

(2015) 05 RAJ CK 0045

In the Rajasthan High Court

Case No : Civil Writ Petition Nos. 2202 and 2975 of 2012

Braham Singh Parihar and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2
Jodhpur Development Authority Act, 2009 — Section 67
Rajasthan Land Revenue Act, 1956 — Section 25, 90B

Citation : (2015) 3 RLW 2482 : (2015) 4 WLN 186

Hon'ble Judges : Sunil Ambwani, C.J.; Banwari Lal Sharma, J

Bench : Division Bench

Advocate : Rajesh Joshi, O.P. Mehta and V.D. Gaur, for the Appellant; P.S. Bhati, A.A.G, Sajjan Singh, Manoj Bhandari, M.R. Singhvi, Bhavith Sharma, Ravindra Singh, R.S. Saluja, Girish Sankhla and Prdeep Choudhary, Advocates for the Respondent

Judgement

Sunil Ambwani, C.J.

Writ Petition No. 2202/2012

1. This writ petition has been filed by the petitioners-Braham Singh Parihar and Chiman Singh Parihar with the following prayers:--

"I. by an appropriate writ, order or direction the impugned order dated 31.1.2012 (Annex.9) passed by the Secretary, Jodhpur Development Authority, Jodhpur and Resolution No. 14 dated 21.3.2011 published on 15.4.2011 (Annex.10) are quashed and set aside.

I/A. Further by an appropriate writ, order or direction, the impugned order dated 16.6.2011 (Annex.11) passed by the Deputy Secretary, Group-3, Nagariya Vikas Department, Government of Rajasthan may kindly be quashed and set aside.

II. Further by an appropriate writ, order or direction, the respondents may be directed to maintain the size of road i.e. 100 ft.

III. Any other appropriate order or direction, which this Hon"ble Court considers just and proper in the facts and circumstances of this case, may kindly be passed in favour of the petitioners.

IV. Costs of the amended writ petition may kindly be awarded to the petitioners."

2. It is alleged that the petitioners had khatedari land in Khasra No. 58/2, Village Bhadwasiya, Tehsil and District Jodhpur. They applied for change of land use under section 90B of the Rajasthan Land Revenue Act, 1956 from agriculture to residential and surrendered their rights in 12 bighas of land of their khatedari for conversion. In the Master Plan of the City of Jodhpur from 1976 to 1996, the width of the Paota "C" Road, on which the plot was situate, was shown to be 125 ft. wide. In the Sector Plan, the width of the same road i.e. coming from Jaipur road to RTO office and thereafter, from RTO office to Nagaur road (Paota "C" Road), was shown to be 100 ft. The respondent-Jodhpur Development Authority (JDA) issued a public notice on 30.4.2010 in the daily newspapers showing the width of the road as 100 ft.

3. It is stated that the petitioners gave a notice through their counsel for removal of encroachments and also claiming the width of the road to be 125 ft., which was arbitrarily and illegally reduced to 100 ft. The petitioners also filed a Civil Suit No. 134/2011 for permanent and mandatory injunction for removal of encroachments on the Paota "C" Road, used as public road. Alongwith the suit, they also made an application under Order 39 Rules 1 and 2 CPC. Notices have been issued on the application in the said Civil Suit.

4. It is stated that in the meeting dated 31.1.2012, the Jodhpur Development Authority (JDA) proposed to recommend to the State Government to reduce the width of the road from 100 ft. to 80 ft. As soon as the petitioners came to know about the proposal dated 31.1.2012 in the news published in the daily newspapers, they applied under the Right to Information Act, 2005 for obtaining the copies of the proceedings and agenda items and from which, they came to know that initially, the width of the road was shown to be 120-160 ft. and thereafter, it was reduced to 100 ft. In the meeting of JDA, by the impugned decision, the width of the road was proposed to be reduced from 100 ft. to 80 ft.

5. It is submitted that no change in the Master Plan is permitted except in accordance with the procedure prescribed under section 25 for modification of Plans and 28 for review of Plan under the Jodhpur Development Authority Act, 2009. In both the cases, a public notice is required to be given and published and thereafter, after hearing the parties, the modification may be made with the permission of the State Government. It is submitted that in the present case, the permission of the State Government was not taken before reducing the width of the road from 100 ft. to 80 ft. and thus, the decision is incompetent and liable to be set aside.

6. In paragraph 4 of the reply of the JDA, the entire details of the width of "Paota-C Road" as it was initially proposed in the Master Plan in the year 1977 (i.e.

26.11.1977) of the Jodhpur City and thereafter, the changes and the acquisition of land for construction of 80 ft. road have been given. In order to appreciate the changes and the reasons thereof, the contents of paragraph 4 of the reply are quoted below:--

"4. That the averments contained in para 4 to 7 are not admitted in the manner stated and hence denied. In this regard, it would be appropriate to submit that in the year 1977 i.e. on 26th Nov.1977, the Master Plan of the Jodhpur City was notified and in that Master Plan, the Paota C Road was shown as major Road. At that time, the width of the Paota C Road was kept as 120-160 Ft. Subsequently in the year 1985, the Sector Plan of the said area was prepared in which the width of the Paota C Road was shown at 100 Ft. In the year 2003, again the State of Rajasthan decided to have revised the Master Plan from 2001-2023 which was notified on 18th August, 2003. In this Master Plan, the Paota C Road was shown as "major road" and width of which can vary be a between 80 to 100 Ft. In this regard, the answering respondents are producing master plan as notified on 18th August, 2003 and the table-16 of the said master plan would show that the major road shall be ranged between 80 ft. to 120 ft. A copy of the master plan shall be kept ready for the perusal of this Hon"ble Court at the time of arguments.

The first decision to have the width of Paota C Road as 80 ft. was taken on 23rd Sept.2002. A copy of the said decision taken by the Settlement Committee under the able leadership of the then District Collector, Jodhpur is produced herewith and marked as ANNEXURE-R/1. In this meeting, it was decided that the persons whose land was coming within 80 Ft, shall be granted compensation and for that purpose, the Committee was also appointed and the Committee distributed approximately 182.67 Lacs as compensation. It is further submitted that survey was conducted of the entire area in which it was found that from National High Way No. 112 to the house of Vikram Singh there is a road of 80 ft, from Vikram"s house to Ashoka Auditorium it is 92 ft. from Ashoka Auditorium to Railway Line it is 60 ft. Since there was under-bridge, which was to be constructed, it was decided that the width of the road cannot be more than 80 Ft. and subsequently decision was taken in the meeting of the Settlement Committee dated 23rd Sept.2002 where all the concerned parties were present and in the presence of all the concerned parties, decision was taken to keep the width of the Paota C Road as 80 Ft.

After much deliberations on the issue and various meeting held by the District Collector, Jodhpur with the erstwhile Collector, Jodhpur, the matter had been referred by the District Collector to the Chief Town Planner, Jaipur dated 20th July, 2007, a copy whereof is being produced herewith and marked as ANNEXURE R/2. Prior to 3rd March, 2007, the meeting was called by the District Collector, Jodhpur in the presence of the Chairman, Erstwhile UIT, the Mayor of the Jodhpur, the District Collector, Jodhpur, the Secretary of the erstwhile UIT, the Chief Executive Officer and Municipal Board Jodhpur, the Deputy District

Collector-II, Jodhpur, the Sub-Divisional Officer, Jodhpur, the Deputy Chief Town Planner, Jodhpur, the various Municipal Councilors and various other persons including the local persons from the Paota C Road in which it was decided that the matter should be discussed in detail with the local leaders and the public as a whole that the width of the Paota C Road should be kept as 100 ft. or should be reduced to 80 ft. If it is to be reduced to 80 ft, the matter should be decided with the State of Rajasthan by the Local Self Body and the approval of the same has to be taken, the compensation to the aggrieved persons whose land is between 80-100 ft. has to be given compensation and if there is a majority view in this regard, should be adhered too. A copy of the said minutes of the meeting dated 8th March, 2007 held on 3rd March, 2007 under the able Leadership of District Collector, Jodhpur is produced herewith and marked as ANNEXURE R/3.

As stated above, subsequently, the matter was further referred to the Chief Town Planner on 20th July, 2007 and similarly the matter was further referred to the Urban Development Department Jaipur vide its communication dated 29th March 2007, a copy whereof is being produced herewith and marked as ANNEXURE-R/4. It would be appropriate to submit here that certain representations were received by the Chairman of the Erstwhile UIT, Jodhpur in the year 2002 to keep the width of the Road even at 60 ft. i.e. much lower than 100 ft. A copy of the representation received from the local residents of Paota C Road and near Lal Maidan is produced herewith and marked as ANNEXURE-R/5. Certain representations were also received that looking to all the facts and circumstances, the width of the road should be kept looking to the interest of the local residents. A copy of one of such representation dated 2nd April, 2002 is produced herewith and marked as ANNEXURE-R/6. Certain representations were also referred by the Ministers of the Local Self Department on 25th Nov.,2010 to take appropriate steps. A copy of such representation made by the local residents of Paota C Road which was referred to the JDA dated 25th Nov.,2010 is produced herewith and marked as ANNEXURE-R/7. In the meanwhile, in the year 2007, the matter was also referred to the Chief Town Planner, Jaipur by the Senior Town Planner, Jodhpur on 20th July, 2007, a copy whereof is being produced herewith and marked as ANNEXURE-R/8. In reply to the said, it was communicated by the Chief Town Planner, Jaipur to take appropriate action after taking legal opinion as to whether the width of the road should be kept as 80 or not? A copy of the said reply filed by the Chief Town Planner, Jaipur dated 24th July, 2007 is produced herewith and marked as ANNEXURE-R/9. In the year 2010, the general information was given by the JDA Jodhpur with regard to various major and main roads of Jodhpur City in which it was shown that the Paota C Road under-bridge to RTO Office is 100 Ft. but that information was wrongly given in the Newspaper, therefore, the contention raised by the petitioner that it was notified in the Newspaper that the width of the road is 100 ft, is absolutely incorrect and baseless, because the corrigendum was issued on 21st May, 2010 that so far as the width of Paota C Road from Aankhaliya Circle to Soorsagar Bye-pass, from Kohinoor Cinema to Jwala Vihar Colony, from Paota

Circle to Surpura Fante, from AIIMS road, the decision is yet to be taken in view of the sanctioned plan and the report of the Chief Town Planner and District Collector. A copy of the said notification issued in the Newspaper dated 21st May, 2010 is produced herewith and marked as ANNEXURE-R/10. In such circumstances, the contention raised by the petitioners is absolutely misleading and in this regard, it is submitted that after much deliberations and the representations of the public, the reports, the decision taken at the level of Chief Town Planner, Jaipur, final decision was taken after passing appropriate resolution to keep the width of the road of Paota C Road at 80 ft. It is submitted that every decision has to be taken in public interest and if there is larger public interest in keeping the road at 80 ft. looking to the ground situation and availability of infrastructure, the decision was taken in public interest to keep the width of the paota C Road at 80 ft. in accordance with law."

7. An objection has been taken by learned counsel appearing for the Jodhpur Development Authority as well as the intervenors that the petitioners are encroachers on the road, inasmuch as, they had surrendered the khatedari rights in Khasra No. 58/2/8 under section 90B of the Rajasthan Land Revenue Act, 1956 and got the land converted into the residential with the permission of the competent authority and thereafter, they submitted a plan for development of colony, in which they exceeded the area, which was in their khatedari and was surrendered by them, by 33,268.29 sq.ft. (1 bigha 18 biswa 4 biswansi). A Committee was constituted by the District Collector, Jodhpur vide his order dated 19.7.2005 to take the measurement. In the report dated 5.8.2005, it was found that the area towards east and west could not be measured. The area was, thereafter, measured by the Inspector and the Land Measurement Officer on 29.8.2005, of which a report was placed before the Committee and in which it was found that the total area encroached was 33268.29 sq.ft. (1.90 bigha). It was also found that within 100 ft. road, the area of the land in khasra No. 58/2 is situated and for which a afresh measurement was directed to be made by the Senior Town Planner, Jodhpur vide order dated 7th December, 2005, to find out as to how much land of the khasra would fall on the road if the width of the road is kept 80 ft. The Committee submitted its report on 21.12.2005 and from which, it was found that the land measuring 17920 ft. i.e. 1.028 bigha would fall on the road if the width of the road is kept 100 ft.

8. In the aforesaid circumstances, the family of the petitioners made an application for regularization of their possession over the excess land of 1 bigha 9 biswa, which was a Government land. They had prepared and got approval of out-lay plan for 13 bigha 9 biswa, as against the total area in their khatedari of 12 bighas and thereafter, allotted and sold the excess Government land. They thereafter, requested that they may be allowed to pay the regularization fees for the excess land and thereafter, the compensation be paid to them for acquisition of land. The matter was referred to the State Government by the Secretary, Urban Improvement Trust, Jodhpur on 7.8.2006. The State Government asked the Urban Improvement Trust, Jodhpur to take the appropriate decision in the

matter at their own level and on which, the Urban Improvement Trust, Jodhpur vide order dated 6.11.2006 rejected the application.

9. We may observe here that under section 67 of the Jodhpur Development Authority Act, 2009, the encroachment or obstruction upon public land is a punishable offence, for which imprisonment is provided, which shall not be less than one month, but which may extend to two years and with fine, which may extend to Rs. 20,000/-. The Jodhpur Development Authority does not appear to have initiated any proceedings under section 67 before the court of competent Magistrate against the petitioners for encroachment and sale of Government land.

10. In our view, a person, who has encroached upon the Government land and has also sold it, on which development has been carried out, is not entitled either to file a writ petition or civil suit for claiming that the Jodhpur Development Authority did not have the authority to change the Master Plan and to reduce the width of the road from 100 ft. to 80 ft. A clarification is given by learned Additional Advocate General on the Master Development Plan-2031, Jodhpur Region, which is pending approval before the State Government. In Table No. 29, the width of the road at Serial No. 11 (Paota C Road) from under-bridge to Nagaur bye-pass has been shown to be 100 ft. The Master Development Plan-2031 is still pending consideration before the State Government, and in the meantime, the Jodhpur Development Authority has decided to maintain the status quo, on the changes, which have been proposed in the Master Development Plan-2031.

11. A wrong doer is not entitled to seek any relief from the Court. It is a well known principles of law that a person, who approaches the Court for any relief in law, must come with clean hands. The petitioners have themselves encroached upon the public land and have got sanctioned out-lay plan and obtained pattas for 13 bigha 9 biswa, as against the total area in their khatedari of 12 bighas, and sold the excess area, which was Government land. Their application for regularization has been rejected. We also find that the JDA has given more than sufficient reasons, to keep the width of the road to be 80 ft. They did not have the sufficient funds for acquiring the road upto the width of 100 ft. The decision taken by the JDA by the impugned order to keep the road upto 80 ft. is supported by the cogent reasons, inasmuch as, the authority (Asian Development Bank) did not provide funds to acquire the road upto the width of 100 ft.

12. For the aforesaid reasons, the Writ Petition No. 2202/2012 is dismissed. Since the petitioners are wrong doers and have filed the said writ petition with malafide intentions, pending for the last three years in which the replies have been filed by the JDA as well as the State Government and that several hours of proceedings of Court were wasted, we impose a cost of Rs. one lac on the petitioners to be deposited by them with the Registrar General of the Rajasthan High Court by Demand Draft in favour of the Rajasthan State Legal Services Authority at Jodhpur.

13. We also direct the Jodhpur Development Authority to take immediate steps for removing the encroachments made by the petitioners by allotting land in excess of their khatedari and all other persons, who have made encroachments on the public land, in accordance with law. The Jodhpur Development Authority will also initiate prosecution against the petitioners under section 67 of the Jodhpur Development Authority Act, 2009 in the court of competent jurisdiction.

Writ Petition No. 2975/2012

14. So far as the Writ Petition No. 2975/2012 is concerned, we find that in view of the findings recorded as above, the only claim of the petitioner survives for consideration is with regard to the passage to be provided to him for ingress and egress to his plot on the road, for which the remedy lies in filing a civil suit for permanent injunction on the ground of easement of necessity, which the petitioner may claim as against the Jodhpur Development Authority or any other person, who is raising constructions.

15. The Writ Petition No. 2975/2012 is dismissed on the ground of alternative remedy of filing civil suit.

16. A copy of this order be placed in both the files.