
(2005) 07 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1486 of 1992

Dungar Das

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-07-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Rajasthan Urban Improvement Trust (Disposal of Urban Land) Rules, 1974 — Rule 10, 12, 17

Citation : (2005) 4 RLW 2672 : (2005) 4 WLC 255

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Babu Lal Darji, Additional Government, M.S. Singhvi, for the Appellant; K.N. Joshi, for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Dungar Das a harijan by caste has filed this petition under Article 227 of the Constitution of India, seeking issuance of writ in the nature of certiorari so as to quash order Annexure-9 dated 17.2.1992 passed by Municipal Council, Banner vide which, the petitioner has been allotted a plot at Mahaveer Nagar on current market price.

2. The bare minimum fact, on which the relief aforesaid is sought to rest reveal that a plot bearing No. AH-4 was allotted to the petitioner on concessional rate by Municipal Board, Barmer in the month of January, 1976. The petitioner deposited amount of Rs. 140/- on 24.01.1976 evidenced through receipt Annexure-1. The possession of this plot however could not be given to the petitioner on the ground that there was some dispute going on in the court, wherein injunction was also granted regarding the said plot. After a lapse of as many as six years vide communication dated 17.7.1982, petitioner was called upon to state as to whether he was interested to get the plot and in case he was not interested then he should submit an affidavit. The petitioner submitted his

affidavit and another plot DA-31 was allotted to him vide order dated 6.10.1983. The possession of this plot too could also not be given to the petitioner for one reason or the other. Constrained in the facts of the case as mentioned the petitioner kept on approaching the respondents and ultimately the respondent Board vide its communication dated 8.4.1991 asked the petitioner to give his consent for allotment of another plot in Mahaveer Nagar bearing No. DD-24 which was to be on deposit of market value determined at Rs. 20,276.50. The petitioner made a representation to the respondent Board on 23.4.1991 pointing out that since the land was allotted to him in the year 1976 the value of plot of Mahaveer Nagar should be taken as of 1976. He also approached the Public Grievance Committee, Barmer and the said committee in its meeting dated 29.6.1991 resolved that the petitioner should be given alternative plot on the rates prevailing in the year in which he deposited the amount. The petitioner then submitted a representation to the respondent Board on 20.7.1991 reiterating his request for allotment of plot on the rates prevailing in the year 1976. The respondent Board however instead of giving allotment and getting the amount on the basis of rates of 1976 ordered on 17.2.1992 that the petitioner should deposit sum of Rs. 40,833/- which would be current market value of the plot that could be allotted to him. It is this order which has been challenged with the further prayer that the petitioner be allotted the same plot, but on the market price as prevalent in the year 1976.

3. Pursuant to the notice issued by this Court, respondents have entered defence and contested the case of the petitioner. On facts, however, there is no dispute whatsoever, even though it may be mentioned that the respondents seek dismissal aside of this petition on the ground that the wife of the petitioner purchased a plot in the year 1992 and therefore, the petitioner would not be entitled for allotment of plot under Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (hereinafter to be referred as "Rules of 1974").

4. Mr. Singhvi learned Counsel representing the petitioner vehemently contends that the allotment of plot was made under Rule 10 read with Rule 17 of the Rules of 1974 vide which, the reservation of residential plots for allotment is made to the categorized persons therein on concessional rates. Rules 10 on which the main contentions of the learned Counsel are based reads as follows:

"10. Reservation of Residential plots for allotment at concessional rate to specified class of person - In the schemes so prepared and technically approved by the Chief Town Planner or his representative authorities in this behalf, the Board shall reserve with the prior approval of [the committee referred to in Rule 12 residential plots for allotment at concessional rates to the specified categories of persons referred to in Rule 17 and on terms and conditions prescribed under the provisions of these rules provided that the person concerned (wife or husband) or any member of his family dependent upon him who in full or part any residential house or plot of lands on free hold or lease-hold basis any where in the State of Rajasthan shall not be entitled for allotment].

5. Whereas, Rule 10 deals with entitlement of allotment of plot on concessional price, Rule 17 only deals with the procedure for allotment. It is the contention of the learned Counsel that if for some reasons the respondent Board could not make any allotment to the petitioner of the plot earmarked to him while making reservation for him of allotment on concessional rates, the Government cannot turn around after lapse of number of years to state that the plot shall be allotted to him even though in different areas, but on current market price. Learned Counsel thus contends that demand of current market price would be violative of provisions contained in Rule 10 as it would militate the policy of the respondent Board in making allotment of plot to specified persons who need financial help from the society and the State. He also contends that the wife of the petitioner purchased a plot in open market.

6. Learned Counsel for the respondents contends that categorical averment has been made in the written statement that since wife of the petitioner has purchased a plot and which fact is not denied, the petitioner will not be entitled to allotment of land under Rule 10. But for the afore-stated contention, no other ground has been raised apposing the cause of the petitioner.

7. I have heard learned Counsel appearing for the parties and with their assistance, examined records of the case.

8. The facts as mentioned above, are not in dispute. Petitioner was allotted a plot on concessional rates belonging to specified category of Scheduled Castes. It is only with a view to ameliorate the lot of down-trodden and socially weaker people that Rule 10 came into statutory book. Rule 10, in considered view of this Court, recognizes the State policy of making homestead, utmost necessary for a human being, available to such persons who may not be able to purchase it on current market rate. Respondent Municipal Board, keeping in view the entitlement of the petitioner under Rule 10, allotted him a plot on concessional rates. Possession of the same, however, could not be handed over to the petitioner for no fault on his part. Respondents, in fact, could not hand over possession of the allotted plot to him for one reason or the other. If years after the allotment of plot the petitioner is to be told that the plot shall indeed be given to him but on the current market rate, the same would violate provisions of Rule 10. It is payment of the current market price which has to be avoided while making allotment of the residential house to weaker sections of the Society and asking the petitioner to pay current market price of the plot, now earmarked for him, would certainly defeat his right of purchasing the same on concessional rate. A plot for residential purposes on current market rate can be purchased by anyone and if the petitioner is to be given a plot on the current market rate, the same would be in total and sharp contrast to the policy statutorily recognized by virtue of provisions contained in Rule 10 of the Rules of 1974.

9. In considered view of this Court, the respondent Board was wholly unjustified in demanding the current market rate of the plot allotted to him now vide impugned order Annexure-9.

10. Mr. Singhvi, learned Counsel appearing for the petitioner placed reliance upon two judgments recorded by the learned Single Judge of this Court in Hanuman Prasad v. Rajasthan Housing Board and Anr. 1994(1) WLC (Raj.) 255 : RLW 1994 (2) 127 and Ashok Kumar Patni v. The Rajasthan Housing Board, Jaipur 1995(2) WLC Raj. 357 : 1995(2) RLW 302 as also a division bench decision of this Court in Urban Improvement Trust, Jodhpur Vs. Laxmi Chand Bhandari, in support of his contention that the petitioner deserves to be allotted alternative plot on the same price that was charged from him when he was allotted plot, possession whereof, however, could not be given to him as yet. This Court is in respectful agreement with the view taken in the judicial precedents cited by Mr. Singhvi, as noted above. The court is also of an independent view that in asking the petitioner to pay current market price for the plot, respondents have denied to the petitioner his right to have allotment of residential house on concessional rates under Rule 10 of the Rules of 1974.

11. In so far as contention of the learned Government Advocate that wife of the petitioner had purchased plot in 1992 and therefore, the petitioner would not be entitled to allotment of plot under Rule 10 is concerned, suffice is to say that at the time when the petitioner made application for allotment of plot, he was entitled to the same under the Rules. Wife of the petitioner purchased plot far after the petitioner was allotted plot under Rule 10. The entitlement of the petitioner under Rule 10 has to be seen on the date on which he made application for allotment. To deny allotment of plot of him at this stage, on the ground that his wife, years thereafter had purchased plot on the market price would be too iniquitous. Petitioner and his family required a house to live. They could not have waited for an indefinite period for allotment of plot which the petitioner was entitled at the time when he made application and was allotted plot also. Purchase of a plot by the wife of petitioner, in the facts and circumstances, as mentioned above, in considered view of this Court, should not make any difference.

12. In view of the discussions made above, this petition is allowed. Order (Annexure-9) is quashed to the extent it directs the petitioner to make payment with regard to plot on market rates now prevalent in the market. The court directs that the petitioner shall be allotted plot now earmarked for him but the same shall be on the price which was fixed when he was allotted plot in the year 1976.

13. This petition is allowed with costs, quantified at Rs. 5,000/- (Rs. Five thousand).