
(1981) 02 RAJ CK 0015
In the Rajasthan High Court
Case No : Civil Writ Petition No. 649 of 1979

Mastana Ram and Others	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 09-02-1981

Acts Referred:

Rajasthan Panchayat Act, 1953 — Section 88
Rajasthan Panchayat and Nyaya Panchayat (General) Rules, 1961 — Rule 256, 264

Citation : (1981) WLN 223

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Lodha, J.—These 13 writ petitions involve common question of facts and law. I have, therefore, accepted joint request of learned Counsel for the parties that they should be decided by a common judgment.

2. All the petitioners are residents of village Dholipal of Ganga-nagar District. Gram Panchayat Dholipal is functioning under the provisions of Rajasthan Panchayat Act, 1953 (hereinafter referred to as the "Act"). It prepared a lay out plan for the development of Abadi (and of village Dholipal and this plan was approved in a general meeting of entire village of Dholipal on April 15, 1972. After its lay out plan was approved by the Gram Panchayat, the Panchayat Samid also recommended for its approval. The Patwari and the Tehsildar concerned sent similar recommendation. The Government of Rajasthan (Panchayat and Development Department) by their letter dated 19th September, 1972 accorded their sanction to the lay out plan as submitted by Gram Panchayat, Dholipal. A direction was further given that it should be sold in accordance with the provisions of rules 256 to 264 of the Rajasthan Panchayat and Nyaya (General) Rules, 1961, (hereinafter referred to as the "Rules"). An auction was held and all these petitioners who were the highest bidders, purchased the plots of land. After their bids were accepted by the Gram Panchayat die amount was deposited

and sale was confirmed in favour of the petitioners by the Gram Panchayat. Pattas were also issued to all the petitioners and possession was handed over to them.

3. The case of the petitioners is that they invested a huge amount of money for development and improvement of their plots.

4. After six years, the respondent No. 2, Collector, Sriganaganagar cancelled all these sales of land by its order dated December 5, 1978.

5. The petitioners further submitted that similar sales were challenged before the Additional Collector, Sri Ganganagar by one Ratanlal. The Additional Collector in the year 1973 held that these sales were strictly in accordance with the provisions of Rajasthan Panchayat Act and the rules made there under. On the very day i.e. December 5, 1978 when the sales of petitioners were cancelled by the Collector, it is alleged that the same Collector, confirmed the sale in favour of some other persons by order No. 648 dated 5.12.78 even though the sale was done in similar manner. By order No. 667 dated 5.12.78, yet another sale was confirmed of similar type.

6. The learned Counsel for the petitioners raised several objections to the cancellation of the sale and submitted that this order deserves to be quashed. Not only this order was passed without any notice to the petitioners but further the respondents are estopped from challenging the said sale after 6 years and more so when the petitioners have acted by spending huge amount of money for development and improvement of these alots of land.

7. I have given the facts of these cases in short because in spite of the denial by the learned Counsel for the respondents, these cases obviously are covered by the judgment of Birjusingh v. The State of Rajasthan and others decided on October 20, 1978. Facts in that case and instant case are identical. In that case this court observed as under:

I am in agreement with the submission of the learned Counsel for the petitioner that in view of its letter dated 19th September, 1972, whereby the Government sanctioned the lay out plan submitted by the Gram Panchayat and further directed the Gram Panchayat to sell the land covered by the said lay out plan by auction in accordance with the provisions contained in Rules 256 to 264 of the Rules, it is not open to the States Govt, and its officers viz. respondents Nos. 3 and 4 to assert that the Gram Panchayat was not competent to sell the land covered by the lay out plan and that the sale in favour of the petitioner was invalid and for that reason the constructions made by him are unauthorised. In my view, the present case is, governed by the principle of promissory estoppels laid down by the Supreme Court in Union of India v. Indo Afghan Agencies AIR 1968 SC 718.

The Court further abserved:

The State Government and its employees are, therefore estopped from taking

the stand that the sale by the Gram Panchayat in favour of the petitioner, even though it was made by public auction in accordance with the provisions contained in Rules 256 to 264 of the Rules, was invalid and no title was acquired by the petitioner in the lands purchased by him under the said sale.

The Court finally held as under:

I am also of the view that the restrictions which have been imposed on the right of the Gram Panchayat Dholipal to sell the lands vested in it u/s 88 of the Act under the order dated 2nd February, 1959 ceased to be operative after the order dated 19th September, 1972 and the order dated 2nd February, 1959 should be treated to have been modified by the order dated 19th September, 1972 to the extent that the Gram Panchayat, Dholipal was authorised to sell lands falling within the layout plan sanctioned by the Government by the said letter by holding auction sale in accordance with the provisions contained in Rules 255 to 264 of the Rules.

For the reasons aforesaid, I hold that the "sale of the plot of land made by the Gram Panchayat, Dholipal in favour of the petitioner is a valid sale and the constructions made by him on the said land cannot be regarded as unauthorised constructions and respondents No. 3 and 4 are not entitled to demolish the said constructions or to interfere with the possession of the petitioner over the said land.

8. Mr. N.M. Lodha, learned Deputy Govt. Advocate confronted with the above judgment, and submitted that in that case it was not pointed out to this Court that approval or sanction given by the Government was not proper because the letter dated 19-9-72 was signed by the Assistant Secretary. I have perused letter dated 19-9-72 I am of the view then the argument is devoid of any substance both in facts and law. The letter has been addressed to the Sarpanch by the "Shasan Sachiv" which means, Secretary, to the Government. It is unusual and very surprising that State Government at this late stage in 1981 wants to challenge the validity of its own order and that too on an absolutely slippery and untenable ground. It is not for this Court to comment how the official work of the various officers functioning in the Secretariat is to be regulated, but it would certainly create serious situation, if the Government starts disowning its own child and that too after nourishing him for decades Moreover this is not ground on which the sale has been quashed by the Collector.

9. The learned Deputy Government Advocate realizing the above, further submitted that the sale could not have been done by the Panchayat as it was only Mandi Samiti, who was competent to do so. Even this ground that there was any Mandi Samiti which alone was competent to make sale nowhere finds place in the impugned order. It is established principle of natural justice that if any right or title once vests in any citizen, he must precisely be told and informed of reasons for being divested of the same. The respondents could not point out that at any stage these grounds which are now being invented for the first time were

taken note by the Collector and the Petitioners were informed and intimated of them and then given opportunity to show cause against cancellation on those grounds.

10. The learned Deputy Government Advocate, further made a feeble attempt to distinguish the judgment of Birjusingh's case (supra) on the ground that the principle of promisory Estoppel was applied because certain constructions were made by the petitioners in that case. However, I am of the opinion that the decision of the Birjusingh's case is primarily based on the judgment of Hon''ble Supreme Court in Union of India v. Indo Afghan Agencies AIR 1968 S.C. 718 and Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another,

11. In the present case also the petitioners spent huge amount of money for improvement and development of the plots of land and it is immaterial, where the same was done for construction in one case of Birjusingh or it is done for levelling of the land or some other purpose. In Indo Afghan Agencies? case what Hon''ble Supreme Court observed was that the Government cannot claim any immunity or excuse from liability to carry out the representation made by it as to its future conduct and promise solemnly made cannot be allowed to be wriggled out on the ground of undefined and undisclosed necessity or expediency. It was further held that it also cannot claim to be the judge of its own obligation to the citizen of an ex-parte appraisalment of the circumstances in which the obligation has been arisen.

12. On the whole, there remains no substantial difference between facts of the case of Birjusingh and the present case The resultant position is that the present cases are covered by the principle laid down in Birjusingh's case.

13. As a result of the above discussion, all these writ petitions deserve to be accepted & consequently they are accepted. The impugned orders for cancellation of the sale of the plots and all sales to the petitioners in the individual cases are quashed and the respondents are restrained from interfering with the possession of the petitioners over said disputed plots of land. There will be no order as to the costs.