

(2002) 09 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 4925 of 1992

Smt. Kanchan Devi

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 1 WLC 781 : (2003) 1 WLN 22

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner against the respondents on 28.8.1992 with a prayer that by an appropriate writ order or direction the Rule 9(11) of the Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for Construction of Cinemas, Hotels and Establishment of Petrol Pumps), Rules 1978 be declared illegal and be struck down and further it may be declared that the petitioner is not liable to pay lease rent again under the Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for Construction of Cinemas, Hotels and Establishment of Petrol Pumps) Rules, 1978 and further the impugned notice dtd. 21/24.6.1992 (Annex. 8) be quashed and set aside.

2. The facts as put forward by the petitioner are as under:

(i) That the petitioner purchased a land measuring 3/4 bighas falling in Khasra No. 618/1 from one Shri Dharam Raj by a registered sale-deed dtd. 21.6.1971.

(ii) That the petitioner wanted to construct a cinema hall and, therefore, she applied for conversion of land under the Provisions of Rajasthan Land Revenue (Conversion of Agricultural Land for Residential or Commercial Purposes in Rural Areas) Rules, 1971 (hereinafter referred to as the Rules of 1971).

(iii) That the competent authority, namely the Collector, Bhilwara (respondent No. 2) permitted the conversion of petitioner's land vide his order dtd. 19.1.1974 (Annex. 1).

(iv) That the petitioner deposited the amount of premium as ordered by the Collector (respondent No. 2) and on payment of the same, the Sanad (Annex. 2) was issued to the petitioner on 28.1.1974 by which land was converted.

(v) That in the meanwhile, no objection certificate for construction of cinema hall was obtained from the Collector, Bhilwara (respondent No. 2) and after the construction of the cinema hall, a licence was granted under the Rajasthan Cinemas Regulation Act, 1950 in favour of the petitioner.

(vi) The further case of the petitioner is that the State Government in exercise of powers conferred by the provisions contained in Section 90A and Section 102 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the Act of 1956) framed the Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agricultural Land for Construction of Cinemas, Hotels and Establishment of Petrol pumps), Rules, 1978 (hereinafter referred to as the Rules of 1978).

(vii) That after coming into force of Rules of 1978, a notice dtd. 8.2.1983 (Annex. 3) was received by the petitioner from the office of Collector, Bhilwara (respondent No. 2) directing the petitioner to make further payment of lease rent as per the Rules of 1978.

(viii) That aggrieved from the issuance of notice dtd. 8.2.1983 (Annex. 3) the petitioner preferred an appeal before the Revenue Appellate Authority and the Revenue Appellate Authority vide its judgment dtd. 25.3.1983 (Annex. 4) quashed the notice dtd. 8.2.1983 (Annex. 3) issued by the respondent No. 2 and remanded the matter back for fresh decision.

(ix) That the Collector again on remand, passed fresh order maintaining his previous order dtd. 8.2.1983 (Annex. 3) through order dtd. 16.4.1985 (Annex. 5). Thereafter the petitioner again preferred an appeal before the Revenue Appellate Authority, Ajmer and the Revenue Appellate Authority again remanded the matter back to the Collector, Bhilwara (respondent No. 2) through its judgment dtd. 11.11.1986 (Annex. 6).

(x) It may be stated here that in the judgment dtd. 11.11.1986 (Annex. 6), the Revenue Appellate Authority observed that the Rules of 1971 stood repealed by coming into force of new Rules of 1978 and because of Rule 9(11) of the Rules of 1978, the lease rent could be charged again.

(xi) That thereafter, the Collector (respondent No. 2) again issued a notice dtd. 21/24.6.1992 (Annex. 8) as to why the conversion order be not cancelled and the land be not reverted back to the State Government. Hence, this writ petition with the abovementioned prayer. Since in this writ petition validity of Rule 9(11) of the Rules of 1978 has also been challenged, therefore, for convenience, Rule

9(11) of the Rules of 1978 is quoted hereunder:

9. Conditions of allotment, conversion and Regularisation:

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11. The lease rent shall apply to all conversions effected during the period starting from 16th December, 1960. The amount already paid as premium shall be adjusted against the total amount payable.

3. Reply to the writ petition was filed by the respondents and their main contention is that because of Rule 9(11) of the Rules of 1978, the Collector had power to issue notice dtd. 21/24.6.1992 (Annex. 8) and further the Collector was also entitled to charge fresh conversion charges as per provisions contained in the Rules of 1978 irrespective of the fact that charges were earlier paid under the Rules of 1971 by the petitioner. Hence, this writ petition should be dismissed.

4. I have heard both and perused the record.

5. There is no dispute in this case on the point that in the beginning agricultural land in dispute was converted by the respondent for use of Cinema and that conversion was made under the provisions of Rules of 1971 and, there is also no dispute that the premium which was to be charged under the Rules of 1971 was paid by the petitioner and thereafter she was given permission through Sanad (Annex. 2) dtd. 28.1.1974.

6. Thus, the fact that disputed land was converted under the provisions of Rules of 1971 stands established.

7. There is also no dispute on the point that Rules of 1978 were framed and they were made effective with effect from 26.10.1978 and Rule 12 of the Rules of 1978 deals with repeal and saving clause and by that Rule, the Rajasthan Land Revenue (Allotment and Conversion of Agricultural Land for Establishment of Petrol Pump) Rules, 1973 (hereinafter referred to as the Rules of 1973) were repealed.

8. There is also no dispute on the point that fresh lease rent is being charged from the petitioner as power has been given to the Collector under Rule 9(11) of the Rules of 1978 as stated above.

9. In my opinion, for the following reasons, this writ petition has to be allowed:

(i) That when the land of the petitioner was already converted for the purpose of construction of Cinema and for that requisite amount as provided in the Rules of 1971 was deposited by the petitioner and permission was also issued to the petitioner through Sanad (Annex. 2) dated 28.1.1974, no fresh/revised lease rent could be charged by respondent No. 2 for conversion of same land for cinema for which the petitioner had already paid the premium and the land was duly converted for that purpose.

(ii) That so far as applicability of provisions of Rules of 1978 is concerned, it may

be stated here that Rule 9(11) of the Rules of 1978 would not be applicable in this case as through Rules of 1978, Rules of 1973 were repealed, but the land of the petitioner was converted not under the repealed Rules of 1973, but under the Rules of 1971 and, therefore, the provisions of Rules of 1978 would not be applicable in the case of the petitioner and when this being the position, issuance of notice dtd. 21/24.6.1992 (Annex. 8) by the respondent No. 2 is without jurisdiction.

(iii) That since in this case provisions of Rules of 1978 are not applicable, therefore, validity of Rule 9(11) of the Rules of 1978 is not being decided in this writ petition.

(iv) That the observation made by the Revenue Appellate Authority, Ajmer in its judgment dtd. 11.11.1986 (Annex. 6) that Rules of 1971 stood repealed by the Rules of 1978 is basically wrong as through Rules of 1978, Rules of 1973 stood repealed. Therefore, approach of the learned Revenue Appellate Authority on the applicability of Rule 9(11) of the Rules of 1978 is absolutely wrong, therefore, the findings recorded by the Revenue Appellate Authority in its judgment dtd. 11.11.1986 (Annex. 6) may be classified as perverse one.

(v) Had the conversion of land of the petitioner taken place under the provisions of Rules of 1973, and fresh lease-rent charged by the respondents under Rule 9(11) of the Rules of 1978, the position would have been different one. Since in the present case, the land was converted under the provisions of Rules of 1971. therefore, the petitioner could not be asked to pay fresh lease rent under the Rules of 1978, therefore, issuance of notice dtd. 21/24.6.1992 (Annex. 8) has become illegal one and is liable to be quashed and set aside.

10. For the reasons mentioned above, this writ petition is liable to be allowed and notice dtd. 21/24.6.1992 issued by the Collector, Bhilwara (respondent No. 2) is liable to be quashed and set aside.

Accordingly, the present writ petition is allowed and the notice dtd. 21/24.6.1992 (Annex. 8) issued by the Collector, Bhilwara (respondent No. 2) is quashed and set aside and it is declared that the petitioner is not liable to pay lease rent again under the Rajasthan Land Revenue (Allotment, Conversion, and Regularisation of Agricultural Land for Construction of Cinemas, Hotel and Establishment of Petrol Pumps), Rules, 1978.

Cost made easy.