
(2014) 07 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5104 of 2014

Khubdan	Vs	APPELLANT
State of Raj.		RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Municipalities Act, 2009 — Section 327

Citation : (2014) 4 RLW 3040

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : Narendra Rajpurohit, Advocate for the Appellant

Judgement

Pratap Krishna Lohra, J.—Invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has filed this writ petition, praying annulment of impugned order dated 11.04.2014 (Annexure 6) passed by Director, Local Self Department, Rajasthan, Jaipur dismissing the revision petition filed by petitioner and has also prayed for repudiation of proceedings for conversion of use of land and issuance of lease deed dated 05.05.2007 by the Municipal Board, Barmer in favour of respondent No. 2. The facts, as narrated in the writ petition, in nut-shell, are that petitioner Khubdan purchased a plot in Khasra No. 1468 presently situated in Indira Colony, Barmer from one Deravar Singh in the name of his wife Lehar Kanwar and daughter Pushpa (respondent No. 3 & 4) vide agreement dated 24.12.1987 and later on respondent No. 3 & 4 on 7.8.2002 executed a sale agreement in his favour in respect of the said plot. Thereafter, petitioner vide agreement dated 5.7.2011 sold the plot to one Hukam Singh and when he proceeded to get the sale deed registered, it was revealed that the said plot has already sold been by respondent No. 3 and 4 to his son respondent No. 2 Rewatdan by an illegal agreement dated 30.12.2006 who in turn filed an application for conversion of the use of land for residential purpose and after conversion got lease deed registered in his name. It is specifically averred that while considering the application of respondent No. 2, respondent

No. 5 without following due process of law completed the proceeding in single day and allowed conversion of land in his favour. Subsequently, fifth respondent issued lease deed dated 5.7.2007. It is also averred that when Hukam Singh, the purchaser of the land came to know about issuance of lease deed in favour of respondent No. 2, he filed a suit against petitioner and respondent No. 2 to 4 for specific performance and injunction, which is pending in the Court of Civil Judge, Barmer. It is further averred that petitioner filed a revision petition before respondent No. 1 Director, Local Self Department against grant of lease deed in favour of respondent No. 2 but the same was dismissed without considering the record and overlooking the illegalities and irregularities committed by respondent No. 5. As per petitioner, respondent No. 1 Director, Local Self Govt., has the powers to cancel the lease deed as lease deed was executed in pursuance to the orders of respondent No. 5 allowing conversion of the land but the Director, Local Self Department has not redressed his grievances and dismissed the revision petition as not maintainable, as such, he has got no other alternate or efficacious remedy else to approach this Court against impugned order dated 11.4.2014 as well as for rescinding of proceedings for conversion of land use and issuance of lease deed.

2. Learned counsel for the petitioner, Mr. Narendra Rajpurohit, argued that Section 327 of the Rajasthan Municipalities Act 2009 confers jurisdiction on respondent No. 1 to consider illegalities and irregularities committed by local bodies while discharging their functions and in exercise of such powers it can set aside the order of conversion and consequential issuance of lease deed, however, by not entertaining revision, it has failed to exercise jurisdiction so vested. Learned counsel would contend that order impugned, therefore, suffers from the vice of an error apparent on the face of record. Learned counsel has urged that the conversion proceedings are undertaken in a single day further raises doubts about its legality which ought to have been examined by the revisional authority. With these submissions, learned counsel has argued that the conversion proceedings are bad in eye of law and are liable to be set aside. It is vehemently urged by the learned counsel for the petitioner that no opportunity was given to him before permitting conversion of land use. Learned counsel would contend that before passing the order permitting conversion of land use, requisite notification was not published in the newspaper for inviting objections having wide circulation in the area, and therefore, the order as such is bad in law. Mr. Rajpurohit has also urged that the fifth respondent has not made any endeavour to inspect the site and has manipulated the maneuvered the report including constructions at the site for facilitating issuance of the impugned order, and therefore, the same is not sustainable.

3. I have heard the learned counsel for the petitioner and perused the materials available on record.

4. On a close scrutiny of the factual matrix, it is crystal clear that it is a pure and simple family dispute between petitioner and his other family members,

inasmuch as he is pitted against his wife, son and daughter with whom he is not enjoying cordial relations. Second respondent Rewat Dan is his son. Third respondent is Smt. Lehar Kanwar, his estranged wife, and fourth respondent is his daughter Pushpa Kanwar. The entire edifice of the claim of the petitioner is agreement to sale (Annex. 1), which in the considered opinion of the Court has not conferred any right, title or interest on him. In this view of the matter, further agreement to sale executed by him in favour of one Hukam Singh is of any avail, or consequence. It appears that the petitioner, on the strength of alleged agreement to sale executed in his favour by his wife and daughter, has entered into an agreement to sale with Hukam Singh with intent to prove his possession on the land in question. Execution of agreement to sale dated 07.08.2002, itself is under cloud because third respondent has lodged a criminal complaint against the petitioner for manipulating the said agreement. The recitals of the agreement dated 7th August 2002, prima facie, creates serious doubts about the nature of the instrument. The agreement is executed on stamp of Rs. 100, which was purchased by the petitioner himself on 7th of August 2002 and not by the executants from Balotra. The agreement bears thumb impression of the third respondent and alleged signature of respondent No. 4 Pushpa Kanwar. From the sequence of events, there are serious doubts about the genuineness of the agreement itself, which is precisely the basis for this entire litigation.

5. Although petitioner has alleged in the writ petition that Mr. Hukam Singh has filed a suit for specific performance of contract and injunction against petitioner and respondent No. 2 to 4 but in want of material particulars about the said suit, at this stage, no comments are desirable from this Court.

6. The Court has reasons to believe that this litigation, which is outcome of abortive attempt of the petitioner to challenge the order of conversion of land use and issuance of lease deed in favour of second respondent before the Director Local Bodies, is either to prepare his defence against the so called suit for specific performance of contract laid by Hukam Singh, or its ingenuity by him, to exert pressure on his estranged wife and other family members.

7. This Court in exercise of extraordinary jurisdiction is not obliged to adjudicate disputed questions of facts. The existence of the agreement to sale and its genuineness can only be proved by considering evidence of the rival parties. All such question cannot be determined in summary proceedings under Article 226. In a writ petition, this Court cannot ordinarily go into the complicated questions of fact involving recording of oral evidence for their determination. It is trite that where a detailed inquiry into complicated facts is necessary, proceedings under Article 226 is not an appropriate forum for such a detailed examination of facts.

8. From the materials available on record, it is apparently clear that requisite procedure was followed by the fifth respondent while permitting conversion of land use and issuing lease deed in favour of respondent No. 2. The Director, Local Self Government, while passing the impugned order has held that

petitioner has not placed on record any material to prove the allegation that requisite procedure was not followed by the Commissioner, Municipal Board, Barmer. Further, taking into account the fact that it is a family dispute, the Director has held that such disputes are not entertainable and are not within its revisional jurisdiction under Section 327 of the Rajasthan Municipalities Act, 2009.

9. The petitioner has made an attempt to project an embellished version of a pure and simple family dispute out of personal vengeance with his estranged wife and kids and this august judicial forum cannot be utilized by a litigant for settling his personal disputes. Extraordinary jurisdiction enshrined under Article 226 of the Constitution of India is founded on equitable considerations and an incumbent approaching this Court while laying hand on the alleged agreement to sale, which is under serious cloud, cannot be granted any indulgence, more particularly, when he has launched this legal battle against his estranged wife and kids.

10. In this view of the matter, I am not inclined to interfere in this matter while extraordinary equitable jurisdiction of this Court. Resultantly, the writ petition sans merit and same is accordingly dismissed summarily.