

(2018) 08 RAJ CK 0147

In the Rajasthan High Court

Case No : Civil Writ No. 4807 of 2004, 1676 of 2005

Anil Kumar Singhvi @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 24-08-2018

Acts Referred:

Urban Improvement Trust Act, 1959 — Section 91A, 91(2)
Constitution of India, 1950 — Article 300A

Citation : (2018) 08 RAJ CK 0147

Hon'ble Judges : SANDEEP MEHTA, J

Bench : Single Bench

Advocate : J.P. Joshi, Siddharth Joshi, Deelip Kawadia

Final Decision : Dismissed

Judgement

Heard learned counsel for the parties. Perused the material available on record.

Â These two writ petitions preferred by the petitioners involve common question of facts and law and are thus being decided together by this single order.

The petitioners herein claim to have purchased one shop each through registered sale deeds after paying valid consideration in the stilted basement of

the multi-storied building known as "Divya Jyoti Apartment" constructed by the respondent No.4 M/s. Salibhadra Builders. The petitioners claim

to be carrying on their respective business in the shops lawfully purchased by them but to their utter shock and surprise, they received notices under

Section 91A of the Urban Improvement Trust Act, 1959 (hereinafter referred to as "the UIT Act") intimating them that construction of the

shoping in question had been raised in contravention to the provisions of the UIT Act as well as the masterplan and so also, against the sanctioned

scheme of the Trust and that the construction permission granted by the Trust had also been violated as well. Each petitioner was called upon to show

cause as to why the illegally constructed shops should not be demolished in exercise of powers conferred upon the Tehsildar, UIT by Section 91A of the UIT Act. The petitioners allegedly approached the respondent No.4 builder and made an inquiry about the predicament faced by them owing to the notice issued by the UIT on which, they were purportedly informed that the construction had been raised strictly in accordance with the sanctioned plan and that the UIT had never raised any objection regarding the shops sold to the petitioners which were lawfully constructed way back in the year 1998-1999 in accordance with the explicit permission granted by the UIT. The petitioners further bank upon an application filed by the respondent No.4 Company before the UIT stating that the area required for parking in the basement of the building was only 9368 sq. fts whereas, a total area of 29000 sq. fts. i.e. an excess of 10000 sq. fts. Area was available in the building for providing parking to its residents. The ten shops which were constructed in the basement area were covering a carpet area of about 1800 to 2000 sq. ft. only and did not exceed 3% of the total FAR which could be lawfully used for commercial purposes. The builder company approached the UIT and agreed to pay the applicable conversion charges and requested that the 10 shops constructed in the basement of the building be regularised in terms of Rajasthan (Urban Area Buildings) Regulations, 2000 (herein after referred to as 'the Building Regulations'). The petitioners claimed to have appeared before the Tehsildar, UIT, Udaipur raising an objection that they being bonafide purchasers of the shops in question from the respondent No.4 being the builder of the multi-storied complex, were entitled to protection of their proprietary rights on the shops in question more so when the builder had expressed a willingness to pay the applicable charges for conversion of the alleged deviation in the building from residential to commercial which was otherwise trivial. On these grounds, the petitioners have approached this Court seeking quashing of the impugned notices and also seeking a direction to the respondents to convert and regularise the shops of the petitioners as per the Building Regulations. The respondents have filed reply in writ petition No.1676/2005 which has been adopted in the other writ petition as well. The prayers made in both the writ petitions have been opposed on merits and so also on the ground of alternate remedy.

Shri J.P. Joshi, Sr. Advocate assisted by Shri Siddharth Joshi, Advocate representing the petitioners vehemently and fervently urged that since, the petitioners are bonafide purchasers of the shops in question and as such, their proprietary rights guaranteed by Article 300A of the Constitution of India deserve to be protected and the impugned action should be struck down. They further urged that the builder has agreed to pay the additional commercial charges for the trivial deviation from the original building plan comprising of the shops in question as the respondents are not entitled to insist for demolition of the shops lawfully purchased by the petitioners. He further urged that the FAR of the area which has been utilized for carving out 10 shops from the entire stilted basement does not exceed more than 3% of the total available parking area and as such, there is no justification in the impugned action whereby, the petitioners being the registered owners of the shops in question are sought to be deprived of their proprietary rights under the garb of demolition notices. On these grounds, Shri Joshi craved acceptance of the writ petitions and striking down the impugned notices.

Per contra, Shri Deelip Kawadia, Advocate representing the respondent UIT, drew the Court's attention to the original construction permission (Annexure-1) dated 10.05.1999 granted to the respondent No.4 Salibhadra Builders, the clause No.17 whereof clearly stipulated that the entire stilted basement area of the building shall be dedicated for parking. He also drew the Court's attention to the revised permission letter issued in favour of respondent No.4 and the Clause 22 thereof as per which, the builder was obligated to execute an agreement and an affidavit in favour of UIT to the effect that the stilted basement area and the set backs of the building shall not be sold to anybody and that the same shall be used exclusively for parking. In case, the area was found being used in violation of this undertaking, the Trust would be at liberty to demolish the same and to charge the cost of demolition from the person found using the reserved area in contravention of the construction permission. He further drew the Court's attention to the sale deeds as per which, the petitioners purchased the areas in question by styling the same to be garage and not as shops. He thus urged that as admittedly, the petitioners had purchased the area in question from the building constructed by the respondent No.4 for use as a garage and as, the permission which was granted to the builder for the said area was explicitly reserved for parking, manifestly, the use thereof as shops and

for commercial activity is not permissible. He further submitted that the remedy of filing an appeal under Section 91(2) of the UIT Act was available

with the petitioners but rather than availing the statutory available remedy, the petitioners have directly approached this Court by way of these writ

petitions for assailing the impugned notices which are even not maintainable. On these grounds, he implored the Court to dismiss the writ petitions.

I have heard and appreciated the arguments advanced by the learned counsel for the parties and have gone through the material available on record.

On the face of it, this Court is duly satisfied that these writ petitions are not maintainable in view of availability of statutory efficacious alternate

remedy of appeal to the petitioners under Section 91(2) of the UIT Act for imploring the impugned notices. Nonetheless, even if the controversy is

examined on merits, it is apparent that the petitioners have no plausible ground for assailing the impugned notices. The fulcrum of the arguments

advanced by Shri Joshi was that the petitioners had bonafide purchased the area in question as shops and that they were made to understand by the

respondent No.4 builder that the requisite conversion of the area from residential to commercial would be ensured. This argument of Shri Joshi is ex-

facie frivolous and farfetched. In the two construction permissions (Annexure-1) and (Annexure-2) placed on record by the petitioners, there exists an

absolute unpliable condition that the stilted basement area of the building shall be used for parking purposes only. There was an emphatic restriction in

the permission letter (Annexure-2) dated 04.09.2000 that the said area would not be available for sale and in case, any deviation is noticed, the Trust

would be at liberty to demolish such construction at the cost of the user. Even in the sale deeds through which the petitioners purchased part of the

basement area from the builder, it is clearly mentioned that the sale was being made as a garage. Evidently, a garage can only be allowed to be used

for parking purposes and cannot be put to use for commercial activities.

Considered in light of the facts noticed herein above and since, admittedly the stilted area of the multistoried building from which the petitioners

purchased the areas in question was reserved for parking purposes with an undeviable condition that it shall not be put to commercial use and as the

registered sale deeds clearly portraying the sale as garage and since the stipulations made in the construction permission and the sale deeds were

blatantly flouted by converting the said area into shops and as the area reserved exclusively for parking has been put to commercial use, manifestly, no

proprietary right of the petitioners is being flouted by the impugned notices of demolition. Thus,Â no ground is made out to exercise this Courtâ??s

extraordinary writ jurisdiction for quashing the same.

Hence, the writ petitions as well as stay applications are dismissed as being devoid of merit.

No order as to costs.

A copy of this order be placed in each file.