

(2018) 03 RAJ CK 0085

In the Rajasthan High Court

Case No : Special Appeal Writ No. 209 of 2018

**Naresh Kasliwal @APPELLANT@Hash Rajasthan State Industrial
Development And Investment Corporation (Riico)**

Date of Decision : 12-03-2018

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2018) 03 RAJ CK 0085

Hon'ble Judges : K.S.JHAVERI, J;VIJAY KUMAR VYAS, J

Bench : Division Bench

Advocate : Anant Kasliwal, Vaibhav Kasliwal, Vikash Jain,

Final Decision : Dismissed

Judgement

1. In all these appeals common question of law and facts are involved hence they are decided by this common judgment.

2. By way of these appeals, the appellants have assailed the judgment and order of the learned Single Judge whereby learned Single Judge has dismissed the writ petitions.

3. The facts of the case are that for 105 acres of land, a lease deed was executed in favour of Diamond & Gem Development Corporation Ltd. (for

short "DGDC"). It was for setting a Gem Stone Industrial Park. The execution of the lease was on certain terms and conditions. The DGDC executed

a lease in favour of the appellant and, accordingly, he possesses the land and paid due amount to the DGDC. In most of the cases, 100% lease

amount was paid. Due to default of the DGDC to develop area in terms of agreement, its lease deed was cancelled by the RIICO. The DGDC

challenged cancellation of lease and writ petitions therein were allowed. Against the said order, the RIICO preferred a special leave to appeal before

the Apex Court. It was allowed and the judgment of the Division Bench in the

writ petitions preferred by DGDC was set aside. It was mainly on the ground that remedy was available to the DGDC against cancellation of lease but without availing it, they approached the High Court. Accordingly, judgment of the Apex Court was not after touching merit of the case. The sub-lease executed by DGDC in favour of the appellant was later on recognised by the RIICO. In few cases, the RIICO admitted receipt of 100% amount from the appellant. In view of the above, sub-lease in favour of the appellant should not have been subjected to the lease granted in favour of the DGDC and its cancellation. An independent right was created in favour of the appellant. They remained in possession of the land but without a notice and even information, the constructions were demolished and appellant was dispossessed.

3. The contention of the petitioners is that learned Single Judge in identical matters being S.BCWP No.10518/2015 (Raj Bakliwal vs. Rajasthan State Industrial Development and Investment Corporation & ors.) and other connected matters decided on the same day has granted some relief to the three petitioners while observing as under:-

Â ""If RIICO finds these cases to be different than bunch of writ petitions decided today, may consider it appropriately.

4. However, in the present cases, the learned Single Judge has dismissed the writ petitions and upheld the action taken by the RIICO.

5. We have put specific queries to both the counsel whether there is anything to establish possession after 1996 as learned Single Judge has based his reasoning only on the dispossession in view of the judgment in The Rajasthan State Industrial Development and Investment Corporation & Anr. Vs.

Diamond and Gem Development Corporation Ltd. Anr. reported in 2013 (5) SCC 470.

6. While considering the case, the learned Single Judge observed as under:-

I have considered the rival submissions made by learned counsel for the parties and perused the record.

The facts of theses cases have already been narrated thus need not to be reiterated. The petitioners had no direct contract with RIICO, rather, lease

deed was executed by the RIICO in favour of DGDC. The petitioners were sub-leasees of DGDC thus if any payment was made by the petitioners

then it was to DGDC and not to the RIICO. It may be that onward payment was

made by the DGDC to the RIICO. Even if some communication exists regarding payment, it cannot be taken to create a sub-lease in their favour in absence of a deed.

The further question is about right of the petitioners. They are sub-lessees of DGDC. If lease in favour of DGDC has been cancelled then petitioners cannot have better right than lease. It is otherwise a case where cancellation of lease interfered by the High Court was not accepted by Apex Court in the special appeal preferred by the RIICO.

The perusal of the judgment of the Apex Court in the case of ""The Rajasthan State Industrial Development and Investment Corporation & Anr. Vs.

Diamond and Gem Development Corporation Ltd. & Anr."" , reported in 2013 (5) SCC 470 reflects consideration of all the issues and even issue about

availability of alternative remedy. It is not that appeals were dismissed only on the ground of availability of alternative remedy, rather, issue aforesaid

was touched in reference to exercise of jurisdiction by this court under Article 226 of the Constitution of India. It may be that after discussing the

factual issues and touching the merit, ultimately appeals were decided in reference of alternative remedy. In any case, judgment of the Apex Court

attained finality as alternative remedy, if available to DGDC, was not availed so as to challenge cancellation of lease. The cancellation having attained

finality, the petitioners cannot claim better right than DGDC being their sub-lessee.

Taking into consideration the aforesaid, prayer made in the writ petitions cannot be granted. It is moreso when possession of the land was taken by the

RIICO in the year 1996 itself. If petitioners remain in possession as happened in few cases, could have proved it. They alleged occupation of the

building but no material or evidence has been placed on record to show their possession. It could have been even an electricity bill but no document to

this effect has been produced. In the circumstances aforesaid, the claim regarding possession of the petitioners cannot be accepted. If petitioners

were not in possession of the land in dispute then procedure, as applied in regard to others, who remained in possession, was not required to be

applied. In view of the above, case of discrimination is also not made out. The respondents were cautious enough to take action in consonance to the

provisions of law for those who remained in possession for one or another

reason, leaving others. In the light of the aforesaid, even the argument that trespasser cannot be evicted without procedure cannot be accepted as petitioners failed to prove their possession. Taking into consideration the aforesaid, I do not find any illegality if building, in possession of the RIICO since 1996, has been demolished. Accordingly, prayer made in the writ petitions cannot be granted.

Â For the reasons recorded above, writ petitions are dismissed. A copy of this order be placed in each connected file. At this stage, learned counsel submits that atleast liberty may be given to the petitioners to make a representation to the DGDC or the RIICO for refund of the amount received towards their plots. The prayer aforesaid does not exist in the writ petitions, however, if anything remains and the petitioners want to pursue it, they would be at liberty to do so.

A further prayer has been made against DGDC to compensate the petitioners. The determination of compensation cannot be made under Article 226

of the Constitution of India. The prayer aforesaid is otherwise not against the State or any agency falling under Article 12 of the Constitution of India

but to a private organisation not falling under Article 12 of the Constitution of India thus if any claim is to be made against DGDC, the petitioners can

very well take remedy before the civil court. The petitioners would, however, be at liberty to approach the RIICO for allotment of plot, if any scheme

is formulated. In that case, RIICO would be expected to consider case of the petitioners sympathetically.

7. We are in complete agreement with the view taken by the learned Single Judge. No case is made out for interference.

8. The appeals stand dismissed.