
(2016) 03 RAJ CK 0107
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5648/2004

Ramchandra

APPELLANT

Vs

The District Collector, Hanumangarh and Others

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

Citation : (2016) AIR(Raj) 95 : (2016) 2 RLW 985 : (2016) 3 WLC 627 : (2016) 3 WLN 449

Hon'ble Judges : Dr. Vineet Kothari, J.

Bench : Single Bench

Advocate : Manoj Bhandari, for the Appellant; Moti Singh and Preety Keswani on behalf of B.K. Vyas, for the Respondent

Final Decision : Allowed

Judgement

Dr. Vineet Kothari, J.—1. The present writ petition has been filed by Ramchandra S/o. Sh. Gulabchand Nai, in this Court on 11.12.2004 praying, inter-alia, for quashing of impugned orders dated 23.06.2004 (Annex.15) and 03.12.2004 (Annex.16) passed by learned District Collector, Hanumangarh in revisional jurisdiction powers under Section 300 of the Rajasthan Municipalities Act, 1959 (for brevity, hereinafter referred to as "Act of 1959") in Case No. 8/2004- Manish Sharma & Ors. v. Ramchandra & Ors., by which the learned District Collector, Hanumangarh, cancelled the registered lease-deed (Annex.12) executed in favour of petitioner in respect to plot of land, measuring 160" x 85" = 13600 square feet, situated in Ward No. 4, Municipal Board, Bhadra, District: Hanumangarh.

2. The petitioner claimed long possession over the said plot of land since the year 1950 and in the year 1957 when he was sought to be evicted from the said land, he filed a civil suit against his threatened dispossession against the Mandi Vikas Samiti, Colonization Department. The petitioner in the meanwhile tried for regularization of his possession over the said plot of land in question and ultimately, withdrew that suit from the competent court, since the local

Settlement Committee, constituted under the third respondent Municipal Board, Bhadra, considered his case for regularization in its meeting held on 20.05.2002 and decided to recommend the regularization and allot the said plot of land in his favour of 85" x 160" size if he gave up the possession of a larger portion of 85" x 220" in his possession since long. In pursuance of such decision, the petitioner not only paid a sum of Rs. 2,09,667/- on 20.01.2003 vide Receipt (Annex.11) to the Municipal Board, Bhadra for the plot of 85 x 160 Ft. but also a registered lease-deed was executed by the Municipal Board, Bhadra in his favour on 01.07.2003 (Annex.12).

3. The private respondents No. 4 to 9, Manish Sharma and others, however, filed a revision petition before the learned District Collector, Hanumangarh, vide Annex.13, which came to be allowed by the learned District Collector, Hanumangarh, on 03.12.2004 (Annex.16).

4. Aggrieved by the same, the petitioner preferred this writ petition before this Court.

5. Mr. Manoj Bhandari, learned counsel for the petitioner submitted that the learned District Collector had no jurisdiction to cancel and quash the registered lease-deed dated 01.02.2003 at the instance of private complainants in the Revision Petition No. 8/2004, as the State Government had clearly held that the District Collector had no jurisdiction to hear any appeal against such decision of the Settlement Committee and only the State Government or the State Level Committee could do so. He also submitted that the learned District Collector not only by a separate order (Annex.15) dated 23.06.2004 decided the question of his own jurisdiction against the petitioner but later on also cancelled the registered lease-deed by allowing revision petition filed by the private respondents illegally by the impugned order dated 03.12.2004. He relied upon the judgment of Hon''ble the Supreme Court in the case of Roop Chand v. State of Punjab reported in , AIR 1963 SC 1503 and judgment of learned Single Judge of this Court in the case of Municipal Board, Nokha v. State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 2593/1991, decided on 01.11.1993) and judgment of this Court in the case of Municipal Council, Pali v. State of Rajasthan & Ors. reported in (2013) 4 RLW 3341 (Raj.).

6. Mr. Manoj Bhandari, therefore, contended that the long possession of the petitioner regularized by issuance of registered lease-deed/Patta in pursuance of the decision of the Settlement Committee constituted by the State, which was referred and approved by the State Government, could not have been cancelled by the learned District Collector exercising his revisional powers under Section 300 of the Act of 1959.

7. On the other hand, the Municipal Board, Bhadra, has filed two replies before this Court, one along with the reply of the State Government through Mr. B.K. Vyas, Advocate and other separately filed later on along with affidavit of one Sh. Ranveer Singh Godara, Executive Officer of the Municipal Board, Bhadra and

represented by different counsel Mr. Moti Singh, who supported the impugned orders of the learned District Collector on various grounds. Mr. Moti Singh, learned counsel for the respondent No. 3, Municipal Board, Bhadra, urged that said Settlement Committee had no jurisdiction to decide the case of regularization of petitioner's possession, as there was no dispute pending as on the date when the matter was taken up by the Settlement Committee and under the Notification dated 01.08.2001 (Annex.5) vide Clause (6) thereof, only if some dispute was pending in some Court, such a settlement could be done by the said Settlement Committee. He also submitted that no adjudication about the reserve price was undertaken by the said Settlement Committee and the price of the said land of Rs. 2,09,667/-accepted by the Municipal Board, Bhadra, without any determination by the Settlement Committee did not bind the respondent Municipal Board and the learned District Collector was justified in not only assuming the jurisdiction under Section 300 of the Act, but also was further justified in canceling the registered lease-deed issued in favour of petitioner. He also submitted that the land in question was a public utility land as per the Master Plan and, therefore, the allotment and lease-deed in favour of the petitioner was not justified.

8. Mr. R.S. Choudhary, learned counsel for the private respondents, even though no separate reply to the writ petition has been filed by them, supported the stand taken by the learned counsel for the Municipal Board, Bhadra, and submitted that the lease-deed was rightly cancelled by the District Collector. He also prayed in the alternative for grant of some time to file reply to the writ petition at this stage, which was, however, rejected by this Court in view of the present old matter being taken up for final hearing today.

9. I have heard the learned counsel for the parties at length and perused the record.

10. It is rather curious for this Court to see that the District Collector, Hanumangarh, has taken a stand contrary to the directives of the State Government itself. In the present case, not only the decision of the Settlement Committee (Annex.8) dated 20.05.2002 was referred for approval and was approved by the State Government vide Annex.10 dated 04.01.2003, but by a general Circular Letter (Annex.16/A) dated 31.10.2001, the State Government had clearly stipulated therein that the District Collector had no jurisdiction to hear any appeal or grievance against the decision of the Settlement Committee of the Municipal Board. The said letter dated 31.10.2001 (Annex.16/A) addressed to all the District Collector(s) of the State Government is quoted herein below for ready reference:--

11. In the face of this, the reasons given by the learned District Collector while justifying his jurisdiction in the aforesaid case, in his impugned orders dated 23.06.2004 and 03.12.2004, cannot be appreciated. The reasons assigned in these impugned orders, to its relevant extract, are quoted herein below for ready reference:--

12. It is also considered appropriate to reproduce the decision of the Settlement Committee itself [Minutes of Meeting dated 20.05.2002 (Annex.8)] regularizing the possession of the petitioner and in pursuance of which after payment of due price therefor, a registered lease-deed (Annex.12) was executed in favour of petitioner.

13. The execution of said registered lease-deed, thereafter on 01.02.2003 is not disputed by the respondent Municipal Board, Bhadra and the only question, therefore, which arises really for consideration by this Court is as to whether the learned District Collector has rightly assumed the jurisdiction under Section 300 of the Act of 1959 in the present case; and whether he could cancel the registered lease-deed/Patta issued in favour of petitioner.

14. In the considered opinion of this Court, the answer has to be negative and it deserves to be held that the learned District Collector had no jurisdiction to entertain the revision petition in the present case contrary to the stand of the State Government in the afore quoted Circular/Letter (Annex.16A) and specific approval given to the minutes to the settlement committee vide Annex.10 dated 04.01.2003 and the law laid down by this Court.

15. The long possession over the plot of land of the petitioner since 1950's is not in dispute and the litigation of the petitioner against Mandi Vikas Samiti, which sought to evict him from the land in question in the year 1957, and the respondent, Municipal Board, Bhadra itself initiated the proceedings against him way-back in the year 1957 itself vide notice (Annex.1) dated 25.07.1957. Against which, in Proposal No. 12 dated 10.09.1957 the respondent Municipal Board itself initially regularized the possession of the petitioner over the said bigger plo of land @ 2 "Anas" per Gaj. for plot (220" x 170"), but since the said money could not be deposited by the petitioner, it was treated as a pending dispute in the property register maintained by the respondent Municipal Board, Bhadra, copy whereof is placed on record as Annex.4 to the writ petition, vide Item No. 14 thereof.

16. After the Circular (Annex.5) dated 01.08.2001 was issued constituting the various local Settlement Committees for such disputes pending, the petitioner again initiated his efforts for regularization for his possession and got it regularized for the lesser size of 85" x 160" = 13600 square feet in the aforesaid manner after depositing a sum of Rs. 2,09,667/- and got the registered lease-deed executed, which was cancelled by the learned District Collector by the impugned order dated 03.12.2004.

17. In view of long and chequered history of the possession, threatened dispossession and regularization, the assumption of the learned District Collector of his revisional jurisdiction contrary to the directives of the State Government and cancelling the registered lease-deed can only be strongly be deprecated by this Court. The stand taken by the respondent Municipal Board contrary to the stand taken by it in the joint reply filed by the State, and in subsequently filed

"detailed reply" on behalf of respondent No. 3, Municipal Board, Bhadra, as late as in the year 2014 before this Court, supported with the affidavit of one Ranveer Singh Godara, Executive Officer, through a different counsel, also appears to be contrary to the stand of the Municipal Board itself taken earlier before this Court and through out the history of this case, and probably for extraneous reasons. There is also no evidence led by the Municipal Board, Bhadra that the land in question was already set apart for a different purpose under the Master Plan or otherwise.

18. Be that as it may, this Court is not directing any further enquiry against the conduct of said official of Municipal Board, Bhadra (Sh. Ranveer Singh Godara) before this Court for the simple reason that the order passed by the learned District Collector himself is found to be without jurisdiction by this Court.

19. This Court in the case of Municipal Council, Pali v. State of Rajasthan & Ors. (SBCWP No. 7572/2006 decided on 13.02.2013) reported in (2013) 4 RLW 3341 (Raj.) deciding a bunch of about 31 writ petitions, vide judgment dated 13.02.2013 held that in exercise of the revisional powers under Section 80 of the Act of 1959, which empowers the State Government or any officer authorized by the State Government including District Collector and providing for transfer of property, held that once a registered conveyance deed or lease deed is executed by the competent body, the revisional powers cannot be invoked or exercised to undo such registered document and only a competent civil court has the power to do so upon appropriately instituted suit at the instance of Municipal Board itself. The relevant paras 24 to 29 of the said judgment are quoted herein below for ready reference:--

"24. On a plain and clear reading of the said provisions, the power to set aside or quash registered conveyance deeds in the form of sale-deeds or lease-deeds is not envisaged in these provisions. Such powers obviously and in general law lies with only the competent civil courts, because under the registered conveyance deeds, the rights in property stand transferred to third party or person whose vested rights can be disturbed only by a decree of competent civil court. One cannot lose sight of the fact that Section 80 providing for "provisions relating to transfer of property and contracts" contained in Chapter III of the "Conduct of Business" in the Rajasthan Municipalities Act, 1959 does not vest any power of the civil court with the State Government or authority authorized by the State, namely, the District Collector. That is why, while giving such powers to modify, cancel or rescind whole or in part the proposal made for lease, sale or transfer the Government land, further power is given to the learned Dist. Collectors are only to modify, cancel or rescind "any action or proceedings taken in pursuance thereof or may give any other directions as may be deemed proper" which may include action or direction to initiate steps by filing suits for cancellation of registration sale-deeds or lease deeds. Had Legislation wanted to give specific power to the learned District Collector or the State Government to cancel, modify or rescind even the registered conveyance deeds in pursuance of such proposal,

it would have specifically provided for the same, but it has not been done.

25. Even Sub-section (3) of Section 80 only envisages a situation where a person has entered into possession of the land in question for which the proposal and subsequent action is found to be illegal and in contravention of law and therefore giving him the status of a deemed unauthorized occupants under the provisions of Rajasthan Public Premises (Eviction of Unauthorized Occupants) Act, 1965, the provisions of Sub-section (3) of Section 80 empowers the authorities concerned to evict the person concerned from land and not from the constructed house only if such lease, sale or transfer even though based on a proposal in contravention of law, has not yet been confirmed by the State Government or prescribed authority in the prescribed manner and on the prescribed conditions. It is only if such transfer or contract is not confirmed as aforesaid, the consideration, if any, received by the Board, Chairman, Vice-Chairman, member or officer of the board for such lease, sale, transfer or contract, shall as far as possible be refunded to the person evicted from such land and the words "house" or "construction" are conspicuous by their absence in Section 80(2) or 80(3) of the Act.

26. The parameters and limits of Section 80, therefore, in the opinion of this Court, are limited to the extent of modifying, cancelling or rescinding the proposal for lease, sale etc., if found to be in contravention of law till the party concerned has not raised any construction thereon and it is still open land from which the person so concerned can be evicted under Section 80(3) of the Act deeming him to be an unauthorized occupant under the provisions of 1965 Act. The last two words in Section 80(3) "such land" are not without significance. These provisions also do not permit cancellation of registered conveyance deeds like lease deeds or sale deeds by the District Collector and he can only direct the authorities to take appropriate measures before the competent civil courts for cancellation of such registered conveyance deeds. Therefore, with great respects, the contention of the learned counsel for the petitioner - Municipal Council, Mr. T.S. Champawat, that if the original proposal is found to be illegal, the registered conveyance deed should automatically fall to the ground, which he submitted relying upon the observations of the Hon'ble Supreme Court in the case of *Mithoo Shahani v. Union of India* and ors. reported in , AIR 1964 SC 1536, is misconceived and cannot be accepted. The case of *Mithoo Shahani* (supra) is distinguishable. It was a case of "sanad" issued in pursuance of allotment order issued by incompetent authority. "Sanad" cannot be equated with the registered conveyance deeds transferring property rights to which provisions of Transfer of Property Act apply. The Hon'ble Supreme Court was dealing with a case arising under the provisions of Displaced Persons (Compensation and Rehabilitation) Act, 1954. The "Sanad" (right to occupy) could only entitle such person, if displaced, to a particular compensation and rehabilitation as envisaged under that Act. The same cannot be equated with the person who has got his rights in the property under the registered conveyance deeds governed by the Transfer of Property Act. As aforesaid, since Section 80 does not confer any power of civil courts upon the District Collector or the State Government and the provisions of Section 80 (2)

(b) read with Section 80(3) also do not stipulate any such power, therefore, no such power can be impliedly read into these provisions as vested with the learned District Collector. Therefore, this contention of the learned counsel for the petitioner, Mr. T.S. Champawat, is liable to be rejected and is accordingly rejected. For the same reason, the decision of coordinate bench of this Court in the case of Smt. Rampyari (supra) decided on 5.5.2006 also cannot be applied in the facts and circumstances of the present case.

27. Turning back to the facts of the present case, since the respondents in their reply filed to the writ petition along with the documents have contended that the registered conveyance deeds were executed in their favour and they had also paid the price for the same, therefore, the learned Dist. Collector cannot be empowered to set aside the same, even though this Court comes to the conclusion that the learned Dist. Collector has power to deal with such matters beyond the "proposal" stage as held by this Court in the case of Municipal Board, Sanchore (supra) by the learned Single Judge as well as Division Bench but such powers of Collector stops short and just before the actual cancellation of registered conveyance deeds, sale deeds or lease deeds. However, the contention of the respondents that no fruitful purpose will be served by remanding the case back to the learned District Collector, also can not be accepted at its face value. Since in view of law laid down as aforesaid by this Court upto Division Bench in the case of Municipal Board, Sanchore (supra), the learned District Collector has power to deal with such cases even beyond "proposal" stage and the questions of facts raised by the respondents in present set of writ petitions before this Court that equities have arisen in their favour by raising of construction under the permissions granted by the Municipal Council itself and that there are registered sale-deed or lease-deeds in their favour or that they are holding the decrees in their favour from the competent civil courts, these are all questions of facts, which are required to be proved before the learned District Collector in accordance with law by producing the relevant documents before him in individual cases.

28. The process of determination of these questions of facts on case to case basis cannot be curtailed on mere averments or even such documents, which are not yet proved, but are produced along with the reply to the writ petition of the Municipal Council, Pali before this Court in some of the cases. Therefore, the remand of the case to the learned Dist. Collector in the present case is required to be made notwithstanding this contention of the learned counsels for the private respondents and the legal position delineated above and the learned Dist. Collector is obviously expected to decide the cases again upon such remand in the light of the aforesaid facts and circumstances including the orders passed by the Hon'ble Minister on 14.10.1992 quoted above and also the powers conferred under Section 80(2)(b) read with Section 80(3) as delineated above in this judgment.

29. Therefore, with the aforesaid observations and directions and the delineation

of powers of learned Dist. Collector under section 80 of the Rajasthan Municipalities Act, 1959, these writ petitions of the Municipal Council, Pali are partly allowed and setting aside the earlier impugned order Annex.2 dtd. 20.8.1998 of the Dist. Collector and Order dtd. 22.2.2005 (Annex.4) of the Divisional Commissioner, Jodhpur, the matters are restored back to the learned Dist. Collector, Pali for decision afresh in accordance with law. No order as to costs."

20. In view of this legal position, this Court is satisfied that in the present case, the impugned orders passed by the learned District Collector assuming the jurisdiction under Order (Annex.15) dated 23.06.2004 and the subsequent order (Annex.16) dated 03.12.2004 cancelling the said registered lease-deed in favour of present petitioner, cannot be sustained as being without jurisdiction and are thus liable to be quashed and set aside by this Court. Ordered accordingly.

21. Accordingly and in view of above, the present writ petition succeeds and the same is, accordingly, allowed with no orders as to costs. A copy of this order be sent to the concerned parties forthwith.