

## RAJASTHAN HIGH COURT

Bija Ram

Vs.

Union of India

Civil Special Appeal Nos. 719 of 2002 with 723 to 761 and 763, 764 of 2002 and 1 of 2003

(N.N. Mathur and H. R. Panwar, JJ.)

24.04.2003

### JUDGEMENT

**N. N. Mathur, J.**

1. These 44 special appeals are directed against the common order of the learned single Judge dated 24-9-2002 dismissing the writ petitions.
2. In the City of Jodhpur, a residential locality is alleged to have developed in the name of Haripura Vyas Colony. It is inhabited in Khasra No. 676 consisting of 92 Bighas and 7 Biswas of land. The inhabitants of the area claim that the colony is in existence for more than 30 years. They have constructed the houses and are living there with their families. They have their family Ration Cards, water and electricity connections and sewerage line connected with the sanitary line constructed by the Urban Improvement Trust, Jodhpur. The names of eligible electors appear in the Voter List of the Lok Sabha, Vidhan Sabha and Municipal Corporation. It is further case of the appellants that the Urban Improvement Trust conducted the survey from time to time and ultimately a decision was taken by the State Government to regularize the possession of the inhabitants by issuing licenses and lease deeds in their favor. When the Urban Improvement Trust started issuing lease deeds, objections were raised by the Air Force Station, Jodhpur. It was claimed that the land belongs to the Air Force. When a threat of demolition and dispossession was raised, number of persons residing in the colony approached to the Civil Court, by way of civil suits against the Union of India as well as the Urban Improvement Trust, Jodhpur. The Urban Improvement Trust, Jodhpur took a stand that the land belongs to them as such they have a right to regularize the possession of the inhabitants by issuing title deeds in accordance with

law. The Civil Court held that even if the plaintiffs are trespassers they can be dispossessed only in accordance with law. The Additional Civil Judge (Jr. Div.) No. 2, Jodhpur by judgment dated 21-4-2001 partly decreed the suit to the aforesaid extent. Thereafter, the Estate Officer, Air Force Station, Jodhpur gave notice under Section 4 of the Public premises (Eviction of Unauthorized Occupants) Act to about 61 persons. The notices were contested by the petitioners. The Estate Officer passed the order of eviction. The petitioners preferred an appeal to the Appellate Authority. The learned Additional District Judge No. 2, Jodhpur by judgment dated 13-8- 2002 dismissed the appeal. The said decisions were challenged by way of petitions under Articles 226 and 227 of the Constitution of India before this Court. The learned single Judge by an elaborate judgment held that the subject land belongs to the Government of India. The learned Judge also found that the petitioners were trespassers and as such there was no infirmity in the order of the Estate Officer. Accordingly, the learned Judge dismissed the writ petitions, however, granted four months time for vacating the subject premises.

3. It is submitted by Mr. P.S. Bhati learned counsel for the appellants that the petitioners have acquired a valuable right on the subject land by adverse possession. It is submitted that the appellants with their families are living in the colony for the last more than 30 years. In support of the contention the learned counsel has placed reliance on various decisions of the Apex Court. He has relied upon decisions of Apex Court in AIR 2001 Supreme Court 700, AIR 2002 Supreme Court page 607 (sic), AIR 1988 Supreme Court 624, AIR 1951 Supreme Court 469, (2002) 3 SCC 258 : ( AIR 2002 Supreme Court 1012), AIR 1993 Supreme Court 276, AIR 1999 Supreme Court 1125, AIR 2000 Supreme Court 1485, AIR 1982 Supreme Court 810 and AIR 1982 Supreme Court 135 (sic). In our view none of the decisions referred advance the case of the appellants. The possession alone cannot be said to be sufficient in the eye of law to confer a title upon a person by adverse possession. It is well settled proposition that mere possession of the land, however long it may be, would not ripen into possessory title unless the possessor has animus possidendi to hold the land adverse to the title of the true owner. Thus, we do not find any substance in the contention raised by the learned counsel.

4. The aforesaid view was expressed by us in order dated 22nd October, 2002. However, instead of straight away dismissing the special appeals, the Court further ordered as follows:-

"However, in view of the peculiar facts and circumstances which raise the

serious human problem pertaining to right to shelter calls for indulgence of the writ Court extraordinary powers under Article 226 of the Constitution of India. The dismissal of the special appeals will only solve the problem of the respondent Air Force Station to the extent that the persons in unauthorized possession on their land shall be dispossessed and a vacant land shall be made available to them, but it does not solve the problem of the appellants who are said to be poor and down trodden. Because of the poverty they are living in unhygienic condition. Every citizen of the country has a right to life under Article 21 of the Constitution of India which includes right to healthy environment and duty of the State to protect those rights.

In the instant case the Urban Improvement Trust, Jodhpur had taken a decision to regularize the possession of the appellants. We are told that possession of the large number of people in a larger area of the colony had already been regularized by the Urban Improvement Trust, Jodhpur. A map has been placed before us, which shows that except a strip of land which is on the right side of the main road, the entire colony has been regularized. The said strip of land is subject-matter of controversy in the instant writ petition. It could not be recognized as it falls within the area which belongs to Ministry of Defense. From the security point of view also it would not be desirable to regularize the possession on the subject strip of land. The U.I.T., Jodhpur is also vicariously liable for continued possession of the petitioners on the subject land and their plight. In these circumstances, the only way out is that the State of Rajasthan and the Urban Improvement Trust, Jodhpur prepare a rehabilitation programme for the residents of the subject colony. Thus, instead of completing the judgment, we take a pause and direct the State Government as well as the Urban Improvement Trust, Jodhpur to prepare and submit a scheme for the rehabilitation of the residents of the part of Haripura Vyas Colony, which is subject-matter of the present writ petitions. The learned counsel has furnished the names of the occupants of the colony. The same is taken on record. Rehabilitation scheme shall confine to the said persons. Thus, the notice is given to the State Government and the Urban Improvement Trust, Jodhpur, Mr. R. L. Jangid learned Additional Advocate General is directed to accept notice on behalf of the State Government. Similarly Shri Dinesh Maheshwari panel lawyer for Urban Improvement Trust, Jodhpur is directed to accept the notice for the Urban Improvement Trust, Jodhpur.

Post on 25th November, 2002".

5. The case was taken up on 2-12-2002, 6-1-2003 and 10-2-2003 but the U.I.T. has not appropriately responded to the proposal. In view of this we are left with no option but to dispose of the group of special appeals as follows:-

(1) All the special appeals stand dismissed.

(2) The U.I.T., Jodhpur is directed to prepare a rehabilitation scheme for the residents of Haripura Vyas Colony latest by 30th July, 2003.

(3) If the scheme is approved by this Court the occupants of the Colony, whose names have been furnished by the learned counsel as per the order of this Court dated 22nd October, 2002 shall be settled by 30th August, 2003.

(4) The appellants are given further time to vacate the peaceful possession of the land occupied by them latest by 30th August, 2003.

(5) No order as to cost.

Order accordingly.