

(2018) 03 RAJ CK 0202

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6032, 6816 of 2017

Naresh Chandra Jajra @APPELLANT@Hash Jodhpur Development Authority

Date of Decision : 15-03-2018

Acts Referred:

Code of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2
Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 — Rule 14

Citation : (2018) 03 RAJ CK 0202

Hon'ble Judges : DR. PUSHPENDRA SINGH BHATI, J

Bench : Single Bench

Advocate : CS Kotwani, Rajesh Joshi, S.G. Ojha, Suniel Purohit, Harshit Bhurani

Final Decision : Dismissed

Judgement

1. Since both the petition pertains to same facts and same sequence of events, therefore, both are being decided by a common order.

2. The petitioner by way of filing these writ petitions is claiming for the following reliefs :-

SBCWP No.6816/2017

â??(A) The instant petition for writ may kindly be ordered to be allowed and a writ, order or direction in the appropriate nature may kindly issued in

favour of the humble petitioner.

(B) the impugned patta so issued in favour of the respondent no.3 vide Annex.16 and the entire proceedings of auctioning the road land to the

respondent no.3 herein by the respondent no.2 may kindly be quashed and set aside and the entire proceedings for auctioning of the road land may

kindly be ordered to be declared illegal and the respondents may kindly be restrained from raising any kind of construction over the open land/road in

question and they may further kindly be directed to remove the construction

already raised over the land without authority and it is further most respectfully prayed that the respondents herein may kindly be restrained from raising any kind of construction towards the south side of the plots of the humble petitioner bearing plots No.1 and 16, which is 40 feet wide road.

(Ci) Any other appropriate writ, order or direction which this Hon`ble Court deems just and proper may kindly be passed in favour of the petitioner.

(D) the cost of the writ petition may kindly be awarded in favour of the petitioner.â??

SBCWP No.6032/2017

â??â??(A) The instant petition for writ may kindly be ordered to be allowed and a writ, order or direction in the appropriate nature may kindly issued in favour of the humble petitioner.

(B) The impugned order dated 27.01.2017 (Annex.10)Â and dated 17.05.2017 (Annex.12) passed by both the learned courts below may kindly be

quashed and set aside and the temporary injunction application preferred by the humble petitioner may kindly be ordered to be allowed with costs throughout.

(C) byÂ an appropriate writ, order or direction the respondents may kindly be restrained from raising any kind of construction over the open land/road

situated towards the South side of the plots in question of the humble petitioner bearing plots no.1 and

16 situated in Khasra No.130/2 at Revenue Village Sunthala, Tehsil and District Jodhpur;

(D) Any other appropriate writ, order or direction which this Hon`ble Court deems just and proper may kindly be passed in favour of the petitioner.

(E) the cost of the writ petition may kindly be awarded in favour of the petitioner.â??

3. The facts as noticed by this Court are that the petitionerÂ purchased two residential plots, bearing plot No.1 & 16 in Khasra No.130/2 situated at

revenue village Sunthala, Tehsil & District Jodhpur by way of a registered sale-deed from one Shri Chhela Ram and Shri Hasta Ram way back in the

year 2009, both being adjacent to each other. Prior to purchase of the plots, the predecessor in title of the plots got issued patta in his favour bearing

patta no.16331 for plot no.1 and patta no.18104 for plot no.16. Counsel for the petitioner has shown map of concerned place and pointed out that

towards southern side of plot no.1, there is 40 Feet wide road; towards northern side there is plot no.2; towards eastern side there is 100 Feet wide

road and towards western side plot no.16 of the petitioner is situated. Further, beyond plot No.16 towards Western side of the plot, 40 Feet road is

available. Counsel for the petitioner submits that the Local Authorities is unlawfully auctioning the land shown as 40 Feet wide way near Plot No.1

belonging to them and to prevent such infringement of right, petitioner preferred a civil suit for permanent injunction alongwith an application under

Order 39 Rule 1 & 2 CPC. The bone of contention and main grievance of petitioner is that 40 Feet wide road, which is available to Plot No.1 on its

Northern side is required to remain as road for the purpose of enjoying his property. Counsel for the petitioner admits that there was a typographical

error in pointing out sides of plot and for that purpose an application for amendment was moved before the learned courts below at the appellate stage.

The application under Order 39 Rule 1 & 2 CPC was decided against the petitioner vide order dated 27.1.2017 (Annex.12), against which, the

petitioner preferred appeal and the appellate court also rejected the same on 17.5.2017 (Annex.14). Counsel for the petitioner submits that

application of mind has not been made by both the courts below and also in the meanwhile auction proceedings were initiated by the Municipal

Corporation, Jodhpur wherein successful bidder was allotted the land in-question on 11.4.2017 during pendency of the suit. Since application under

Order 39 Rule 1 & 2 CPC did not provide adequate relief to the petitioner, therefore, he challenged the action of Local Authority by way of filing S.B.

Civil Writ Petition No.6032/2017 and during pendency of the writ petition due to subsequent event of auctioning of the land inquestion by the

respondent no.2 in favour of respondent no.3 on 11.4.2017, the petitioner had to prefer writ petition, being S.B. Civil Writ Petition No.6816/2017, in

which, the auction proceedings are under challenge. Counsel for the petitioner pointed out that the respondents by such action have committed grave

illegality as the entire exercise of auctioning has been undertaken in a hurried manner just to give benefit of auction to respondent no.3. Counsel for

the petitioner has further harped upon the fact that though his property falls in Khasra No.130/20 but he is directly affected by auction in Khasra

No.131/20 as respondent no.2 has allotted 40 Feet road land in question to respondent no.3 to extend undue benefit. Counsel for the petitioner has also

shown map annexed with the pattas, which as per him, establish the fact of 40 Feet road being available towards Southern side of the plot bearing no.1

& 16. Counsel for the petitioner further reiterated that a road was provided by Local Authorities in the plan approved by the Assistant Town Planner,

Jodhpur. Counsel for the petitioner states that the pattasud plots are adjacent to the road in-question, therefore, he had to file an application

for temporary injunction so as to restrain respondents from making any construction on the land in-question. As per the proposed site map, it proposes

a residential scheme in Khasra No.130/2 (annex.15) at Village Sunthala and just near plot nos. 1 & 16, a public road of 40 Feet width, is shown.

Counsel for the petitioner has also pointed that the auction was cancelled at one point of time but the same was re-initiated without adopting proper

procedure laid down in law and, therefore, once the auction itself was bad, thus, it was not open for the respondents to claim any right to do

construction on the said plots or to change status of the same.

4. Counsel for the respondent no.3, however, stated that the auction of land was in public domain as it pertains to Khasra No.131/20 at revenue village

Sunthala, Tehsil and District Jodhpur, whereas the petitioner's land was in Khasra No.130/20. Counsel for the respondent has pointed out that the

application for temporary injunction has been thoroughly considered and after due consideration of record, the learned courts below arrived at a finding

that the petitioner has not approached court with clean hands as he was not in a position to explain discrepancy in the alleged land as size and borders

are being reflected differently. There is a distance between both the khasras i.e. Khasra no.130/2 and 131/2. Counsel for the respondent also pointed

out from Commissioner Report that the way in-question is not in existence. Counsel for the respondent also pointed out that the learned courts below

recorded in its orders that there is a mark difference between the dimensions, adjoining sides of the property inquestion as per the lay-out plan.

Apparently plot no.1 as per the patta has 100 Feet road on East; plot no.16 on West; plot no.2 on North and 40 Feet road on South and same is

proposition of Plot No.16. Counsel for the respondent further shows that the boundaries are wrongly demarcated. The petitioner did not come

with clean hands to seek relief. Even when the registered saledeed, the patta of the lay out plan and mauka report reflect different

dimensions.Â There was mark difference and variation in the title documents of the petitioner, thus, justifying impugned orders passed by the courts

below.Â Counsel for the respondent further stated that the auction in-question was conducted after proper publication of notice in daily

newspapers.Â Fair and impartial auction proceedings were convened. As a matter of fact, auction was never cancelled only â??boliâ?? (bid) was

cancelled, thus, republication was made and the auction had been made in presence of 10 bidders and the highest bid was of respondent no.3.Â Since

respondent no.3 participated in the auction with clean hands, therefore, he being bonafide purchaser ought to be protected by the Court. Entire process

of auction was conducted strictly as per procedure and after proper publication in newspaper in presence of Senior Town Planner and representatives

of Collector and other officers of the Municipal Corporation. Counsel for the respondent has justified title of the auctioned land and has in fact harped

upon the fact that this is not a public way, therefore, the auction cannot be said to be bad as the petitioner is having title over Khasra No.130/2 and the

land in-question, which is being auctioned is lying in Khasra No.131/2.

5. Counsel for the petitioner in rejoinder claimed that the auction proceedings which is on record clearly show that the auction was conducted in

hurried manner and the publication made is of such as it may not come in the purview of â??wide publicityâ?? as it would not conform to parameters

laid down in the Rule 14 of the Rules of 1974. Counsel for the petitioner in rejoinder further reiteratedÂ Â that impugned orders are bad in the eye of

law and until the suit is decided, no construction shall be permitted to be raised as it would be detrimental to the interest of petitioner.Â Counsel for

the petitioner has relied upon Rule 14 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974, which reads as follows :-

â??The following procedure shall be adopted for sale of plots by public auction :-
(a) Wide publicity of the auction shall be given by publishing the

notice of auction in Newspapers and by describing the plots proposed to be sold together with their dimensions and areas to completely that the

description may enable their identification and by notifying the date and time of auction and the conditions thereof.

[Note.- Wide publicity means-

(i) Fixing of notice on the notice board of the municipality,

Collectorate, office of the Sub-Divisional Officer, Tehsil, Government and public offices located at the headquarter and offices of the other local

authorities, autonomous and statutory bodies situated in the district concerned and other conspicuous places in the area;

(ii) Description of printed hand bills and posters and

(iii) Publication in one newspaper commonly in circulation in the area and one leading newspaper in circulation in the State of Rajasthan.]

[(b) (i) Auction shall be held by an auctioner appointed by the Chairman/Administrator.

(ii) The auction proceedings shall to take place under the supervision of the Collector concerned or his representative and the Executive Officer of the Board;

(iii) The Executive Officer shall intimate the date, time and place of auction to the Collector, atleast before 15 days and shall ensure that the intimation has been delivered to the Collector;

(iv) Before the auction is started, Collector, or his representatives shall ensure that-

(1) Layout plan of the scheme/plots proposed to be auctioned is duly approved by the competent authority:

(2) that the reserve price has been determined by the Committee referred to in rule 12;

(3) that wide publicity has been made: and

(4) that the plot proposed to be auctioned is free from all disputes and vest and belong to the Board without any encumbrances.

(v) Where the auctioner has not been appointed or is not present, the auction shall be held by an officer of the board to be appointed by the

Chairman/Administrator;

(vi) Where the Collector or his representative is not present at the time of auction despite the said intimation, the auction shall be held under the

supervision of the Chairman/Administrator and the Executive Officer provided that in such case, confirmation of the auction proceedings shall be

obtained from the Collector.]

(c) Conditions of binding shall be read out before the auction starts.

(d) Every bidder shall be required before being permitted to bid in auction to deposit an amount specified below which shall be refunded to him at the

close of the bid or adjusted against premium in case of successful bidder :-

(i) in case of residential plots a sum or equivalent to 5% of the cost of plot calculated on the basis of reserve price fixed for the scheme subject to

minimum of Rs. 250/-;

(ii) in case of commercial plot other than Cinemas and Hotels, a sum equivalent to 5% of the cost of the plot calculated on the basis of reserve price

fixed for that scheme; and

(iii) in case of cinemas and hotels 5% of the cost of the Plot calculated on the reserve price of the plot.

(e) Proceeding shall be drawn up stating the name of every bidder and the amount for which he bids.

[(f)

(i) The successful bidder shall be required to deposit one-fourth of the amount of his bid forthwith on the acceptance of the bid and the remaining

three-fourth of the amount of the bid shall be deposited by him within one month of the acceptance of the bid and in case of failure to deposit within

the next thirty days interest @ 15% per annum shall be charged retrospectively from the date of acceptance of the bid :

Provided that in case of default in depositing the three-fourth amount of bid within the period prescribed above, the one-fourth of the amount of the bid

deposited by the bidder shall be forfeited and auction of land shall automatically stand cancelled :

Provided further that the board may regularise such auction of land withdrawing the automatic cancellation within a period of then months from the

date of such automatic cancellation if the successful bidder is prepared to pay the three-fourth amount of the bid money plus interest @ 15% per

annum upto the regularisation of auction of land and in addition also an amount of penalty at the following rates:-

Amount of Penalty

after the

the bid

date of

money automatic

cancellati

on

not Rs. 250/-

exceeding p.m.

Rs. 5,000/-

exceeding Rs. 500/-

p.m.

R s . 5,000/-

& upto Rs.

10,000/-

exceeding Rs.

Rs 10,000/- 1,000/-

p.m. [the amount of penalty

mentioned in clause (a), (b) and (c) above shall not exceed

the principal amount.]

Â (ii) After the expiry of the period of ten months from the date of the said automatic cancellation, the board shall have no power to regularise such auction of land in any case.

(iii) The board, if it considers necessary in its interest, may refer the case to the State Government for regularisation even after the expiry of the period

mentioned in sub-clauses (i) and (ii) above. The State Government, after considering the recommendations made by the board, may permit such

regularisation on payment by the bidder, the amount of bid plus interest and penalty as provided in sub-clause (i) above upto the month in which the

case was referred to State Government by the Board :

Provided that after depositing one-fourth of the amount of bid by the successful bidder, if he is restrained/not allowed to deposit the remaining amount

by any act to the board or the State Government, as the case may be or resultant to any order of the court or any legal proceedings, the interim period

shall not count for the purpose of calculating the amount of such penalty, forfeiture of the one-fourth amount or automatic cancellation of the auction.]

(g) The bid shall be subject to the sanction of the Chairman of the Municipality in whom are reserved the rights to accept or reject any bid without

assigning any reason thereof.

[The auction proceedings shall be authenticated jointly by the Chairman/ Administrator and the Executive Officer and also if present by the Collector or his representative.]

(h) Attempt shall be made to ensure that rings are not formed.

(i) The officer holding or supervising the auction may at anytime cancel bid if he finds it is not free and competitive.â??

Counsel for the petitioner has stated that in terms of Annexure (A) of Rule 14, the respondents were required to adopt complete proceedings but they

have failed to do so. Counsel for the petitioner, thus, made out a case of preservation of relief claimed regarding 40 Feet road in-question was required

to be ordered by this Court and the auction proceedings as well as the impugned orders need to be interfered so as to safeguard interest of the public

way of 40 Feet.

Â 6. After hearing learned counsel for the parties and perusing record of the case, this Court is of the opinion that the property in question which was

situated in Khasra No.131/2 at revenue village Sunthla, Tehsil & District Jodhpur was auctioned to highest bidder by the Municipal Corporation,

Jodhpur on 31.5.2017.Â Auction proceedings were initiated after proper publication of notice in daily newspapers and after giving wide publicity and

auction proceedings reflects that all necessary parameters were followed by the Municipal Corporation while dealing with the auction in-question.Â

This Court finds that the impugned orders of learned courts below are well reasoned and justified and does not call for any interference as

discrepancy in description of property in-question is writ large on the face of it and petitioner himself seems to be not sure as what is the extent of his

title, its dimensions as well as surroundings before coming to Court.Â This Court finds that there is mark difference in the dimensions narrated in patta

of the petitioner and lay-out plan submitted by him.Â Such difference in documents submitted by the petitioner clearly reflects that the proposition of

petitioner cannot be prima facie believed so as to entitle him any relief of temporary injunction. A perusal of record and order-sheets of auction

proceedings clearly point out that it was a public auction conducted after proper publicity in daily newspapers.Â The bid was opened in favour of

highest bidder.Â It is not the case of petitioner that the auction was not in

accordance with bidding process or whether any malafide was there in the process of auction. It is also not refuted by the petitioner that the land in question in fact did not belong to him and he was only contesting for the way adjoining his property which as per him was public way, thus, no interference is called for in both the writ petitions.

The writ petitions are dismissed.