v. Govind Ram*,¹ The notification under Section 4 cannot be examined on merits and the writ petition is liable to be dismissed on that ground. It also be observed that the applications for conversion was rejected on 27-1-1986 and this fact was concealed by the petitioner and on that ground the writ petition is liable to be dismissed."

5. When the question relating to regularization of the land in dispute was again re-agitated before the learned Judges constituting Division Bench in Special Appeal with reference to the Rajasthan Land Revenue (Allotment, Conversion and Regularization of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981, it was again ruled by Division Bench which reads thus :

"Admittedly the application for conversion was rejected on 22nd January, 1986 and that order has not been challenged so far it has become final. It will not be proper for this Court to pass any order which may be contrary to earlier order."

6. The aforesaid discussion leads towards an irresistible conclusion that the controversy involved in the present writ petition is barred by principle of *res judicata* and argument contrary to it is not acceptable.

7. It is next contended by learned counsel for the petitioners that earlier Writ Petition No. 2090/87 was not filed by present petitioners but it was filed by Hathroi Garhi Grah Nirman Sahkari Simiti Ltd. respondent No. 3 and the present petitioners claim themselves to be members of the aforesaid Co-operative Housing Society. Suffice it to say in this regard that aforesaid earlier writ petition was filed by Hathroi Garhi Grah Nirman Sahkari Simiti Ltd. - Co-operative Housing Society and few of its members but since in the aforesaid writ petition the plea of conversion and regularization was raised by the said Co-operative Housing Society predecessor-in-interest before the learned single Judge and before Division Bench and as such the issue of conversion and regularization was directly and substantially in issue in the earlier writ petition. It is apparent from the perusal of Annexure-R-4 and Annexure R-5 to the reply filed by respondent No. 2 that plea of conversion and regularization was negated by learned single Judge as well as learned Judges constituting Division Bench. Hence, this plea of conversion and regularization cannot be allowed to be reopened by filing the present writ petition by the petitioners who claim themselves to be the members of Hathroi Garhi Grah Nirman Sahkari Simiti Ltd. - a Co-operative Housing Society. It is held that if plea of conversion and regularization of the predecessor-in-interest of the present petitioners was negated and Co-operative Housing Society respondent No. 3 was non-suited on the aforesaid plea then the petitioners who are claiming right, title and interest through the aforesaid Co-operative Housing Society, they are not entitled to take the plea of conversion and regularization which has attained finality to avoid multiplicity of litigation and conflicting judicial orders in the present writ petition

under Article 226 of the Constitution. The present petitioners are not entitled to file successive writ petitions one after other unless they get their affairs decided as they wish. It is held that principle of *res judicata* is based on public policy to avoid multiplicity of litigation and to prevent an unscrupulous litigant to harass his opponent by filing successive writ petitions under Article 226 of the Constitution one after other. The question relating to conversion and regularization decided against the Co-operative Society from whom the petitioners are claiming right, title and interest is clearly barred by principle of *res judicata* and it cannot be allowed to be reopened in the present writ petition.

8. It is next contended by learned counsel for the petitioners that the earlier writ petition was filed in the year 1987 whereas the cause of action for filing the present writ petition accrued in the year 1994 i.e. when the Government order dated 18-2-94 was issued under the Rajasthan Land Revenue (Allotment, Conversion and Regularization of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981. The aforesaid argument of the learned counsel for the petitioners is fallacious inasmuch as the aforesaid Government Order was issued under the Rajasthan Land Revenue (Allotment, Conversion and Regularization of Agricultural Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 which was in existence when the earlier Writ Petition No. 2090/87 was filed in the year 1987 by the Co-operative Housing Society respondent No. 3 from whom present petitioners are claiming right, title and interest. The said writ petition was decided by learned single Judge on 29-8-96 and the learned Judges constituting Division Bench affirmed the judgment of learned single Judge on 16-9-96 and on these two dates the Government order dated 18-2-94 upon which the case of the present petitioners is based was in existence. It is to be imbibed that under Section 57 of Indian Evidence Act, the learned single Judge and learned Judges constituting Division Bench were under legal obligation to take judicial notice of the Government Order dated 18-2-94. It is held that the parties are entitled to raise legal plea based on subsequent events and the Courts of law are under legal obligation to take judicial notice of such legal plea based on subsequent events of statutory enactment, rules or notification within the meaning of Section 57 of Indian Evidence Act. The learned single Judge and learned Judges constituting Division Bench after giving cogent and convincing reasons negated the plea of conversion and regularization of the predecessor-in-interest of the present petitioners then it is too late for the present petitioners who claim themselves to be members of the Co-operative Society to re-

open the issue which was directly and substantially in issue in first innings of litigation between respondent and Co-operative Society respondent No. 3 predecessor-in-interest of the present petitioners. It is held that once the right, title and interest of the predecessor-in-interest of the present petitioners was decided vide Annexures R-4 and R-5 to the reply filed by respondent No. 2 by the learned single Judge and thereafter by learned Judges constituting Division Bench in the special appeal then now the present petitioners cannot be allowed to re-open the plea of conversion and regularization which was directly and substantially in issue in earlier writ petition and has been decided by the learned single Judge by speaking order and the learned Judges constituting Division Bench confirmed it by giving cogent and convincing reasons. More-so, it is pertinent to mention that not only the issue relating to conversion and regularization in the earlier writ petition and special appeal was decided between the Co-operative Housing Society and the contesting respondents but even the right, title and interest of the Co-operative Housing Society was negated by the Division Bench. It would be expedient to reproduce the decision of the Division Bench for ready reference on the point mentioned hereinabove which reads thus :

"The Notification under Sections 4 and 6 had already been issued before the agreement for sale was entered into in favor of the appellant. So, the question of regularization could not be considered after acquisition."

9. There is yet another reason to arrive at the aforesaid conclusion. A close scrutiny of Section 40 of the Indian Evidence Act reveals that existence of any judgment or decree which by law prevents any Court from taking cognizance of a suit or holding a trial, is a relevant fact when the question is whether such Court ought to take cognizance of such suit, or to hold such trial. In the present case, the judgment rendered by learned single Judge in S.B. Civil Writ Petition No. 2090/87 Annexure R-4 and the judgment rendered by learned Judges constituting Division Bench in D. B. Special Appeal No. 926/96 Annexure R-5 to the reply filed by respondent No. 2 leads towards an irresistible conclusion that these two judgments wherein the plea of conversion and regularization had been negated by speaking order together with the right, title and interest of the predecessor-in-interest of the petitioners, hence, the instant writ petition is not entertainable within the meaning of Section 40 of the Indian Evidence Act. I decline to take cognizance of the present petition as envisaged under Section 40 of the Indian Evidence Act. As a result of aforesaid discussion, the instant writ petition is hereby dismissed *in limine* as barred by principle of *res judicata*

and being not entertainable within the meaning of Section 40 of the Indian Evidence Act.

Petition dismissed.

Cases Referred.

1. D.B. Civil Special Appeal No. 470/92 decided on 4-8-1996