
(2014) 05 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 724 of 2013

Bhuvaneshwari Singh

APPELLANT

Vs

Government of Rajasthan and Others

RESPONDENT

Date of Decision : 30-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Jaipur Development Authority Act, 1982 — Section 83(8)(b)

Citation : (2015) 1 RLW 118

Hon'ble Judges : Amitava Roy, C.J;Veerender Singh Siradhana, J

Bench : Division Bench

Advocate : Hans Kumar Sharma, Advocates for the Appellant; Ram Kumar Sharma, Advocates for the Respondent

Judgement

Veerender Singh Siradhana, J.—In the intra-court appeal, the petitioner-appellant (for short "appellant"), has impeached the judgment and order dated 17th May, 2013, passed by the learned Single Judge, rejecting the assailment to the order dated 9.12.2009, and map as well as list of the even date, and thus, declining the relief as prayed for under the relief clause of the writ application. In order to appreciate the controversy, the indispensable essential material facts need to be outlined first. The subject matter of the impugned communication dated 9th December, 2009, is the Vidhan Sabha Nagar Residential Scheme (hereinafter referred to as the "Scheme", for short) and Sanyukta Grah Nirman Sahakan Samiti (hereinafter referred to as the "Samiti", for short). The impugned communication reflects the informations collected by the Liquidator appointed by the Samiti from time to time from the allottees and submitted to Jaipur Development Authority (for short the "JDA"), in the Scheme including the ownership documents, which necessitated revision of layout plan of the Scheme by the JDA Sector Road in compliance with the parameters of 60% or less plotted area in the Scheme and 40% or more for road and facilities, resulting into reduction in plot sizes on revision of some plots. The appellant aggrieved of the Conclusions arrived at by the Deputy Registrar, Cooperative Societies and

conveyed to the Deputy Commissioner, Zone-8, JDA, vide communication dated 9th December, 2009, assailed the same as an arbitrary and illegal action with a mala fide intention to regularize the plots to the allottees under Section 83(8)(b) of the JDA Act, 1982, in collusion with the Officers of the Samiti. The appellant alleged arbitrary increase in the plots" size of various Officers of the JDA, Cooperative Department and relatives of the Liquidator as well as erstwhile office bearers of the Samiti, prior to the appointment of the Administrator under order dated 20th June, 1995. The competence of the Deputy Registrar, to forward the impugned communication dated 9th December, 2009, to the Deputy Commissioner, Zone-8, JDA, was also questioned since this action could be undertaken by the Liquidator alone. The impugned communication dated 9th December, 2009, assailed for want of jurisdiction, has also been questioned for factual illegalities in view of the enhancement of number of plots resulting into reduction of plot areas of the appellant and others and therefore, prayed for annulment of the impugned communication dated 9th December, 2009.

2. In response to the notice of the writ application, the respondents/non-appellants (for short the "respondents"), submitted their counter affidavit questioning the very maintainability of the writ proceedings so much so that the controversy raised, involved seriously disputed complex questions of facts with reference to the number of the members of the Samiti, and further, availability of the alternative remedy under Section 58 of the Rajasthan Cooperative Societies Act, 2001 (hereinafter referred to as the "Act of 2001", for short), was also pleaded. Further, since allegations of mala fide were levelled against the Administrator of the Samiti, the Official Liquidator and also against the erstwhile office bearers of the Samiti, before the appointment of the Administrator, but none was impleaded as party eo-nominee to the writ proceedings. Moreover, since the revised layout plan of the Scheme of the Samiti was approved by the JDA vide order dated 7th January, 2010, which was not under challenge, therefore, the writ proceedings were liable to be dismissed on that count alone. Initiation of the litigation is stated to be a proxy litigation by one Bahadur Singh Meena, who claimed himself to be the President of Samiti, who filed a Revision Petition Number 1/2010 before the Deputy Registrar, Cooperative Societies, unsuccessfully challenging the impugned communication dated 9th December, 2009 and documentary evidence in this regard was also brought on record, questioning the bona fide. Initiation of the writ proceedings was stated to be a gross abuse of process of court. The allegations of increasing in the number of plots were repelled for facts without any factual foundation. The writ proceedings were also contested on merits.

3. The learned Single Judge having heard the learned counsel for the parties and taking into consideration the materials available on record as well as pleadings of the parties, concluded that the writ proceedings did raise seriously disputed complex questions of facts with reference to the members of the Samiti and title with reference to the allotment of the plots in the Scheme as well as to the layout plan of the Scheme. The question of facts could only be determined by

leading evidence and therefore, declined to exercise discretionary jurisdiction under Art. 226 of the Constitution of India.

4. The learned counsel for the appellant, reiterating the pleaded facts emphasized that all the documents placed on record were admitted and therefore, the issue of any fact being a disputed question of fact, simply did not arise in the matter. The learned counsel, referring to para 6 of the impugned communication dated 9th December, 2009, insisted that the change in the size of the plots and amendment in the plot numbers was carried out with the consent of the allottees on 10th November, 2009 and therefore, the finding arrived at by the learned Single Judge is bad in the eye of law. The learned counsel also pointed out that initially in the Scheme, 1000 plots were chalked out by the Samiti and a question in this reference was also raised in the 12th Legislative Assembly of the State and referred a communication at Annexure-58. Countering the objection as to impleadment of the authorities eo-nominee, while alleging mala fides, the learned counsel pleaded malice in law and placed the reliance on the opinion of the Hon''ble Supreme Court in the case of Ratnagiri Gas and Power Pvt. Ltd. Vs. RDS Projects Ltd. and Others, , and in the case of M/s. Real Estate Agencies Vs. Govt. of Goa and Others, . The learned counsel further contended that the appellant agreed to change of the seize of the plot, but his consent letter was not produced for reasons best known to the respondents.

5. Per contra, the learned counsel appearing on behalf of the respondent number 2 (Liquidator), supporting the judgment and order passed by the learned Single Judge, and reiterating the stand before the learned Single Judge, argued that in fact, the initiation of the writ proceedings was a misuse of process of Court. The learned counsel referring to Annexure-R/2/2, filed along with reply to the memo of the appeal, contended that the plot was allotted to one R.N. Bhargava, the original allottee. Since some portion of the land was included in the sector road, which necessitated resizing of the plot(s). No allotment letter was placed on record by the appellant though the appellant has been resorting to filing of the writ applications, is yet another objection urged by the learned counsel repelling the factual contentions. According to the learned counsel for the respondent number 2, there was no registered sale deed executed, with reference to the transfer of the plot, in the name of the appellants. Therefore, taking note of these seriously disputed complex questions of facts, the learned Single Judge, rightly declined to exercise the extraordinary original discretionary jurisdiction under Article 226 of the Constitution of India, to entertain the writ application and hence, the intra-court appeal merits rejection. Moreover, the appellant has an alternative remedy under Section 83(8)(b) of the JDA Act, as has been observed by the learned Single Judge.

6. We have heard the learned counsel for the parties and with their assistance, perused the materials available on record including the judgment and order passed by the learned Single Judge.

7. From a bare perusal of the nature of the pleadings of the parties and materials

available on record as well as the findings arrived at by the learned Single Judge, *prima facie*, we do find that the matter involves seriously disputed complex questions of facts, which can only be proved by leading evidence. Further, taking note of the fact that the appellant has not placed on record the allotment letter, and also there is no registered sale deed transferring the plot in the name of the appellant, available on record, we are not persuaded to take a view different than the one arrived at by the learned Single Judge.

8. The opinion of the Hon''ble Supreme Court, as referred to and relied upon, in the case of *M/s. Read Estate Agencies (supra)*, would reveal that though there is no question or issue beyond the adjudicatory jurisdiction under Article 226 of the Constitution of India, but as a matter of prudence the High Court under Article 226 of the Constitution normally, would not entertain a dispute, which requires determination of contested questions and conflicting claims as has been observed by the Hon''ble Supreme Court.

9. In the case of *Ratnagiri Gas and Power Pvt. Ltd. (supra)*, the Hon''ble Supreme Court while dealing with the issue of allegations of mala fide has observed that the allegations of mala fides are more easily made than proved. Therefore, mere assertion or vague statement is not sufficient to prove the bias or mala fide. The Hon''ble Supreme Court in the case aforesaid observed thus:-

"24. Even otherwise the findings recorded by the High Court on the question of mala fides do not appear to us to be factually or legally sustainable. While we do not consider it necessary to delve deep into this aspect of the controversy, we may point out that allegations of mala fides are more easily made than proved. The law casts a heavy burden on the person alleging mala fides to prove the same on the basis of facts that are either admitted or satisfactorily established and/or logical inferences deducible from the same. This is particularly so when the Petitioner alleges malice in fact in which event it is obligatory for the person making any such allegation to furnish particulars that would prove mala fides on the part of the decision maker. Vague and general allegations unsupported by the requisite particulars do not provide a sound basis for the court to conduct an inquiry into their veracity. The legal position in this regard is fairly well-settled by a long line of decisions of this Court. We may briefly refer to only some of them. In *State of Bihar and Another Vs. P.P. Sharma, IAS and Another*, , this Court summed up the law on the subject in the following words:

50. Mala fides means want of good faith, personal bias, grudge, oblique or improper motive or ulterior purpose. The administrative action must be said to be done in good faith, if it is in fact done honestly, whether it is done negligently or not. An act done honestly is deemed to have been done in good faith. An administrative authority must, therefore, act in a bona fide manner and should never act for an improper motive of ulterior purposes or contrary to the requirements of the statute, or the basis of the circumstances contemplated by law, or improperly exercised discretion to achieve some ulterior purpose. The determination of a plea of mala fide involves two questions, namely (i) whether

there is a personal bias or an oblique motive, and (ii) whether the administrative action is contrary to the objects, requirements and conditions of a valid exercise of administrative power.

51. The action taken must, therefore, be proved to have been made mala fide for such considerations. Mere assertion or a vague or bald statement is not sufficient. It must be demonstrated either by admitted or proved facts and circumstances obtainable in a given case. If it is established that the action has been taken mala fide for any such considerations or by fraud on power or colourable exercise of power, it cannot be allowed to stand.

(Emphasis supplied)

25. We may also refer to the decision of this Court in *Ajit Kumar Nag Vs. General Manager (P.J.), Indian Oil Corporation Ltd., Haldia and Others*, where the Court declared that allegations of mala fides need proof of high degree and that an administrative action is presumed to be bona fide unless the contrary is satisfactorily established. The Court observed:

56. ... It is well settled that the burden of proving mala fide is on the person making the allegations and the burden is "very heavy". (vide *E.P. Royappa Vs. State of Tamil Nadu and Another*, There is every presumption in favour of the administration that the power has been exercised bona fide and in good faith. It is to be remembered that the allegations of mala fide are often more easily made than made out and the very seriousness of such allegations demands proof of a high degree of credibility. As Krishna Iyer, J. stated in *Gulam Mustafa and Others Vs. The State of Maharashtra and Others*, : "It (mala fide) is the last refuge of a losing litigant."

26. There is yet another aspect which cannot be ignored. As and when allegations of mala fides are made, the persons against whom the same are levelled need to be impleaded as parties to the proceedings to enable them to answer the charge. In the absence of the person concerned as a party in his/her individual capacity it will neither be fair nor proper to record a finding that malice in fact had vitiated the action taken by the authority concerned. It is important to remember that a judicial pronouncement declaring an action to be mala fide is a serious indictment of the person concerned that can lead to adverse civil consequences against him. Courts have, therefore, to be slow in drawing conclusions when it comes to holding allegations of mala fides to be proved and only in cases where based on the material placed before the Court or facts that are admitted leading to inevitable inferences supporting the charge of mala fides that the Court should record a finding in the process ensuring that while it does so, it also hears the person who was likely to be affected by such a finding. Decisions of this Court have repeatedly emphasised this aspect, which is of considerable importance. In *State of M.P. and Others Vs. Nandlal Jaiswal and Others*, , speaking for the Court, P.N. Bhagwati, J., as His Lordship then was, disapproved the observations made by the High Court attributing mala fides and

corruption to the State Government without there being any foundation in the pleadings for such observations. The Court declared that wherever allegations of mala fides are made, it is necessary to give full particulars of such allegations and to set out material facts specifying the particular person against whom such allegations are made so that he may have an opportunity to controvert such allegations. The following observations of the Court are apposite:

39. Before we part with this case we must express our strong disapproval of the observations made by B.M. Lal, J. in para 1, 9, 17, 18, 19 and 34 of his concurring opinion. The learned Judge made sweeping observations attributing mala fides, corruption and underhand dealing to the State Government. These observations are in our opinion not at all justified by the record. In the first place it is difficult to appreciate how any such observation could be made by the learned Judge without any foundation for the same being laid in the pleadings. It is true that in the writ petitions the Petitioners used words such as "mala fide", "corruption" and "corrupt practice" but the use of such words is not enough. What is necessary is to give full particulars of such allegations and to set out the material facts specifying the particular person against whom such allegations are made so that he may have an opportunity of controverting such allegations. The requirement of law is not satisfied insofar as the pleadings in the present case are concerned and in the absence of necessary particulars and material facts, we fail to see how the learned Judge could come to a finding that the State Government was guilty of factual mala fides, corruption and underhand dealing.

27. To the same effect is the decision of this Court in *Swaran Lata Vs. Union of India and Others*, , where the Court emphasized the need for particulars supporting the allegations of mala fides, in order that the Court may hold an inquiry with the same. Absence of such particulars was held to be sufficient for the Court to refuse to go into the allegations. The Court said:

57. ... The Court would be justified in refusing to carry on investigation into allegations of mala fides, if necessary particulars of the charge making out a prima facie case are not given in the writ petition. The burden of establishing mala fides lies very heavily on the person who alleges.

28. The above was reiterated in a recent decision of this Court in *Nirmal Jeet Singh Hoon Vs. Irtiza Hussain and Others*, and *All India State Bank Officers' Federation and Others Vs. Union of India (UOI) and Others*, . In the latter case this Court observed:

22. There is yet another reason why this contention of the Petitioners must fail. It is now settled law that the person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit Respondents 4 and 5 would amount to the Petitioners contending that the Board of Directors of the Bank sought to favour Respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been

impleaded as Respondents. This being so the Petitioners cannot be allowed to raise the allegations of mala fides, which allegations, in fact, are without merit.

(Emphasis supplied)"

10. In the instant case at hand, from the nature of the pleadings of the parties and materials available on record, it is apparent that there are specific allegations of personal bias, alleged by the appellants, but have not laid the factual foundation to sustain the allegations made. In the peculiar facts, circumstances and in view of the materials available on record, we have no hesitation in confirming the conclusion and view arrived at by the learned Single Judge for non-impleadment of the authorities eo-nominee to the proceedings, against whom allegations of mala fides have been alleged. The impugned judgment and order suffers with no infirmity or illegality, calling for any interference.

11. For the reasons and discussions herein above, the intra-court appeal is devoid of any substance and deserves to be dismissed.

12. Ordered accordingly.

13. In view of the final adjudication on the intra-court appeal, the stay application stands closed. However, in the facts and circumstances of the case, there shall be no order as to costs.