
(1993) 12 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Review Petition No. 31 of 1991

Gouri Shankar and Another

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 20-12-1993

Acts Referred:

Constitution of India, 1950 — Article 299

Citation : (1993) WLN 583

Hon'ble Judges : R.S. Kejriwal, J;Farooq Hasan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Farooq Hasan, J.—The aforesaid two Review Applications have been filed against the common order dated 17.4.91 passed by this Court in D.B. Civil Writ Petitions No. 2185/88, 2770/88 and 2791/88. Against the aforesaid judgment/order Smt. Kusum Gupta, whose writ petition No. 2185/88 was dismissed has already filed SLP before the Hon"ble Supreme Court and that has been admitted. The other two petitioners namely; Gourishanker and Nand Kumar Agrawal have filed Review Applications. As the common question of law is involved in these Review Applications and as such, they are decided by a common judgment.

3. The brief relevant facts of the case, are that the petitioners became members of "New Pink City Grah Nirman Sahkari Samiti Limited" for its Sidharth Nagar Scheme, Jaipur and deposited the requisite fees and charges. The Society allotted Plots No. E-45 and E-124 in Sidharth Nagar Scheme to Shri Gourishanker and Nand Kumar Agrawal respectively vide allotment letters No. 6308 and 6309 dated 18.2.1987 and possession thereof was also handed-over to the petitioners. The petitioners deposited conversion charges alongwith penalty. They further deposited development charges to the Additional Collector (South), Agriculture Land Conversion, Jaipur who leased out the aforesaid plots to the petitioners for a period of 99 years and leased-deeds were registered in the name of Governor for 99 years in accordance with Article 299 of the Constitution of India. The

petitioners also deposited the development charges, inspection charges, security charges and insurance fee with the Jaipur Development Authority (for short "the J.D.A."). The J.D.A. also approved Building Plans as proposed by the petitioners subject to leaving of set backs as directed in the sanction letter. The J.D.A. further demanded some amount for issuing the approved building plans, which was also deposited by the petitioners. But when the petitioners started raising construction in accordance with the approved plans, the officers of the J.D.A. did not permit the petitioners to continue the constructions. Under these circumstances, the petitioners filed writ petitions before this Court praying that the State of Rajasthan be restrained from interfering in the user and enjoyment of the disputed plots and further that, the J.D.A. be restrained from interfering in the construction work, which was in accordance with the approved and sanctioned plans of the J.D.A. itself. It was further prayed that the respondents be directed to act in accordance with the promise and assurance given by them by registered lease deeds and approved building plans. Notices were issued to the respondents to show cause as to why the writ petitions be not admitted. Notices were served on both the respondents but respondent No. 1 State of Rajasthan did not file any reply to the writ petition but the respondent No. 2 Jaipur Development Authority, Jaipur filed reply to the writ petitions alleging that the petitioners were not the members of the aforesaid Society but in fact, they purchased the plots from the plot-holders and this purchase was illegal and in violation of the Conversion Rules, 1981. It was further alleged that the disputed lands were acquired and acquisition proceedings were held valid by the Supreme Court and Award was also given on 17.12.1976. It was further alleged that the order of conversion was provisional in nature; that there was no sale-deed either in favour of the Housing Society or in favour of the members of the Housing Society; that the Housing Society had purchased the lands through Agreement to sale and no title had ever been passed in favour of the Housing Society and as such, the petitioners, who were allottees of the Housing Society had no right to raise any construction. It was further alleged that if the petitioners had deposited the conversion charges before the Additional Collector (South), Agriculture Land Conversion, Jaipur that has no redegency and all the proceedings of conversion were void as the same were contrary to Rule 5 of the Rajasthan Land Conversion (Allotment, Conversion Regularisation of Agricultural Land for Residential and Commercial purpose in Urban Areas) Rules, 1981 (hereinafter referred to as the Rules of 1981). In para 4 of the reply, it has been mentioned that the land had already been vested with the State Government. In para 8, it has been mentioned that while making recommendations dated 4.3.85, the Jaipur Development Authority had specifically mentioned and put five conditions. The Housing Society failed to fulfill the said conditions with the result that the land was acquired by issuance of Award and same was held to be valid upto Apex Court and as such, the petitioners had no right or title over the plots in question and the same vests in the respondents. It has also been mentioned that on account of permission for construction, the petitioners would not get any right or title over the disputed plots. It has also been mentioned that on account of

acquisition of land, the order with respect to conversion of land automatically came to an end. The officers of the Jaipur Development Authority never gave any promise to the petitioners for raising the construction over the disputed plots. The raising of construction by the petitioners was also denied by the respondents and it was prayed that the writ petition be dismissed.

4. This Court, after hearing the arguments of the learned Counsel for the parties vide its order dated 17.4.89 dismissed all the there writ petitions. As mentioned above, Smt. Kusum Gupta had already filed Special Leave to Appeal before the Supreme Court, whereas, the present petitioners filed Review Applications. During this period, Hon"ble Shri S.S. Byas, J. retired and as such, the Review Applications were listed for admission before Hon"ble Shri D.L. Mehta J. on 13.11.91, show cause notices were issued to the respondents. Both the respondents have been served. After retirement of Hon"ble Shri D.L. Mehta, J. the Review Applications were listed before us for admission. Respondent No. 2- Jaipur Development Authority was represented by Shri R.S. Mehta, Advocate but none was present on behalf of the State of Rajasthan inspite of service of notices.

5. We have heard Mr. R.M. Lodha, learned Counsel for the petitioners and Mr. R.S. Mehta, learned Counsel for respondent No. 2 and gone through the record as well as perused the judgments cited by them.

6, Mr. R.M. Lodha, learned Counsel for the petitioners argued that the State of Rajasthan did not file any reply to the writ petition and as such, the facts mentioned in the writ petition remained uncontroverted. He also argued that this fact has not been denied even by the J.D.A. that respondent No. 1 granted a lease of the disputed plots in favour of the petitioners for 99 years and got the same registered. The J.D.A. did not dispute grant of sanction of building plans submitted by the petitioners for raising construction. He also argued that there was no allegation in the reply of the J.D.A. that the petitioners ever missed their position or colluded with the officers of the J.D.A. or of the State Government. He argued that the petitioners did not claim their right over the disputed lands on the basis of Pattas granted by the Housing Society but claimed their right on the basis of registered lease-deeds executed by respondent No. 1 in the name of His Excellency the Governor of Rajasthan. Neither the lease-deeds were cancelled nor permission granted to the petitioners for raising construction, was withdrawn. He argued that after acquisition, the disputed land vested in the State of Rajasthan and the State of Rajasthan had already executed the lease-deeds in favour of the petitioners and under these circumstances, the petitioners had every right to raise the constructions in accordance with sanction of the buildings plans granted by the J.D.A. He further argued that the conversion order has not been challenged by any of the respondents in any proceedings. He argued that the learned Judges who rejected the writ petitions of the petitioners did not base their judgment on the material on record but based the same on the basis of certain assumptions, which are as below:

Page 2. Out of 135 persons, about 27 persons succeeded in their attempt. Most

of them are high-ups of the Society some of them from Judiciary, some for Executive Wing of the State. Other are atleast those who could secure influence for getting the land converted or could get the acquisition frustrated. It was pointed out during the course of arguments that the judiciary and the executive and also the representative wing has acquired the membership by way of transfer from bogus membership.

Page-5. With abundant caution, some remarks were also made about High-ups and the officers of the judiciary by the learned Counsel appearing on behalf of the J.D.A. Notice was drawn to the list of members filed by the petitioners, remarks made by court in the judgment of Spl. Appeal and reasons for suppression of documents.

All the three persons acquired the land on account of the position or the power by illegal transfer in 1986-87.

Page-21. Petitioners were also knowing that Spl. Appeals are pending. Two of them were holding very important posts in Law Department as well as in the Registry. Thus, all the three speculated knowing well the factual position and effect of the special appeal, which was pending.

Pages 25 & 16. We will not like to say anything about the institution of judiciary. However, it will suffice to say that the acts and omission by the officers/authorities connected with the impartition of justice has lowered down the prestige of the judiciary as a whole. It may be that the people might be considering that the judiciary is not above board in the matter of integrity, though it may be correct. On these grounds, it was submitted that the J.D.A. and the officers of the State misrepresented the petitioners and the doctrine of the promissory estoppel applies. Apart from the fact of collusion, the land conversion rules do not apply in the circumstances of the case at all as the land of the State Government cannot be allotted by the society to Its members.

Para-34. Even from the perusal of the record submitted by the petitioners, if is clear that the authorities have violated the provisions of Rules 5 and 10 of the Rules to oblige the High-ups of the society namely, the officers of Executive, Judiciary and other persons capable of influencing decisions and orders.

In fact, it is the duty of the State Government to take action against such officers who have violated the provisions of law and particularly Rules 4, 5 and 10 and who have overlooked the fact that the land has already been acquired, should be taken to task. We hereby direct that the proceedings should be initiated against them if not Initiated so far and it should be made known to the public that the State Government feels that the doctrine of accountability applies in such cases and action has been taken.

Page-35. Hon''ble the Chief Justice should also look into the matter that the judicial officers do not come in the trip of such society and do not put hindrance in the development programme, particularly in the acquisition proceedings.

7. Mr. Lodha, learned Counsel for the petitioners argued that the aforesaid assumptions are not only erroneous but also incorrect. According to him, Shri G.S. Saraf was posted as Additional Registrar in the Rajasthan High Court at Jaipur only on 16.12.87 much after obtaining the patta from the aforesaid Society and after payment of conversion charges when the land was already ordered to be converted into Abadi Land whereas Shri N.K. Agrawal was never posted in the Registry of Rajasthan High Court at Jaipur. He further argued that the petitioners got allotment after seeking due permission from the Registrar of this Court, under these circumstances, he argued that the petitioner had no knowledge about the pendency of the special appeals filed by the respondents before the Division Bench of this Court. Mr. Lodha, further argued that when the question of grant of equitable relief has already been settled by the Hon'ble Supreme Court, there was no necessity of making enquiry by the learned Judges regarding the market price of the disputed plots and to observe that the market price may be charged of the plots in question. In support of his argument, Mr. Lodha, learned Counsel for the petitioners placed reliance on the following decisions--Shivdeo Singh and Ors. v. State of Punjab and Ors. AIR 1963 SC 1909 , State of Gujarat Vs. Sardarabegum and Others, , Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh, , Moran Mar Basselios Catholicos and Anr. v. Most Rev. Mar Populose Athanasius and Ors. AIR 1954 SC 526 Mt. Jamna Kuer v. Lal Bahadur and Ors. AIR 1950 F.C. 131, and Mohd, Sultanh Zargar v. Custodian General E.P. and other AIR 1960 J & K 125.

8. On the other hand, Mr. R.S. Mehta, learned Counsel for the J.D.A. argued that Smt. Kusum Gupta has filed Special Leave to Appeal before the Supreme Court and notices in that appeal have already been issued and J.D.A. had already filed its reply. The matter is still pending before the Supreme Court for adjudication, and as such, the review application should be deferred till decision of the Special Leave to Appeal by the Supreme Court. He further argued that during pendency of the acquisition proceedings, an Agreement to sale was entered into by the Khatedars of the disputed lands in favour of New Pink City Grah Nirman Sahkari Samiti Limited, Jaipur and as such, the agreement to sale was illegal. He argued that no legal rights were accrued to the Society on the basis of such argument and the petitioners, who are allottees of the disputed lands from the Society, did not get any right over the disputed land. The J.D.A. approved the plans and recommended for conversion subject to certain conditions but when the disputed lands were acquired finally, the petitioners did not get any legal right over the disputed lands. He argued that no lease-deeds could be executed under Rule 16 of the Rules of 1981, when the lands were Under acquisition. The proceedings of conversion, execution of lease-deeds and approval of building plans were bad in law and as such, the petitioners did not get any benefit out of them. The learned Judges considered the writ petitions from all angles and dismissed the same. There is no error apparent on the face of record and as such, the review applications be dismissed.

9. In rejoinder, learned Counsel for the petitioners contends that the decision of

the Review Applications cannot be deferred on account of pendency of the appeal filed by Smt. Kusum Gupta before the Supreme Court. In that connection, Mr. Lodha, learned Counsel for the petitioners placed reliance on the decision of the Supreme Court in Kapoor Chand and others Vs. Ganesh Dutt and others,

10. From going through the record and reply of the J.D.A. and also the judgment of this Court, we are of the opinion that the judgment is based on certain assumptions as mentioned above. The J.D.A. in its reply did not raise these objections. We are also of the opinion that the judgment is based only on the ground that after acquisition of lands, neither the Society nor the petitioners had any right or interest over the disputed lands/plots but this Court did not take into consideration the effect of the registered lease-deeds, which were executed in favour of the petitioners by the State of Rajasthan in the name of His Excellency the Governor of Rajasthan and those lease-deeds were duly registered. This Court also did not consider this aspect of the case that the lease-deeds were never cancelled and are still in existence. This Court did not consider that the land was already converted in Abadi Land and the J.D.A. had also granted sanctions for raising construction, which were not cancelled until date. This Court also did not take into consideration, as to whether under these circumstances, it can be said that the petitioners had no interest whatsoever in the disputed lands.

11. The question of equitable relief though was dealt with in the operative portion of the judgment, but not on the basis of material on record but on the personal views of the learned Judges. Under these circumstances, we are of the view that various questions having material bearing thought raised by the petitioners in their writ petitions, were not considered by this Court and this Court based its judgment on certain assumptions, which are not part of the record. In *Moran Mar Baselions Catholicos*" case (supra), it has been observed as under:

It does not appear that either of the two majority Judges of the High Court adverted to either of these aspects of the matter, namely, service of notice to all churches and competency of the persons who issued the notice of the Karingassera meeting and in any case did not come to a definite finding on that question. The majority judgments, therefore, are defective on the face of them in that they did not effectively deal with and determine an important issue in the case on which depends the title of the plaintiffs and the maintainability of the suit. This, in our opinion, is certainly an error apparent on the face of the record.

In *Mohd. Sultan Zargar*'s case (supra), it has observed as under:

It is next argued for the petitioner that a review on the ground of an error of fact, however, apparent it be on the face of the record, cannot be supported under Order 47, r. 1. CPC. I think this proposition is wholly incorrect. There is nothing in Order 47, r. 1. to confine its application to apparent errors of law and not of fact. In *AIR 1949 112 (Privy Council)* a judgment of the Judicial Committee was reviewed by it because it proceeded on an erroneous assumption that

certain Police Rules were operative on a specified date when as a matter of fact, it did not come into operation on that day. In *Jamna Kuer v. Lal Bahadur* AIR 1950 FC 131, a mistake of fact was made in the judgment with regard to the nature of certain immovable properties and the Federal Court forcefully pointed out that it was a clear case for review of judgment.

It is unnecessary to multiply authorities on this point. If an obvious error of material fact appears on the face of the record, it can be a valid ground for review. So also if a judgment or order did not effectively deal with and determine an important point on which the decision in the case was to depend and the omission appeared on the face of the judgment or order, the judgment or order could well be reviewed. (See *M.M.B. Catholicos V.M.P. Athanaslus* AIR 1954 SC 526 at P. 540).

12. Thus, in our opinion, there is an error apparent on the face of record and under these circumstances, the judgment passed by this Court deserves to be reviewed.

13. We do not agree with the argument of learned Counsel for the respondent J.D.A. that since the appeal filed by Smt. Kusum Gupta, is still pending before the Supreme Court, hence, the decision of the Supreme Court should not be deferred. The Apex Court in *Kapoorchand's* case (*supra*) observed as under:

We however, wish to indicate that the High Court was right in dismissing the review petition on the ground that in view of Spl. Leave Petition having been filed against the judgment sought to be reviewed, the review petition was no longer maintainable because the Judgment of the High Court would merge in the order of this Court. The question regarding merger of the judgment under review in the order of this Court had considered the SLP on merits and had passed an order on the matters dealt with in the judgment of the High Court dated July 23, 1987. Till such an order was passed by this court, it was competent for the High Court to review its judgment dated July 23, 1987 and the review petition could not be dismissed as not maintainable merely because SLP had been filed against the said judgment before the Court and was pending.

(Emphasis supplied by us)

14. For the reasons mentioned above, we allow these Review Petitions and recall our judgment dated 17.4.1991 so far as it relates to the petitioners and direct the office to fix the writ petitions for final disposal at admission stage at an early date.