
(2013) 10 RAJ CK 0062

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 976 of 2013

Lt. Col. Rohtan Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 04-10-2013

Acts Referred:

Citation : (2013) 10 RAJ CK 0062

Hon'ble Judges : Jainendra Kumar Ranka, J;Ajay Rastogi, J

Bench : Division Bench

Advocate : R.D. Rastogi, for the Appellant; R.N. Mathur, Assisted by Mr. Punit Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Ajay Rastogi, J.—Instant intra-court appeal has been jointly filed by seven appellants against the order & judgment passed by the Id. Single Judge dt. 05.07.2013 directing State Authorities including Jaipur Development Authority to allot plots to such of the writ petitioners who not only remained successful in the draw of lottery but also deposited the amount pursuant to the demand letter issued to them. At the same time, the Id. Single Judge further directed the respondents to consider the cases of other category of writ petitioners who had deposited registration fee and paid the amount in part pursuant to the draw of lottery and demand letter & in respect of such of the writ petitioners the respondents may consider their case and take a sympathetic view for the second category of writ petitioners at the earliest but in any case not later than three months. At the same time, the Id. Single Judge further observed that the order dt. 21.06.2012 issued under the signatures of the Principal Secretary, Department of Urban & Housing (UDH), cannot be given effect to as it has not been expressed in the name of HE the Governor, as mandated by Art. 166(1) of the Constitution. However, liberty was granted for passing fresh order after due compliance of R. 11 of the Rules of Business so as Art. 166(1) of the Constitution, with certain other directions but that are not so material for the

present purpose. The appeal has been filed by the appellants, who were not party in the pending proceedings before the Id. Single Judge, assailing the judgment of the Id. Single Judge dt. 05.07.2013 primarily on the premise that their rights are adversely affected by the judgment of the Id. Single Judge to the extent that they are also similarly situated persons like such of the writ petitioners who are referred to in para-1 of the directions issued under the judgment impugned dt. 05.07.2013, as it has been confined to the writ petitioners alone and on parity seeking their inclusion in para-1 of the directions under judgment impugned.

2. Along with the present appeal, the appellants have also filed an application seeking leave of this court to file special appeal against the impugned judgment dt. 05.07.2013.

3. The necessary facts which culled out from the record, relevant for the purpose, are that the appellants and the writ petitioners were applicants of Prithvi Raj Nagar Scheme (in short "PRN Scheme") of the Jaipur Development Authority, Jaipur (in short "the JDA"). The subject land was acquired for the scheme to establish a residential colony and the challenge to the acquisition proceedings attained finality with the verdict of the Apex Court dt. 03.10.1997 and thereafter JDA launched PRN Scheme in the month of October, 1997 and the appellants, as alleged, applied for allotment of plots in PRN Scheme. The lottery was drawn wherein the appellants remained successful but as alleged they were denied allotment of plots in PRN Scheme. It has been further alleged by the appellants that JDA issued demand letters quantifying the amount which was to be deposited by the appellants in the year 2006 and one of the allotment-cum-demand letter dt. 15.06.2006 (Ann. 2) was issued in the name of one Rohtan Singh (appellant) for allotment of plot in Kalpana Nagar, Jagatpura, Jaipur (one of the successful allottee of PRN Scheme) and in terms of the allotment-cum-demand letter it has been alleged that the amount was deposited but still the JDA failed to give possession of the plots to the appellants but as it reveals no remedy or measures were adopted by either of the appellants for taking possession of the plots, referred in terms of their allotment-cum-demand letters, in any court of law and as it appears the respondent-State took a decision for regularization of plots in favour of such of those applicants who were in possession of the piece of land which is part of the subject land for which acquisition proceedings at one stage were initiated and to streamline the matter, the Department of Urban & Housing (in short "Department of UDH") issued an order dt. 21.06.2012 taking decision to allot plots in favour of the occupants of the subject land after taking certain charges. At that stage when there was no decision taken, as regards handing over possession of plots to such of the applicants who had deposited the amount in terms of the allotment-cum-demand letter, number of writ petitions were filed seeking direction from the court for allotment of plots to those who remained successful in draw of lottery and deposited the amount pursuant to the demand letter issued to them but still possession was not handed over to them. At the same time, few of the writ

petitioners also raised objection to the decision of State Government dt. 21.06.2012 regarding allotment in favour of different categories on the rates prescribed under the impugned decision of the State Government being a method adopted to regularize the possession of alleged encroachers. So far as the present appellants are concerned, either of them have neither filed any writ petition regarding allotment of plots, if remained successful in draw of lottery nor if aggrieved by the decision of State Government dt. 21.06.2012 issued under the signatures of the Principal Secretary, Department of UDH for allotment of different categories referred therein on the prescribed rates mentioned for the purposes took legal action permissible under the law.

4. The Id. Single Judge after taking into consideration the material which came on record gave certain directions while disposing of the bunch of writ petitions. It will be appropriate to quote the same ad infra:-

1. The respondents are directed to allot plots to those petitioners who not only remained successful in the draw of lottery but deposited the amount pursuant to the demand letter issued to them. It would obviously leaving those who had withdrawn their amount or opted for other scheme(s) followed by issuance of lease deed.

2. The respondents may further consider cases of another category of petitioners who had deposited registration fee and paid the amount in part pursuant to the draw of lottery and demand letter. It would be expected of the respondents that a proper and sympathetic view would be taken for second category of petitioners at the earliest and, if possible, within a period of three months from the date of receipt of copy of this order. This would exclude those who had opted for other scheme and thereupon given lease deed or withdrawn the amount.

3. So far as the impugned order dated 21.6.2012 at Annexure-16B, passed by the Principal Secretary, Department of Urban Development and Housing (UDH) (in CW 2740/2006 "Sugan Singh & ors versus State of Rajasthan & anr") is concerned, it cannot be given effect to as it has not been expressed in the name of HE the Governor so as to comply the mandate of rule 11 of the Rules of Business so as Article 166(1) of the Constitution of India. The respondents would however be at liberty to pass fresh order in accordance with rule 11 of the Rules of Business so as Article 166(1) of the Constitution, if it has not already been issued.

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5. The main thrust of submission of counsel for appellant Mr. R.D. Rastogi is that the present appellants are also similarly situated like the writ petitioners who approached and took legal action under the law but the Id. Single Judge restricted his directions to allot plots to such of the writ petitioners who not only remained successful in draw of lottery but also deposited the amount pursuant to the demand letter issued to them and the appellants are also similarly situated persons/applicants and the direction restricted by the Id. Single Judge only with

regard to the writ petitioners alone is violative of Art. 14 of the Constitution and such of the applicants being similarly situated who fall and covered under para-1 of the directions contained in order impugned of Id. Single Judge, they are also entitled to get the same & similar treatment. He further submits that as regards decision of the State Government for allotment of plots in favour of different categories, on prescribed charges in the order dt. 21.06.2012, are encroachers, has been upheld and approved but order of the State Government being defective unless issued or expressed in the name of HE the Governor u/Art. 166(1) of the Constitution & taking note thereof, the State Government has now issued a policy almost on the same line & length with certain modifications expressing in the name of HE the Governor u/Art. 166(1) of the Constitution dt. 20.09.2013 and no purpose will now be served in assailing the policy of the State Government dt. 20.09.2013 before the Id. Single Judge more so when it has already been examined under the impugned judgment dt. 05.07.2013 and that is a reason for which the appellants have approached this court who were not party to the proceedings before the Id. Single Judge seeking leave of filing special appeal against the judgment impugned dt. 05.07.2013. In support of his submissions, counsel placed reliance on the decisions of Apex Court in K.I. Shephard and Others Vs. Union of India (UOI) and Others, Ashwani Kumar and Others Vs. State of Bihar and Others, & H.P. Public Service Commission Vs. Mukesh Thakur and Another,

6. Mr. R.N. Mathur, Sr. Advocate appearing on behalf of the JDA while opposing the application seeking leave of filing special appeal submits that the present appellants are not basically aggrieved by the judgment of the Id. Single Judge which is impugned in the instant intra-court appeal dt. 05.07.2013. On the contrary they are also claiming the same treatment and parity which has been confined to the writ petitioners by the Id. Single Judge in the judgment impugned dt. 05.07.2013, as such, they cannot be said to be aggrieved by the directions in particular para-1 of the directions of order of Id. Single Judge and they cannot be said to be aggrieved on the basis of the relief being confined to the writ petitioners by the Id. Single Judge, the rights of the present appellants cannot be said to be in any manner adversely affected.

7. Counsel Mr. Mathur further submits that as regards the order dt. 21.06.2012 of the State Government earlier issued regarding allotment of plots to various categories on the prescribed rates is concerned, if the appellants are at all aggrieved by the decision of the State Government, they had a remedy of assailing the same before the Id. Single Judge by filing writ petition but either of the appellants has not chosen to do so. However, the Id. Single Judge had observed that the order of the State Government dt. 21.06.2012 cannot be said to be a policy decision being not in conformity with the mandate of Art. 166(1) of the Constitution, liberty has been granted to pass fresh order after due compliance of Art. 166(1) of the Constitution and as per the appellants' own saying, the present policy decision of the State Government dt. 20.09.2013 has been introduced with certain modifications but the said policy decision has not

been examined by the Id. Single Judge so far and if any of the appellants are at all aggrieved they had a remedy available under the law but it cannot be said that they are having locus-standi to question the policy decision of the State Government dt. 20.09.2013 seeking leave of this court to assail the same in intra-court appeal more so when the Id. Single Judge has not at all considered or examined the policy decision of the State Government which has been impugned in the instant proceedings dt. 20.09.2013.

8. In counter, Mr. Rastogi submits that subsequent events and developments can always be taken note of in granting relief to the appellants and the earlier order of the State Government dt. 21.06.2012 which came to be examined by the Id. Single Judge and the policy decision of the State Government issued thereafter after compliance of Art. 166(1) of the Constitution dt. 20.09.2013 are almost on the same guidelines and no purpose is going to be served in examining those conditions stipulated under the so-called policy decision of the State Government which is nothing but regularization of occupants/encroachers over the government land and filing a writ petition remains an empty formality. In support of his contention, counsel placed reliance on the decision of Apex Court in State of U.P. and Others Vs. Mahindra and Mahindra Ltd.,

9. We have given our anxious consideration to the rival submissions made on the application seeking leave of the court for filing intra-court special appeal against the judgment impugned passed by the Id. Single Judge dt. 05.07.2013.

10. From the submissions which have been made by counsel for appellant, the claim of the appellants in the intra-court appeal is that they are the persons similarly situated to such of the writ petitioners to whom relief has been granted by the Id. Single Judge, as evident from para-1 of the directions under the impugned judgment dt. 05.07.2013 but that being restricted to the writ petitions alone, they have approached to this court by filing instant intra-court appeal.

11. In our considered view the appellants are primarily not aggrieved by the findings which has been recorded by the Id. Single Judge while arriving at a conclusion that the writ petitioners, who were successful in draw of lottery and deposited the amount pursuant to the demand letter, are entitled for allotment of plot. On the contrary, the appellants also want to sail in the same boat and if they are not aggrieved by the finding recorded by the Id. Single Judge in regard to such of the writ petitioners who remained successful in draw of lottery for their allotment of plot, they cannot be said to be persons aggrieved and their rights are not in any manner adversely affected. On the contrary it is open for each of them to avail remedy which the law permits to them but at the same time they do not have any locus-standi to file instant intra-court appeal seeking clarification to consider all such similarly situated persons for the same treatment. Their submission is further not be countenanced for the reason that it is yet to be examined as to whether each of the appellant is at all similarly situated, as claimed by them to the writ petitioners and that cannot be a subject matter to be examined in the intra-court appeal assailing validity of the

judgment passed by the Id. Single Judge dt. 05.07.2013.

12. The judgments on which, counsel for appellants, has placed reliance, with due respect are not even remotely related to the issue under consideration inasmuch as so far as the judgment of Apex Court in K.I. Shephard's case (supra) is concerned, it was a case where certain employees of the private banks challenged the validity of S. 45 of the Banking Regulation Act, 1949 where a decision was taken of amalgamation in Punjab National Bank, Canara Bank & State Bank of India in terms of separate schemes drawn under the provisions of the Act and while the amalgamation was made certain dispute arose regarding the service conditions of the employees of transferor & transferee banks and in this context the question arose that if some of the employees could not challenge the validity or vires of the Act then what will be its effect and the Apex Court observed that all the employees of the three transferee Banks may be considered on the same terms & conditions of employment under the respective banking companies prior to amalgamation and all the employees were held entitled to the benefit of continuity of service. With due respect this case law may not be of any assistance in the instant proceedings.

13. So far as the judgment of Apex Court in Ashwani Kumar's case (supra) is concerned, it was a case where a large number of Class-III & Class IV employees were appointed and the appointment was in flagrant violation of the statutory Rules and the question arose as to whether each of the incumbent was entitled to be afforded an opportunity of hearing and principle of natural justice was required to be followed in such cases, which was answered by the Apex Court in negative and we do not find as to how the judgment relied has any relevance on the subject matter in the instant proceedings.

14. As regards the judgment of Apex Court in Himachal Pradesh Public Service Commission's case (supra) is concerned, it was a case pertaining to selection process undertaken by Selection Board of Himachal Pradesh Public Service Commission and there was some discrepancies and inconsistencies in the question papers and evaluation thereof and the question referred was whether it is permissible for the High Courts to examine the question papers and answer sheets particularly when the State Public Service Commission had assessed inter-se merit of the candidates where the individual grievance of the incumbent may not have been necessary to be examined.

15. We make it clear that even if one is not a party to the proceedings before the Id. Single Judge but still if his rights are adversely affected by the order of the Id. Single Judge, he has locus-standi in assailing the proceedings by filing intra-court appeal seeking leave of this court but in the facts of the instant case we do not find, after the submissions being noticed by us, that the rights of present appellants are in any manner are going to be adversely affected. On the contrary, they are claiming parity which has been confined by the Id. Single Judge to the writ petitioners alone.

16. As regards submissions made by counsel for appellant regarding the later policy decision of State Government published after due compliance of mandate of Art. 166(1) of the Constitution dt. 20.09.2013, suffice it to say the Id. Single Judge finally observed that the order issued by the State Government dt. 21.06.2012 was not in conformity with the mandate of Art. 166(1) of the Constitution and as per the appellants' own case the present policy dt. 20.09.2013 with modifications has been introduced by the State Government and was never a subject matter of challenge in the appropriate proceedings before the Id. Single Judge.

17. As regards present appellants are concerned, they never appears to be aggrieved by the decision of the State Government dt. 21.06.2012 where a decision was taken to allot plots on certain conditions, as per the prescribed rates, to the incumbents concerned and as regards present policy decision of the State Government dt. 20.09.2013, which has now been published with due compliance of Art. 166(1) of the Constitution is concerned, the same being never a subject matter of challenge before the Id. Single Judge at least cannot be examined by this court in the instant proceedings in the intra-court appeal merely on the premise that the later policy decision of the State Government dt. 20.09.2013 is almost on the same line to that of the earlier order of State Government dt. 21.06.2012 and that will not give a right to the appellants to seek leave of this court of filing special appeal against the order & judgment impugned passed by the Id. Single Judge dt. 05.07.2013.

18. In our considered opinion and from the submissions which have been noticed, the rights of the present appellants in no manner can be said to be adversely affected by the order & judgment impugned passed by the Id. Single Judge dt. 05.07.2013 and to claim parity with the writ petitioners they can always avail the remedy which the law permits to them and at least are not entitled to seek leave of this court of filing special appeal against the order & judgment impugned passed by the Id. Single Judge dt. 05.07.2013. Consequently, the application seeking leave of this court stands dismissed. As a consequence whereof, the appeal also stands dismissed.