
(1995) 07 RAJ CK 0025

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4343 of 1992

Mohammed Iqbal and Others

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1996 Raj 78

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Advocate : D.S. Shishodia, sisted by Heera Lal Kela, for the Appellant; K.L. Jasmatia, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—The instant writ petition has been filed by the petitioners seeking a relief to quash the Notification issued u/s 4 (Annx. 3) to the writ petition and the Notification issued u/s 6 of the Land Acquisition Act (Annx. 4) to the writ petition.

2. The brief facts necessary to be noticed for disposal of the instant writ petition are that the lands over which the house purchased by the petitioners stands at Khasra Nos. 744 measuring 0.0500 Hares and 745 measuring 0.0300 Hares situated at village Parda Tehsil Girwa and District Udaipur. It is also alleged that the petitioners purchased this property in October, 1988 which is on rent with Zila Shiksha Adhikari, Udaipur.

3. It is also alleged by the petitioners that a Notification u/s 4 of the Land Acquisition Act was issued by the respondents which was published in the Rajasthan Gazette on 29-3-90. It is also alleged that the said notification was published in the Rajasthan Patrika on 17-5-90 inviting objections. The main grievance of the petitioners is that no individual notices to the petitioners were issued with the result no objection could be filed.

4. It is alleged in paragraph No. 6 of the writ petition that another notification u/s 6 of the Land Acquisition Act was issued and published in the Rajasthan Gazette on 9-8-90 and was published in the Rajasthan Patrika; a copy whereof is filed along with the writ petition and marked as Annx. 4.

5. After service of notices, the answering-respondents have filed a detailed reply stating therein that the house alleged to have been purchased by the petitioners stands at Khasra Nos. 745 and 744 is a road. In support of the aforesaid averment, a copy of map is filed along with the return and marked as Annx. R/1.

6. It is further averred in the return filed by the answering-respondents that initially both Khasra Nos. 744 and 745 were recorded in the name of "Rajasthan Sarkar" but vide E. No. 63 dated 17-5-89, these plots were recorded in the name of "Urban Improvement Trust, Udaipur" and it is so recorded even today. A copy of the said order dated 17-5-89 is filed along with the return and marked as Annx. R/2.

7. In the nutshell, the answering-respondents averred in their reply that since the plots in dispute are situated on the land belonging to Urban Improvement Trust, Udaipur, therefore, the sale deed through which the petitioners are claiming themselves to be the owners is not entertainable.

8. It is made clear on behalf of the answering-respondents that the aforesaid notifications Annxs. 3 and 4 were published in two newspapers not in one newspaper as alleged by the petitioners, namely; Nav Jivan and Rajasthan Patrika dated 14-7-90 and 17-7-90 respectively. In support of the aforesaid averments, the answering-respondents have filed copies of the aforesaid two newspapers, which are marked as Annx. R/ 7 and Annx. R/8 respectively.

9. I have heard learned counsel for the parties at length and have critically gone through the materials available on record.

10. Learned counsel for the petitioners invited my attention towards a Patta alleged to have been executed in favour of their predecessor-in-interest Shri Akbar Ali, who had executed the alleged sale deed in their favour.

11. It is not denied by the learned counsel for the petitioners that even after expiry of 90 years neither the name of Akbar Ali nor the names of present petitioners were entered in the records of right i.e. "Khatauni". It is further not disputed before me that earlier the land in dispute was recorded in the name of "Rajasthan Sarkar" and vide order dated 17-5-89, it is entered in Khatauni in the name of Urban Improvement Trust, Udaipur.

12. In my humble opinion, there is a presumption about the correctness of the entries made in the extract of Khatauni. Although, the presumption is rebuttable but this presumption can be rebutted by the petitioner under the reference proceedings, which the Land Acquisition Officer had made on 7-8-92 vide Annx. R/13-A deciding the compensation with regard to the land in dispute. It is apparent from the perusal of Annx. R/13-A that the Land Acquisition Officer has

referred the matter u/s 18 of the Land Acquisition Act with a direction to the petitioners to prove their title before the competent Court in order to make them entitled to receive the compensation of the land in dispute.

13. Due to filing of the instant writ petition and also because of ad interim stay order, the reference proceedings are still pending. The questions which are being argued by the learned counsel for the petitioners before me can be raised in reference u/s 18 of the Land Acquisition Act about their title and about their entitlement to receive compensation of the land in question. Disputed question of their title cannot be gone into under Article 226 of the Constitution of India as a Court of appeal or revision.

14. The next contention of the learned counsel for the petitioners before me is that no individual notice has been served to them.

15. In reply to the aforesaid argument advanced by the learned counsel for the petitioners, the learned Additional Advocate-General appearing on behalf of the answering-respondents invited my attention towards an application moved by the petitioners themselves before the Land Acquisition Officer stating therein that they are prepared to accept the compensation of Rs. 87,000/- in lieu of the land in question.

16. According to the learned counsel for the petitioners, this application was signed only by one petitioner i.e. Mohammed Kaleem while according to learned Additional Advocate General, it was signed by all the five petitioners. Again, this is a disputed question of fact which cannot be gone into in the writ jurisdiction.

17. The next contention of the learned counsel for the petitioners before me is that there is no compliance of Section 4(1) because description of the land in dispute is not given in clear terms in the notification. It is also contended by the learned counsel for the petitioners that in absence of individual notice to them, they have been deprived of to file objections against the acquisition of the land in dispute.

18. In my considered opinion, these arguments become academic having no bearing on the merits of the case once the petitioners themselves moved an application for compensation before the Land Acquisition Officer and after believing the contents of the averments made in their own application, the Land Acquisition Officer has decided the question of compensation with a direction to the petitioners to raise their question of title u/s 18 before a competent Court.

19. It is well to remember that once the petitioners themselves have participated in the proceedings for compensation, the arguments raised by the learned counsel for the petitioners cannot be said to be of any substance.

20. There is yet another reason not to accept the aforesaid contention raised on behalf of the petitioners because according to me mere illegality is no ground for interference under Article 226 of the Constitution of India. This Court cannot afford to consider itself a Court of appeal or revision under Article 226 of the

Constitution of India. The power is purely discretionary although no limits can be placed upon that discretion. It must be exercised along with recognised lines. One of the self-imposed limitation by the Courts under Article 226 is that Courts will not exercise jurisdiction in a class of cases or in a case unless substantial injustice has ensued or is likely to ensue.

21. Thus, this Court cannot afford to turn itself into a Court of appeal or revision merely to set aside an illegal order which does not occasion injustice in a broad and general sense.

22. I am fully satisfied that in the present case, no injustice has been done to the petitioners by the decision taken by the Land Acquisition Officer on 7-8-92 vide Annx. R/13-A deciding the compensation and making a reference u/s 18 of the Land Acquisition Act with a direction to the (sic) tioners to prove their title before a co(sic) Court in order to make them en(sic) receive the compensation.

As a result of the aforementio(sic) cussion, the instant writ petition lacks ment(sic) and it is hereby dismissed.