

(2007) 10 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3821 of 2007

Shri Vinayak Colony Vikas Samiti

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 03-10-2007

Acts Referred:

Citation : (2008) 1 WLN 468

Hon'ble Judges : Govind Mathur, J

Bench : Single Bench

Judgement

Govind Mathur, J.—The petitioner, a society registered under the Societies Registration Act, having membership among the residents of Chopasani Housing Board, preferred this petition for writ denominating it as a public interest litigation claiming the reliefs as follows:

(I) By an appropriate writ, order or direction the Allotment of Lottery 16.06.2007 may be quashed.

(II) By an appropriate writ, order or direction the respondent may be directed to keep reserved for park the open land which is nearer to house Nos. 15/50 and opposite to house Nos. 15/413 to 418 and 15/32 to 15/34 in Sector 15 of the Chopasani Housing Board Scheme, Jodhpur and not to allot the said land to any body.

2. The Division Bench of this Court by order dt. 04.07.2007 held that the litigation is primarily for the cause related to the occupants of houses No. 15/1 to 15/50, 15/413 to 15/424 and 15A to 15W of Sector 15 of the Chopasani Housing Board Scheme and such cause cannot be considered to be as a public interest litigation. The writ petition in view of the order referred above was placed before the Single Bench.

3. The allegations of the petitioner in the petition for writ are that:

(1) respondent Housing Board made allotment of houses in Chopasani Housing

Board as well as Kudi Bhagtasani Housing Scheme under the recommendations of a property allotment committee that was not constituted as per Clause (26) of the Rajasthan Housing Board (Disposal of Property) Regulations, 1970;

(2) respondent Housing Board has effected 100% reservation of 28 houses sought to be allotted in Chopasani Housing Board in favour of its employees and that is illegal;

(3) the allotment of houses under general registration scheme to respondents No. 4 to 11 and certain other persons in Chopasani Housing Board Scheme shall effect the public amenities available to members of the petitioner society adversely in view of the fact that the woodland i.e. required to be kept reserved shall be curtailed; and

(4) the allotment of any further houses in Chopasani Housing Board Scheme will adversely effect the drainage and sewerage system.

4. A reply to the writ petition has been filed on behalf of the respondents, rejoinder to the same is filed by the petitioner and certain other additional affidavits are also submitted, however, the issues relating to extension of reservation in house allotment to the employees of the Housing Board, impropriety in constitution of the property allotment committee are not required to be adjudicated in this petition for writ as the Division Bench of this Court by its order dt. 04.07.2007 made it clear that the cause involved in this petition for writ is relating to the occupants of certain houses and the present one is not a public interest litigation. The members of the petitioner association are admittedly having their own houses, thus, atleast in this petition for writ it is not open for them to challenge allotments sought to be made in favour of other persons.

5. After excluding the issues above, the question only survives is that whether the respondent Housing Board by making allotment of houses to the respondents No. 4 to 11 and also to other persons is curtailing woodland available to the residents of Sector 15, Chopasani Housing Board and also effecting adversely the drainage and sewerage system.

6. In reply to the writ petition the Housing Board in quite unambiguous terms denied the fact that the allotment of houses shall in any way adversely effect the public amenities available to the members of the petitioner society and also that it will curtail or deny the facility of parks/woodland already available. The relevant portion of the reply submitted by the Housing Board reads as follows:

3. Contents of Para No. 3 of the Writ Petition are matter of record and are not disputed. However it is submitted that the Board while framing schemes always keeps provisions for parks/woodland as per the rules and regulations of the Board.

4. Contents of Para No. 4 of the Writ Petition as stated are wholly wrong and are vehemently denied. The site plan submitted by the petitioner is not an authentic copy of the lay out plan of Sector 15 Chopasani Housing Board. The answering

respondents submit a true and correct copy of the site/lay out plan of Sector 15 Chopasani Housing Board, Jodhpur and the same is marked as Ann.R/2/1. A bare look at the site plan Ann.R/2/1 will reveal that the respondents have made adequate provision for park/woodland in this Sector and the site plan submitted by the petitioner is not a correct plan. The answering respondents further submit that in all other sectors, likewise adequate provisions have been made for parks/woodlands as per the norms laid by the Town Planning Department and the Board. The answering respondents shall keep ready the site/layout plans of other sectors for the perusal of the Hon?ble at the time of arguments. It is further submitted that as per the Ann.R/2/1 the land in dispute is neither a park nor woodland but is land earmarked for constructing houses. Merely because the construction could not be made earlier will not change the category of the land.

5. Contents of Para No. 5 of the Writ Petition are wholly wrong and are emphatically denied. It is wrong that the then Dy. Housing Commissioner ever give any assurance to the members of the petitioner Society that no construction shall be made on the disputed land. The petitioner may kindly be put to strict proof of these averments.

7. The Housing Board in sur-rejoinder specifically mentioned that the drainage and sewerage lines shall not be effected in any way by allotment of houses in Chopasani Housing Board Scheme. The relevant portion of surrejoinder reads as follows:

3. Contents of Para No. 3 of the rejoinder are wholly wrong and are emphatically denied. It is wholly wrong to state that on account of the construction on plot No. 12E/5-A and 12E/6-A the existing drainage line is being destroyed. It is most respectfully submitted that the alleged drainage line is a non-functional for long time. It is submitted that the ADB has constructed a sewerage line for the locality which serves the drainage and sewerage. It is further submitted that if any person can complain in this regard it can only be the allottees of the house No. 12E/5-A and 12E/6-A and not the petitioner who are residents of Sector 15.

4. Contents of Para No. 4 of the rejoinder are wholly wrong and are emphatically denied. There is no canal in this Sector as alleged by the petitioner. It is submitted that there exist a nalla and the same is existing as it was and the answering respondents have not blocked any waterway or nalla so as to damage houses of Sector No. 16, 17, 17-E and nearby areas. Furthermore it is further submitted that if any person can complain in this regard it can only be the residents of Sector No. 16, 17, 17-E and nearby areas and not the members of the petitioner society who are residents of Sector 15.

It is also wholly wrong on the part of the petitioner to state that house No. 15/16 is situated over the existing water pipe line. It is submitted that this pipe line is outside the house No. 15/16. It is further submitted that the answering respondents have left 2.5 feet space between house No. 15/15 and 15/16 for this pipe line and so also have covered it with stone masonry for the safety of this

pipe line as per the directions of the concerned JEN PHED Govt. of Rajasthan.

8. During the course of arguments counsel for respondent Housing Board has ensured that the facility of park/woodland as per norms shall remain available and be kept intact to the residents of Chopasani Housing Board Scheme and any development or promotional work including allotment of new houses will not effect the drainage and sewerage system. He has further ensured the Court that all efforts shall be made to provide all public and general amenities to the residents of Chopasani Housing Board by the Board including dense plantation, proper availability of drainage and sewerage system etc.

9. Looking to the averments made in reply to the writ petition and also in sur-rejoinder, I am convinced that the respondent Board in any manner not going to reduce park/woodland available to the residents of the Houses referred in the order dt. 04.07.2007 passed by the Division Bench of this Court.

10. An application is also preferred by one Shri Vijay Kumar Jain, resident of 16/538, Chopasani Housing Board, Jodhpur to become party to the proceedings on the ground that the drain situated near his house shall be choked if Housing Board be permitted to make allotments of houses in Sector 15 of the Chopasani Housing Board Scheme. In view of the averments contained in the reply to the writ petition and also the statement given by counsel for the Housing Board, I am satisfied that all cautions shall be taken by the Board to maintain drainage and sewerage lines. Be that as it may, even after such assurance given by the Board, if the applicant is having any problem with regard to drainage or sewerage nearby to his house, he may make necessary complaint in this regard to the competent authorities of the Housing Board.

11. With the observations as above, this writ petition is disposed of.