

RAJASTHAN HIGH COURT

Pareshar Soni

Vs.

State of Rajasthan

Civil Special Appeal No. 1109 of 1999

(H.R. Panwar and Narendra Kumar Jain, JJ.)

23.05.2005

JUDGEMENT

H. R. Panwar, J.

1. By the instant Special Appeal under Section 18 of the Rajasthan High Court Ordinance, the appellant-petitioner has sought the relief of setting aside the impugned judgment and order dated 19-7-99 passed by the learned Single Judge in SBCWP No. 2159/1997 and allowing the writ petition as prayed therein.

2. The facts, relevant and necessary for decision of the instant Special Appeal, in succinct, are that the appellant purchased an old house from one Smt. Shanti Kumari Lodha vide registered sale deed dated 15-5-87. The said property is situated at Moti Chowk, Jodhpur. Smt. Shanti Kumari acquired ownership and possession of the said property by a judgment and decree dated 6-6-72 passed by the Calcutta High Court in Civil Suit No. 867/1934. After purchase of said property, the appellant filed an application under Section 170 (1) of the Rajasthan Municipalities Act, 1959 (for short, "the Act" hereinafter) before the respondent Municipal Corporation, Jodhpur seeking permission for raising construction of shops and residential house. Respondent did not respond the notice and, therefore, a notice under Section 170 (8) of the Act was served upon the respondents fixing a duration of 15 days. Even that notice was not paid any heed and then invoking the deeming clause, the appellant started construction. Vide impugned letter dated 24-5-1997 (Annx.2), the respondents raised a demand of Rs. 1,61,874/- as conversion charges, Rs. 1619/- for construction fees and Rs. 27,409/- as compounding fees. Appellant filed representation Annx. 3 against the impugned order/letter Annx. 2 dated 24-5-1997 challenging the validity of the demand letter

Annx. 2 and stating therein that the property is nearly 200 years' old and reference thereof has been given in the Patta of the year 1865 belonging to a neighboring house and as such, being a free-hold property, no commercial charges can be levied. However, the appellant deposited Rs. 1619/- towards construction fees vide Annx.4. The representation Annx. 3 could yield nothing. Ultimately, the appellant filed the aforesaid writ petition. The respondents filed reply stating therein that the provisions of Section 173-A of the Act permits the State Government to allow any person to use the land for the purpose other than for which it was originally allotted. It has further been stated in the reply that the regulation of the areas, markets etc. are all within the compass of the Act and the Patta issued by the earlier State would also remain subject to the provisions of the Act. The further stand taken in the reply is that appellant had not produced the copy of the Patta to show the rights and the conditions there under. After hearing the parties, the learned single Judge, vide impugned judgment and order dated 19-7-1999, dismissed the writ petition solely on the ground of non-production of Patta.

3. We have heard learned counsel for the parties and perused the judgment and order impugned, as also the record of the case.

4. The main contention raised by the learned counsel for the appellant is that the property in dispute was a free-hold HUF property of nearly two centuries' old and in the erstwhile State's time, the land was being allotted on free- hold basis, therefore, the provisions of Section 173-A of the Act do not apply to the instant case. It has further been contended that the impugned demand letter Annx. 2 is illegal and bad in the eye of law because the said property had never been allotted or sold by the Municipal Corporation or the State Government and as such no conversion charges or compounding fees can be levied from the appellant. It has further been contended that in identical five matters, the orders like impugned order Annx. 2 have been quashed and set aside.

5. The conversion charges and compounding fees have been demanded by the respondents taking recourse of Section 173-A of the Act. Section 173-A of the Act reads as under:-

"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 State Government subject to the condition of restraining its use for a particular purpose, 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."

6. A bare reading of Section 173-A of the Act 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 the 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 the instant case, the appellant purchased the suit property from Smt. Shanti Kumari Lodha vide registered sale deed Annx. 1 dated 15-5-87, which was originally a HUF property and came to her share in pursuance of a judgment and decree of the Calcutta High Court. It has never been the case of the respondents that the said property had been sold or allotted by them.

7. In *Hot Chand v. Municipal Council, Ajmer*,¹ the learned Single Judge of this Court, while considering the provisions of Section 173-A of the Act, observed that a careful reading of this Section shows that the provisions will apply only with regard to the property which has been allotted or sold to any person by a Municipality or the State Government and unless these ingredients are satisfied, the provisions of Section 173-A of the Act will not apply. On appeal being filed, the Division Bench, affirmed the view taken by the learned Single Judge and held as under:-

"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 conditions of restraining its use for a particular purpose."

8. In *Municipal Corporation, Jodhpur v. Rajendra Bhandari*,² a Division Bench of

this Court held that where there was change of use of the land and the Municipal Corporation demanded conversion charges. The land on which construction was raised and some alterations sought to be made was neither allotted nor sold by the Municipality. While considering the provisions of Section 173-A of the Act, the Division Bench held as under (at p. 13 of AIR):-

"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) 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 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 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."

9. In *Lalit Kumar Bothra v. Municipal Board, Sheoganj*,³ the land was allotted to petitioner's ancestors therein without any condition as to its use. The Municipal Board levied conversion charges on change of user of land. While declaring the notice for levy of conversion charges illegal and quashing the same, the learned single Judge of this Court held as under :-

"I am unable to agree inasmuch as there is nothing in the Notification (dt. 30-9-1999) which makes it retrospective in operation so as to validate the orders made under the then existing provisions before its amendment, nor any provision of the amended section makes any change so far as the principle of levying conversion charges only to a case when a person uses or permits the use of any land situated in municipal area for the purpose other than for which the land was originally allotted or sold by the State Government to any person. Undoubtedly, in this case, Sirohi State has allotted/sold the land in question to the petitioner's ancestors without any restriction on the user of the land. Therefore, the question of using the land for any purpose other than for which it is allotted so as to invite application of the provisions of Section 173-A whether amended or unamended does not arise. Change in permissible use can only occur when in the first instance the land is sold with such condition about particular use to which land could be put. Else freedom to use the land for any purpose is uninhibited."

10. In *Municipal Corporation, Jodhpur v. Raj Kumar*,⁴ a Division Bench of this Court held that conversion charges cannot be levied in respect of the land which was neither allotted nor sold by the Municipality. It was further held that the provisions of Section 173-A of the Act have to be read along with Sections 8 and 55 (6) (a) of the Transfer of Property Act.

11. We have carefully gone through the registered sale-deed Annx. 1. There is no condition of specific user of the suit property. The property was neither allotted nor sold by the Municipal Corporation or the State Government, that too for a specific purpose. In the representation Annx. 3, the appellant came with a specific case that the property purchased by him was nearly two hundred years' old and there is reference of the said property in the Patta of 1965 issued in favor of one of the neighbors of this property. It was further stated that the property is free-hold, on which there cannot be a levy of commercial charges. There is no rebuttal to this stand taken by the appellant and the said representation remained unattained and unanswered by the respondents.

12. Thus, from the factual matrix of the instant case, it is clear that the land in question was neither allotted nor sold by the Municipal Corporation nor by the State Government and, therefore, the provisions of Section 173-A of the Act are not attracted. More so, learned counsel for the respondents failed to substantiate his contention that the provisions of Section 173-A of the Act apply to all land situated within the municipal limit irrespective of the fact whether the land was allotted or sold by the Municipal Council or the State Government or it was transferred by sale by a private party. There is no evidence that the land in question came in the hands of the appellant with certain condition restraining its use. While dismissing the writ petition filed by the petitioner-appellant, the learned single Judge led much emphasis on non-production of the "Patta" relating to the land in question. The appellant specifically came with the case that the appellant purchased the land from Smt. Shanti Kumari Lodha by a registered sale deed dated 15-5-1987 and her predecessor-in-title acquired the land by a judgment and decree of the Calcutta High Court. The transaction relates to the period prior to coming into force of the Act 1959 and, therefore, from the unrequited averments made in the writ petition, it has been established that the appellant acquired the ownership and possession over the land by the registered sale deed without there being any condition restraining its use. Therefore, the impugned order dated 24-5-1997 (Annx.2) demanding conversion charges from the appellant cannot be sustained, therefore, the impugned order of the learned single Judge deserves to be set aside and the writ petition filed by the petitioner- appellant deserves to be allowed.

13. In view of the aforesaid discussion, we allow the Special Appeal, set aside the impugned order dated 19-7-1999 passed by the learned single Judge and allow the writ petition filed by the petitioner-appellant and quash the order Annx.2 dated 24-5-1997 passed by respondent No.2. The stay petition stands disposed of.

No costs.

Petition allowed.

Cases Referred.

1. (1996) 1 WLC 300 (Raj)
2. AIR 2001 Raj 9
3. 2001 DNJ (Raj) 455 : (2001 AIHC 3235)

4. (2000) 3 WLC 29 : (AIR 2000 Raj 348)