
(2013) 04 RAJ CK 0080

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 355/2013

Mukesh Kumar Sharma and Others

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 3 RLW 2246 : (2013) 2 WLN 387

Hon'ble Judges : Amitava Roy, C.J;Meena V. Gomber, J

Bench : Division Bench

Judgement

Amitava Roy, C.J.—In assailment is the judgment and order dated 25.2.2013 passed in S.B. Civil Writ Petition No. 4181/2011 thereby rejecting the appellants"/writ petitioners" cavil against construction of Rajiv Gandhi Sewa Kendra (hereinafter referred to as "the Kendra) over pasture land, as contemplated by them. We have heard Mr. Rajendra Prasad, learned counsel for the appellants/writ petitioners.

2. For the order proposed to be passed, we do not consider it essential to issue formal notice.

3. The appellants/writ petitioners, who represent themselves to be the elected ward panchas of Gram Panchayat, Khijuriya Brahmanan, Tehsil Bassi, District Jaipur (hereinafter referred to as "the gram Panchayat") and also residents within its local limits, have asserted that in terms of the guidelines issued by the Rural Development and Panchayati Raj Department of the State prescribing the criteria for selection of a site for construction of Bharat Nirman Rajiv Gandhi Sewa Kendra (IT Centre), the same ought to be made, as far as possible, in the jurisdictional village Panchayat building, and in case for want of place thereat, at any other place over government land with prior proposal of the gram Panchayat to that effect. According to them, in the month of June 2010, the respondent-Sarpanch of the gram panchayat concerned, in contravention of the guidelines, started the construction work of such Kendra over the pasture land of the village panchayat situated near his house in Village Rooppura, but could not complete

the same, in view of the objections raised by the villagers. They also averred that by order dated 10.6.2010 of the jurisdictional District Collector, Rs. 10.00 lacs was sanctioned for construction of the said Kendra. They averred too that the gram panchayat however, vide its resolution dated 30.7.2010, resolved that the Kendra would be constructed near the panchayat building over the available abadi land measuring 47 x 60 feet and located near the Panchayat Headquarters.

4. While the matter rested at that, the appellants/writ petitioners alleged that on 5.1.2011, the gram panchayat conveyed a meeting, in which though no resolution was taken on the issue of construction of the Kendra, eventually, a forged/fabricated decision in this regard was conjured to the effect that the Kendra would be constructed over the pasture land of Village Khijuriya Brahmanan bearing khasra No. 1 measuring 4 bighas and 1 biswa situated on the Kanota to Sambariya Road. According to the appellants/writ petitioners, though they were participants in the said proceedings, they did never concur to this resolution, which in fact had not been adopted. They urged that however, on the basis of this resolution, the respondent-Sarpanch succeeded to get approval for construction of the Kendra over the aforementioned pasture land and though they successively represented before the concerned State authorities, nothing materialized. According to them, this venture is not only in violation of Section 92 of the Rajasthan Land Revenue Act, 1956 (for short, hereinafter referred to as "the Act") and Rule 7 of the Rajasthan Tenancy (Government) Rules, 1955 (for short, hereinafter referred to as "the Rules"), the site being located within an area earmarked for Delhi Mumbai Industrial Corridor Project, it would also eventually result in wastage of public money.

5. The State-respondents, in their reply, while denying the allegation of non-compliance of the above legal provisions, have asserted that the construction works had been started after being accorded technical and financial sanction therefor by the jurisdictional District Collector. They have referred to an application submitted on behalf of the gram panchayat before the Sub Divisional Officer, Bassi to the effect that it has no objection in keeping some land reserved for extension of the residential area and construction of the Centre out of Gochar land located in khasra No. 1. According to the answering respondents, the Centre cannot be constructed in the existing gram panchayat office, as it is in a dilapidated condition and further, located on an insufficient area of land. They have stated that there is no place available in the vicinity of the panchayat building, and that, it was only thereafter that the concerned officials of the MNREGA and B.D.O., Bassi had inspected the site as identified by the gram panchayat, and being satisfied that it was suitable for the intended purpose, approval for the construction of the Centre had been accorded. Referring to the resolution dated 5.1.2011 of the gram panchayat deciding to raise construction of the Centre on the Gochar land of khasra No. 1 on the Kanota to Sambariya Road, the respondents have asserted that at the time of filing of their reply, 90% of the construction works had been completed. They also mentioned that though the appellants/writ petitioners were present in the meeting dated 5.1.2011, they

did not raise any objection to the resolution, to this effect. Apart from pleading that the construction works had been strictly in accordance with the technical and financial sanction accorded by the jurisdictional District Collector on the basis of the decision of the gram panchayat to that effect, it has been maintained that the identified site is not within the scheme for the Delhi Mumbai Industrial Corridor Project, as alleged.

6. Mr. Sharma has emphatically argued that the construction of the Kendra is not only in blatant violation of the guidelines formulated for the purpose, but also in gross contravention of Section 92 of the Act and Rule 7 of the Rules and thus, ought to be adjudged to be patently illegal and unauthorized. As for such construction on a Gochar land to be valid, unfailing compliance of the prescription of these legal provisions is obligatory, in absence of any averment to this effect in the reply of the State-respondents, the learned Single Judge ought to have interfered with the impugned action/exercise of setting up the Centre, admittedly on a pasture land, he urged. While contending that the technical and financial sanction granted by the jurisdictional District Collector is no substitute of the conformance of the statutory enjoinments embodied in Section 92 of the Act and Rule 7 of the Rules, the learned counsel argued as well that the appellants/writ petitioners though were present in the meeting dated 5.1.2011 of the gram panchayat, they were not party to any resolution deciding to set up the said Kendra on a pasture land. He reiterated, on instructions, that the resolution to this effect was manipulated and fabricated one and thus, non est in law. He, therefore, contended that by no means, the appellants/writ petitioners could be said to be estopped in law in bringing a challenge to the impugned action by invoking the writ jurisdiction of this Court. The learned counsel insisted that in case the construction work is allowed to be completed on the pasture land, no Gochar land would be left in the village. Further, as the site is within the Delhi Mumbai Industrial Corridor Project, unless the works are impeded at this stage, it would result in sheer wastage of public money.

7. We have extended our conscious consideration to the arguments advanced. We have also traversed the pleadings of the parties.

8. Section 92 of the Act and Rule 7 of the Rules, for ready reference, are being extracted hereinbelow:-

92. Land may be set apart for special purposes.-(1) Subject to the general orders of the State Government, the Collector may set apart land for any special purpose, such as, for free pasturage of cattle, for forest reserve, for development of abadi or for any other public purpose or municipal purpose; and such land shall not be used otherwise than for such purpose without the previous sanction of the Collector.

7. Allotment or setting apart of Pasture Land.-(1) The Collector may, in consultation with the Panchayat, change the classification of any pasture land, as defined in subsection (28) of Section 5 of the Act or any pasture land set apart u/

s 92 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act of 1956), as unoccupied cultivable Government land (Sawai Chak), for allotment for agricultural or any non-agricultural purposes:

Provided that in case where the area of the land sought to be so allotted or set-apart exceed 4 hectares, the Collector shall obtain prior permission of the State Government.

[XXX - Second proviso - deleted - XXX]

Provided also that any such land, falling within the boundary limits of the Jaipur Region as defined in the Jaipur Development Authority Act, 1982 (Act No. 25 of 1982) or within the periphery of 2 kms. of a municipality, shall not be allotted except for the purpose of a public utility institution or for expansion of abadi.

(2) Where classification of any pasture land is changed under sub-rule(1), the Collector may set-apart an equal area of unoccupied cultivable Government land, if available, as pasture land in the same village.

9. A bare perusal of these legal provisions would demonstrate that in terms of Section 92 of the Act, the Collector, subject to the general orders of the State Government, may set apart a land for any special purpose, such as, free pasturage of cattle, forest reserve, development of abadi or any other public or municipal purpose, and in such a case, such land would not be used otherwise than for such purpose without previous sanction of the said district authority. This provision per se does not make it mandatory for the Collector to set apart any land for pasture.

10. Rule 7 of the Rules framed u/s 257 of the Rajasthan Tenancy Act, 1955 empowers the Collector, in consultation with the Panchayat, to change the classification of any pasture land for allotment of agricultural or any non-agricultural purposes. First proviso thereto, stipulates that in case where the area of land sought to be so allotted or set apart is in excess of 4 hectares, the Collector would have to obtain prior permission of the State Government. Sub-rule (2) of Rule 7 authorizes the Collector, where classification of any pasture land is so altered, to set apart an equal area of unoccupied cultivable government land, if available, as pasture land in the same village.

11. Noticeably, the appellants/writ petitioners in the writ petition did not, in categorical terms, state that the District Collector had not taken the necessary steps as envisaged by Section 92 of the Act or Rule 7 of the Rules. This assumes importance in the face of the categorical assertion of the State-respondents that there has been no breach of these legal provisions. The jurisdictional District Collector had accorded the technical and financial sanction for the impugned project. The resolution dated 5.1.2011 of the gram panchayat, to this effect, also cannot be lightly ignored or discarded. Admittedly, the appellants/writ petitioners had attended the meeting in which the said resolution had been adopted. Though the text of the relevant resolution indicates that it was the one adopted on the

basis of the views of the majority, there is nothing on record to evince that they (appellants/writ petitioners) had complained immediately thereafter before any authority that the same (resolution) was forged and/or fabricated. Their representation before the Chief Executive Officer, Zila Parishad, Zila Jaipur laid on 17.8.2010, also does not disclose that the contemplated project was sought to be set up in violation of the legal provisions now referred to. Though Annexure-2 to the writ petition dated 10.6.2010 testifies the financial sanction for the project and countersigned by the District Programme Coordinator and District Collector, Jaipur is prior to the resolution dated 5.1.2011, it per se does not unimpeachably establish the alleged contravention of Section 92 of the Act and Rule 7 of the Rules. The State-respondents, in unambiguous terms, have insisted that 90% of the construction works have since been completed and the site is not within the scheme for Delhi Mumbai Industrial Corridor Project, as imputed by the appellants/writ petitioners.

12. On an overall consideration of all relevant aspects, factual and legal, we are constrained to observe that the appeal lacks in substance. We have perused the impugned judgment and order and we find ourselves in general agreement with the findings recorded therein. The appeal fails and is dismissed. The stay application also stands dismissed.