

(2014) 10 RAJ CK 0119

In the Rajasthan High Court

Case No : Civil Special Appeal No. 1402/2014 in Civil Writ Petition No. 6215/2014

State of Rajasthan

APPELLANT

Vs

Green Touch Developers Private Ltd.

RESPONDENT

Date of Decision : 09-10-2014

Acts Referred:

Citation : (2014) 10 RAJ CK 0119

Hon'ble Judges : Vijay Bishnoi, J; Govind Mathur, J

Bench : Division Bench

Advocate : P.S. Bhati, Additional Advocate General Assisted by Sajjan Singh Rathore, Advocate for the Appellant; M.S. Singhvi, Senior Advocate Assisted by Varun Singhvi, Advocate for the Respondent

Judgement

Govind Mathur, J.—This appeal has been filed by the appellants being aggrieved by the order dated 10.09.2014 passed by learned Single Judge directing the respondents for not interfering with the business of the respondent petitioner and on-going construction subject for final decision of the petition for writ.

2. Facts of the case in brief are that the Collector, Rajsamand while exercising authority under the Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959 (hereinafter referred to as "the Rules of 1959"), by order dated 5.1.2011 allotted chunk of land to the respondent petitioner company subject to certain conditions referred in the order of allotment itself. As per clause (6) of the conditions for allotment, the allottee was required to set up a tourism unit within a period of two years from the date of its allotment on the land allotted. As per the appellants, the respondent petitioner failed to establish the tourism unit within the period prescribed, thus, proceedings were initiated as a consequence to violation of clause (6) referred above. By an order dated 26.8.2014 the Collector, Rajsamand cancelled the allotment made by order dated 5.1.2011 as a result of proceedings aforesaid.

3. To challenge the order of cancellation dated 26.8.2014, a petition for writ

alongwith an application seeking interim relief was filed and that came up before learned Single Bench on 5.9.2014. Learned Single Bench while granting three days time to the appellant respondents considered it appropriate to grant an interim relief to the respondent petitioner in the terms that "in the meanwhile and until the next date, the land in question shall not be allotted to anybody else".

4. The writ petition then came up before the Court on 10.9.2014 and on that day reply to the writ petition was filed on behalf of the appellant respondents. Learned Single Judge, while adjourning the petition for writ for a period of four weeks, enabling the respondent petitioner to file rejoinder, directed the appellant respondents as interim measure for not interfering with the business of the petitioner and on-going construction subject to final decision of the writ petition. The order passed on 10.9.2014 reads as under:-

"The lawyers are observing strike contrary to various Hon"ble Supreme Court decisions.

Heard the petitioner and the Tehsildar, Nathdrawa, who are present in person.

Mr. H.S. Joshi, Tehsildar, Nathdrawa, submits that reply to writ petition has been filed. The copy of the reply may be supplied to the petitioner's authorized representatives.

The petitioner may file rejoinder to the same within four weeks. Mr. Raj Kumar Bapna, Power of Attorney Holder and the Director of the petitioner Company submits that the respondents without affording an opportunity of being heard passed the impugned order cancelling the allotment made in favour of petitioner. He further submits that on-going construction work has been hampered as the respondents have put lock on the main gate of the site.

Having heard the parties, it is directed that the respondents will not interfere with the business of the petitioner and the on-going construction, however, the same shall remain subject to the final decision of this writ petition."

5. While questioning correctness of the order dated 10.9.2014, submission of Dr. P.S. Bhati, learned Additional Advocate General is that the rights of the respondent petitioner were adequately protected by the Court under the order dated 5.9.2014 by issuing a direction for not allotting the land in question to anyone else, hence, no need was there for further grant of interim relief as given under order impugned. As per learned Additional Advocate General the interim relief granted, as a matter of fact, amounts to grant of final relief, which is not at all permissible.

6. While contesting the appeal, Shri M.S. Singhvi, learned Senior Advocate submits that the order dated 26.8.2014 is an out come of malicious and arbitrary exercise of powers and, therefore, the court rightly granted interim relief of mandatory nature. It is stated that as a matter of fact a tourism unit has already been established and is operational. He has substantiated his argument by

placing reliance upon a judgment of Hon"ble Supreme Court in Deoraj Vs. State of Maharashtra and Others, . In the case aforesaid Hon"ble Supreme Court while examining the issue of granting interim relief of mandatory nature held as under:-

"11. The Courts and Tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair procedure requirement which involves delay intervening between the previous and the next procedural Steps leading towards preparation of case for hearing. Then, the Courts are also over burdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case, irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the Court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the Court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any Judge to test.

12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case-- of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the Court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The Court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the Court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the Court may put the parties on such terms as may be prudent."

7. Heard learned counsels and also examined the record available.

8. Precisely, question involved in this appeal is that whether in the present set of circumstances learned Single Judge was right in granting the interim relief of

mandature nature?

9. It is well settled that in normal course the court should not grant an interim relief that amounts to acceptance of the cause sought to be agitated by the party aggrieved. Having considered the argument advanced and in view of the law laid down by Hon'ble Supreme Court in the case of Deoraj (supra), on which heavy reliance is placed by learned counsel for the respondent petitioner, the power to grant any interim relief that amounts to granting a final relief should be exercised in rare and exceptional cases, and should not grant such relief unless being satisfied that withholding of it would prick the conscience of the Court, and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing. An interim order of mandatory nature can be granted by the Court on arriving at the conclusion that non-granting of interim order would result in causing extreme hardship and irreparable loss on account of not following the settled position of law. In usual course no final relief at interim stage by way of interim order should be granted. The grant of interim relief of mandatory nature or of the nature that amounts to grant of final relief would depend upon rare, exceptional and compelling circumstances which are required to be spelt out by the court while granting such relief.

10. In the case in hand the appellants sought time to argue the matter on 5.9.2014 and quite diligently filed a reply to the writ petition before next date of hearing i.e. 10.9.2014. Learned Single Bench on 10.9.2014 granted four weeks time to the respondent petitioner to file rejoinder to the reply filed on behalf of the appellant respondents and while doing so granted interim relief of mandatory nature. In reply to the writ petition the respondents came out with the case that necessary procedure was adhered before cancellation of the allotment made under the order dated 5.1.2011. It was also pointed out that the photographs placed on record by the respondent petitioner to establish that a tourism unit has already been situated, discloses the facts contrary. We too perused the photographs available on record. Having considered the facts stated, we are of the opinion that the facts of the case are not of such exceptional or rare nature that may warrant an order of exceptional nature. As a matter of fact the interim relief granted on 5.9.2014 was adequate to protect rights of the respondent petitioner. Suffice to mention that the possession of the land too was with the appellants on the day interim order was passed.

11. For the reasons given above, we are inclined to accept this appeal. Accordingly, the same is allowed. The interim order granted on 10.9.2014 by learned Single Bench is modified in the terms that till further orders the land in question shall not be allotted to anyone else than the petitioner.