
(1999) 02 RAJ CK 0036
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2424 of 1987

Smt. Pushpa

APPELLANT

Vs

Municipal Council, Jodhpur and Others

RESPONDENT

Date of Decision : 11-02-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Municipalities Act, 1959 — Section 80

Citation : AIR 2000 Raj 85

Hon'ble Judges : Bhagwati Prasad, J

Bench : Single Bench

Advocate : Govind Mathur and Sanjay Mathur, for the Appellant; N.M. Lodha and M.R. Singhvi, for the Respondent

Final Decision : Dismissed

Judgement

Bhagwati Prasad, J.—The petitioner in the present writ petition claims that she has a house near Adharsheela Inside Nagori Gate, Jodhpur and in the rear side of this house, there is a plot which is in her possession since last 18 years. The State Government issued a notification dated 5/9-5-1977 being No. F.7(187) LSG/58/1152/1632. In pursuance of this notification unauthorised possessions, on certain conditions, as laid down in the aforesaid notification, were to be regularised. To get the benefit of the notification aforesaid, the petitioner applied to the respondent Municipal Council, Jodhpur for regularisation of the possession over the said plot, it was ordered by the Council that the plot in possession of the petitioner be leased out to her on payment of Rs. 6/- per Sq. Yds. The petitioner deposited the amount in relation to the plot and a lease deed was executed by the Municipal Council, Jodhpur in favour of the petitioner dated 26-3-1982 which was registered on 16-10-1982.

2. An application was moved against the said grant of lease in favour of the petitioner by the respondents Nos. 3 and 4 before the Additional Collector, Jodhpur u/s 285 of the Rajasthan Municipalities Act, 1959 (referred to

hereinafter as "the Act of 1959"). The Additional Collector set aside the order of the Municipal Council, Jodhpur dated 26-5-1982 by virtue of which the lease was sanctioned in favour of the petitioner vide order dated 31-5-1983 and he remanded the matter back to the Municipal Council, Jodhpur to decide the same afresh. Being aggrieved by the order dated 31-5-1983 of the Additional Collector, Jodhpur the petitioner preferred a writ petition before this Court being S.B. Civil Writ Petition No. 1738/ 1983. This writ petition was decided by this Court and the order of the Additional Collector was quashed vide its Judgment dated 23-9-1983. This Court held that Section 285 of the Act is prohibitory in nature. In cases where the action has been completed and nothing remains to be done Section 285 is not applicable.

3. After these proceedings the respondent No. 5 preferred an application u/s 80 of the Act assailing the validity of the abovementioned allotment order and prayed that the lease deed be quashed. The petitioner contested the application filed by the respondent No. 5 u/s 80 of the Act. These proceedings were decided by the Additional Collector, Jodhpur vide order Annex. 1. It was held that in terms of Section 80 of the Act as the delegate of the State it can set at naught any proposal and action or proceedings undertaken in pursuance thereof, if the same is incorrect, illegal or Improper. Being aggrieved by this order of the Additional Collector, Jodhpur, the petitioner has preferred the present writ petition.

4. The petitioner has assailed the order Annex. 1 alleging that it is only a proposal which can be examined by the State Government u/s 80(2)(a) of the Act. This power is only available at the proposal stage. When such proposal had culminated into grant of a lease and the lease has been executed, there remains no power with the State or as its delegatee Additional Collector to interfere with it. Therefore, the powers conferred by Section 80(2)(a) could not have been invoked and the lease granted in favour of the petitioner could not be cancelled. The application, when filed before the Additional Collector, there was no proposal pending. The proposal has resulted into grant of a lease, which has been registered.

5. The petitioner further alleged that the application of respondent No. 5 was a belated one inasmuch as the action was finalised in favour of the petitioner in May, 1982, whereas the application against the grant of lease in favour of the petitioner has been filed in May, 1987. The respondent No. 5 has been sleeping over the matter, and, therefore, on the ground of delay and laches also the respondent No. 2 should not have invoked the powers in favour of respondent No. 5. If such belated application can be entertained then the sword of Section 80 of the Act will always be kept on hanging on bona fide lessee of the Municipal land. The petitioner's possession over the land in question was bona fide regularised being an old possession in terms of the State Government notification. The respondent No. 2 has wrongly assumed that the land in question forms part of a public chowk and this was based on a wrong assumption and,

therefore, the findings of the respondent No. 2 are wrong and incorrect.

6. On behalf of the respondent No. 5 it has been alleged that a parcel of land which was in fact a part of public way was alienated by the Municipal Council, Jodhpur. Any parcel of land, which forms part of the public way is not the property of the local bodies. As a matter of fact, local bodies are only custodian of the public property and they hold the same for and on behalf of the public at large and the public at large has got every right to use it. The local bodies are not expected to alienate, transfer, sell or dispose of the same. Any alienation, transfer, sale in this regard has been seen by the Courts with such strongness that they have been quashed. A reference has been made by the learned counsel for the respondent in this regard to the following decisions :

1. 1982 Rajasthan LR 505 : Smt. Kishna Devi Vs. Vishnu Mitra and Another,
2. 1984 RLR 938, Devi v. State of Raj.;
3. Citizens of Bundi and Others Vs. Municipal Board, Bundi and Others, etc.,
4. 1991 (1) RLR 845, Nizamuddin v. The Board of Revenue;
5. Bihari Lal Batra Vs. The Chief Settlement Commissioner and Others,

7. Since the respondent No. 2 has set at naught a wrong action of the Municipal Council, Jodhpur, the same is, not liable to be interfered with in writ jurisdiction under Article 226 of the Constitution of India because it will tantamount to perpetuation of illegality. A reference in this regard has been made to Jagan Singh Vs. State Transport Appellate Tribunal, Rajasthan and Another,

8. Learned counsel for the respondents has urged that the question of delay is of no consequence because the land by any action of the respondent Municipal Council does not become available for allotment and since the land does not get converted from public way to any other category any amount of delay cannot, therefore, be to the advantage of the petitioner.

9. As regards Section 80 of the Act the learned counsel for the respondents has urged that in Section 80(2)(b), the addition of the words "any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper" clearly shows the intention of the legislature that it was not only the proposal but any subsequent act also which was intended to be brought within the sphere of Section 80. Therefore, it would be wrong to say that it was only the action of the respondent Municipal Council which relate to a proposal can be interfered with in Section 80 of the Act. The subsequently added words quoted hereinabove make it wide enough to annul any action taken in pursuance of the proposal which is violative of the rights of public at large. In the instant case, a part of the public way has been allotted to the petitioner which the Municipal Council cannot do as it had no right and since the Municipal council had no right, there was no question of the order being sustained. The order had rightly been interfered with by the Additional Collector.

10. After hearing of the case concluded, an application was purportedly filed on behalf of the respondent No. 5, the case was put up for the decision of the application. No one appeared in support of the application. The application was designed to withdraw the objections filed before the Additional Collector. It was considered by this Court that it was too late in the day to make such an application. Therefore, the application was rejected and the case was set up for rehearing. Nothing was added by the parties. After the hearing was re-set and they relied upon their earlier arguments, the case was then closed.

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

12. Learned counsel for the petitioner has heavily relied on the delay in filing the application and the term proposal used in Section 80 of the Act. The delay of 5 years no doubt gives a cause to the petitioner to complain. But when it relates to a problem in relation to the rights of public at large and when in relation to the same land some litigation was pending and the situation of the land remained the same, the public rights were not affected due to the pendency of the proceedings u/s 285 of the Act, therefore, nothing can be seen in the delay of 5 years. The public at large knew that some one is agitating the rights of the public in relation to the land in question. In any case the rights of the public at large cannot be permitted to be defeated only on account of delay and latches.

13. In this case, the petitioner claims her rights as a trespasser on a land belonging to the Municipal Council. The land has been held to be a public chowk. Nothing has been put forward by the petitioner to rebut the findings arrived at by the Additional Collector respondent No. 2 that the land in question is a land belonging to the public chowk. Firstly, this Court would be slow in going into the controversy of factual matrix whether the land in question is a public chowk or not because the writ jurisdiction is not meant to entertain the disputed questions of facts. Secondly when the petitioner herself has not made any efforts for bringing on record any material which could have supported her case no interference is called for. Therefore, the findings of the respondent No. 2 that the land in question is a public chowk is not liable to be interfered with.

14. Once it is accepted that the land in question is a public chowk then exercise of powers u/s 80 of the Act cannot be seen to be suffering from any arbitrariness on the part of the administrative authorities. Section 80 of the Act clearly gives power to the State Government or the authorities acting under delegation, to interfere with any proposal or any action or proceeding taken in pursuance thereof or may give any other direction as may be deemed proper. Since the proposal and aftermath have been made the subject-matter of jurisdiction u/s 80, it cannot be said that the Additional Collector has no jurisdiction to interfere with the order passed by the Municipal Council. The Hon"ble Supreme Court in Shri Mithoo Shahani and Others Vs. Union of India (UOI) and Others, has clearly laid down as under (at p. 1541, para 9) :--

"Where an order making an allotment is set aside the title which is obtained on the basis of the continuance of that order also falls with it. The relevant provisions of the Act and the Rules do not contain any provision which militates against the position which is consistent with principle and logic. It is manifest that a sanad can be lawfully issued only on the basis of a valid order of allotment. If an order of allotment which is the basis upon which a grant is made is set aside it would follow, and the conclusion is Inescapable that the grant cannot survive, because an order that the grant should be valid it should have been effected by a competent officer under a valid order,"

15. Thus, it is seen that the basic proposal being in relation to a land which was a public land it required to be interfered with. If the basic proposal of allotment of public land to the petitioner is subject to doubt then in the writ petition consequential question of delay etc. cannot be gone into. Therefore, the question of facts decided by the Additional Collector, Jodhpur in proceedings u/s 80 of the Act, cannot be made subject matter of writ petition before this Court.

16. In *Blhari Lal Batra (supra)* the Hon"ble Supreme Court determined the case on the question whether on the date of allotment, the allotment could be made in terms of the rules and having come to the conclusion that after promulgation of the rules, the land could not have been allotted, the Court held that the land allotted having come within the definition of urban area could not have been validly allotted and if the allotment could not have been made validly in terms of the rules, the allotment cannot be sustained. In the instant case, the land, which is subject-matter of this writ petition, falls within the definition of a public way/ chowk and, therefore, its allotment was not proper.

17. In the case of *Nizamuddin (1991 (1) RLR 84) (supra)* a Division Bench of this Court held that the land which forms part of the way can only be utilised as a way and not otherwise because, the general public has a right to use that land as public path and no encroachment can be permitted on that public path. It has been further held that even if any encroachment has been made it cannot be regularised but should be removed. Thus, in this back-ground it would be seen that this Court has held that on a public path the public has a right to use that land as public path and no encroachment can be permitted on a public path and as such the land cannot be regularised.

18. in *Citizens of Bundi and Others Vs. Municipal Board, Bundi and Others, etc.*, this Court has held that whether a place is a public park or chowk or maidan or public square etc. Is not very material as they are different forms and manifestations of basic concept of public use, public utility and public purposes and as such these public places cannot be sold by local authority or State.

19. In *Smt. Kishna Devi Vs. Vishnu Mitra and Another*, this Court held that sale of sanitary and public lane and grant of permission by U.I.T. to the defendant to make constructions over it does not extinguish the right of the plaintiff and as such civil Courts should grant temporary injunction.

20. In the case of *Devi (supra)*, this Court has held that the land which forms part of public way cannot be sold because such land vests in Panchayat only as trustee.

21. Thus, in the light of the aforesaid discussion of the decisions of this Court and the Hon"ble Supreme Court, the land, which is not available for allotment, cannot be allotted. Any allotment, so made, can be cancelled by the Courts. Any person, who has a right to use it as a public way, can litigate in this regard. In this perspective when the proposal to allot the disputed land was made the subject matter of litigation u/s 80 of the Act, it was found by the Collector that the land forms part of the public way. After appreciation of the material on record the Collector has found that the land was a public way. It cannot be said that the Collector had exceeded his jurisdiction in holding that the land was not available for allotment. If the land was not available for allotment then it has to be subjected to the treatment provided u/s 80 of the Act which provides the provisions relating to transfer of property and contracts. Relevant provisions of Section 80 of the Act reads as under:--

"80. Provisions relating to transfer of property and contracts -- (1) Every board shall be competent, subject to the prescribed restrictions and conditions to lease, sell or otherwise transfer any movable or immovable property belonging to it, including municipal land as also any Govt. land and so far as is not inconsistent with the provisions and purposes of this Act and the rules made thereunder, to enter into and perform all such contracts as it may consider necessary or expedient in order to carry into effect the said provisions and purposes :-- ; Provided that -

(1) and (ii) xxxxx

Explanation :-- xxxxx

(a) to (c) xxxxx

(2) (a) xxxxx

(b) if after examination of the record and after giving to the person interested in such proposal, a reasonable opportunity of being heard, the State Government or the officer authorised as aforesaid, is satisfied that the proposal of lease, sell or transfer the Government land is not in accordance with or in contravention of the provisions of this Act, it may by order published in the Official Gazette, modify, cancel or rescind wholly or in part the proposal made for lease, sale or transfer of the Government land or any action or proceedings taken in pursuance thereof or may give any other direction as may be deemed proper.

(3) xxxxx"

22. Any action taken on the proposal can be set aside as seen above. This has been done in the present case. It does not appear to be illegal or otherwise against the principles of law as held by the Supreme Court and this Court in the

cases relied upon by the learned counsel for the respondents. In this view of the matter, no interference is called for.

23. In the result, the writ petition has no force and, therefore, the same is dismissed.