
(2010) 12 RAJ CK 0074

In the Rajasthan High Court

Case No : Civil Writ Petition (PIL) No. 1829 of 2004

Jugal Kishore Joshi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 203

Citation : (2011) 1 RLW 599

Hon'ble Judges : Arun Mishra, C.J.;Prakash Tatia, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—The instant writ petition has been filed in public interest for demolition of shops, construction of which has been illegally raised by Respondent No. 5 Doonger Singh over the agricultural land in between the area marked ABCD in the sketch map, Ex. 1. Prayer has also been made to take action against the erring officers.

2. It is submitted by the Petitioner that Mandore Road is National Highway No. 65. There is a chunk of agricultural land in between the boundary of the BSF Headquarters and a lane leading to Nagauri Bera. As per the Master Plan and as per the National Highways Act, 1956, the minimum width of the road is 160 feet. Conversion of part of this vacant agricultural land was in process before the Additional Collector, Land Conversion, Jodhpur. The Senior Town Planner, Jodhpur vide letter P/2 dated 7.5.1994 made it clear that conversion should not be permitted of any agricultural land which comes within the zone of Mandore Road upto 80 feet from the centre line.

3. It is submitted that Respondent No. 5 is a politically influential person. The Respondent No. 5 started construction within the vicinity of 50-55 feet from the middle line of the National Highway. Complaint was lodged by the Petitioner to the concerned authority. When Patwari and the Revenue Inspector went on the

site on 8.1.2004, the Respondent No. 5 refused to stop the construction and misbehaved with them. They requested that police force may be provided to stop the construction. Consequently, the Tehsildar wrote a letter to the SHO, Police Station, Mandore requesting the police authorities to help in stopping the construction. When Police Inspector went on the spot, the Respondent No. 5 attacked on the Inspector and his party and threatened that he will kill them. On this, an FIR was lodged at the police Station, Mandore on 23.1.2004. The officers of the Respondent No. 3 were attacked by Respondent No. 5 and his associates. The matter also published in the newspaper on 24.1.2004 in Rajasthan Patrika and Dainik Bhaskar (P/6). Ultimately, the Respondent No. 5 managed everything at high political level and also police, nothing was done to stop the construction. Hence, Petitioner approached this Court by way of filing this instant writ application in public interest.

4. In reply filed by the Respondent Nos. 1 & 2, it is mentioned that Senior Town Planner addressed a communication dated 7.5.1994 and objected for construction of the land abutting the road. Matter was enquired into when the complaints were made. Basically the dispute was in relation to the construction of shops and the authorities bound down the land owners not to construct the shops. After due investigation in this episode, FIR was registered. For the time being, construction work has been stopped on the land, which had not been converted into "Abadi". No construction should have been made in the 80 feet area from the Central line of the Jodhpur-Mandore road as per National Highway Rules. National Highway has been declared in the year 1999. Construction has been stopped in the area in question. This Court passed order on 28.4.2004 and Respondent No. 5 has been bound down not to construct.

5. Respondent No. 3, Municipal Corporation in its reply is much categorical. It is submitted that no permission from the Municipal Corporation has been sought. When intimation was received by the Municipal Corporation, orders were issued to the Anti Encroachment Inspector to stop the ongoing construction and seize the construction material lying on the site. When the Commissioner of the Municipal Corporation went to yet another place, he too has been misbehaved with, by the politicians on 18.5.2004. Orders have been issued to stop the construction and to remove it.

6. Respondent No. 6, Circle Inspector in his reply has tried to support the action of Respondent No. 5 but at the same time, has submitted that he is not in collusion with Respondent No. 5.

7. Additional submissions have been filed on behalf of the State of Rajasthan on 19.3.2005 pointing out that Doonger Singh has not get the land converted for residential or commercial purposes, as such the case was registered against him and notices were issued. Proceedings were not taken further due to pendency of the petition. Before demolition, time was given to the Petitioner for removal of the construction and if the Petitioner fails to remove the construction, steps will be undertaken after 15 days for demolition. Affidavit of Govind Singh Charan,

Additional District Magistrate (City), Jodhpur has been filed in support of additional submissions.

8. Submissions on behalf of the Secretary, Local Self Department, Government of Rajasthan, Jaipur has also been filed pointing out that orders of demolition has been passed on 1.3.2005. The Commissioner, Jodhpur Municipal Corporation and the concerned Sanitary Inspector and the incharge of the Removal of Encroachment were directed to ensure that construction work was stopped but construction was not stopped. FIR was filed at Police Station, Mandore and challan has also been filed. Again a notice was issued on 13.2.2004 under Rajasthan Municipalities Act and the material lying on spot was seized. On 7.4.2004, Doongar Singh made it clear that he has already stopped the construction work and submitted his affidavit. Hence, the material was released, however fine of Rs. 500/- was imposed. On 23.3.2004, an application was filed by Doongar Singh for change of use of land. This application has been rejected vide order dated 11.4.2005. No construction could have been raised or allowed by the Municipal Corporation as the land is agricultural land. The reply is supported by the affidavit of Secretary, Local Self Department, Government of Rajasthan, Jaipur. It was submitted that against the order of Tehsildar, appeal has been preferred before the Collector and on account of stay order passed, demolition of construction has not been made.

9. The Respondent No. 8, Union of India in its reply has relied upon a letter dated 13.1.1977 of Ministry of Road Transport & Highways, Government of India and also in IPC: 73-1980 (R/8/1 & R/8/2) indicating how much is to be the width of the road and restriction to be imposed in the area of National Highway, the State Government have been suggested to take necessary steps. The Executive Engineer, PWD, N.H. Division, Jodhpur has to look after in the matter and to take action in accordance with the provisions of the Control of .

10. The Respondent No. 9, National Highway Authority of India in its reply has submitted that road in question is National Highway No. 65. It is the duty of the Union of India or the Central Government to develop, maintain such National Highways. The National Highway is under the control and supervision of Executive Engineer, National Highway Division, Public Works Department, Jodhpur who is the person concerned ought to have been impleaded.

11. The Respondent No. 11, Executive Engineer, National Highway Division, Public Works Department, Jodhpur in his reply has pointed out that the land has not been converted for commercial or residential purpose as it is an agricultural land. Even assuming that land was converted for residential purpose, it could not have been used for commercial purpose without being converted into commercial one. The construction activity is illegal and is liable to be removed. Notification (R/11/1) issued by the Government of Rajasthan on 2.7.2004 has been filed along with communication (R/11/2) dated 16.10.2004 issued by the Chief Engineer, PWD, Govt. of Rajasthan. No conversion or construction should be done to the extent of 70 meters of the National Highway. Survey map (R/11/4) has

been filed which reveals that the construction raised by Respondent No. 5 is on 44-45 feet which is much less than at other points.

12. The aforesaid Respondents have supported the case of the Petitioner, however the Respondent No. 5 in his reply has submitted that this public interest litigation has been filed at the instance of Shri K.K. Singhvi of Gautam Bhawan Nirman Sahkari Samiti, who has filed a suit before the civil court for specific performance of agreement to sale in which the area in question along with other areas, is subject matter.

13. When Respondent No. 5 wanted to check the residential address of the Petitioner, he found that there was no residential house like 2-Bha-46. On enquiry, it has been found by Respondent No. 5 that Jugal Kishore is an employee of Shri K.K. Singhvi in the Fun World at Chopasani Road. When K.K. Singhvi could not obtain the relief from the regular civil court, had set up Jugal Kishore to file the public interest litigation.

14. Suit for specific performance was filed by Gautam Bhawan Nirman Sahkari Samiti way back in the year 1985 on the basis of agreement of 1982. It was ordered to be abated on 3.12.1997, no interim injunction was granted. The High Court has remanded the case and suit is pending. Shri K.K. Singhvi got filed another suit through one of his employee Vail Kumar in respect of eight plots out of this land. Copies of orders, plaint of civil suit have been placed on record.

15. Petitioner has filed false map for obtaining interim order from this Court. There are various constructions within the alleged 80 feet from the center on both the sides of road. Map (R/5/5) has been filed to show the existing constructions. However, constructions have also been raised at the distance of 50 feet from the road including the temple. Other structures have also been pointed out where the shops are existing at the distance of 30 feet from the middle of the road. The petition cannot be said to be in the interest of public as new constructions are coming up on this road upto Paota Choraha at various places including the place near Krishi Upaj Mandi Samiti, Mahamandir after Megraji Ka Tanka. Thus, Respondent No. 5 has tried to justify raising of construction by him. The Petitioner is actuated by malice, therefore no interference can be made by this Court. In additional affidavit also, more or less, similar justification has been given.

16. We have heard the learned Counsel for the parties.

17. The submissions of all the counsel except Mr. M.S. Singhvi, appearing for Respondent No. 5 are that the construction is illegal and is required to be removed. No such construction could have been raised on the agricultural land, that too, without conversion. There was no permission to use it as commercial land. It is also submitted that the construction has been made on in prohibited area of 80 feet from the middle of the road.

18. Mr. M.S. Singhvi, learned Counsel appearing for the Respondent No. 5 has

submitted that petition cannot be said to be filed in public interest and is actuated with malice. Petitioner has been set up by Shri K.K. Singhvi. Various civil suits are pending with respect to the specific performance of agreement to sale. The suit was filed way back in the year 1982. Counsel has also submitted that Petitioner is set up by Shri K.K. Singhvi in seeking the relief in the Petitioner. With respect to demolition of the structures, Petitioner has only chosen the construction raised by Respondent No. 5 whereas other similar constructions are also being raised in urban areas within the prohibited area. No prayer has been made in the writ application to demolish those structures. Court cannot issue direction to demolish particular structures. However, general direction is welcome to take steps for demolition of other structures which have been raised in violation of the notification issued by the State Government and the Central Government.

19. First we take up the preliminary objection raised by Shri M.S. Singhvi, that petition is actuated by malice and the Petitioner has been set up by Shri K.K. Singhvi. We are not satisfied about the correctness of the aforesaid submission. The suit was preferred by K.K. Singhvi way back in the year 1982 for specific performance of agreement to sale and there is no document on record indicating the Petitioner is servant of Shri K.K. Singhvi working in Fun World. These facts have been disputed by the Petitioner. Thus considering the fact that this petition has been filed in the year 2004 when the construction was being raised by the Respondent No. 5 and various other facts which are going to be dealt with indicates that this petition has been filed bonafide in the public interest.

20. It is not in dispute that the land is agricultural land. It is also not in dispute that land has not been converted for residential house or for commercial purposes. It is also apparent that no permission to raise construction has been obtained from the Municipal Corporation or from Tehsil. It is also apparent that Municipal Corporation, Tehsildar, Police and Executive Engineer, National Highway Division PWD, Jodhpur, have taken the steps to stop the construction but Respondent No. 5 did not stop the construction. He took the law in his own hands. He misbehaved with the various officials including the police party as reflected from the FIR lodged by the police against him. He did not pay any heed to the notices issued u/s 203 of the Rajasthan Municipalities Act by the Municipal Corporation, Jodhpur. The very conduct of the Respondent No. 5 indicates that he has acted wholly unlawful, violently and even used criminal intimidation and force to complete the construction of shops to the extent, he could complete.

21. In spite of the fact that all concerned Respondent authorities have submitted that construction is required to be demolished being illegal, but it could not be demolished so far. It is submitted that there is interim stay lastly granted by the Board of Revenue, whether it is in force or not, could not be informed to us on specific query being made. Whatever may be, the fact remains that construction is per se illegal, such a construction cannot be tolerated even for a moment. Not only that, it is violative of the guidelines issued by the Central Government

contained in its communication dated 13.1.1977 R/8/1 in which with respect to the control of building activities, in para 6.1, it is desirable that with the prescribed distance from the highway, no building activity is allowed or undertaken. Guidelines should be strictly enforced by the State Government. Para 6.1 is quoted below:

6.1 In order to prevent overcrowding and preserve sufficient space for future road improvement, it is desirable to lay down restrictions to regulate building activities along arterial highways. Such measures will help in securing adequate sight distance and preserve the aesthetic value of the highway besides ensuring free flow of traffic. It is desirable that within a prescribed distance from the highway no building activity is allowed or undertaken. This distance from road is defined by a hypothetical line called the "Building Line". Beyond this line it is desirable that buildings of height exceeding 13 metre above road level are not built for a further distance defined by what are called "Control Lines". The minimum desirable standard for "Building Lines" and "Control Lines" for various types of roads are given in Table 2.

Generally the building and control lines would be symmetrical about the road way. These should be strictly enforced by State Govts. along all National Highway/Strategic Roads while approving schemes of development and specifying land use. Necessary legislation to enforce these where required, may also be enacted.

22. The State Government has issued a circular dated 15.1.2005 mentioning therein that earlier within 150 meters on both the sides of the National Highways, no conversion of the land be permitted nor any construction. Matter has been reconsidered and it has been decided that it is restricted upto 70 meters, 35 meters on each side, no conversion or construction be permitted within the aforesaid restriction zone. In view of the aforesaid notifications and considering the mandate of notification issued under National Highways Act, 1956 we find that the construction which has been raised, is without any kind of permission and is within the zone of restriction approximately 44.9 feet away from the middle of the National Highway, as mentioned in the map submitted by Respondent No. 11 with his reply. As no permission could have been granted for conversion or for construction and none has been obtained, the construction is totally illegal and is required to be demolished forthwith.

23. Shri M.S. Singhvi has submitted that there are certain other constructions in the urban areas which are going on during pendency of the Petitioner as pointed out in the reply. Prayer has not been made for demolition of such constructions, as such, petition cannot be said to be bonafide. Mr. M.S. Singhvi, learned Counsel appearing for Respondent No. 5 has relied upon a decision rendered in Dattaraj Nathuji Thaware Vs. State of Maharashtra and Others, and submitted that out of private malice, petition is filed under the attractive brand name of public interest litigation. It should not be used for suspicious products of mischief. Learned Counsel has also relied upon a decision rendered in R and M Trust Vs.

Koramangala Residents Vigilance Group and Others, . which lays down the law to the same effect.

24. In the instant case, high-handedness of the Respondent No. 5 was subject matter of the publication in newspaper. When police party tried to stop the construction, he attacked on them. It is not proved that Petitioner is connected with Shri K.K. Singhvi. Thus, it cannot be said that provision of public interest litigation has been used for settling private dispute in the instant case.

25. It is not clear, when the aforesaid other constructions were started as pointed out in the reply of Respondent No. 5. However, it is assured on behalf of the State as well as Executive Engineer, National Highway Division, PWD, Rajasthan, that they will not spare any illegal construction, in case has been raised in violation of the direction issued by the Central Government or the State Government.

26. In the circumstances, we direct that the shops in question to be demolished forthwith. We also make it clear that no order passed by any subordinate authority shall come in the way of the concerned Respondents to demolish the constructions forthwith and cost of demolition be recovered from Respondent No. 5.

27. Let, needful be done within a period of four weeks from today. Shri Jangid, learned Additional Advocate General appearing on behalf of the State has assured full corporation and police protection to be given to the concerned authorities, as earlier the Respondent No. 5 had used criminal intimidation, violence and misbehaved with the police force. Now we, direct that adequate police protection be given to the Municipal Corporation, Jodhpur and Respondent No. 11 i.e. Executive Engineer, National Highway Division, PWD, Jodhpur and they shall ensure that no part of construction of Respondent No. 5 remains.

28. Let, appropriate action be initiated in case there is any other violation committed by someone else.

29. The writ petition accordingly stands allowed.