

(2015) 10 RAJ CK 0048
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9219/2014

Jamindara Trading Company	Vs	APPELLANT
The State of Rajasthan and Others		RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 10 RAJ CK 0048

Hon'ble Judges : Arun Bhansali, J.

Bench : Single Bench

Advocate : B.S. Sandhu, for the Appellant; Pankaj Gupta and Arpit Bhoot, for the Respondent

Final Decision : Dismissed

Judgement

Arun Bhansali, J.—This writ petition has been filed by the petitioner aggrieved against the allotment of land by the respondent-Krishi Upaj Mandi Samiti (Anaj), Sriganganagar ("KUMS") for setting up of retail outlet to the respondent No. 5.

2. It is inter-alia indicated in the writ petition that the petitioner is a partnership firm and dealing in trade-cum-commission business of grains having its place of business at KUMS and has been allotted a shop-cum-godown in the new market yard. It is claimed that the shop of the petitioner is situated on the third block in the market yard; near the shop there is a platform and auction space on Southern side of the shop of the petitioner on Gate No. 4, there is a parking space cum auction area and oxidation pond, in between the gate and oxidation pond 72 ft. wide space is lying vacant, which it is claimed as part of parking space cum auction area.

3. The petitioner has questioned the allotment of the said open space for setting up of retail outlet. It is indicated in the writ petition that initially the allotment in favour of respondent No. 5 Smt. Vinod Kumari took place by way of resolution dated 20.2.2002 passed by KUMS, whereby a particular land was allotted to the

respondent No. 5. The allotment letter (Annex.-8) specifically stipulated that if the possession of the allotted plot was not taken within 45 days, the allotment would automatically stand cancelled.

4. Whereafter, the KUMS passed another resolution dated 12.8.2009 inter-alia providing for deletion of the plot marked for petrol pump behind Shops No. 227 to 230 and to remark land for petrol pump at another place and decided to sought approval of the town planner for land ad measuring 10500 Sq.fts. on Northern side of Shop No. 272.

5. Whereafter, on 1.2.2012, a resolution was passed to delete the demarcation of the petrol pump indicating that the petrol pump was not required. The resolution was sent to the Director, Marketing Board by KUMS on 17.7.2012.

6. Whereafter it is alleged that on account of pressure exerted by respondent No. 6, the resolution dated 12.8.2009 (Annex.-11) passed by the KUMS was approved by the Director by his letter dated 3.12.2012 (Annex.-15) and the resolution dated 1.2.2012 passed by KUMS was cancelled exercising powers under Section 39 of the Rajasthan Agriculture Produce Market Act, 1961 ("the Act"). Pursuant thereof, the land in question has been allotted to the respondent No. 5 based on the approval of the Director dated 20.5.2014 on payment of the cost of land in question on the current DLC rate.

7. It is inter-alia submitted by learned counsel for the petitioner that the allotment of the land for setting up of retail outlet by the respondents to Smt. Vinod Kumari is illegal exercise of power and therefore, the allotment deserves to be quashed and set-aside. It is submitted that there is not any provision for allotment of land for setting up of retail outlet, the allotment, if any, should have been made by way of auction in terms of Allotment Policy of 2005 ("Policy of 2005") and the respondents have flouted all the provisions and conditions for allotment only under the pressure exerted by the respondent No. 6.

8. Further submissions were made that the allotment made in the year 2002 stood cancelled on account of failure of the respondent No. 5 to comply with its condition i.e. deposit the required amount within a period of 45 days and therefore, the allotment cannot relate back to the allotment of year 2002. It is further submitted that once the KUMS passed a resolution dated 1.2.2012 deleting the requirement of the petrol pump at the yard, there was no occasion for the Director to approve a proposal of the year 2009 and disapprove resolution dated 1.2.2012 and the exercise of power on face of it is illegal and against the settled requirements and therefore, the action of the respondents allotting the land in question to the respondent No. 5 deserves to be quashed and set-aside.

9. Further submissions were made that in view of the nature of goods, which are traded at the yard, the setting up of retail outlet would be hazardous and looking to the present conditions, in case the respondent No. 5 fails to get an allotment of retail outlet, the land would be misused by her and would be used for other purposes and on that count also, the allotment deserves to be set-aside.

10. Vehemently opposing the submissions made by learned counsel for the petitioner, learned counsel for the respondents submitted that the writ petition has no substance and the same deserves to be dismissed.

11. The respondent No. 5 questioned the locus standi of the petitioner in filing the present writ petition, it was submitted that the petitioner is only involved in business as a broker and is having his shop 1000 ft. away from the land allotted for the purpose of setting up of petrol pump, which aspect is evident from map Annex.-2.

12. At no stage, the petitioner sought allotment of retail outlet and/or raised any objection at any stage in this regard and the present petition has only been filed as a busybody, the petitioner cannot claim himself as person aggrieved and therefore, the writ petition is not maintainable. It was further submitted that the allotment was made to the petitioner way-back in the year 2002, however, the same was objected to by the shopkeepers, who were seeking allotment of land in question for godown purposes and the writ petition being SBCWP No. 1384/2002 was filed, wherein interim order was granted by this Court and therefore, pursuant to the allotment made, the petitioner could not deposit the amount as petitioner herself was made a party to the writ petition. The writ petition was decided by order dated 9.7.2012 based on the resolution passed by KUMS dropping the proposal of establishing the petrol pump at the location in question. The KUMS based on its decision dated 12.8.2009, proposed alternative land for retail outlet to the petitioner and sought its approval, its approval was granted by the Director on 3.12.2012 and the resolution in the meanwhile passed by the KUMS dated 1.2.2012 was rejected.

13. Pursuant to the approval, the allotment of land has been approved by KUMS and based on the direction, the petitioner has already deposited a sum of about Rs. 76 lacs on 6.12.2014, which amount is lying deposited with KUMS.

14. It is submitted that the submissions made by the petitioner regarding violation of Policy of 2005 is baseless, inasmuch as, the allotment was made long back in the year 2002 and only because of filing of the writ petition, the allotment could not fructify. It was submitted that the initial allotment was made for a sum of Rs. 18 lacs only and now the petitioner has already deposited a sum of Rs. 76 lacs and therefore, it cannot be said that the KUMS has in any manner been put to loss.

15. The allegations made by the petitioner with reference to the respondent No. 6 clearly indicates his malafides in filing the present writ petition to settle scores on account of political rivalry. It was also submitted that the allegations/apprehensions made by the petitioner regarding putting the land in question to use other than petrol pump is baseless as the respondent No. 5 undertakes that the land would be used only for the purpose of retail outlet and other related activities and for no other purpose. It was prayed that the writ petition be dismissed.

16. Reliance was placed on Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others, and Ethiopian Airlines Vs. Ganesh Narain Saboo, .

17. KUMS also filed a detailed reply and has sought dismissal of the writ petition. It is submitted that the resolution dated 1.2.2012 already stands cancelled by the Director exercising powers under Section 39 of the Act and therefore, the petitioner cannot rely on the said resolution. It is submitted that the setting up of the retail outlet at the dedicated place is required and the same would be subject to all the clearances as required under various provisions of the Act and therefore, the apprehension expressed by the petitioner regarding setting up the retail outlet being hazardous has no basis. It was prayed that the writ petition be dismissed.

18. I have considered the submissions made by learned counsel for the parties and have perused the material placed on record.

19. The petitioner has questioned the allotment of land to respondent No. 5 for setting up of retail outlet on the ground that the same is in violation of Policy of 2005, the action in question has been taken based on the influence of respondent No. 6 and that the same has taken place despite resolution dated 1.2.2012 passed by the KUMS seeking deletion of demarcation for petrol pump. Further plea has been raised regarding the retail outlet being hazardous and likelihood of land being misused by the respondent No. 5.

20. The aspect regarding locus standi of the petitioner and/or whether the petitioner can be termed as person aggrieved has to be examined in the context of the facts which have come on record wherein it is not disputed that the petitioner is involved at Mandi yard in the business as broker and is having a shop 1000 fts. away from the location in question. As such, the petitioner has nothing to do with the location in question and from the record it is not disclosed that at any stage from the year 2002 till filing of the present writ petition, the petitioner had raised any grievance regarding the allotment and/or has questioned its validity either before the KUMS or before any other authority. The writ petition has been filed raising the issues of malafide exercise of powers by the respondents in allotting the land in question dehors the facts as to how the petitioner is personally affected by the allotment in question.

21. The Hon"ble Supreme Court in Jasbhai Motibhai Desai (supra) while dealing with the issue of locus standi, held and observed as under:--

"34. This Court has laid down in a number of decisions that in order to have the locus standi to invoke the extraordinary jurisdiction under Article 226 , an applicant should ordinarily be one who has & personal or individual right in the subject-matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modi-; fled. In other words, as a general rule, infringement of some legal right or prejudice to some legal interest inhering in the petitioner is necessary to give him a locus standi in the matter. (See State of Orissa v. Madan Gopal Rungta; Calcutta Gas Co. v. State of

W.B.; Ram Umeshwari Suthoo v. Member, Board of Revenue, Orissa; Gadde Venkateswara Rao v. Government of A.P.; State of Orissa v. Rajasaheb Chandanmall; Dr. Satyanarayana Sinha v. M/s. S. Lal & Co.)

35. The expression "ordinarily" indicates that this is not a cast-iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority, even though he has no proprietary or even a fiduciary interest in the subject-matter. That apart, in exceptional cases even a stranger or a person who was not a party to the proceedings before the authority, but has a substantial and genuine interest in the subject-matter of the proceedings will be covered by this rule. The principles enunciated in the English cases noticed above, are not inconsistent with it.

36. In the United States of America, also, the law on the point is substantially the same.

No matter how seriously infringement of the Constitution may be called into question, said Justice Frankfurter in *Coleman v. Miller* this is not the tribunal for its challenge except by those who have some specialized interest of their own to vindicate apart from a political concern which belongs to all.

To have a "standing to sue", which means locus standi to ask for relief in a court independently of a statutory remedy, the plaintiff must show that he is injured, that is, subjected to or threatened with a legal wrong. Courts can intervene only where legal rights are invaded. "Legal wrong" requires a judicially enforceable right and the touchstone to justifiability is injury to a legally protected right. A nominal or a highly speculative adverse affect on the interest or right of a person has been held to be insufficient to give him the "standing to sue" for judicial review of administrative action. Again the "adverse affect" requisite for "standing to sue" must be an "illegal effect". Thus, in the under mentioned cases, it was held that injury resulting from lawful competition not being a legal wrong, cannot furnish a "standing to sue" for judicial relief.

37. It will be seen that in the context of locus standi to apply for a writ of certiorari, an applicant may ordinarily fall in any of these categories: (i) "person aggrieved"; (ii) "stranger"; (iii) busybody or meddlesome interloper. Persons in the last category are easily distinguishable from those coming under the first two categories. Such persons interfere in things which do not concern them. They masquerade as crusaders for justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. They indulge in the pastime of meddling with the judicial process either by force of habit or from improper motives. Often, they are actuated by a desire to win notoriety or cheap popularity; while the ulterior intent of some applicants in this category, may be no more than spoking the wheels of administration. The High Court should do well to reject the applications of such busybodies at the threshold.

38. The distinction between the first and second categories of applicants, though

real, is not always well-demarcated. The first category has, as it were, two concentric zones; a solid central zone of certainty, and a grey outer circle of lessening certainty in a sliding centrifugal scale, with an outermost nebulous fringe of uncertainty. Applicants falling within the central zone are those whose legal rights have been infringed. Such applicants undoubtedly stand in the category of "persons aggrieved". In the grey outer circle the bounds which separate the first category from the second, intermix, interfuse and overlap increasingly in a centrifugal direction. All persons in this outer zone may not be "persons aggrieved".

39. To distinguish such applicants from "strangers", among them, some broad tests may be deduced from the conspectus made above. These tests are not absolute and ultimate. Their efficacy varies according to the circumstances of the case, including the statutory context in which the matter falls to be considered. These are : Whether the applicant is a person whose legal right has been infringed? Has he suffered a legal wrong or injury, in the sense, that his interest, recognised by law, has been prejudicially and directly affected by the act or omission of the authority, complained of? Is he a person who has suffered a legal grievance, a person against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something, or wrongfully affected his title to something?

Has he a special and substantial grievance of his own beyond some grievance or inconvenience suffered by him in common with the rest of the public? Was he entitled to object and be heard by the authority before it took the impugned action? If so, was he prejudicially affected in the exercise of that right by the act of usurpation of jurisdiction on the part of the authority? Is the statute, in the context of which the scope of the words "person aggrieved" is being considered, a social welfare measure designed to lay down ethical or professional standards of conduct for the community? Or is it a statute dealing with private rights of particular Individuals?

49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money."

22. From the above law laid down by the Hon"ble Supreme Court, it is apparent that the petitioner does not fall within the category of person aggrieved and is apparently a stranger/busybody so far as the allotment of land to respondent No. 5 is concerned and therefore, the petition filed by the petitioner is apparently not

maintainable and deserves rejection on this ground alone.

23. However, in view of the submissions made, the matter was examined on merits as well. Admittedly, the allotment took place in the year 2002 in favour of respondent No. 5, which was injunctioned on account of interim order passed by this Court in SBCWP No. 1384/2002 resulting in the allotment being left in limbo. There is substance in the submissions made by learned counsel for the respondent No. 5 that as the allotment was stayed, she could not have deposited the amount and the stipulation of 45 days was meaningless.

24. In the meanwhile as the dispute pertained to location of the land proposed to be allotted which was situated behind Shops No. 227 to 230, the same was reconsidered and by resolution dated 12.8.2009, the land which is subject matter of present allotment was proposed instead of the earlier land, apparently, on account of pendency of the writ petition, the Director, Local Bodies did not proceed with grant of approval to the resolution dated 12.8.2009. However, in the meanwhile another resolution dated 1.2.2012 was passed by KUMS seeking deletion of demarcation of petrol pump itself indicating that the same was not required. However, after disposal of the writ petition on 9.7.2012, both the resolution dated 12.8.2009 and 1.2.2012 were taken into consideration by the Director, Marketing Board and by his order dated 3.12.2012 (Annex.15), while the resolution dated 12.8.2009 was approved, exercising powers under Section 39 of the Act, the resolution dated 1.2.2012 was cancelled. Pursuant thereto, the land in question was directed to be allotted to the petitioner and by order dated 15.10.2014, it was indicated that the amount of allotment at present DLC rate be got deposited from the allottee and possession be handed over. Pursuant thereto, the respondent No. 5 has deposited a sum of about Rs. 76 lacs.

25. The above sequence of events, nowhere indicates any violation of any provision of allotment etc., bald assertions have been made by the petitioner regarding violation of Policy of 2005 that the land should have been put to auction etc., for which neither any foundation has been laid in the writ petition nor any submissions were made to question the legality of allotment on such grounds.

26. So far as the apprehension sought to be raised by the petitioner regarding the hazardous nature of business i.e. retail outlet to be conducted at the allotted land is concerned, the setting up of retail outlet, if any, would be subject to grant of NOC by the district administration, by the authorities under the Explosives Act and all other concerned departments, who are bound to take into consideration all the relevant factors before granting the NOC/licence under various provisions and in case it is found that setting up of the retail outlet would be hazardous, law will take its own course. However, on mere apprehension expressed by the petitioner, the allotment cannot be questioned.

27. So far as the fact that the respondent No. 5 may fail to get allotment of retail outlet from petroleum companies and/or may even fail in getting NOC/licence

from the concerned authorities and in that situation the use/misuse of the allotted land in question is concerned, the said aspect can be taken care of by directing the respondent-KUMS which is hereby directed to insert a specific clause in the letter of allotment & lease that the land in question would be used exclusively for the purpose of retail outlet and other related services within a stipulated period and would not be put to use for any other purpose and on account of failure of the petitioner to get allotment of retail outlet and/or NOC/ licence from the concerned authorities, the allotment/lease would stand cancelled and the respondent No. 5 would handover back possession of the land in question to KUMS and that the amount in question deposited by the respondent No. 5 would be refunded back to him.

28. In view of the above discussion, there is no substance in the writ petition filed by the petitioner for lack of locus standi and on merits and consequently, the writ petition is dismissed. However, the respondents No. 1 to 5 are directed to ensure that condition pertaining to the use of land as directed hereinbefore is inserted in the allotment letter & lease deed for the land in question.

29. No order as to costs.