(2019) 11 RAJ CK 0056

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1484 Of 2019 In Civil Writ Petition No.9362 Of 2018

M/s Sun City Project Pvt. Ltd — APPELLANT

Vs

Jaipur Development Authority — RESPONDENT

Date of Decision : 04-11-2019

Acts Referred:

Land Revenue Act, 1956 — Section 90B
Jaipur Development Authority Act, 1982 — Section 25, 25(3), 54
Rajasthan Industrial Areas Allotment Rules, 1959 — Rule 14, 14(1)
Rajasthan Municipalities (Change Of Land Use) Rules, 2000 — Rule 12(i)(k), 12(ii)(j)
Constitution Of India, 1950 — Article 226(3)

Citation : (2019) 11 RAJ CK 0056

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : R.K. Agarwal, Sunita Pareek, Adhiraj Modi, Saloni Khatri

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J

1. This appeal has been preferred by M/s. Suncity Project Pvt. Ltd. challenging the order dated 14.08.2019 passed by the learned Single Judge dated

14.08.2019 by which the application filed by the respondent-Jaipur Development Authority under Article 226(3) of the Constitution of India has been

allowed in part, requiring the appellant to deposit a sum of Rs. 5.00 crores with the JDA within a period of 60 days towards the demand of due

charges for change of land use of the subject land to commercial. The learned Single Judge, however, directed that in the event the appellant-company

succeeds in the writ petition, the respondent-JDA will be liable to refund the aforesaid amount or amount as the court may direct with interest at the current PLR rate of the State Bank of India commencing the date of deposit under the interim order till the date of re-payment.

2. The appellant in the writ petition challenged the judgement of the Jaipur Development Authority Appellate Tribunal (for short-â??the Tribunalâ??)

dated 13.4.2018 (Annexure-1) and the communication/demand notices dated 5.1.2016 (Annexure-2), dated 15.3.2016 (Annexure-3) and 22.9.2016

(Annexure-3A) and prayed that the demand raised by the respondents pursuant to audit objection be declared illegal and arbitrary.

3. The appellant approached the Tribunal by filing the appeal against the order dated 22.9.2016 (Annexure-3A) issued by the JDA demanding a sum

of Rs. 7,18,12,474 for conversion of the disputed land from industrial to commercial and another sum of Rs. 10,86,16,367 towards interest, totalling to

Rs. 18,04,28,841. The Tribunal by the aforesaid judgement dated 13.4.2018 dismissed the appeal.

4. Facts of the case are that the appellant purchased the land in dispute measuring 7 Bigha 9 Biswa in khasra no. 1/1, Village Bassi, Sitarampura,

Tehsil, Sawai-Jaipur, Jhotwara Road, Jaipur vide sale deed dated 25.07.2005 from M/s. Assam Roller Flour Mills. The land was earlier being used for

industrial purpose, but at the instance of erst while owner M/s. Assam Roller Four Mills, by order dated 22.6.2005 passed under Rule 14(1) of

Rajasthan Industrial Areas Allotment Rules, 1959 by District Collector, the land use was changed from industrial to agricultural on certain conditions

and accordingly ordered to be entered in the revenue records. Condition no. 4 thereof stipulates that the land being situated in the Urban Area, the

company in order to make use of the same for any non-agricultural purpose, will have to seek permission from the local body concerned after making

appropriate application in accordance with Rules. Thereafter, the appellant-company has submitted application dated 1.9.2005 to the Commissioner,

JDA, Jaipur for converting the land for commercial use. The JDA by notification dated 7.10.2005 issued u/s.25(3) of the JDA Act changed the land

use in the Master Plan from industrial to commercial.

5. The case of the appellant was placed before the Land Use Change Committee, Jaipur Division on 3.1.2006, which allowed the land use change.

However, condition no. 4 thereof stipulated that the appellant for the purpose of change of land use from industrial to commercial shall be required to deposit the conversion charges for getting the lease deed issue. On application by the appellant filed under Section 90B of the Land Revenue Act, the

prescribed authority passed an order (Annexure-8) dated 4.2.2006 for reverting the land to Jaipur Development Authority as per the original Section

54 of the JDA Act, 1982, by requiring the Tehsildar to accordingly mutate the land in its name, but simultaneously the lease deed was issued in favour

of the appellant on 8.3.2006. It appears that the audit objection was raised by the Audit Department for not charging the correct amount of conversion

charges from the appellant. The Deputy Commissioner, Zone-6 submitted reply to the audit objection on 16.4.2008.

6. Shri R.K. Agarwal, learned senior counsel for the appellant has argued that the learned Single Judge has erred in law in requiring the appellant to

deposit a sum of Rs. 5 crores. He failed to appreciate that the appellant had no role whatsoever to play when the erstwhile khatedars namely partners

of M/s. Assam Rolling Flour Mills applied for conversion of the land from industrial to agricultural which was reversed by the order of the Collector

dated 22.6.2005 and the land use was again changed to agricultural on the condition that the amount earlier deposited by the khatedars for conversion

of land from agricultural to industrial was not refundable. The learned Single Judge proceeded on the assumption as if it was the appellant, who had

applied for conversion of the land from industrial to agricultural and thereafter from agricultural to commercial, which was factually wrong. In fact, the

original khatedar sold out the land measuring 7 bigha 9 biswas pertaining to khasra no. 1/1 in Revenue Village, Bassi Sitarampura, Tehsil and District

Jaipur for valuable consideration by registered sale deed dated 18.7.2005 to the appellant having recital of the conversion order dated 22.6.2005

passed by Collector. The appellant has not been made a party thereof. The condition no. 4 incorporated in the order dated 22.6.2005 could not be

applied today and the appellant could not be dragged beyond what was contemplated in the order of the Collector dated 22.6.2005, resulting in

purchase of the agricultural land by registered sale deed. The appellant entered into the exercise after purchase of the agricultural land to get the same

converted from agricultural to commercial purpose. The JDA under Section 25 of the JDA Act took follow up action for change of the land use in the

master plan. This enabled the JDA to proceed with the application of the appellant under Section 90B of the Land Revenue Act, 1956. The JDA on

1.2.2006 raised the demand for conversion charges as also one time lease money aggregating to Rs. 94,12,418 and on deposit of the amount as

demanded, lease deed for 99 years was executed in favour of the appellant on 8.3.2006, enabling it to proceed with the commercial project and it was

completed in the year 2009 with further sale, transfer etc. by the appellant almost completed in the year 2010. To saddle the appellant with liability to

pay such huge amount, all of a sudden, after 10 years in 2016, is wholly illegal and arbitrary. It is submitted that Section 25 of the JDA Act does not

attract any charge on account of land use change in the master plan. It was on application of the appellant filed under Section 90B of the Land

Revenue Act that the JDA processed the application, but the charges could be as envisaged in Section 90B for conversion of land use from

agricultural to non-agricultural that being commercial purpose in the present case. The very justification invoked by JDA under Section 90B could

attract the conversion charges from agricultural to non-agricultural purpose. Condition no. 4 of the Land Use Change Committee as per agenda note

dated 24/3.1.2006 was only advisory in nature and did not mandatorily require the JDA to raise demand of such enormous charges. The JDA having

looked into the matter as advised by condition no. 4, wrote a letter dated 21.7.2008 (Annexure-15 to writ petition) to the Director Planning and

Member Secretary of the said Committee to delete condition no. 4.

7. Shri Amit Kuri, learned counsel for the JDA submitted that condition no. 4 of the contemplated decision of Land Use Change Committee dated

3.1.2006 required the appellant to pay the conversion charges for change of the land use from industrial to commercial, but the aforesaid condition

cannot be taken as merely advisory as it clearly stipulated thatithe appellant shall have to obtain the lease deed after depositing the conversion charges

from industrial to commercial, Merely because in the last line of the condition no. 4, it is stipulated that it would be appropria to look into that aspect,

does not mean that the main condition stands diluted. Learned counsel argued that this condition is reiteration of the similar condition again in clause 4

of basic order of the Collector dated 22.6.2005 and since the land in dispute was situated in the urban area, if the appellant would put the same to any

other use, it will have to seek appropriate permission from the concerned legal body by making appropriate application in accordance with law.

8. Learned counsel for JDA submitted that the appellant was fully cognizant of this situation. He himself submitted an application (Annexure-R/3) to

the Additional Commissioner (West), Jaipur Development Authority, Jaipur for publication of the notice inviting objection in two newspapers.

Reference is made to detailed note of the Land Use Conversion Committee dated 28.10.2005 (Annexure-R/4) and the application of the appellant

(Annexure-R/5) submitted in 2005 itself. It is submitted that the appellant submitted an undertaking on 3.3.2009 (Annexure-R/11) that as per the

conditions in the decision of the Land Use Conversion Committee dated 3.1.2006, if the land is allowed to be changed for use from industrial to

commercial, the appellant shall deposit the conversion charges as per Rule 4 of the JDA Rules. Learned counsel has in this connection referred to

Rule 14 of the Rajasthan Industrial Areas Allotment Rules, 1959 to argue that aforesaid Rule clearly provided that if a person after conversion of his

khatedari land for industrial purpose and having utilized it for such purpose, intends to use such land for any other non-agricultural purpose, he shall

have to get it reverted to the original use of the land by making an application to the Collector, who shall pass an order for such conversion.

Thereafter, he shall submit an application to the local authority for conversion under relevant Rules. The condition no. 4 of the order of the Collector

dated 22.6.2005 was precisely this condition, which was incorporated in compliance of Rule 14 and condition no. 4 of the Land Use Committee in their

decision dated 3.1.2006 was nothing but reiteration of the same condition.

9. Shri Amit Kuri has submitted that the demanded amount from the appellant is just and reasonable. In this connection, he has relied on Rule 12(i)(k)

and 12(ii)(j) of the Rajasthan Municipalities (Change of Land Use) Rules, 2000, which provides for requisite charges for changing the land use, to be

paid by the lease holder. Shri Amit Kuri, learned counsel for the JDA has relied on the judgement of the Supreme Court inM unicipal Corporation,

Rajasthan v. Sanjeev Sachdeva, Civil Appeal No. 240/2013 in support of his arguments.

10. Having heard the rival submissions of learned counsel for the parties and perused the material on record, we find that the present appeal is

directed against the interlocutory order and, therefore, examination of all the contentious issues, one way or the other, is likely to prejudice the case of the either party. It is always open for the parties to raise all such issues before the learned Single Judge, which shall be considered and decided by the

learned Single Judge on merits. The total demand is of Rs. 7,18,12,474, which on adding the further amount of interest would far exceed Rs. 20 crores,

therefore, the order of the learned Single Judge requiring the appellant to deposit only a sum of Rs. 5 crores with the JDA, cannot be, in the facts of

the case, said to be unjustified. The impugned order is just, reasonable and balanced order, particularly when it is accompanied by further direction that

in the event the appellant-company succeeds in the writ petition, the respondent-JDA will be liable to refund the aforesaid amount or amount as the

court may direct with interest at the current PLR rate of the State Bank of India commencing the date of deposit under the interim order till the date

of re-payment. Even though, we have taken note of the rival submissions made by the learned counsel for the parties on both sides, but we shall

refrain us from considering them on merits and rendering a finding accordingly on such arguments, one way or the other, lest it might prejudice the

case of either party.

11. In view of above discussion, we do not find any merit in this appeal. However, taking note of the facts and circumstances of the case, we direct

that the writ petition be itself listed for hearing at the admission stage before the learned Single Judge on 20th January, 2020 with request to the

learned Single Judge to decide it finally.

12. The appeal is dismissed accordingly.