

(1999) 10 RAJ CK 0013
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3556 of 1997

St. Anne's School Society

APPELLANT

Vs

Urban Improvement Trust, Jodhpur and Another

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Evidence Act, 1872 — Section 115

Citation : AIR 2000 Raj 70 : (2000) 1 RLW 71

Hon'ble Judges : B.J. Shethna, J

Bench : Single Bench

Advocate : Marudhar Mridul, for the Appellant; N.M. Lodha and K.N. Joshi, for the Respondent

Final Decision : Dismissed

Judgement

B.J. Shethna, J.—The petitioner St. Anne's School Society has filed this petition under Article 226 of the Constitution, praying that the Resolution of the Urban Improvement Trust dated 27-4-1995 (Annex. 11) and the order of allotment dated 12-10-95 (Annex. 12) allotting land to the respondent No. 2 -- Sri Nakoda Parshwanath Jain Mahavidyalaya and consequential licence issued to it, be declared invalid and it may be quashed. It is further prayed that the respondent-UIT may be directed to allot the remaining land of 10,200 sq. mts, out of the plot in question to the petitioner.

2. At this stage, it may be stated that earlier also, this very petitioner filed S.B. Civil Writ Petition No. 1762/96 before this Court on 23-5-1996, praying that the respondent UIT be directed to allot rest of the plot in question to the petitioner and it may be restrained from allotting land of plot in question to any one else. Notice was ordered to be issued in that petition and in response to that, reply-affidavit was filed by respondent-UIT in that petition also, wherein it was pointed out that the land in question was already allotted to Sri Nakora Parshwanath Jain College, Jodhpur, by order dated 12-10-95 and the required amount was also deposited by the College and the possession was also handed over. It was also

contended in the reply-affidavit that when the petitioner came to know of this allotment, it has filed this petition pleading ignorance about the allotment. On the reply being filed in that petition by the UIT, an application dated 10-9-1997 was filed by the counsel for the petitioner in that petition stating that the petition became infructuous in view of the allotment and the fresh petition is required to be filed. Thereupon, on 12-9-1997, this Court (Hon''ble P. P. Naolekar, J.) granted permission to the petitioner to withdraw that petition with liberty to file a fresh petition challenging the order of allotment. The original papers of that petition No. 1762/96 were called for and perused.

3. It is, thereafter, this petition was immediately filed within three days, i.e., on 15-9-1997. In this petition, the petitioner has joined the respondent No. 2 in whose favour the allotment was made.

4. In response to the notice issued by this Court in this petition, the reply-affidavits have been filed by both the respondents-U.I.T. as well as Sri Nakora Parshwanath Jain Mahavidyalaya. Respondent-UIT has annexed a letter dated 8th July, 1992, addressed by the petitioner itself to the UIT (Annexure R. 1/3 to the reply-affidavit of UIT). It is clearly stated in the letter by the petitioner that they have accepted the allotted land and never made grievance about the remaining half of the land of the plot in question. The allotment was made in favour of the petitioner on 9-1 -92 regarding half of the plot comprising 10250 sq. yards and the licence was issued in its favour and the amount of Rs. 6,34,375/- for about 10.00 sq. yards land was also deposited by the petitioner with the respondent-UIT. Not only that as per the averments made in this petition itself, the petitioner constructed a huge building having 80 class rooms with a Laboratory and computer centre and 2500 students are studying in it.

5. It appears that initially, being satisfied with the allotment of half of the plot in January, 1992, the petitioner once again made an attempt to get remaining half of the plot from respondent-UIT by commencing the correspondence only in January, 1993. I.e., after a period of almost 1 year of the allotment. It appears that when the petitioner came to know about the allotment being made in favour of respondent No. 2 on 12-10-1995 for the remaining land in question, then pleading ignorance of the fact, they first filed earlier Writ Petition No. 1762/ 96 on 23-5-96 before this Court and when UIT stated this fact on oath in reply-affidavit, then it withdrew that petition with liberty to file a fresh petition. Accordingly, this writ petition was filed within 3 days from the date of withdrawal of the earlier petition.

6. Both the respondents have raised preliminary objections in the reply-affidavits regarding maintaining of the second writ petition as well as the delay of 2 years in challenging the allotment and also contended that this Court cannot go into the disputed question of fact and decide the same in its writ jurisdiction and the petitioner has got better alternative efficacious remedy by way of civil suit only. It is also pointed out that in the reply-affidavit of the respondent No. 2 another institution, namely, Central Academy had already filed a suit which is pending

before the Civil Court regarding the same land, hence it would be nothing but a multiplicity of the litigations which is not desirable.

7. First objection regarding constructive res judicata and/or the res judicata raised by the learned counsel for the respondents, I would not like to go into the same because while dismissing the earlier Writ Petition No. 1762/96, the learned single Judge of this Court reserved liberty to the petitioner to file the petition. Regarding delay also, it cannot be said that there is a gross delay. When the petitioner had earlier filed writ petition and when it was pointed out that the land in question was already allotted in 1995, then, it cannot be said to be a gross delay.

8. However, there is a lot of substance in the third preliminary objection raised by the learned counsel for the respondents regarding disputed question of fact involved in this petition and that the petitioner had better alternative efficacious remedy by way of suit before the Civil Court. On this ground alone, this petition is required to be dismissed without going into the merits of the case. That apart, it was rightly pointed out by the learned counsel Mr. N. M. Lodha, for the respondent-UIT that having accepted the allotment of half plot way back in January, 1992, later on it was not open to the petitioner to claim remaining half of the land. Letter dated 8th July, 1992, addressed by the petitioner to the UIT (Annexure R. 1/3) makes it clear that the petitioner was fully satisfied with the allotment of the land of half of the plot in question. Thereafter, it was not open to the petitioner to claim the remaining land of the plot in question. In my considered opinion, even if the petitioner had any right, it had waived the same and the principle of waiver will certainly apply against the petitioner. In any case, when it made the demand in January, 1993, then it should not have waited for all these years and it should have immediately approached the appropriate forum by way of appropriate proceeding. Once the allotment is made to the respondent No. 2, which is co-incidentally a school itself, way back on 12-10-1995 and the possession is also handed over to it and that some construction is also made on the plot, then there is no question of putting the clock back.

9. Before parting, I must state that right of the petitioner, muchless fundamental right, guaranteed under the Constitution has been infringed by the UIT in allotting the land to the respondent No. 2.

10. In view of the above discussion, this petition fails and is dismissed with no order as to costs. Notice is discharged. Interim relief, if any, granted earlier, stands vacated. The stay petition is also dismissed.