
(2017) 02 RAJ CK 0136
In the Rajasthan High Court
Case No : 8846 of 15

Smt. Daksha & anr.

APPELLANT

Vs

State of Rajasthan & ors.

RESPONDENT

Date of Decision : 10-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Rajasthan Land Revenue Act, 1956, Section
90

Citation : (2017) 02 RAJ CK 0136

Hon'ble Judges : Sangeet Lodha

Bench : SINGLE BENCH

Advocate : Muktesh Maheshwari, Sandeep Shah, Pratistha Dave, Rajesh Joshi,
Chandraveer Singh, M.C.Bishnoi

Judgement

1. These petitions are directed against order dated 24.6.14 passed by the District Collector, Dungarpur, whereby order dated 20.12.12 passed by the Authorised Officer, Municipal Board, Sagwada converting the agriculture land measuring 0.13 biswas comprising khasra no.5497 situated at village Sagwada, District Dungarpur in favour of the petitioner Puriya for residential purposes under Section 90A of Rajasthan Land Revenue Act, 1956(for short "the Act of 1956"), stands set aside. Consequently, the patta issued in his favour stands cancelled and the matter has been remanded to the Authorised Officer, Municipal Board, Sagwada to take appropriate proceedings for conversion after taking into consideration the actual position of the land in the record and at the site.

2. The relevant facts are that Shri Dungar Makwana, resident of Sagwada, made an application under Section 90B of the Act of 1956 for conversion of land measuring 0.13 biswas i.e. 1261 sq. yard comprising khasra no.5497 for residential purposes before the Authorised Officer (Land Conversion), Sub Divisional Officer, Sagwada. The application preferred was rejected by the Authorised Officer (Land Conversion), Sagwada vide order dated 19.1.11 relying

upon the report submitted by the Tehsildar, clarifying that the plan submitted by the applicant, the khatedar of the land, is incorrect inasmuch as, in the map produced in the west existence of PWD Road is shown whereas as per the revenue record in the west of khasra no.5497, there exists land of khasra no.5498, then abadi land of khasra no.5303 and thereafter, there is PWD Road. The order passed by the Authorised Officer as aforesaid was not further challenged by the applicant Dungar by taking appropriate remedy and the same attained finality.

3. Dungar sold the said land to the petitioner Puriya by way of registered sale deed. In the meantime, the area wherein the land in question is situated stood transferred to the Municipal Board, Sagwada. After purchasing the land, Puriya made an application for conversion of the land ad measuring 1261 sq. yard to the Authorised Officer (Land Conversion) i.e. the Executive Officer, Municipal Board, Sagwada. The Authorised Officer proceeded to convert 1088 sq. yard land out of 1261 sq. yard for residential purposes vide order dated 8.2.13 and issued patta in favour of the petitioner Puriya. On the same day, petitioner Puriya sold the land in favour of the petitioners Daksha and Kachru by way of registered sale deed.

4. Aggrieved by the conversion of the land as aforesaid vide order dated 8.2.13, the respondents Bharti, Kanhaiya Lal, Tara Devi and Praveen Kumar (the respondents no.7 to 10 in Writ Petition No.8875/15 and respondents no.6 to 9 in Writ Petition No.8846/15), the owners of abadi land comprising khasra no.5503/4, preferred an appeal before the District Collector, Dungarpur, which stands allowed by the order impugned and the matter stands remanded to the Authorised Officer, Municipal Board, Sagwada, for consideration afresh, as indicated above. Hence, these petitions.

5. The District Collector while allowing the appeal as aforesaid, arrived at the finding that the application preferred by Puriya having been rejected by the Sub Divisional Officer, Sagwada vide order dated 19.1.11, the order passed by the Authorised Officer, Municipal Board, Sagwada converting the same land for residential purposes is not sustainable. The District Collector arrived at the conclusion that it will be appropriate that matter with regard to conversion of the land is considered by the Authorised Officer afresh, after taking into consideration the actual position of the land in the record and at the site.

6. Learned counsels appearing for the petitioners contended that the District Collector has seriously erred in setting aside the conversion order and cancelling the patta relying upon order dated 19.1.11 passed by the Sub Divisional Officer, Sagwada, rejecting the application preferred by the petitioner Puriya for conversion of the land in question for residential purposes. Learned counsel submitted that the application preferred by the petitioner Puriya under Section 90B was rejected by the Sub Divisional Officer on technical grounds and therefore, the Executive Officer has committed no error in allowing the application preferred by the petitioner Puriya under Section 90A of the Act of

1956, for conversion of the land for residential purposes. Learned counsel submitted that earlier application was rejected by the Sub Divisional Officer observing that the map produced by the petitioner Puriya seeking conversion of the land is not the correct map, whereas the map produced alongwith the fresh application filed before the Authorised Officer, Municipal Board was the correct map and thus, after following the procedure laid down, the conversion order passed could not have been interfered with by the District Collector on the ground that the patta issued shall lead to multiplicity of the litigation between the parties. Learned counsel submitted that the order impugned passed by the District Collector in perfunctory manner deserves to be set aside.

7. On the other hand, the counsels appearing for the respondents submitted that while making an application for conversion of the land in question before the Authorised Officer of Municipal Board, Sagwada, under Section 90A of the Act of 1956, the petitioner Puriya had concealed the factum of rejection of his earlier application preferred under Section 90B of the Act of 1956, seeking conversion of the land for residential purposes as aforesaid. Learned counsel submitted that the order passed by the Sub Divisional Officer, Sagwada, rejecting the application preferred by the petitioner Puriya seeking conversion of the land for residential purposes having attained finality, without there being any change in factual position, the fresh application preferred under Section 90A of the Act of 1956 before the Authorised Officer, Municipal Board, Sagwada was not maintainable. Learned counsel submitted that the petitioner Puriya had produced the same map before the Authorised Officer, Municipal Board, which was not accepted by the Sub Divisional Officer, Sagwada as the correct map. Drawing the attention of the court to the revenue map, learned counsel submitted that apparently, the petitioner Puriya had concealed the position of the petitioner's land, the land comprising khasra no.5498 and the existence of the PWD Road and thus, the order passed by the Authorised Officer, Municipal Board, Sagwada without taking into consideration the actual position of the land, sought to be converted, has rightly been set aside by the District Collector and the remand order passed does not warrant any interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

8. I have considered the rival submissions and perused the material on record.

9. Indisputably, the petitioner Puriya in the first instance preferred an application under Section 90B of the Act of 1956 seeking conversion of the land in question for residential purposes before the Sub Divisional Officer, Sagwada. It is not in dispute that the application preferred was rejected by the Sub Divisional Officer vide order dated 19.1.11 observing that the neighborhood of the land as shown in the map produced does not tally with the revenue record. The Sub Divisional Officer categorically observed that the petitioner Puriya in the west of his land, had shown existence of PWD Road whereas, as per the revenue map, in the west of his land, there exists land comprising no.5498, then the land comprising khasra no.5303 i.e. inter alia the petitioner's land and thereafter, there exists

PWD Road. The factual position as noticed by the Sub Divisional Officer, Sagwada stands fortified from the revenue map, which is available on record. It is pertinent to note that while rejecting the application as aforesaid, the Sub Divisional Officer has categorically found that the amended plan got certified by Municipal Board, Sagwada showing the existence of PWD Road in the west, is not correct. Admittedly, the order passed by the Sub Divisional Officer, rejecting the application preferred by the petitioners seeking conversion of the land, attained finality. In this view of the matter, the Authorised Officer, Municipal Board, Sagwada was not justified in permitting the conversion of the land without verification of the actual position of the land as per revenue record and at the site and ignoring the order passed by the Sub Divisional Officer, as aforesaid, rejecting the conversion application of the petitioner. In this view of the matter, in the considered opinion of this court, the order impugned passed by the District Collector, remanding the matter for fresh consideration after verification of the actual position of the land as per the revenue record and at the site, does not suffer from any infirmity, illegality or jurisdictional error so as to warrant interference by this court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution of India.

10. In the result, the petitions fail, the same are hereby dismissed. No order as to costs.