
(2012) 10 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 16341 of 2012 and 16819 of 2012

H.L. Mittal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-10-2012

Acts Referred:

Citation : (2012) 4 WLN 432

Hon'ble Judges : Narendra Kumar Jain, J;Arun Mishra, J

Bench : Division Bench

Advocate : K.K. Sharma, with Mr. Rajendra Prasad, for the Appellant; S.N. Kumawat, Additional Advocate General, for Respondents No. 1, 2, 4, 5 and 6, Ms. Naina Saraf, Advocate, for the Respondents No. 3 and 8 and Mr. Rajendra Soni, Advocate, for the Respondent No. 9, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, CJ.

1. The Writ Petition No. 16341/2012 has been filed by H.L. Mittal and others praying for the relief to set aside the general notice dt. 12.09.2012 and consequential action taken pursuant thereto; prayer has also been made to declare the provision of 40 feet wide road in the plan approved by the JDA in 1988 as illegal and unconstitutional and the respondents be directed to reconsider and revise the same by taking into consideration the points raised in the writ petition and by restoring 30 feet wide road; prayer has also been made to restrain the respondents from demolishing the structures, shops etc. The Writ Petition No. 16819/2012 has been filed by the Indian Society for Educational Innovation running the school.

2. Since the questions involved in both the writ petitions are similar, they are being decided by the common order.

3. It is averred in the petition filed by H.L. Mitral and others that they are retail traders and tenants in the shops existing in the Barkat Nagar Market; notices for

demolition have been issued, but they are questioning it, hence they have come apprehending demolition of structures for widening the road upto 40 feet as sanctioned in the map by the JDA.

4. The Writ Petition No. 4783/2003 was registered suo moto by this Court and that petition and other connected matters were finally decided by this Court vide order dt. 20.10.2004 in which general directions were issued for removal of encroachments from various roads of Jaipur. However, no specific direction with respect to Barkat Nagar Market was issued. Contempt Petition No. 261/2008 was filed by Badri Prasad Dhaka and others alleging violation of the directions of this Court as to preventing of commercial activities in residential premises in Mansarovar Colony and nearby areas. Another Writ Petition No. 3275/1990 was filed by Ramji Lal Sharma with respect to constructions of shops/restaurants etc. in Mahesh Nagar residential colony in which order was passed by this Court on 04.01.1991. Misc. Application was filed by Shri Karan Pal Singh, Advocate in the Contempt Petition No. 261/2008 for removal of encroachments upon 100 feet road starting from 22 Godam to Gopalpura Bypass and "main road of Barkat Nagar" which connects Tonk Road to 80 feet road of Mahesh Nagar. Copy of the said application has been filed as Annex. 3 to the writ petition no. 16341/12. It was not mentioned as to what was the width of the road. The Division Bench of this Court on the basis of the statement made by the Additional Advocate General directed to remove the encroachments on the road parallel to Sawaimadhampur Railway line and 80 feet road of Mahesh Nagar and also from road of Barkat Nagar.

5. It is stated that it was not mentioned by this Court in the orders that width of road of Barkat Nagar is 40 feet. However, the petitioners have submitted that while sanctioning the plan in the year 1988, road of 40 feet was shown and while regularizing construction for which applications were invited in the year 1999, road of 40 feet was shown. But, on the spot, there existed only 25-30 feet road. The master development plan of Jaipur came into force in the year 1976 and it was extended upto 31.08.1998. Since there was no planned development, the areas and agricultural land were purchased by the Housing Cooperative Societies and allotment of plots were made by them to the public. As regards Barkat Nagar Market, the road was divided into three patches; Adarsh Basti, Barkat Nagar and Sachivalaya Colony have been developed; allotment letters with respect of Adarsh Basti were issued by the Village Panchayat of Village Rampura Roopa showing width of road to be 20 to 25 feet; other colonies were also developed leaving the road of 25 to 30 feet; Barkat Nagar residential colony densely populated within no span of time; development took place in unplanned manner; respondent No. 7 prepared plan in the year 1988 leaving 40 feet wide road, however regularization of the construction raised was started in the year 1999; road was illegally approved as 40 feet in the site plan; it was not existing on the spot and thus, the respondents are illegally insisting for widening of road upto 40 feet.

6. In the additional affidavit filed by the JDA, it has been mentioned that plan for sector 26 has been prepared in the year 1983; sector 26 is the area falling between two railway lines; Jaipur to Delhi and Jaipur to Sawaimadhopur; in the plan of sector 26, housing schemes of various societies are in existence, therefore, providing better road facilities and connectivity plan for main roads has been prepared; from Tonk Phatak to Mahesh Nagar, 40 feet wide road was proposed looking to the connectivity with 80 feet wide road of Mahesh Nagar and thus, 40 feet wide road has been sanctioned as apparent from the approved plan (Annex. R-4/1).

7. It is further submitted by the JDA in the additional affidavit that respective Housing Cooperative Societies have submitted their plans, which have been considered and examined as per parameters and thereafter, the same were approved for various Housing Cooperative Societies; 40 feet wide road has been approved looking to the ground condition and connectivity with 80 feet wide road of Mahesh Nagar; the map (Annex. 9 to writ petition No. 16341/12) was approved in the year 1988, but certain amendments were made later-on by the JDA in the year 2000, but 40 feet wide road has not been changed at any point of time.

8. The respondent No. 9-Shri Karanpal Singh, Advocate has also filed preliminary objections to the petition No. 16341/2012; it is contended in the preliminary objections that the map has been approved on 7.10.1988 providing 40 feet wide road in the Barkat Nagar connecting Tonk Phatak to Mahesh Nagar Phatak, after due consideration of proposed plan of Pink City Society; plot holders have been allotted plots by leaving 40 feet wide road and some of the allotment letters leaving 40 feet wide road have been filed collectively as Annex. R-9/1; the conversion charges have been taken by the JDA for regularization leaving 40 feet wide road on which no encroachment is permissible; petition has been filed by tenants, whereas owners are ready to remove encroachments; most of the encroachments have been removed of which photographs have been placed on record; W.P. No. 16341/2012 has been filed by H.L. Mittal and others, who are tenants and not owners.

9. Mr. K.K. Sharma, learned Senior Counsel appearing with Mr. Rajendra Prasad for the petitioners has submitted that 40 feet wide road was not in existence at the time when it was so approved by the JDA; earlier plots were allotted to the owners by the Gram Panchayat in which road of 20 feet width was shown; on the spot there was road of 25 to 30 feet only, not 40 feet; road of 40 feet could not have been approved without hearing the occupiers; the respondents have constricted the width of the other road from 100 feet to 60 feet as the road was not in existence; it is not appropriate to order for demolition at last; they should have acted similarly by constricting the size of road in question from 40 feet to 25-30 feet; this Court has nowhere determined in the orders passed in the main petition or contempt petition as to what is the width of the road, as such, notices issued on the strength of the orders passed by this Court that width of the road

is to be widened upto 40 feet, are illegal and deserve to be quashed; prayer has also been made to quash the approved plan of 40 feet wide road sanctioned in 1988.

10. In addition, it has been further submitted In Writ Petition No. 16819/2012 filed by Indian Society for Educational Innovation that purchase of land was made by the said Society and school has been raised" on it; as the students are obtaining education, partial demolition of construction of building of school will cause interruption in the studies of students, as such, till end of Academic Session, demolition may be stayed.

11. Mr. S.N. Kumawat, learned Additional Advocate General, Ms. Naina Saraf and Mr. Rajendra Soni appearing on behalf of respondents raising preliminary objections have submitted that as per the case set up by the petitioners themselves, road of 40 feet wide has been sanctioned in the year 1988; regularization was started in the year 1999, however, width of road has never been changed even as per amendment made in the map in the year 2000; it is apparent from the plan Annex. 9 filed by the petitioners as well as from Annex. R-4/1 filed by the JDA that width of road in question of Barkat Nagar is 40 feet; the petitioners-H.L. Mittal and others are only tenants; owners have accepted notices and they have not questioned the same; most of the encroachments have been removed by them and JDA; no orders have been placed on record showing that at any point of time or at the time of regularization, order has been passed leaving road less than 40 feet, on the contrary, regularization charges were realized by the JDA after leaving road of 40 feet only as per plan which was sanctioned in the year 1988. It was also submitted that no permission for raising construction etc. have been placed on record, thus, it is clear that encroachments have been made on the road in question. When colonies have been sanctioned after leaving 40 feet wide road, obviously any encroachments on the road of 40 feet have to be removed; no construction permission granted by any authorities whatsoever has been placed on record. The map filed of gram panchayat does not relate to road in question considering the direction shown in the map. Thus, no interference is called for in the writ applications and same deserve to be dismissed.

12. After hearing the learned counsel appearing for the parties, we are of the considered opinion that this Court did not determine the width of the road at any point of time while passing the orders either in the main petition or contempt petition. However, in the contempt petition, there was direction issued by this Court on the basis of the statement made by the Additional Advocate General that there are encroachments on the road in question, which were required to be removed. Thereafter, notices have been issued by the Commissioner, Civil Line Zone, Nagar Nigam, Jaipur under the provisions of the Rajasthan Municipalities Act, 2009 for demolition of encroachments; general notice has also been published in the newspaper. Factum of order passed by this Court on the basis of statement made by Additional Advocate General has also been mentioned in the

notices; notices cannot be taken to mean that this Court has held the width of road in question to be 40 feet in contempt petition, but since 40 feet wide road for the area in question was admittedly sanctioned in the year 1988 itself by the JDA, obviously it was required to be maintained and on this basis, statement has been made while contempt petition was decided and on the basis of such statement, order was passed by this Court. The question was not that of determination of width of the road by this Court in previous proceedings; the question in the petitions is whether road is 40 feet wide; as per the admitted case of the petitioners themselves, 40 feet wide road was left by the JDA in 1988, but their submission is that it was not in existence. When road of 40 feet has been sanctioned, any regularization/construction could have been raised only in terms of the sanctioned lay out for the area in question; owners have not come up in the petition; writ petition no. 16341/2012 has been filed by H.L. Mittal and 109 others, who are tenants; owners have accepted the factum of encroachments and when there are encroachments, obviously they have to be removed from the road; there is no reason to quash the map sanctioned in the year 1988 leaving 40 feet wide road; prayer made by the petitioners is not only belated but wholly misconceived for quashment of sanctioned map. It appears that constructions in the colony were raised illegally and regularization was initiated in the year 1999 leaving 40 feet wide road and JDA has issued several pattas leaving the 40 feet wide road as evident from various documents and allotment letters placed on record by respondent no. 9 collectively as Annex. R-9/1. The road of 40 feet width is necessary for the area in question and thus, no direction can be issued to respondents to constrict its width; no case is made out so as to issue any such direction. The map of 40 feet wide road was sanctioned in the year 1988 before 24 years and no case is made out so as to interfere with the lay out so sanctioned. No permissions to raise construction or regularization orders showing that width of road was left less than 40 feet have been placed on record whereas pattas issued by JDA show width of road to be 40 feet.

13. On behalf of petitioner-Indian Society for Educational Innovation, it has been submitted that there is sale deed in favour of the petitioner-Society, but the copy of map of sale deed has not been placed on record in which road might have been shown. Apart from this, no permission for construction has been placed on record. The order of regularization has also not been placed on record; how much area was regularized has also not been placed on record; how much width of road was left in such orders; map sanctioned in the year 1988 leaving 40 feet wide road has been questioned timely. We do not find any ground to quash the plan sanctioned in 1988.

14. We are also not at all impressed by the submission that since it is a school, partial demolition of school building, which is encroachment on road, should not be made till end of academic session; no such equity can be claimed in their favour by the petitioner-Society being road encroacher and they were well aware about the consequences as notices for demolition were issued in September,

2012.

15. In *Deepak Kumar Mukherjee vs. Kolkata Municipal Corporation and Ors.* (Civil Appeal No. 7356 of 2012 decided on 8.10.2012) relied upon by the learned counsel for the respondents, the Apex Court held that respondent no. 7 cannot take benefit of Rule 25 of the Kolkata Municipal Corporation Building Rules, 1990 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction. The Apex Court laid down thus:

2. In last four decades, the menace of illegal and unauthorized constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasized the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions-(1) *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, ; (2) *Virender Gaur and Others Vs. State of Haryana and Others*, ; (3) *Pleasant Stay Hotel and Another Vs. Palani Hills Conservation Council and Others*, ; (4) *Cantonment Board, Jabalpur and Others Vs. S.N. Awasthi and Others*, ; (5) *Pratibha Co-operative Housing Society Ltd. and another Vs. State of Maharashtra and others*, ; (6) *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, ; (7) *Manju Bhatia (Mrs) and Another Vs. New Delhi Municipal Council and Another*, ; (8) *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, ; (9) *Friends Colony Development Committee Vs. State of Orissa and Others*, ; (10) *Shanti Sports Club and Another Vs. Union of India (UOI) and Others*, and (11) *Priyanka Estates International Pvt. Ltd. and Others Vs. State of Assam and Others*,

26. In our view, respondent no. 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction.

27. Before parting with the case, we consider it necessary to observe that respondent no. 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorized construction under a bonafide belief that respondent no. 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorized construction some of such persons will become shelter less. It is, therefore, necessary that respondent no. 7 is directed to compensate them by refunding the cost of the flat etc. with interest. Respondent no. 7 must also pay for raising construction in violation of the sanctioned plan. It must be remembered that while preparing master plan/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage etc. Unauthorized construction of buildings

not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such construction but also impose adequate penalty on the wrongdoer.

16. In *Dr. Harsh Vardhan and Others Vs. Haryana Urban Development Authority and Others*, relied upon by the learned counsel for the respondents, the Division Bench of Punjab and Haryana High Court has held that there is no legal or other justification to exercise writ jurisdiction of the High Court to confer legitimacy on such encroachments either in the name of beautification or in the garb of enjoying the extended scope of the right to life and acceptance of such plea will not only frustrate the object of planned development of the Urban estates but also encourage similar encroachments of public property by the affluent class of people leading to chaos in the society. There was no rhyme and reason to restrain the respondents from removing the encroachments made by the petitioner on H.U.D.A. land. The unauthorized encroachments made by the petitioners and others are creating obstruction in the free flow of traffic and depriving the pedestrians of their right to use the road reservations and berms and open spaces.

17. In *Shanti Sports Club & Anr. vs. Union of India & Ors.*, Civil Appeal Nos. 8500-8501 of 2001 decided on 25th August, 2009 relied upon by the learned counsel for the respondents, the Apex Court has considered the concept of planned development of the cities and urban areas and menace of illegal and unauthorized constructions in violation of relevant laws, master plan or zonal development plan or sanctioned building plan etc. and has laid down thus:

52. Before concluding, we consider it necessary to enter a caveat. In all developed countries, great emphasis has been laid on the planned development of cities and urban areas. The object of planned development has been achieved by rigorous enforcement of master plan prepared after careful study of complex issues, scientific research and rationalization of laws. The people of those countries have greatly contributed to the concept of planned development of cities by strictly adhering to the planning laws, the master plan etc. They respect the laws enacted by the legislature for regulating planned development of the cities and seldom there is a complaint of violation of master plan etc. in the construction of buildings, residential, institutional or commercial. In contrast, scenario in the developing countries like ours is substantially different. Though, the competent legislatures have, from time to time, enacted laws for ensuring planned development of the cities and urban areas, enforcement thereof has been extremely poor and the people have violated the master plans, zoning plans and building regulations and bye-laws with impunity. In last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century the menace of illegal and unauthorized constructions and encroachments has

acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned buildings plans. In most of the cases of illegal or unauthorized constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realize that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker Sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorized constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasized that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme etc. on the ground that he has spent substantial amount on construction of the buildings etc. *Shri K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, Udipi and Others*, , *Dr. G.N. Khajuria and others Vs. Delhi Development Authority and others*, *M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others*, , *Friends Colony Development Committee Vs. State of Orissa and Others*, . *M.C. Mehta Vs. Union of India (UOI) and Others*, and *S.N. Chandrashekar and Another Vs. State of Karnataka and Others*, .

53. Unfortunately, despite repeated judgments by this Court and High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans etc. have received encouragement and support from the State apparatus. As and when the Courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous

compliance of laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorized constructions, those in power have come forward to protect the wrong doers either by issuing administrative orders or enacting laws for regularization of illegal and unauthorized constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorized constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions.

18. In the instant case, the plan was approved in the year 1988 leaving 40 feet wide road for the area in question; regularization was ordered in the year 1999 leaving 40 feet wide road; amendment was made in the plan in 2000, but width of road was not changed. From the documents placed on record by the parties especially plan approved in 1988 and allotment letters issued from time to time by JDA, which have been filed as Annex. R-9/1, it is apparent that the width of the road in question is 40 feet. The owners have accepted that encroachments were made on the road of 40 feet and they have not objected to notices. The encroachments exist, obviously they have to be removed from the road in question. The owners have not approached this Court, rather the tenants of the shops have filed petition No. 16341/2012 and Indian Society for Education Innovation has filed petition No. 16819/12 running school and since they have made encroachments on public roads, they are not entitled for any relief whatsoever. In view of the discussion made above, there is no merit in the writ petitions and the same deserve dismissal. Accordingly, the writ petitions are dismissed. The stay applications are also dismissed. However, at this stage, a prayer was made on behalf of the petitioners that since diwali festival is coming, time may be granted upto 20th November, 2012 to remove the encroachments and illegal constructions/structures. As prayed, we stay demolition till 20th November, 2012 and if the encroachments and illegal construction/structures are not removed by the petitioners by 20th November, 2012, the respondents shall be free to take steps for demolition of encroachments and illegal constructions/structures made by the petitioners on the road in question.