

(1996) 12 RAJ CK 0004

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2999 of 1994

Mahendra Kumar Sharma and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-12-1996

Acts Referred:

Citation : (1997) 1 RLW 243 : (1997) 1 WLC 702 : (1996) 2 WLN 570

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

V.K. Singhal, J.—This writ petition has been filed against the in-action of the respondent Jaipur Development Authority in not checking illegal construction of the temple by Vardhman Jain Sudhar Samiti. The submission of the petitioner is that when-ever a land is developed and plots are allotted, certain areas are left for development as facility area and no one has any right to encroach on the said land or make a construction thereon. The respondent No. 4 is said to be Principal of Prem Santi Public School who in conspiracy with other associates have made un-authorized constructions and the JDA inspite of attention being drawn could not take any action against the Zinalaya.

2. On behalf of the respondents, it is stated that the Jain Temple is constructed over 788.88 sq. yds and the Vardhman Jain Sudhar Samiti with the consent of all the members of the colony have constructed the said temple and there exists the temples of Ram, Laxman, Sita, Hanumanji etc. and, therefore, 130 members (plot holders) signed the no objection to the proposal. The park is measuring 600 sq. yds. It is also stated that the Government has also been moved for giving the necessary permission.

3. Without going to any disputed questions, the legal position is that if a particular plot has been reserved for facility area, then no individual or association or even the members of the society where the plot has been sold by

the society or the plot holders whether it is sold by the JDA or the Municipality or by any other authority have any power to encroach upon it. The procedure for disposal of property has been given under the rules. Even if majority of persons agree then they cannot take law in their own hands by making any illegal construction. Unless, the land is agreed to be sold by the Government/ JDA, possession is given and maps are approved no construction activity can be carried on. It is happening day and night that for personal interest including the community interest the Government land is encroached upon and the JDA and police is only a spectator. If it is permitted that majority of members may construct their temple without permission or by encroaching upon the Government land, the result would be that there may be even dispute between the plot holders of the locality and one may try to establish a Church and other a mosque and raise a temple and that too of Jain, Budh, Ram, Sita, Shiva and others and law and order situation may arise. This is besides the fact that no legal right is created in favour of a person or a group of persons who construct the temple they cannot even presume and proceed on the basis that the land shall be allotted by the State Government and before any order is passed by the State Government the construction is started. In such a case, it is duty of the JDA either to demolish it or to realise the full market value. A person who has violated the provisions of rules cannot be given the benefit even of reserve price, or any concessional price. If any temple or other public worshipping place is to be constructed, then it should be in a proper manner by obtaining proper permission and paying the charges to the JDA and it is not vice-versa that first the land is encroached, construction is made and then it is said that it is with the consent of so many persons. The consent of all the persons could not confer it with a right to make any construction and it is an offence.

4. In these circumstances, the writ petition is allowed and the JDA is directed to proceed in accordance with law and the observations made above.