

(1987) 03 RAJ CK 0087

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2371 of 1986

Baboo Lal Gehlot

APPELLANT

Vs

Urban Improvement Trust and Others

RESPONDENT

Date of Decision : 13-03-1987

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1987) WLN 287

Hon'ble Judges : Milap Chand Jain, J;Kanta Bhatnagar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Kanta Bhatnagar, J.—This writ petition under Articles 226 & 227 of the Constitution of India has been filed by the petitioner for issuance of writ of prohibition for restraining respondent No. I the Urban Improvement Trust, Bikaner (for short the UIT here in after) from proceeding with the proposed auction in pursuance of Annexure 4.

2. The averments in the writ petition are that the petitioner has a shop in the India Market in front of the P.B.M. Hospital, Bikaner. That the scheme of that market was approved by the U.I.T. and put in execution. That, space for parking was earmarked for the utility of the shopkeepers and the visitors of the market and it was being soused for a longtime. That the U.I.T. thereafter proposed to auction that land earmarked for the parking and issued Notice Annexure-4. which has caused grievance to the petitioner and those for whose use the land was reserved.

3. The grievance of the petitioner is that once a scheme has been sanctioned under the Rajasthan Urban Improvement Act, 1959 (for short "the Act" here in after) it cannot be altered without the previous sanction of the Government, the Map relating to the scheme, in which the land in dispute was earmarked for parking, was not supplied to the petitioner despite his depositing the requisite

fee. That every scheme by the U.I.T. has to be approved by the Town planner under Rules 9 of the Rajasthan Urban Improvement trust (Disposal) Rules, 1954 (for short "the Rules" here in question and therefore, no change can be affected to the approved scheme in the India Market. That, the demand of Notice Annexeure-3 was not considered by the Urban Improvement Trust.

4. Notice was issued to the respondents. Written reply has been filed on behalf of the U.I.T. It has been stated that with a view to remove to do away with the nuisance and unhealthy of the scheme constructed India Market and let out the shops constructed by the U.I.T. to the erstwhile unauthorised occupants with a view to regularly settle them. It has been admitted that there was a provision of a small space of 20" X 30" to be used of parking but the scheme was not a statutory scheme. That representations such as Annexures R/3, R/4 and R/5 were received and it was disclosed that the occupant of shop No. 22 and a few others were using the land reserved as parking and it was not being utilised for the purpose it was earmarked. That the earmarked parking space led to unauthorised encroachment by the persons having "Thelas" and "Khomchas" In that situation, the U.I.T. resolved to auction the land for the construction of shops No. 23 24 and 25 that, the meeting in which the proposed alteration was decided was attended by the Senior town Planner and as such there arises no question of violation of any Rule.

5 There is no dispute on the point that the petitioner has a shop in the India Market and the land which is now stated to have been auctioned for the construction of Shops No. 23, 24 and 25 Verandah in front of them has been reserved for Scooter parking in the initial India Market Scheme. Annexure R/2 is the Map. In that Map while earmarking the proposed land for shops, the original situation i.e. earmarking for Scooters parking has been shown.

6. Mr. Bhagwati Prasad vehemently contended that there is no approval, or sanction by the Town planner for this alteration in the scheme and therefore, the auction of the land is illegal. It has also been urged that if that space earmarked for parking is not kept as such it will create great hardship for the occupants of the shops in the market and the visitors thereto.

7 Mr. D.S. Shishodia, learned counsel for the U.I.T referred to Annexure R/1, the resolution passed in the meeting dated October 6, 1986 where at serial No. 2 of resolution there is mention of land near the B.T.M. Hospital. It is important to note that the decision taken in that regard was that in case the and got vacated from the un-authorised occupants is left vacant there would again be unauthorised occupation and it would be difficult to remove that and therefore, at these places plots for commercial purposes may be auctioned. That, all the Members insisted that in no case any land may be kept vacant otherwise it would be very difficult to remove unauthorised occupants again.

8. Mr. Bhagwati Prasad submitted that this part of the resolution does not specifically show that it was meant for the land reserved for parking. Though,

there is no specific mention about it but when there is a reference of the land near the P.B.M. Hospital and the decision is taken in that regard, it would mean the land in question.

9. The pertinent question is whether this decision of the U.I.T. was in contravention to the Rules.

10. Mr. Bhagwati Prasad has referred to Rule 9 of the Rules which requires the approval of the scheme by the Chief Town Planner. Rule 9 of the Rules relates only to scheme falling under Rule 8. Rule 8 deals with the preparation of the scheme for disposal of land exceeding 1500 sq. yds, and division of land for the purposes mentioned there in.

11. Rule 15 of the Rules provides the method for allotment of sale of non-residential land and reads as under:

15. Allotment and sale of Non residential Land

Lands for non-residential purposes shall be allotted to public and charitable institutions on terms and conditions prescribed under these rules provided that lands of commercial nature shall be disposed of by public auction in the manner referred to in Rule 14 provided further that lands reserved for cinemas, luxury hotels and petrol pumps shall be disposed of in accordance with the directions of the State Government that may be issued from time to time.

12. Mr. Bhagwati Prasad sought help from the provisions of Rule 16 of the Rules which reads as under:

16. Lands outside the sanctioned schemes

Before any allotment or sale of land is made by the Trust outside the sanctioned scheme, the Chief Town Planner or his nominee authorised in this behalf shall be consulted, so that it is ensured that the land so allotted or sold for such purpose shall be in conformity with the Master Plan for that area, if any, and in the absence of a Master Plan the allotment or sale of land shall fit in with the overall development plan for that area.

13. The contention of the learned counsel for the petitioner is that in the present case the proposed alteration has neither been approved nor sanctioned by the Chief Town Planner or his nominee and therefore cannot be effected.

14. Mr. Shishodia tried to meet this argument by submitting that the Senior Town Planner was present in the meeting dated October 6, 1986 as is evident from Annexure Rule R/1 and therefore no further approval was required.

15. Mr. Bhagwati Prasad submitted that the presence in the meeting does not mean the sanction as envisaged by Rule 16 of the Rules, the argument does not appeal. The reason is that whereas the Rule 9 requires the approval of the scheme by the Chief Town Planner, Rule 16 requires the consultation of the Chief Town Planner or his nominee authorised in this behalf. There is difference

between approval, sanction and consultation.

16. Mr. Bhagwati Prasad submitted that the consultation in such matter should be active consultation and not a mere formality. It is correct but when the Senior Town Planner was present in the meeting where the decision referred to here in before was taken, it cannot be said that he was not agreeable to the alteration in the scheme.

17. Mr. Shishodia referred to the Map and submitted that while widening the road in front of the land in dispute 10" in width from the parking space has already been taken away for that purpose. Mr. Bhagwati Prasad does not dispute this position. He also does not dispute that the building line of the shops No. 23, 24 and 25 would be that of the existing shop occupied by the petitioner and that similar Verandah is provided in front of shops No. 24 and 25.

18. Mr. Shishodia submitted that on the other side of the roads in front of the land earmarked for the parking in the initial scheme some area has been earmarked for Scooter and Tonga stand which would definitely be more convenient to the occupants of the shops of the India Market and the visitors thereto.

19. According to Mr. Shishodia, the land in question had been auctioned long back and the petitioner has no genuine case. That, it is the competition in his business which has caused grievance to the petitioner on account of new shops being in his line rather than any inconvenience to the public at large.

20. In view of the above discussion specially when alternate arrangement and that too of better type for the parking has been provided and there is no illegality or violation of any Rule in making the alteration in the space of parking initially left, the petitioner has no case so as to get any relief from this Court.

21. The writ petition is dismissed. Costs are made easy.