

(2002) 11 RAJ CK 0021

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 4106, 4107, 4115, 4116, 4234, 4236, 4237 and 4238 of 2000

Mangat Rai

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-11-2002

Acts Referred:

Rajasthan Colonisation Act, 1954 — Section 28

Citation : AIR 2003 Raj 181

Hon'ble Judges : Jagat Singh, J

Bench : Single Bench

Advocate : H.S. Sidhu, for the Appellant; Hemant Choudhary, for the Respondent

Final Decision : Allowed

Judgement

Jagat Singh, J.—The petitioners herein were allotted commercial shops in Mandi Rawla District Sriganganagar in April, 1990 as per the provisions of the Rajasthan Colonisation (Sale and Allotment of Land in Mandis in Bhakhra and Indira Gandhi Canal Project Colony Areas) Conditions, 1973 (hereinafter referred to as "the Conditions of 1973"). Each of the petitioners was allotted shops being the highest bidder in open auction. The size of the shop was 25 x 60 ft. The petitioners constructed the shops and started their business immediately after the purchase. On 15-11-1994 the respondents passed a resolution No. 16 Anx. P/1 by which a decision was taken that behind each shop there is an area of 25 x 30 ft. which is being used by the owners of the shops without making any payment, therefore, the owners of the shops may be allotted the land on payment of Rs. 500/- per sq. yard for commercial use and Rs. 300/- for residential purposes. This resolution was for all the mandi samitis situated in District Hanumangarh. The petitioners submitted, an application for allotment of the land 25 x 30 ft. behind their shops as per the resolution referred above. The respondents also gave them a direction to deposit the amount @ Rs. 500/- per sq. yard. Each of the petitioners deposited the amount and thereafter raised

some construction over it.

2. Subsequently the respondents vide order Anx. P/3 dated 17-9-1997 issued a notice to each of the petitioners that the allotment so made in their favour of the land 25 x 30 ft. is cancelled and the amount so deposited by them is being refunded. Aggrieved against the order Anx. P/3 the petitioners filed writ petitions in this Court which were accepted vide order dated 12-2-1998 with a direction to the respondents that after giving opportunity of hearing they may proceed afresh. Thereafter order Anx. P/6 dated 22-8-2000 was passed and the allotments of 25 x 30 ft. made in favour of the petitioners were cancelled. Hence these petitions.

3. During the course of arguments learned standing counsel for the respondents submitted that no construction as such is made till date. However, the case of the petitioners was that they have constructed their godown and other sundry constructions were made upon it. Consequently a factual report was sought from the Tehsildar. Mandi Vikas Samiti, who submitted a report showing that all the petitioners have raised some construction of the other on the land 25 x 30 ft. behind their shops and are using the same.

4. During the course of arguments on merits the submissions of the learned counsel for the respondents were that the land could not have been allotted by the Development Committee under the Rules and at the most it could have been put to open auction. When the shops in question was sold in open auction at a rate of about Rs. 3000/- per sq. yard, how can the land immediately situated behind the shop could be sold at a commercial rate of Rs. 500/- and residential rate of Rs. 300/- per sq. yard.

5. On the contrary, learned counsel for the petitioners submitted that the Development Committee so constituted under the condition No. 4 of the Conditions of 1973 have taken a decision for allotment of the land to the owners of the shops in question vide Anx. P/1 dated 15-11-1994 and subsequently have accepted the applications filed by the petitioners to allot the land to them and the money has also been deposited as back as in the year 1994. It is further submitted that the petitioners could not be put to a loss of the construction they have raised upon the land in question simply on the ground that the land was not put to auction.

6. I have carefully considered the rival submissions made at the Bar.

7. Even assuming that as per condition No. 10 of the Conditions of 1973 the persons eligible for allotment were the category of persons who do not own or owned either any home in his own name or in the name of his members of the family or any residential plots anywhere in the Mandi area. In the matter at hand the original allotment of the shops was made as per condition No. 10 referred above. The land immediately situated behind the shops was 25 x 30 ft. and was being used by the shop owners and, therefore, the resolution was passed by the respondents to allot the land to the owners of the shops. In such a situation even

if the land in question may not have been put to open auction, when once the respondents have taken a resolution and in consequence thereof the price of the land has been deposited and the petitioners have raised construction, the respondents cannot be permitted to take shelter of sundry regulations. Admittedly the Anx. P/1 was passed by the members of the Development Committee who were competent to do the same. Because the original shop was auctioned @ Rs. 3000/- per sq. yard the allotment in question cannot be cancelled because it was made only (r) Rs. 500/- per sq. yard. When the Development Committee has taken a decision In the year 1994 and on that basis the petitioners have deposited the amount and raised the construction, the same cannot be undone at the whims and fancy of the respondents by a resolution passed as back as in the year 1997 and 2000.

8. Consequently, there is merit in these petitions. The same stand accepted and the Impugned order Anx. P/6 dated 22-8-2000 stands quashed.