

(2015) 03 RAJ CK 0120

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) Nos. 715/2013 in Civil Writ Petition No. 4591/2009, Civil Special Appeal (Writ) No. 714/2013 in Civil Writ Petition No. 10976/2011 and Civil Special Appeal (Writ) No. 739/2013 in Civil Writ Petition No.

Hilton Granite Ltd. and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Citation : (2015) 2 CDR 929 : (2015) 3 RLW 1885

Hon'ble Judges : Sunil Ambwani, C.J.; Jaishree Thakur, J.

Bench : Division Bench

Advocate : J.P. Joshi, P.P. Choudhary, Siddharth Joshi and Rajendra Kataria, for the Appellant; Rajesh Panwar, Additional Advocate General, Sunil Joshi and Dilip Kawadia, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sunil Ambwani, C.J.—We have heard learned counsel appearing for the parties.

2. These three connected intra-Court D.B. Civil Special Appeals, arise out of a common order dated 19.08.2013, by which learned Single Judge dismissed S.B. Civil Writ Petition No. 4591/2009- Hilton Granite Ltd. v. State of Rajasthan and Ors.; S.B. Civil Writ Petition No. 7854/2009-Rockwood Hotels And Resorts Ltd. v. State of Rajasthan and Ors.; and S.B. Civil Writ Petition No. 10976/2011-Rockwood Hotels And Resorts Ltd. v. State of Rajasthan and Ors.

3. In S.B. Civil Writ Petition No. 4591/2009, Hilton Granite Ltd.- the petitioner, had prayed for quashing and setting aside the order dated 08.04.2009, passed by the Tehsildar, Urban Improvement Test, Udaipur (in short, "the UIT), by which he, in exercise of powers under Section 92-A of the Rajasthan Urban Improvement Act, 1959 (for short, "the Act of 1959"), directed demolition of boundary wall, by which the hotel had included 0.1400 hectare of land of Arazi Nos. 1 and 2 of the Revenue Village of Udaipur City, recorded in the name of the

UIT. The petitioner had also prayed for a direction, restraining the UIT from demolishing/removing the boundary wall constructed by the petitioner, which forms part of the hotel.

4. In S.B. Civil Writ Petition No. 7854/2009, Rockwood Hotels and Resorts Ltd.- the petitioner, had prayed for a direction to quash the notice/order dated 20.07.2009, passed by the Deputy Secretary-II, Urban Improvement Department, Government of Rajasthan, constituting a Committee to enquire into the complaint made to the State Government against the petitioner for having raised constructions of the hotel in "No Construction Zone"; encroaching upon the Government land; and for considering sanction of the building plans. The State Government, constituting a Committee, directed that in case the Secretary, UIT, is fully satisfied that the constructions have been raised unauthorizedly by including the Government land, the constructions will be demolished in the presence of three Officers constituting the Committee, and to submit a report to the Hon'ble Minister, in charge of UIT, within fifteen days. The petitioner had also prayed for directions to the UIT, Udaipur, to issue formal sanction in terms of the order passed by the State Government on 12.06.2006, and the Resolution of the UIT, Udaipur, dated 05.12.2007; and for restraining the respondents from proceeding to demolish the constructions, and to regularize the violation, if any, committed by the petitioner, in terms of the directions given by the State Government on 12.06.2006, and the Resolution of the UIT, Udaipur,

5. In S.B. Civil Writ Petition No. 10976/2011, Rockwood Hotels and Resorts Ltd.- the petitioner, had prayed for directions to quash and set aside the notice dated 14.10.2011, issued by the Tehsildar, UIT, Udaipur under Sections 92-A and 91-A of the Act of 1959, and further to restrain the UIT, Udaipur from initiating any proceedings against the petitioner, in pursuance to the said notice. A further prayer was made directing the UIT, Udaipur, to release the duly sanctioned plan in favour of the petitioner, as directed by the State Government and as resolved by the Urban Improvement Trust, Udaipur in its meeting dated 05.12.2007.

6. Learned Single Judge, after considering the documents filed in the writ petitions and the arguments raised by the Counsel appearing for the petitioners as well as the Counsel appearing for the State Government, and the UIT, held that construction of the building in the municipal area of Udaipur City is governed by the provisions of the UIT Act and the bye laws framed thereunder. No one has a right to raise construction within the municipal area without prior sanction of the plans by the local authority. The petitioner was well within its right to raise construction on the land, duly converted for the purpose of construction of a hotel, strictly adhering to the plan sanctioned by the State Government vide order dated 12.06.2006., but in the garb of the permission granted, the petitioner cannot be permitted to encroach upon the land belonging to the UIT/ State Government, as also raise construction in deviation of the sanctioned plan. The petitioner cannot be permitted to raise construction on the agriculture land in respect whereof he had acquired the khatedari rights, until and unless the

same is duly converted for non-agriculture use by the competent authority.

7. Learned Single Judge held that the petitioner and its sister concern M/s. Padmini Palace Private Limited, had acquired the khatedari rights in respect of land measuring 1.5600 hectares, comprising Khasra No. 1939/10, and 1.8200 hectares of land comprising Khasra No. 9 respectively, situate in Revenue Village, Udaipur. It was not disputed that out of the said land, 42,300 sq. ft. i.e. 4701 sq. yd. of land stands converted in the name of the petitioner for the purposes of construction of a hotel by the competent authority, and a lease deed was also executed in its favour. It was also not disputed that the petitioner had obtained the permission for raising construction of a hotel for basement + Ground + two floors, on certain conditions, vide order dated 12.06.2006, issued by the State Government. The right of the petitioner to raise constructions of the hotel building as per the sanctioned plan on the land, which stands duly converted for the purpose of construction of a hotel, is not disputed. The petitioner however has, in the garb of the land conversion order, encroached upon the Government land, comprising Khasra/Arazi No. 1, measuring 0.0300 hectare, Khasra No. 2, measuring 0.0100 hectare, Khasra No. 10 Meen, measuring 0.2400 hectare, and Khasra No. 11, measuring 0.0800 hectare in Revenue Village, Udaipur. It had also raised unauthorized constructions over the land, situate in Arazi No. 2047 in Revenue Village, Sisarma, falling in the "No Construction Zone", and that the land use thereof has not been changed for the purpose of construction of a hotel. The proceedings were initiated against the petitioner under Section 92-A of the Act of 1959, for raising illegal constructions on the Government land in Khasra Nos. 1 and 2, challenged in S.B. Civil Writ Petition No. 7854/2009. The notices were issued to the petitioner on 23.07.2009 for raising constructions on the Government land, comprising Arazi No. 10 Meen. In S.B. Civil Writ Petition No. 10976/2011, the petitioner had also challenged the proceedings in respect of Arazi No. 2047.

8. Learned Single Judge held that raising of boundary wall including the Government land, situate in Khasra Nos. 1, 2, 10 Meen and 11, and raising construction over the agriculture land in Khasra No. 2047, which has not been converted for non-agriculture use, which actually falls within the "No Construction Zone", as well as raising of unauthorized constructions by adding two additional floors over and above the permission granted to the petitioner, have resulted into gross violation of law. He held that under Section 91-A of the Act of 1959, the UIT is competent to direct, in addition to the prosecution lodged for such violation, demolition of the constructions by the owner thereof, carried out in contravention of the Master Plan, or of any scheme sanctioned and notified by the State Government or the sanction of the UIT under subsection (1) of Section 72 or without the permission obtained under Section 73, or in contravention of any Rules or conditions subject to which, such permission has been granted. Apart from the action, to be taken under Section 91-A, Section 91-B of the Act of 1959, provides that whoever uses any land or building in any urban area in contravention of the provisions of sub-section (2) of Section 72,

any Officer of the UIT empowered in this behalf in addition to any prosecution that may be instituted under the Act for the improper use, may make an order requiring such person to stop such improper use immediately. Sub-section (2) of Section 91-B of the Act of 1959, provides that if such improper use is not discontinued in pursuance of the requisition under sub-section(1), the UIT or the Officer empowered in this behalf may require any police officer to stop such improper use, as may be specified in the requisition to the police and to remove such land or building, any person other than owner making the improper use and such police officer will comply with the requisition.

9. Learned Single Judge found and recorded findings of fact that the petitioner has raised constructions over the Government land, and is also unauthorizedly using the agriculture land falling in "No Construction Zone", for construction of the hotel, and has also violated the building plans by raising constructions of two additional floors, and thus, the notices issued by the UIT, initiating proceedings for the violation specified, do not suffer from any infirmity or illegality, and are within the jurisdiction of the authority issuing the notices. It is always open to the petitioner to make submission before the authority concerned pursuant to the impugned notices, and on which, an appropriate order will be passed by the authority concerned, after giving an opportunity of hearing to the petitioner, in conformity with the provisions of Section 91-A and 92-B of the Act of 1959. He further held that the Court cannot sit in appeal over the administrative decisions taken by the competent authorities for removing encroachments upon the Government land and raising of unlawful constructions. The proceedings initiated by the UIT therefore, vide impugned notices, do not warrant interference of the Court.

10. An application was filed, to take the additional documents on record, on 19.01.2015, with which the appellants have annexed a copy of the notice dated 12.01.2015, issued by the Tehsildar, UIT, Udaipur, requiring the petitioner to appear in his Court on 19.01.2015, to submit the objections. The notice is addressed to the Manager, Hotel Sheraton (earlier named as Hotel Padmini Palace, Hilton Granite, Rockwood Radison), Rani Road, near Fateh Sagar Lake, Udaipur. In this notice, after referring to the judgment of this Court dated 19.08.2013, giving rise to these Special Appeals, and the order dated 27.09.2012 passed in D.B. Civil Misc. Contempt Petition No. 90/2010 and D.B. Civil Writ Petition No. 12652/2011- Rajendra Rajdan v. State and Others, as well as the order in S.L.P. No. 8270/2013- Rockwood Hotel And Resorts Ltd. v. Rajendra Kumar Rajdan and Ors., by which the Hon"ble Supreme Court permitted on 03.12.2014, to withdraw the SLP, the noticee has been called upon to explain as to why it has made illegal constructions in the area of 0.0371 hectare (371 sq.mtr) agriculture land in Arazi No. 2047, total area 0.3500 hectare in Revenue Village Sisarma.

11. The appellants have also annexed a reply/objection filed by the noticee to the notice, in which, after stating that noticee has not encroached on any land,

reliance has been placed on the measurement made by one Shri Ramkaran Chouhan, Land Measurer(Bhoomapak), along with Shri Baburam Meena, A.S.O., Shri Bhagwan Sahai Dadav, Inspector and Patwari of Udaipur City along with E.T.S. Machine on 25.05.2009. It is submitted that after the measurement, it was reported that if the total area of 0.3600 hectare is reduced, the applicant is in actual possession of total 3.3800 hectare area, which is recorded in its name in

12. We do not propose to take these documents on record inasmuch as these documents were not produced at any stage, prior to filing of the present Special Appeals. The report of measurement on the spot, dated 25.05.2009, was not relied on, nor was presented in any proceedings prior to filing of the writ petitions, or along with the records of the writ petitions. These documents have been filed in reply to the notice, which is yet to be considered by the Tehsildar, UIT, Udaipur, in pursuance to his notice dated 12.01.2015, issued under Section 91-A for making illegal and unauthorized constructions on the agriculture land, without taking permission of the UIT.

13. The application dated 19.01.2015, filed on the day of hearing, is thus rejected. The reply, however, may be considered by the Tehsildar, in reply to his notice dated 12.01.2015 under Section 91-A of the Act of 1959.

14. It is submitted by learned counsel appearing for the appellants that learned Single Judge has committed a serious error of law on facts, in dismissing S.B. Civil Writ Petition No. 4591/2009. He failed to appreciate that this writ petition was filed against the notice issued by the UIT, Udaipur, directing the petitioner to remove the encroachments, and to remove any construction raised on the land. The petitioner had challenged the notice on the ground that it was absolutely vague as it did not mention, as to in which part of the Government land, or the UIT land, the petitioner had made encroachments. The report prepared by the Patwari, on the basis of which the notice was issued to the petitioner, was also vague, as it referred to Khasra Nos. 1 and 2 and also Arazi No. 1939/10 and 9, whereas the petitioner was able to demonstrate before learned Single Judge that the Settlement Department in its report, had stated that the petitioner was in possession of the land as it was recorded in its name in the record of rights. The report also pointed out that so far as Arazi No. 10 is concerned, the amendment was erroneously made, and it should have been made in Arazi Nos. 9 and 10, jointly, and not in Arazi No. 10 alone. Learned Single Judge was carried away by the facts mentioned in other writ petitions and the stand taken by the UIT, Udaipur in those writ petitions, wherein the respondents tried to make out a case that the petitioner has raised constructions in violation of the sanctioned plan, and has raised the constructions over and above the permission granted to it.

15. It is further submitted by learned counsel appearing for the appellant that learned Single Judge has failed to appreciate that the Settlement Department had admitted that an error was committed by the Revenue Department in making amendment in Arazi No. 10 alone, whereas the amendment ought to have been made jointly in Arazi Nos. 9 and 10. Learned Single Judge also failed

to appreciate that the UIT, either in its reply, or in reply to the application filed by the petitioner, was not in a position to controvert the report. All the three writ petitions were based on different causes of action, and different facts and circumstances, and thus, they could not have been decided by a common order, by which a serious error is crept in the findings recorded by learned Single Judge.

16. In D.B. Civil Special Appeal(W) No. 739/2013, arising out of S.B. Civil Writ Petition No. 7854/2009, the petitioner had prayed for quashing the notice/order 20.07.2009, passed by the Urban Improvement Trust, Government of Rajasthan, constituting a Committee to enquire into the complaint made by the State Government. The decision of learned Single Judge, and the findings recorded by him, have been challenged on the ground that there is no provision either in the Act of 1959, or in the Revenue Act, authorising the State Government to constitute a Committee to ascertain any irregularity, or illegality in raising constructions and, therefore, the order of the State Government was wholly without authority of law. Earlier, the State Government constituted a Committee comprising of Shri N.L. Meena, Additional Commissioner(East), Jaipur Development Authority, Smt. Lavang Sharma, Senior Town Planner, Jaipur Development Authority, and Shri Ganesh Agarwal, Deputy Commissioner, Jaipur Development Authority, but the said Committee did not perform its functions and, in fact, the report was prepared by the Committee, consisting of Superintending Engineer, Jodhpur Development Authority, Senior Town Planner, Jodhpur Zone, and the Additional District Collector, Udaipur. It was this Committee, constituted vide order dated 20.07.2009, which was required to make a spot inspection and submit its report, and not the Committee which was not constituted by the State Government. The Committee did not give any notice to the petitioner before carrying out the spot inspection. The report was prepared without taking into consideration the explanation of the petitioner. Learned Single Judge failed to record any finding on this important issue. He also failed to appreciate that the petitioner had earlier filed D.B. Civil Writ Petition No. 1557/2002, for issuing direction to the UIT, Udaipur, to grant permission to raise construction, and to quash the order of the UIT, Udaipur, refusing to grant permission to the petitioner to raise construction in the area, for which the lease was granted. The Division Bench had, by its judgment dated 15.07.2002, partly allowed the writ petition, setting aside the order of the UIT refusing to raise constructions. The UIT, Udaipur was directed to decide the application of the petitioner-Company for construction, afresh, in the light of the observations made in the judgment, and the decision of the Court in E.I.H. v. State of Rajasthan and Ors. A contempt petition was also filed, and it was only after the notice was issued in the contempt petition, insisting compliance of the judgment dated 15.07.2002, that the permission was finally granted to the petitioner. The Committee was, therefore, not justified in observing that the constructions have been raised in the "No Construction Zone", nor learned Single Judge was justified in relying upon the report, which was contrary to the decision of the Division Bench.

17. It was further submitted that learned Single Judge failed to appreciate that it was not a case, in which constructions have been raised without obtaining the requisite sanction. The sanction was granted by the UIT and the State Government, on a further request made by the petitioner, vide order dated 12.06.2006. The permission was granted to the petitioner to the extent of Ground + four floors on certain conditions, which was reiterated by the UIT in its meeting dated 11.09.2007. The construction beyond Ground + two floors was, thus, not unauthorized. The findings recorded by learned Single Judge that the UIT is following the procedure and the notice issued for this purpose cannot be said to be without jurisdiction, thus, require to be set aside.

18. In the matter arising from S.B. Civil Writ Petition No. 10976/2011, i.e. D.B. Civil Special Appeal(W) No. 714/2013, the common judgment of learned Single Judge, deciding all the three writ petitions, has been assailed on the ground that after recording categorical finding in favour of the petitioner, that it has obtained permission for raising construction of a hotel upto Ground + two floors on certain conditions vide order dated 12.06.2006, the finding that, in the garb of the land conversion order, the petitioner has encroached upon the Government land and has raised constructions on it, cannot be sustained. In this writ petition the only question which came up for consideration was, whether the petitioner has constructed the hotel without express permission of the competent authority,/ and whether construction of the hotel has been made on an agricultural land without seeking its conversion. In view of the finding recorded by learned Single Judge that the permission for construction of Ground + two floors was given on certain conditions on 42,300 sq. feet of land, which stood converted in the name of the petitioner for construction of a hotel by the competent authority and a lease deed was also executed in its favour, the writ petition ought to have been allowed.

19. Learned counsel appearing for the State Government and the UIT, have defended the findings recorded by learned Single Judge. It is submitted by Shri Rajesh Panwar, learned Additional Advocate General, that the petitioner did not approach the Court with clean hands. He has attempted to grab the public land on the basis of the documents, which do not relate to the land in dispute. He has encroached upon the land of the UIT, measuring 0.2400 hectare in Khasra No. 10 Meen, 0.0300 hectare in Khasra No. 1, 0.0100 hectare in Khasra No. 2, and 0.0800 hectare in Khasra No. 11, and had raised unauthorized constructions over the total land, measuring 0.3600 hectare, which stands duly entered in the name of the UIT in the revenue records. Apart from encroaching upon the land of the UIT, the petitioner had also raised constructions, unauthorizedly, over the land of Arazi No. 2047 in Revenue Village Sisarma, falling in "No Construction Zone". The State Government, considering the importance and urgency of the matter, constituted a Committee vide Government Order dated 20.07.2009, which had submitted its report after enquiries, in which it was found that the petitioner had raised constructions over the Government land, situate in Khasra Nos. 1, 2, 10 Meen and 11 of Revenue Village, Udaipur. It had also raised construction of two

additional floors, and has continued to raise constructions, in gross violation of the permission granted to it. The Committee recommended to demolish the constructions made on the Government land, and to initiate criminal proceedings against the petitioner. Learned Single Judge perused the report submitted by the Committee, which was placed on record along with the reply to S.B. Civil Writ Petition No. 78564/2009, as Annexure-R2/1. The order passed by the State Government, dated 29.11.2011(Annexure-R2/3), pursuant to the report submitted by the Committee, directing demolition of the unauthorized constructions raised over the Government land, and to stop any further construction, does not require any interference, as the high level Committee had recorded the findings after spot inspection and measurement.

20. We have considered the respective submissions, challenging the judgment of learned Single Judge.

21. We do not find that learned Single Judge has committed any error of law in deciding all the three writ petitions by a common judgment. The issues raised before learned Single Judge and findings of fact recorded by him regarding unauthorized occupation and construction over the land in Khasra Nos. 1, 2, 10 Meen and 11 in Revenue Village, Udaipur, and Arazi No. 2047 in Revenue Village, Sisarma, which falls in the "No Construction Zone", are essentially the findings of fact, which do not require any interference, as the appellants have not challenged the finding that Khasra Nos. 1, 2, 10 Meen and 11 of Revenue Village, Udaipur are recorded in the name of the UIT. This land was unauthorizedly encroached upon by the appellants. The appellants have also not challenged the finding that Arazi No. 2047 in Revenue Village, Sisarma, falls within the "No Construction Zone", and the land use of the plot has not been changed for the purpose of construction of a hotel. So far as the notice issued by the Tehsildar, UIT, Udaipur under Sections 92-A and 91-A of the Act of 1959 is concerned, the appellants have already given reply to the notice. The notice has not been challenged on the ground that the Tehsildar does not have the jurisdiction to give such notice. The appellants have also tried to raise the issue on merits against the notice, which cannot be gone into, at the first instance in the writ petition, as decision of the Tehsildar, who has the authority in law to issue the notice dated 14.10.2011, is still pending.

22. We do not find any error on facts or in law in the findings recorded by learned Single Judge that the acquisition of Khatedari rights in respect of land, measuring 1.5600 hectare in Khasra No. 1939/10, and 1.8200 hectare in Khasra No. 9, in Revenue Village Udaipur, out of which 42,300 sq. feet (4701 Sq. Yds.) of land stands converted in the name of the petitioner for construction of a hotel, and the permission obtained from the State Government to raise construction of a hotel upto Ground + two floors on certain conditions, dated 12.06.2006, did not authorise the appellants to encroach upon the neighbouring land of Khasra Nos. 1, 2, 10 Meen and 11 of Revenue Village, Udaipur, to raise constructions over Arazi No. 2047 of Revenue Village, Sisarma, which is included within the

"No Construction Zone" and to construct two additional floors without sanction of plans for such constructions.

23. Learned Single Judge has not recorded any finding adverse to appellants with regard to constructions of a hotel, which was raised upto the level of Ground + two floors, as per the permission of the State Government. Learned Single Judge, however, did not commit any error of law in holding that the constructions beyond Ground + two floors, were without any authority, inasmuch as no permission for raising constructions beyond Ground + two floors, was available on the record. The construction of any building in the municipal area of Udaipur City, a heritage city of lakes, is governed by the provisions of the Act of 1959, and the bye-laws framed thereunder. No one has a right to raise construction within the municipal area without prior sanction of the plan by the local authority. Once the plan is sanctioned, any construction beyond the sanctioned plan, for construction of a hotel with Ground + two floors, was not permitted. The appellants could not have raised two additional floors, for which despite the notice issued by the competent authority, the appellants continued to raise constructions, and appears to have completed two additional floors of the hotel in gross violation of law.

24. We do not find any lack of authority nor any prohibition in the Land Revenue Act or UIT Act which may prohibit or any statutory provision which may have restrained the State Government to constitute a Committee of senior officers, who had already submitted its report, confirming the violation of the land use including encroachments on the Government land, and raising constructions beyond the permissible limits. The State Government was not bound by any orders passed earlier, constituting a Committee, of which the alleged report has not been placed on record.

25. So far as notices issued by the Tehsildar, UIT, Udaipur under Sections 91-A and 92-B of the Act of 1959, are concerned, the appellants have already given their reply to these notice, for which, learned Single Judge has rightly observed that an appropriate order will be passed by the authority concerned, after giving opportunity of hearing to the petitioners.

26. We do not find any error in appreciation of facts and the laws, in the findings recorded by learned Single Judge. He had rightly consolidated all the three writ petitions, and decided them together, as they raised a common issue of unauthorized constructions beyond the permission granted to the appellants of the hotel, encroaching the Government lands in Khasra Nos. 1, 2, 10 Meen and 11 of Revenue Village, Udaipur, and also raising construction over the land situate in Arazi No. 2047 of Revenue Village, Sisarma, which falls within the "No Construction Zone".

27. We are informed that the constructions raised on Arazi No. 2047 of Revenue Village, Sisarma, which falls within the "No Construction Zone", are not substantial and that the demolition of the boundary wall, including constructions

on Khasra Nos. 1, 2, 10 Meen and 11 of Revenue Village, Udaipur, and Arazi No. 2047 of Revenue Village, Sisarma, will not affect the construction of the hotel within the permissible limits, under the sanctioned plan.

28. For the aforesaid reasons, we do not find any good ground to interfere with the judgment of learned Single Judge in these Special Appeals.

29. All the three Special Appeals are, accordingly, dismissed.

30. A copy of the judgment will be placed in the connected files.