
(1986) 07 RAJ CK 0023
In the Rajasthan High Court
Case No : Civil Writ Petition No. 378 of 1985

Banwarilal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-07-1986

Acts Referred:

Land Revenue Act, 1956 — Section 90A
Rajasthan Land Acquisition Act, 1953 — Section 3, 4(1)
Rajasthan Tenancy Act, 1955 — Section 42, 5

Citation : AIR 1987 Raj 115 : (1986) RLW 581 : (1986) 2 WLN 648

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Advocate : Jagdeep Dhanker, for the Appellant; K.S. Rathore, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

M.B. Sharma, J.—The petitioner has challenged the notification dt. 7th Dec. 1982 which was issued under Sub-section (1) of Section 4 of the Rajasthan Land Acquisition Act, 1953 (hereinafter referred to as "the Act"). He has also challenged the notification dt. Jan 29, 1985 issued under Sub-section (4) of Section 17 of the Act under which in exercise of the powers under Sub-section (4) of Section 17. the provisions of Section 5-A of the Act have been dispensed with. Under the notification dt. June 29, 1985 it has also been ordered that the Land Acquisition Officer shall take possession of the land under Sub-section (1) of Section 9 after the expiry of the 15 days of the publishing of notice.

2. In the writ petition the main challenge is confined to a portion of Khasra No. 1937 measuring 14 Bighas and 17 Biswas situated in Chomu, Jaipur. The case of the petitioner is that he had purchased the plot of land measuring 3600 Sq. feet and forming part of the land of Khasra No. 1937 situated in Chomu from Shri Banwarilal son of Shri Jhabarmal for a sum of Rs. 6,000A in the year 1980. The sale deed to the above effect was executed on Jan. 24, 1980 and registered with

the Sub-registrar on the same date. Thereafter, he raised constructions over the aforesaid plot in the year 1980 and invested Rs. 90,000/- in raising the aforesaid constructions. In the year 1982, the petitioner also deposited conversion charges for the aforesaid plot for getting the same legally conveyed for being used for residential purposes and a sum of Rs. 2016/- was deposited.

3. The challenge to the notification is that the petitioner is a person interested within the meaning of Section 4(g)(i) of the Act.

4. In my opinion, it is discretionary with the court to invoke its jurisdiction under Article 226 of the Constitution. Before the Court can be asked to invoke the jurisdiction, the person must come with clean hands. The relief under Article 226 of the Constitution of India is an equitable relief. As per the averments contained in the writ petition, Khasra No. 1937 measures 17 Bighas and 14 Biswas and the petitioner only purchased 3600 Sq. feet i.e. only a portion of the land. u/s 42 of the Rajasthan Tenancy Act, 1955 (for short "the Tenancy Act") the sale, gift or bequest by a Khatedar tenant of his interest in the whole or part of his holding shall be void, if it is not of a survey number except when the area of the survey number so sold, gifted or bequested is in excess of the minimum area prescribed for the purpose of Sub-section (1) of Section 53 in which case also the area not transferred shall not be a fragment. The case of the petitioner does not fall under any of the proviso to Section 42(a) of the Tenancy Act. Thus, the sale of 3600 Sq. feet agricultural land of Khasra No. 1937 measuring 17 Bighas and 14 Biswas is in contravention of Section 42(a) of the Tenancy Act and as such is void. It is a case where no right or title or interest in the land vests in the petitioner. Not only this, as per the averments of the writ petition itself after the void transfer as aforesaid of the portion of the land in favour of the petitioner, the petitioner without seeking permission under the provisions of the Land Revenue Act, 1956 (For short "the LR Act"), of the Gram Panchayat or the notified area committee is said to have raised construction of the shops. As appears from (Annex. 2) the photos (were) filed by the petitioner himself. Thus, he has used the agricultural land for non-agricultural purpose. u/s 90-A of the L.R. Act, no person holding any land for purpose of agriculture and no transferee of such land or any part thereof shall use the same or any part thereof by the construction of buildings thereon or otherwise, for any other purpose except with the written permission of the State Government obtained in the manner laid down therein and otherwise than in accordance with the terms and conditions of such permission. Sub-section (2) of Section 90-A of the LR Act provides that any such person desiring to use such land or any part thereof for any person other than that of agriculture shall apply for the requisite permission in the prescribed manner and to the prescribed officer or authority and every such application shall contain the prescribed particulars. From the averment of the writ petition it cannot be said that any permission for use of agricultural land for non-agricultural purposes i.e. for construction of building was sought by the petitioner from the State Government or from the other authorities and was obtained. It cannot, therefore, be said that prima facie the constructions have been made by the petitioner is without

permission and agricultural, the portion of agricultural land has been used for non-agricultural purposes in contravention of Section 90-A of the LR Act. Trespass has been defined in Section 5 Clause (44) of the Tenancy Act and shall mean a person who takes or retains possession of land without authority or who prevents another person from occupying land duly let out to him. The petitioner who purchased the land in contravention of Section 42(a) of the Tenancy Act under a void transfer is a trespasser as he took possession from State Government or authorities. Under Sub-section (5) of Section 90-A of L. R. Act, if any agricultural land is used for non-agricultural purposes without the permission of the State Government or Government authorities as aforesaid u/s 90-A Sub-sections (1) to (4) then both the transferor and transferee shall be deemed trespasser and shall be liable to be evicted from that land u/s 91 of the L.R. Act. It can, therefore, be said that the petitioner is a trespasser in possession under a void transfer made in his favour of portion of survey number in contravention of Section 42(a) of the Tenancy Act. Such person cannot be a person interested within the meaning of Section 4(1) of the Rajasthan Land Acquisition Act. 1953. The person interested has been defined in Section 3(b) of the Act and includes those who claim interest in compensation of the land under the Land Acquisition Act. A person who is a trespasser, who is in possession under a void transfer in contravention of Section 42(a) of the Tenancy Act cannot, in my opinion, be a person claiming an interest in any compensation to be paid on account of acquisition of land under the Act.

5. The petitioner has not cited a single authority where it has been stated that there a trespasser is also a person interested within the meaning of the term as defined in Section 3(b) of the Act. Article 300A of the Constitution is not attracted.

6. The result of the above discussion is that the petitioner has not come with clean hands as the land has been purchased in contravention of Section 42(a) of the Tenancy Act, being a trespasser raised construction of building without prior permission of State Government or authorities. There is no force in this writ petition and is hereby dismissed.