
(2016) 03 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 443/2005

State of Rajasthan

APPELLANT

Vs

Hilton Estate Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 08-03-2016

Acts Referred:

Citation : (2016) 3 DNJ 1169 : (2016) 2 WLN 340

Hon'ble Judges : Satish Kumar Mittal, C.J. and Ajay Rastogi, J.

Bench : Division Bench

Advocate : P.S. Bhati, Addl. Advocate General assisted by S.S. Rathore, Counsel, for the Appellant; J.P. Joshi, Senior Counsel assisted by Siddharth Joshi, Counsel, for the Respondent

Final Decision : Dismissed

Judgement

1. Instant intra-court appeal has been preferred by the State of Rajasthan assailing order of the Id.Single Judge dt. 16th February 2005.

2. At the outset, it may be noticed that we are dealing with the unamended Sec. 173-A of the Rajasthan Municipalities Act, 1959 and the scope of Sec. 173-A of the Act has been examined by the Apex Court in the judgment of State of Rajasthan and Others v. Pareshar Soni reported in , (2007) 14 SCC 144.

3. Indisputably, the subject land has neither been allotted by the Municipal Corporation or the State Government nor any restriction has been placed on its user and the question is whether the State authorities are justified in demanding conversion charges for change of land use under the unamended Sec. 173-A of the Act. The Apex Court while examining the scope of unamended Sec. 173-A of the Act observed ad infra:--

"19. We, therefore, have to accept the conclusion of the Division Bench that the property had neither been allotted by the Municipal Corporation or by the State Government or that any restriction had been placed on its user. Consequently, the question of demanding conversion charges for change of user would also not

arise and the amended provisions of sub-section (4) of Section 173-A would also have no application to the facts of the case, since it is controlled by the very opening words that no person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally allotted or sold to any person by the State Government. If the basis on which sub-section (4) of Section 173-A could be applied is not available to the petitioner the demand raised by it towards conversion charges is also not maintainable."

4. In the instant case, the undisputed facts are that the subject land in question was originally belonging to the erstwhile Ruler of the State of Udaipur and it was described as exclusive property of the Ex-Ruler of Udaipur. The subject land in question was sold by the Ex-Ruler to M/s. Lake Palace Hotels & Motels Pvt. Ltd. by registered sale deed dt. 02.03.1963 and further sold to the respondent vide sale deed dt. 20.05.1994 and after taking possession of the subject land in question, the respondent filed an application for grant of permission for raising construction of a commercial complex, upon which the Municipal Council, Udaipur raised objection vide communication dt. 19.02.2002 informing the respondent to apply by submitting an application in the prescribed form along with requisite fees and it was also informed to him that if he wants to raise construction of commercial complex, he is under an obligation to get the subject land converted for commercial purpose.

5. In compliance thereof, an application was submitted by the respondent seeking permission to raise construction u/Sec. 170 (1) of the Act on 23.03.2003 for which the requisite fees was also deposited. In furtherance thereof, the Municipal Council, Udaipur vide communication dt. 28.03.2003 informed the respondent that he has not produced the documents evidencing conversion of the land and was further informed that the matters relating to conversion of the land have been stayed by the Government.

6. Faced with the demand of conversion of the land, before permission to raise construction can be granted, the respondent preferred writ petition and prayed that the Municipal Council, Udaipur may be directed to grant permission to raise construction in terms of the application submitted by him u/Sec. 170(1) of the Rajasthan Municipalities Act and further prayed that the authorities be restrained from demanding any amount from him on account of conversion of the subject land to commercial use.

7. The Id.Single Judge while examining the scope of unamended Sec. 173-A of the Rajasthan Municipalities Act, 1959, observed that sub-sec.(1) of Sec. 173-A applies in reference to the land which was sold either by the Municipality or by the State Government or by any local authority and indisputably, in the instant case, the subject land was neither sold nor allotted by the Municipality/State Government or any other local authority even to the original owner i.e. Ex-Ruler of Udaipur and it was not the case of the authorities that they intend to use the subject land in contravention to the land use shown in the master plan and after

examining the scope of unamended sub-sec.(1) of Sec. 173-A of the Act observed that when the subject land has neither been allotted by the Municipal Council or by the State Government nor there is any restriction placed on its user and such fact remained unrebutted on behalf of the State authorities the question of demanding conversion charges for change of land use under the unamended Sec. 173-A of the Act does not arise and what has been observed by the Id.Single Judge under order impugned has been confirmed by the Apex Court in State of Rajasthan and Others v. Pareshar Soni reported in , (2007) 14 SCC 144, of which we have made a reference supra.

8. We further make it clear that we have examined the scope of unamended Sec. 173-A of the Act and in the light of the judgment of the Apex Court, referred to supra and in the given facts and circumstances, the controversy is no more res integra for consideration to be examined by this court.

9. Counsel for appellant has placed reliance on the latest judgment of the Apex Court in Municipal Corporation Rajasthan v. Sanjeev Sachdeva and Others reported in , 2013 (1) Supreme 349.

10. At the outset, it may be observed that the judgment relied upon by the counsel may not be of any assistance for the reason that the controversy on hand before the Apex Court deals with amended Sec. 173-A of the Rajasthan Municipalities Act, 1959 introduced by the Rajasthan Municipalities Amendment Act, 1999 which deals with power of the State Government to allow change in use of land on payment of conversion charges but as observed supra, this court has examined the scope of unamended Sec. 173-A of the Act, which is applicable in the facts and circumstances of the case.

11. After we have heard counsel for the parties, we do not find any error being committed by the Id.Single Judge in passing the order impugned which may call for our interference.

12. Consequently, the instant intra-court appeal is devoid of merit, accordingly stands dismissed.