

(1989) 03 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2690 of 1988

Mahendra Singh and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 27-03-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 1 RLW 147 : (1989) 2 WLN 88

Hon'ble Judges : M.B. Sharma, J;I.S. Israni, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.B. Sharma, J.—The petitioner has challenged the legality and propriety of the order Annr. 4 dated July 5, 1988, made by the Director, Local Bodies Government of Rajasthan Jaipur. The said order is available at pages 34 and 35 of the Paper Book of the writ petition and a perusal of which will show that an application u/s 300 of the Rajasthan Municipalities Act 959 (for short, the Act) was filed before the Director, Local Bodies and the Director, Local Bodies in exercise of the powers u/s 300 of the Act made an interim order ordering to maintain the status quo and further that no permission to construct should be given on the land in dispute relevant facts. aforesaid order Annr. 6, it will be useful to give

2. One Mangal Singh, father of the Petitioner filed a civil suit in the Court of Additional Munsif Magistrate No. 1, Dholpur for declaration and perpetual injunction against the Municipal Board Dholpur in respect of the land in dispute. The necessity for filing the suit arose as the Municipal Board intended to auction the land in question and in that suit an application for temporary injunction was also filed which was allowed The suit was contested on behalf of the Municipal Board Dholpur where in issue were framed and ultimately for a period of 10 years the suit remained pending and it arrears that the parties, i.e. the father of the petitioner as well as the Municipal Board Dholpur arrived at a compromise and on the basis of compromise a decree was passed when in it was declared

that the land in dispute belongs to the father of the petitioner. The land was also marked by letters "Ka Kha, Ga Gha" and "A.B.C.D." It appears that no appeal against the said decree was preferred and the said decree became final.

3. Roshanlal who was not wilfully made the party in the writ petition and was made the party only under the order of this Court, & now respondent no. 4 filed a suit where in the petitioner as well as the Municipal Board were arrayed as defendants. Reclaimed that he had purchased the property in dispute from the sons of Liladhar who had purchased the said property in 1939 by registered sale deed. In that suit an application for injunction was filed but Roshanlal did not succeed in seeking the injunction. Roshanlal filed an application u/s 285 of the Act before the Sub-Divisional Officer Dholpur and the Additional District Development Officer Dholpur we know not under what powers vested in him his order dated October 13 1987 stayed the operation of the resolution of the Municipal Board dated April 10.1983 under which it has been decided that the compromise should be arrived at. The file was sent to the Collector Dholpur for further orders That case is still pending. Roshanlal, respondent No. 4 filed an application before the Director, Local Bodies and the Director Local Bodies as has already been said earlier made the interim order.

4. The only question which is relevant is whether the order of the Director, Local Bodies is without jurisdiction. We have already said earlier that a compromise was arrived at between the father of the petitioner and the Municipal Board and on the basis of that compromise as far back as on June 1987, the civil suit filed by the father of the petitioner was decreed against the Municipal Board Dholpur and the decree was not challenged and therefore so far as the Municipal Board is concerned, it became final. If the Municipal Board thought that the decree had been secured as a result of collusion the only remedy was to file a suit for cancellation of the decree. The Municipal Board has not filed any suit and in the suit filed by Roshanlal he failed to secure any injunction upto this Court. A resolution of the Municipal Board can only be stayed under the powers vested in the Sub-Divisional Officer in case the order has not been acted upon. A bare reading of Sub-section (I) of Section 285 of the Act will show that if in the opinion of the officer appointed or authorised by the Government in this behalf, the execution of any order or resolution of a Board, or the doing of anything which is about to be done or is being done by or on behalf of a Board is causing or is likely to cause injury or annoyance to the public or a breach of peace or is unlawful, he may by order in writing under his signature suspend the execution or prohibit the doing thereof. The said section conferred no power on the officer who may be authorised by the State Government to stay the operation of a decree of the civil court. Admittedly when the Municipal Board passed the resolution that the compromise should be arrived at and thereafter a compromise was arrived at and a decree was passed on the basis of that compromise, the powers u/s 285 of the Act could not have been exercised to suspend the resolution which has been acted upon by entering into a compromise. We have already said that the Sub-Divisional Officer referred the

matter to the Collector and no decision has yet been arrived on it and we will refrain to say what should be done by the Collector in view of the order made by us as no final order u/s 285(1) has been made. Now if we also read Section 300 of the Act, its Sub-section (1) provides that the State Government or any authority authorised in this behalf by the State Government may, for the purpose of being satisfied as for the correctness, legality or propriety of any order passed or purporting to have been passed, under the Act by or on behalf of any Board, its Chairman, vice-Chairman any Member or Officer as a Collector or other Officer appointed by the State Government in that behalf call for the relevant record, and may, in doing so, direct that pending the examination of such record, such order shall be held in abeyance and no action in furtherance thereof shall be taken till the decision of the State Government under Sub-section (2). It is well known that even if no time is fixed for the exercise of the statutory powers, the same must be exercised within a reasonable time. If the resolution to enter into compromise was made in the year 1983 the powers u/s 300 of the Act, even assuming that it could be exercised, in this case, could have been exercised within reasonable time and not in the year 1988 i.e. after the lapse of 5 years. That apart, it has already been said earlier that after the resolution was passed by the Municipal Board a compromise was filed before the civil court to which the Municipal Board was a party and a decree in favour of the father of the petitioners was made. Therefore, under these circumstances, we are of the opinion that the powers u/s 300 of the Act could not have been exercised and exercise of the powers is arbitrary and abuse of the process and it has been exercised in colourable exercise of the powers. We may state that the objection of the learned Counsel for the Municipal Board that the order Annx. 6 is only an interim order and powers under Article 226 of the Constitution by this Hon'ble Court should not be exercised has no force. There is no absolute bar to the exercise of the powers under Article 226 of the Constitution against the interim orders. In the instant case, we have already said that the order has been made to over-ride the civil court which has made a decree on the basis of compromise.

5. Consequently, we allow the writ petition, quash Annx. 6 dated July 5, 1988 and also quash the proceedings u/s 300 of the Rajasthan Municipalities Act, 1959 pending before the Director, Local Bodies/ Government of Rajasthan. We have already said that if permissible under law the Municipal Board may take action for getting set aside the decree in a court of law.