
(2015) 04 RAJ CK 0118
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2522 of 2004

Ram Sharan Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 120-B, 406, 420, 467, 468

Citation : (2015) 4 CDR 2137

Hon'ble Judges : Raghuvendra S. Rathore, J

Bench : Single Bench

Advocate : Vimal Choudhary, for the Appellant; Rajendra Prasad, R.D. Rastogi, Sneha Singh, Sandeep Taneja and Amit Tanwani, Advocates for the Respondent

Final Decision : Allowed

Judgement

Raghuvendra S. Rathore, J.—In a matter relating to public land worth crores of rupees, the petitioner has preferred this writ petition with the prayer that investigation be conducted by the Central Bureau of Investigation so that fair and proper investigation is made and action be taken against the real culprits, in accordance to law.

2. The land involved is Plot No. I-6 in Bani Park Scheme "E", Tehsil Jaipur, measuring 9396 sq. yards. In October 1946, the Government had decided to allot the land on lease basis to one Jagan Prasad of Ajmer for establishing an ice factory. According to the petitioner, the lease deed could not be executed. As per law, the land could not be transferred or alienated in any manner. But subsequently Shri Jagan Prasad relinquished his interest in favour of Kali Charan and Banshidhar on 04.11.1949. The partnership which came into existence had different constituents from time to time because old partners were retiring and new came to be inducted. In M/s. Agrawal Ice Factory, initially there were six partners, (1) Sugni Chand, (2) Kastoor Chand Khaitan, (3) Suresh Chand, (4) Jawahar Lal, (5) Sharmila Ahuja and (6) Amar Lal. Later, on 20.02.1997, eight

new partners joined the Agrawal Ice Factor, namely (1) Shailendra Garg, (2) Rajnesh Garg, (3) Vijay Mehta, (4) Suchish Shukla, (5) Ramesh Sukhani, (6) Vikram Sukhani, (7) Kamla Sukhani and (8) Raj Kumar Bhatia. Thereafter, two old partners Kastoor Chand Khaitan and Sugni Chand retired. Similarly, at a later point of time, old partners Suresh Chand, Jawahar Lal, Sharmila Ahuja and Amar Lal retired on 26.09.1997. In the result eight partners, who joined on 20.02.1997, named above, remained. Ultimately with change of partnership, which was designed by one Bhimsen Garg and his family members alongwith Manager Vijay Mehta, led to purchase of the land by Bhimsen Garg, after keeping his family members and Manager Vijay Mehta, in front.

Subsequently, Shailendra Garg son of Bhimsen Garg, Vijay Mehta and Suchish Shukla planned out 33 residential plots of various sizes on the land. The plots were then sold out to Bhimsen Garg (father of Shailendra Garg), Manju Garg (Mother of Shailendra Garg and wife of Bhimsen Garg), Shivani Garg (Sister of Shailendra Garg) and other employees of Bhimsen Garg. The payments were received by cheques and deposited in the account of Agrawal Ice Factory. Later on, the amount was transferred in the account of Shailendra Garg. Shri Shailendra Garg transferred these plots which were on the land belonging to him. The market value of the land in Bani Park, when the plots were sold in 1998, was approximately Rs. 20,000/- per square meter.

3. When it came to the knowledge of the then Commissioner, Jaipur Municipal Corporation (Vidhyadhar Nagar Zone), he took up the matter and it was on his instructions that a first information report (58/2002) was lodged on 17.05.2002 at Police Station Bani Park, Jaipur against Bhimsen Garg and other family members. After occupying the government land, Shri Bhimsen Garg tried to get it regularised through Samjhota Samiti before which he had submitted an application. The petitioner, on having come to know about it, submitted a detail representation to the Chairman, State Level Settlement Committee (Samjhota Samiti) on 25.06.2002 informing that a criminal case in respect of the land is already pending and as such regularisation may not be done. Thereafter, the petitioner appeared before the said Committee on 07.09.2002, in response to the summons issued to him. Other representations were submitted on 24.09.2002 and 24.10.2002. However, the Samjhota Samiti could not pass any final order as the functioning of the said Samiti was stopped by the High Court in a writ petition which was filed by the petitioner against the illegal activities of the Samiti.

A representation was submitted by the petitioner to the Deputy Inspector General of Police, Jaipur Range, Jaipur on 13.11.2002 requesting him for a fair investigation in the case and to take action. To the utter surprise of the petitioner, when he met the police authorities, he was told to bring the original record of the land in question. According to the petitioner, the original record of the property was got misplaced by Shri Bhimsen Garg. The police did not investigate the matter and submitted a final report on the ground of non-

availability of the record. The learned ACJM No. 4, Jaipur City had thereafter considered the matter and vide order dated 19.07.2004, returned the final report alongwith record to the police for further investigation in the case. The investigation is still pending with the local police. Hence, the petitioner filed this writ petition seeking direction from this Court that the investigation be done by the Central Bureau of Investigation.

4. It has been submitted by the learned counsel for the petitioner that the decision to allot land on lease basis was subject to the provisions of Revenue Standing Order No. 1. According to clause 23 of the said order, a land could not be transferred or alienated without sanction of the Government. Moreover, when the lease deed was not executed in favour of Jagan Prasad, he had no authority to transfer the same to any other person in the garb of entering into partnership with Kali Charan and Banshidhar in the month of November, 1946. Further, the design of change of partnership, some retiring and new being inducted, was also illegal as being without prior sanction of the Government and Municipality.

It has also been submitted by the counsel for the petitioner that the police was neither investigating the matter nor taking action against the culprits because the one involved was an influential person, namely Shri Bhimsen Garg, who was having very thick relationship with the then Chief Minister of Rajasthan Shri Ashok Gehlot. Both were in contact of each other on mobile phone. The petitioner had also represented to the Chief Minister and Chief Secretary for sending the present case for investigation to the Central Bureau of Investigation.

5. On the other hand, it is to be noted that the Municipal Corporation-respondent No. 4 and 5 had taken the stand in its reply that the land belongs to it but the same has been illegally grabbed by Shri Shailendra Garg. Further, it is stated that the Corporation was always vigilant for protecting its land and as soon as it came to its knowledge that the land in question was being sought to be regularised by some persons for residential purposes that the Corporation immediately lodged an FIR at Police Station Bani Park, Jaipur by giving complete facts in details that the land belongs to it and the accused were occupying the same as a trespasser and had illegally purchased it in a fraudulent manner. The lease deed could not be executed in pursuance of allotment letter dated 14.04.1997 and the subsequent Letter dated 23.05.1947. At that time, the rule for sale and lease of land in Jaipur City and town which were contained in Revenue Standing Order No. 1 and these rules were also to apply to all cases of sale and municipal towns. According to Rule 23 of the Standing Order, a government land which had been granted either free or has been sold or let out on concessional rate, the transferee was not entitled to alienate it permanently or temporarily nor had the right to lease it without the sanction of the Government.

6. Further, the case of Municipal Corporation was that the land in question was allotted for establishment of an ice factory which is an industrial purpose. It could not have been put to any other use as it would be violative of the specific purpose for which it was allotted. The decision of allotment was in favour of one

Jagan Prasad who had, without any authority, transferred the land in favour of M/s. Agrawal Ice Factory. The said transfer was turned down by the Government, vide Letter No. 3191 of 22.12.1969. The partners of the said firm kept on changing without prior approval and for this reason also the land reverted back to the State/Jaipur Municipal Corporation. The land is not being utilized for the purpose for which it was allotted and no lease deed was executed. The Municipal Corporation lodged an FIR (58/2002) on 17.05.2002 at Police Station Bani Park, Jaipur against Bhimsen Garg and 21 other persons for the offences under Section 420, 467, 468, 471 and 120-B IPC and under Section 203(1) of the Rajasthan Municipality Act, 1959.

The carving out of residential plots in the land in question was a nullity and Shailendra Garg or any other person had no such authority. Most of the plots have been purchased by Bhimsen Garg and his family members like his wife, daughter, etc. and they wanted to have the land regularised through the State Level Settlement Committee which had been opposed by the Corporation. The Municipal Corporation had made the relevant record available to the police which was in its custody. The original record of the land in question was not sent to the Corporation by Jaipur Development Authority. In fact, the police should have inquired about the record from the Jaipur Development Authority. The Jaipur Municipal Corporation had cooperated with the police during the investigation but the police had submitted negative final report on the ground that original records were not made available to it. The Corporation had tried that the matter should be thoroughly investigated by the police.

7. It has been vehemently argued on behalf of respondent No. 7 that the land in question was allotted to M/s. Agrawal Ice Factory in accordance to law and they are in possession of the same since then. It has also been submitted that the petitioner has not come out with full facts of the case and has rather concealed the same. Further, it is submitted that respondent No. 5 had malafidely and out of extraneous consideration got an FIR registered by making false allegations. A final report in the said FIR was submitted before ACJM No. 4, Jaipur City on 04.03.2003 which was pending acceptance. The present litigation is patently a motivated personal interest litigation amounting to gross abuse of the process of the Court and an attempt to over-reach the judicial process. The FIR itself shows that it is not only misconceived but is a malafide action of respondent No. 5. It is an illegal attempt to malice and tarnish the image and reputation of an individual. The first information report contained allegation of unlawful transfer of the land in question by Shri Jagan Prasad, more than 50 years ago. The Municipality had no concern with the land in question which was allotted by the erstwhile State of Jaipur.

8. On having thoroughly considered and after careful perusal of the record, it is revealed that the instant writ petition was filed by the petitioner for bringing the facts of grabbing of republic land in connivance with the Government and the police department. Accordingly it was prayed that by appropriate writ, order or

direction, fair investigation be done in the matter by an independent and effective investigating agency, namely the Central Bureau of Investigation. The object was to get the culprits suitably punished and appropriate action be taken against the police officials who did not conduct the investigation properly. Hence, the present writ petition was filed by the petitioner before Division Bench and notices were issued to the respondents on 27.04.2004.

Thereafter when the matter came up before the Court on 21.05.2004, the counsel appearing for Jaipur Municipal Corporation stated that the land belongs to the Corporation but the same has been grabbed illegally by the private respondents. The Court then restrained them from transferring the property or part of the same in any manner. The Jaipur Municipal Corporation was directed to produce the record for perusal of the Court. The State was directed to produce the case diary and the final report of investigation which had been filed before the Court. Later during the course of proceedings, the counsel for the Municipal Corporation, on the basis of JMC Letter dated 15.06.2002, had submitted that the title documents of the land in question would be with Jaipur Development Authority. Accordingly, the counsel for the Jaipur Development Authority had thereafter been directed to produce the title documents of the land. On the submissions made by the counsel for the petitioner that the entire record of the investigation was with the Inspector General of Police, Jaipur Range-II, he was called before the Court alongwith the record on the next date. On 28.09.2004, the learned counsel for the Jaipur Development Authority submitted that the search of the record relating to the property would be made. It was ordered by the Court that:-

"In case, the record is not forthcoming the JDA shall locate the responsibility for the misplacement of the record or its loss and action shall be taken against the person who is responsible for the same. In case record is not made available to the investigation officer, action in accordance with law may be taken by him against the defaulter."

The matter was ordered to come up on 25.10.2004 and the record of the investigation was to be made available by the State on that day. Thereafter, respondent No. 6- Jaipur Development Authority was directed to produce copy of the title and documents pertaining to the land in question within seven days. The matter was then ordered to be placed for final hearing. The JDA and Jaipur Municipal Corporation were directed to make statement in the Court on 25.10.2004 as to who is in possession of the land.

9. It would not be out of place to mention here that in respect of land in question and after the same was being sold by carving out small plots, a dispute arose between the partners of the firm/seller of the plots and its purchaser and therefore, a first information report (140/2000) had come to be registered at Police Station Bani Park, Jaipur for the offences under Section 406 and 120-B IPC. One Vijay Mehta and Rajeev Mishra apprehending their arrest, moved applications for anticipatory bail. During the proceedings of the said anticipatory

bail applications, the counsels for the parties had made elaborate arguments. High Court had thoroughly considered the matter by taking into consideration all the aspects in detail and observed that after examining the nature and seriousness of the charges, it was not a fit case for granting of anticipatory bail. While doing so, it had taken note of the facts that the case involve a government land given on lease for a specific purpose of setting up an ice factory and a cold storage. The petitioners, who were seller/purchaser of the plot as well as the partners of the firm, colluded and sold plots after sub-dividing the land. Under the relevant law, no transfer was to be made by the allottee without sanction of the Government and in case of violation, the land was to revert back to the lesser (Vijay Mehta and Anr. v. State, 2000(2) RCC 1383).

10. Reverting to the proceedings of the present writ petition, as mentioned earlier, the counsel for the petitioner had submitted on 15.09.2004 that the entire record of the investigation is with Inspector General of Police, Jaipur Range-I, therefore, it was ordered that IGP be present in the Court alongwith the record on the next date. The order sheets of 28.09.2004 goes to show that Shri O.P. Galhotra, IGP, Jaipur Range was present in person. It has been pleaded by the petitioner that when Mr. Gehlotra appeared before the Court, enquiry was made from him about the criminal case. The State had filed an application on 20.07.2004 for withdrawal of the final report from the concerning court. Mr. Gehlotra had submitted that due to non submission of the original record by the Municipal Corporation, a final report was submitted by the police without investigation. He had further submitted that police was re-investigating the matter. The Court had then perused the case diary also and found that no progress in investigation was made. The Inspector General of Police stated that efforts were being made to trace to the original record of the land and investigation in regard to it shall be made from the concerned employees of Jaipur Development Authority and the Jaipur Municipal Corporation. Thereafter, the Court, on 25.10.2004, directed Jaipur Municipal Corporation to file an affidavit about the availability of the record. In other words, the matter was not pending before the trial court for consideration of final report but before the police for investigation.

An affidavit was filed by the Commissioner, Vidyadhar Nagar Zone of Jaipur Municipal Corporation in compliance of the order of the Court passed on 25.10.2004 to state as to who is in possession of the record of the land. It was deposed by the Zonal Commissioner that as per the record available with the Corporation, the original record relating to the land in question was not sent to it by Jaipur Development Authority. The Jaipur Municipal Corporation had written repeated letters to Jaipur Development Authority to make the original record of the land available. The details of the letters were given in the affidavit which are, letter dated 24.05.2000 sent by Additional Chief Town Planner, JMC to Secretary, JDA; letter dated 20.07.2000 sent by Additional Chief Town Planner, JMC to Secretary, JDA; and letter dated 15.06.2002 sent by the Commissioner, Vidyadhar Nagar Zone, JMC to the Commissioner, JDA.

Likewise in compliance of the aforesaid order of the Court, an affidavit was filed by the Deputy Commissioner, Zone 2-A, JDA who was also the officer-in-charge of the case, deposing that from 1982 to 1992, the area of Bani Park was under the Jurisdiction of Jaipur Development Authority. As the plot in question was given on lease by the Director, Industry Department on 12.02.1990, the concerning file must have been sent to the Industry Department by Jaipur Development Authority. However, there is nothing on record to show whether the said file was sent to the Industry Department or not. In order to find out whereabouts of the file, a letter was written to the Director, Industry Department on 18.01.2003 to inform about the file. On 07.11.1992, Bani Park area was transferred to Jaipur Municipal Corporation. However, there is nothing on record to show that the concern file was transferred to the Corporation. Further, it was deposed that it is possible that since the file had been sent to the Industry Department, it was not within possession of JDA in 1992. The said file was not transferred to Jaipur Municipal Corporation. The letter is said to have been written to the Deputy Secretary, UDH on 21.01.2003 with the request that in case any file of the concerned land is available, the same be sent. However, no response from UDH Department had been received.

According to the Jaipur Development Authority, the record is with either Industry Department or Jaipur Municipal Corporation whereas the Jaipur Municipal Corporation has stated that the same was not sent to it and is lying with Jaipur Development Authority. Therefore, both the parties are trying to shift the responsibility on each other. The original record pertaining to land in question has not been placed before the Court so far.

11. It is noteworthy that respondent No. 7 stated in his reply that the buyers of the plot had filed an application before the State Level Settlement Committee on 22.03.2002 for regularisation of the plots. The said application was submitted for and on behalf of the plot owners of Green Park Enclave by none else but Bhimsen Garg (Annexure-R/7-20). Mention has been made in the said application about the documents relating to the land and also the page number which relates to the record. This goes to show that the relevant record was available with JDA at that time and it had been looked into by Bhimsen Garg or that he himself was in possession of the same.

12. It is also important to note here that on 25.10.2004, the Division Bench had directed respondent No. 7 to produce copy of the title documents of the land in question for which his counsel had pointed out that complete title documents pertaining to land in question had been submitted in another writ petition (9692/2002 and 9693/2002). But the title documents of the land, which do not exist, have never been put up before the Court. This further reflects the truthfulness about the existence of the documents and the stand taken up by respondent No. 7.

13. The matter was listed on 12.05.2005 and the learned Division Bench observed that no public interest is involved in the instant petition and it may be

placed before the Single Bench. It is in these circumstances that the writ petition came before the Single Bench and ultimately for hearing before this Court.

14. During the proceedings of this case, respondent No. 7 Garg Bhimsen Garg expired and an application for substitution was filed by his son Shailendra Garg and the same was allowed on 06.03.2009. On behalf of Shailendra Garg, it was submitted on 20.11.2012 that "Counsel for respondent wants to adopt the reply filed by Bhimsen Garg who stands substituted by his son Shailendra Garg represented by him. Therefore, the steps taken in this matter by Shailendra Garg were not independent of or unknown to Bhimsen Garg.

15. From the above discussion, it is clear that allotment of the land was made to one Jagan Prasad in the year 1947. But no lease deed had been executed in pursuance of the allotment letter. The said land was allotted for industrial purpose to establish an ice factory. Shri Jagan Prasad had transferred the land in favour of M/s. Agrawal Ice Factory without any authority. The said transfer was turned down by the Government in the year 1969. Thereafter, there was a change of partners in the firm who, by virtue of the said status, claimed themselves to be the owners of the land. Later on, the land was sought to be utilized for residential purposes by carving out small plots. The change of use of the land for any other purpose was violative of initial allotment for industrial purpose. With the change of partners, without prior approval, the land otherwise reverted back in favour of the JMC. Mere filing of application and depositing conversion charges, the land used cannot be automatically changed from industrial to residential, without an order of a competent authority. No one had any right to sell the land by making small residential plots in contemplation of conversion of the land use. Even if a circular was issued by the State that the land in question was not to be changed without order of a competent authority, automatically.

16. In these circumstances where steps were being taken not in accordance to law and land which is in the heart of the city, valuing crores of rupees is sought to be taken over by the individuals for their vested interest, is certainly a matter of serious concern. After long time since the area in which the land is situated was transferred to the Jaipur Municipal Corporation, the matter was looked into. Thereafter the situation had attained serious dimension so much so that the land had been illegally sold by the individuals without there being any change in the use of the land, that JMC took steps against the culprits. But strangely enough, after initiating criminal case against the concerning persons, the investigating agency did not investigate the matter for the reason that the original record was not available. The investigating agency had taken the matter in a casual manner and without taking any proper steps against those who were the custodian of the record, had held that the same is not traceable. The Jaipur Development Authority as well as the Jaipur Municipal Corporation have totally denied to have possessed the record and despite of a long period having passed no one has handed over the record to the police. The police had also, in a haste, submitted

the final report on the ground of non-availability of the record, though it was their duty to have traced out the same. Later on when the criminal case has been ordered, on 19.07.2004, to be investigated after return of Final Report, no progress whatsoever has been made till now to trace out the record so as to complete the investigation. Looking to the gravity of the matter and the fact that it relates to a public land, it is essential that complete investigation of the matter be made by an independent agency like the Central Bureau of Investigation. It is rather a matter of surprise that apart from inability to trace out the original record since long, no intimation/information with regard to it on further investigation of the case has been given by the State.

17. The investigating agency had filed a final report without investigating the matter on the ground that the record of the land was not made available by the department. But the investigating agency could have investigated the case in the light of the provisions of Section 203(15), 274 and 275 of the Rajasthan Municipal Act. The learned Single Judge, while deciding the bail application of Vijay Mehta and Anr. (Supra), observed that the partners of the firm had colluded and sold the plots after sub-dividing the government land which was taken on lease whereas the same should have been reverted to the Government. It was in view of the seriousness of the charges against the said accused that the anticipatory bail application was dismissed.

18. In respect of investigation of a case by the Central Bureau of Investigation and its powers thereof, particularly when the investigation by the local police was not satisfactory, it has been laid down by the Hon'ble Supreme Court in the case of Central Bureau of Investigation and another Vs. Rajesh Gandhi and another, (1996) 7 AD 752 : AIR 1997 SC 93 : (1997) CriLJ 63 : (1996) 4 Crimes 104 : (1996) 9 JT 131 : (1996) 7 SCALE 508 : (1996) 11 SCC 253 : (1996) AIRSCW 4249 : (1996) 7 Supreme 455 , as under:-

"...If investigation by the local police is not satisfactory, further investigation is not precluded. In the present case, the material on record shows that the investigation by the local police was not satisfactory. In fact the local police had filed a final report before the Chief Judicial Magistrate, Dhanbad. The report, however, was pending and had not been accepted when the Central Government with the consent of the State Government issued the impugned notification. As a result, the CBI has been directed to further investigate the offences registered under the said FIR with the consent of the State government and in accordance with law. Under Section 173(8) of the Cr.P.C. 1973 also, there is an analogous provision for further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate."

19. In the instant case also, after registration of the report by Jaipur Municipal Corporation in the year 2002 on the ground that the land belonging to it, the local investigating agency has not completed the investigation so far. The departments concerned are sitting tight over the record and the same has not been furnished to the police. The police had also not taken any serious steps to

seize the record and the person/officer concerned of the department ought to recommend appropriate action against such like people. The police had hastily submitted a final report in March, 2003 before the court concerned on the ground that the investigation was not possible in absence of the record. However, the learned Magistrate had not accepted the final report and had in fact returned the same, vide order dated 19.07.2004, to the police for further investigation. But even after passing of a long period, the local investigating agency has not completed the investigation so far.

The reason appears to be obvious that the persons having vested interest have, for some reason or the other, come in the way with the object that the investigation should not be brought to its conclusion as they have apprehensions and rightly so. Even in the present case, respondent No. 7 had, on his own, come to be included in the proceedings, whereas in a matter as to who is to investigate the case no other person has any right to get himself involved in it on the ground of an opportunity of hearing. The Hon'ble Supreme Court in the case of Central Bureau of investigation (Supra) has observed, in para 8 and 9, that the decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offence he is charged with nor there is any provision in law under which, while granting consent or extending the powers and jurisdiction of the Delhi Police Establishment to the specified State and to any specified case any reason are required to be recorded on the face of the notification.

20. In view of the aforesaid discussion, this Court is of the considered opinion that the petition has merit and the prayer made by the petitioner for investigation by the Central Bureau of Investigation deserves to be accepted. In the facts and circumstances of the case; a public property having been involved; the manner in which the local police has proceeded with the investigation, even after the order of further investigation; the fact that the department concerned has neither provided the record to the police nor has taken any steps to fasten the responsibility, if the concerning record is misplaced, on the person in custody it was supposed to be, etc. it is a fit case where a thorough and fair investigation needs to be made by an independent agency, such as the Central Bureau of Investigation.

21. Consequently, the writ petition is allowed. It is ordered that the criminal case arising out of FIR No. 58/2002 registered at Police Station Bani Park, Jaipur be handed over to the Central Bureau of Investigation forthwith. The Director, Central Bureau of Investigation, New Delhi is directed to immediately appoint a senior officer to investigate in the present case. Further, he is directed to ensure that the investigation is expeditiously done and its conclusion is submitted, at the earliest.

A copy of this order be sent to the Director, Central Bureau of Investigation, New Delhi through fax immediately, apart from sending the certified copy in the normal course.