
(1999) 09 RAJ CK 0024
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1213 of 1998

Kundan Mal

APPELLANT

Vs

District Collector, Pali and Others

RESPONDENT

Date of Decision : 02-09-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 115
Rajasthan Municipalities Act, 1959 — Section 170, 173A

Citation : AIR 2000 Raj 152 : (2000) 1 RLW 251 : (2000) 4 WLC 166

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : K.N. Joshi, for the Appellant; Yashwant Mehta, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner's father purchased 48 x 56 square feet land out of a pattasud land measuring 1125.33 square yards in the municipal limits of Sumerpur from Beera Kesha and others and another piece of land admeasuring 56 x 48 square feet from Ibrahim s/o Moosaji. According to the petitioner, a regular patta was also issued in the name of the petitioner and his father thereafter for the land admeasuring 60 x 72 square feet and for the remaining land of 6 x 72 square feet, a patta was issued in favour of the erstwhile Gram Panchayat. Thus, according to the petitioner, they purchased the land from the private owners and are in possession of the same since long.

2. The petitioner moved an application u/s 170 of the Rajasthan Municipalities Act, 1959 (for short "the Act") for grant of permission to raise construction over that land along with the plan. According to the petitioner, the respondent Municipality treated that application for grant of permission to raise construction for commercial purposes and directed to calculate the conversion charges though the petitioner did not seek permission to raise construction for commercial purposes. Rs. 29,887/- was calculated towards the commercial charges and the

petitioner was asked to deposit the same before the permission was given as per Annex. 1 dated 28-7-97. The said amount was deposited by the petitioner.

3. As per the averments made in para 7 of the petition, after the deposit of commercial charges, the respondent Board accorded permission to the petitioner to raise construction by its order dated 2-6-95. (This statement is factually Incorrect because the order at Annex. 1 was passed on 28-7-97 much after passing of the impugned order at Annex. 2 on 2-6-95.)

4. In para 9 of the petition, it has been stated that the petitioner almost completed the construction as per the plan approved by the Municipal Board but all of a sudden he was served with an order dated 13-5-96 (Annex. 4) whereby the permission to raise construction was cancelled. The same was challenged by the petitioner before the Additional Collector, Pali in appeal under wrong advice, who by his order dated 28-3-97 (Annex. 5) partly allowed the appeal and set aside the order at Annex. 4 dated 13-5-96 (which is wrongly typed as 28-3-97 in para 10) and the permission was granted to the petitioner to raise construction over the land in question by remanding the matter to the respondent Board with a direction to the petitioner to deposit the conversion charges for using it for the commercial purposes.

5. At this stage, it is pertinent to note that in pursuance of the said order dated 28-3-97 (Annex. 5) passed by the Additional Collector, Pali, the petitioner on 28-7-97 submitted in writing to the respondent Board that he is ready and willing to deposit the conversion charges. This statement is produced along with the reply affidavit filed by the respondent Board at Annex. R/1 at running page 61 of the petition. Suppressing this most important and material fact, the petitioner averred in para 11 of the petition that thereafter (after the order dated 28-3-97 at Annex. 5) without calling upon the petitioner and without issuing him any notice, the respondent Board directly issued a notice to the petitioner on 10-9-97 (Annexure 6) asking him to deposit Rs. 7,53,746/-as conversion charges of the land from residential purposes to commercial purposes.

6. In para 12 of the petition, once again the petitioner has stated that the impugned notice at Annex. 6 was challenged before the District Collector, Pali in appeal under the wrong advice who rejected his appeal by the order dated 31-3-98 (Annex. 7).

7. The petitioner has filed this petition before this Court on 13-4-98 under Articles 226 and 227 of the Constitution and challenged the impugned order dated 13-5-96 (Annex. 4) passed by the respondent Board cancelling the permission of the petitioner to raise construction over the land in question, the order at Annex. 5 dated 28-3-97 passed by Additional Collector, Pali in appeal whereby the appeal was partly allowed by setting aside the order cancelling the permission granted to the petitioner to construct and remanding the matter to the respondent Board with a direction to the petitioner to deposit the conversion charges of the land for using it for commercial purposes and the impugned notice

dated 10-9-97 (Annex. 6) issued by the respondent Board calling upon the petitioner to deposit Rs. 7,53,746/- towards conversion charges and also the impugned order dated 31-3-98 (Annex. 7) passed by the District Collector, Pali rejecting his appeal against the notice issued by the respondent Board calling upon the petitioner to deposit a sum of Rs. 7,53,746/-.

8. Apart from the fact that there is a belated challenge to the impugned order at Annex. 4 dated 13-5-96 passed by the respondent Board cancelling the permission to construct, I fail to understand how the petitioner can challenge the same in this petition particularly when the said order dated 13-5-96 was set aside in appeal by the Additional Collector, Pali on 28-3-97 (Annex. 5). The petitioner has challenged the impugned order dated 28-3-97 (Annex. 5) passed by the Additional Collector, Pali whereby the matter was remanded to the respondent Board with a direction to the petitioner to deposit the conversion charges of the land for using it for commercial purposes. The impugned order at Annex. 5 was not only accepted but duly complied with by the petitioner by submitting an application in writing to the respondent Board on 28-7-97 (Annex. R/1 to the reply affidavit). Having accepted the impugned order at Annex. 5 in toto, in my opinion, later on it was not open to the petitioner to challenge the same before this Court by way of this petition. Hence, the challenge to the impugned order dated 28-3-97 (Annex. 5) should fail only on this ground without going into the legality and validity of the impugned order dated 28-3-97 (Annex. 5).

9. Similarly, it was not open to the petitioner to challenge the subsequent notice dated 10-9-97 issued by the respondent Board calling upon the petitioner to deposit a sum of Rs. 7,53,746/- as conversion charges of the land from residential purpose to commercial purpose because as stated earlier, the petitioner himself submitted in writing at Annex. R/1 on 28-7-97, after the order was passed by the Additional Collector on 28-3-97 in his appeal that he is ready and willing to deposit conversion charges. It appears that only because the amount for conversion charges calculated by the respondent Board was more, therefore, the petitioner later on decided to challenge the same by way of this petition, which cannot be entertained by this Court.

10. It was submitted by the learned counsel Joshi for the petitioner that the petitioner was forced to submit the application on 28-7-97 because his construction was held up. He, therefore, submitted that on the point of gun, if somebody has written that he is ready and willing to pay conversion charges then it cannot be misused against him. He submitted that if such writing or admission is against the law then it would not be binding to the petitioner. He submitted that in this case, the land neither belongs to the Municipality nor the State Government, therefore, Section 173-A of the Act will have no application. He, therefore, submitted that the impugned notice issued against the petitioner by the respondent Board u/s 173-A of the Act is bad in law and illegal and even if the petitioner has given in it writing that he is ready and willing to deposit the

conversion charges, then also he is not bound by it.

11. This submission of Mr. Joshi is without any basis and without substance, therefore, required to be rejected because, the petitioner was supposed to disclose this fact in this petition that after the order passed by the Additional Collector on 28-3-97 (Annex. 5) In his appeal, he had submitted an application on 28-7-97 to the respondent Board showing his willingness to deposit the conversion charges. Not disclosing this most important and material fact shall be viewed seriously and on this ground alone of suppression of material fact, this petition was required to be dismissed.

12. However, the submission of Mr. Joshi was that the petitioner was required to mention only relevant facts in support of his case and not all other facts. This submission of Mr. Joshi cannot be accepted for the simple reason that the petitioner was required to disclose the fact of his statement dated 28-7-97 made in writing before the respondent Board wherein he clearly stated that he was ready and willing to pay the conversion charges. It was most important and relevant material for the adjudication of his case. I am of the opinion that if this was stated by him in the writ petition then, perhaps, this Court might not have even entertained this petition and straightway dismissed it at the admission stage itself. Because the petitioner was estopped from challenging the demand notice after accepting the order dated 28-3-97 (Annex. 5) In toto by giving it in writing on 28-7-97 that he was ready and willing to deposit conversion charges.

13. Even on merits, the petitioner has no case. The submission of Mr. Joshi that the respondent Board fail to prove that it was either a Municipal or State land, therefore, the demand made u/s 173-A of the Act was illegal is without substance. Because the petitioner himself is not sure about his case. Learned counsel Mr. Mehta for the respondent Board rightly pointed out the averments made by the petitioner in para 3 of the petition that ".....a patta was Issued in favour of the erstwhile Gram Panchayat....." (which was subsequently merged Into Municipality). At running page 70 in the rejoinder, the petitioner changed his stand and stated in para 20 that ".....It is wrong to contend that the patta has been Issued by the Gram Panchayat but it has been issued by the earlier Govt. of Jodhpur....." Even the pattas were initially not produced. It was produced by the petitioner only after the order was passed by my learned brother Hon"ble Mr. Bhagwati Prasad, J.

14. The land in question is Municipal or Government land is a question of fact which is seriously disputed by the respondent Municipal Board in its reply. It is well settled law that the disputed questions of facts cannot be gone Into and decided by this Court in its jurisdiction either under Articles 226 or 227 of the Constitution. Therefore, the judgment of this Court in case of Hot Chand v. Municipal Council, Ajmer reported in 1996 (1) WLC 300, cited by the learned counsel Mr. Joshi will have no application.

15. Having gone through the impugned Order at Annex. 7 passed by the District

Collector. Pali I am of the opinion that no error much less an error on facts or law or jurisdictional error is committed by him while passing the same order. He has given cogent reasons for dismissing the appeal. It is surprising to note that the petitioner himself has urged that under wrong advice, he filed the appeal before the District Collector against the impugned notice at Annex. 6. Thus, in my opinion, the petitioner cannot be allowed to blow hot and cold at the same time. If the appeal was not maintainable, then there was no question of filing the same. How the appeal was not maintainable is not stated by the petitioner in the petition.

16. Learned counsel Mr. Joshi raised one more submission that Section 173-A of the Act was introduced only in 1974 which has retrospective effect, therefore, no conversion charges can be demanded by the Municipality from the petitioner. This point was never raised in the petition, therefore, it cannot be allowed to be argued for the first time at the time of hearing of this petition,

17. Mr. Joshi then submitted that this being a neat question of law it should be permitted to be raised for the first time at the time of hearing of the petitioner though it may not have been taken up in the writ petition. This submission of Mr. Joshi has no substance, therefore, it is to be rejected. This cannot be said to be a neat question of law. Mr. Joshi is forgetting the fact that the petitioner applied for permission from respondent Board only in 1995 which is much after the introduction of Section 173-A in the Act in 1974. After the introduction of Section 173-A in the Act in 1974, any person applying for raising construction over the land which is falling under the municipal limits has to pay the conversion charges for construction over the land which he might have purchased prior to 1974 before Section 173-A was introduced in the Act. Hence, even on merits this submission has no substance and accordingly, it is rejected.

18. Except the aforesaid contentions, no other contention was raised by Mr. Joshi. This order was dictated in open Court in the presence of both the counsel Mr. Joshi and Mr. Mehta.

19. Before parting, I must state that learned counsel Mr. Mehta for the respondent Board pointed out that the petitioner almost completed the construction of the building under the interim orders obtained by him in appeal. Be that as it may, we are not at present concerned with the valid or invalid construction. We are concerned with the demand notice issued by the respondent Board by which the petitioner is called upon to deposit Rs. 7,53,746/- by way of conversion charges. On merits also, I am of the opinion that the impugned notice at Annex. 6 issued by the respondent Board to the petitioner calling upon him to deposit Rs. 7,53,746/- towards conversion charges is valid and legal and the petitioner is required to pay the same. At this stage, the learned counsel Mr. Mehta for the respondent Board submitted that the petitioner has enjoyed blanket stay against the payment of Rs. 7,53,746/- for all this period of nearly 1 1/2 years by suppressing material facts and making false statement in the petition, therefore, heavy costs should be awarded to the respondent Board while

dismissing this petition.

20. In view of the above discussion, I do not find substance on merits in this petition. Hence, this petition fails and is dismissed. At this stage. Mr. Joshi stood up and stated that this Court has not passed an order for costs. I was about to pass an order of special costs of Rs. 10,000/- because of the reason that the tendency of either making false statement in the petitioner and obtaining Interim order or suppressing material facts and obtaining interim order is on increase which is required to be checked by Imposing heavy costs against such persons so that in future others may not be lured in indulging in this type of practice. I have already stated earlier in my judgment that by suppressing the most important and relevant fact of giving it in writing to the Municipal Board that he (petitioner) Is ready and willing to pay the conversion charges to the Municipal Board as per the order passed by the Collector in appeal, the petitioner has obtained blanket stay against the notice demanding Rs. 7,53,746/- from him and enjoyed the same for all this period of 1 1/2 years. Therefore, if Mr. Joshi feels that passing of an order of special costs may help in getting stay from the higher Court in appeal then I am sure that he is under a wrong impression. There are instances where the High Court has imposed heavy costs in these types of cases which has been enhanced by the Supreme Court and this will not deterred this Court from passing the orders of costs in these type of cases. Accordingly, the order of special costs of Rs. 10,000/- is ordered.

21. Therefore, this petition is dismissed with a special costs of Rs. 10,000/- which should be paid by the petitioner to the respondent Board within one month from today.