
(2009) 05 RAJ CK 0105
In the Rajasthan High Court

Sudi Bai (Smt.)	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Rajasthan Land Revenue (Allotment, Conversion and Regularisation of Agriculture Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 — Rule 19

Citation : (2009) 3 WLN 22

Hon'ble Judges : Sangeet Raj Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sangeet Lodha, J.—This writ petition is directed against order dt. 17.12.1996 passed by the District Collector, Rajsamand whereby a penalty of Rs. 29,865/- is ordered to be recovered from the petitioner in terms of Rule 19 of the Rajasthan Land Revenue (Allotment, Conversion & Regularisation of Agriculture Land for Residential and Commercial Purposes in Urban Areas) Rules, 1981 (in short "the Rules of 1981" hereinafter) for unauthorised use of the land converted for residential purpose, for commercial purpose.

2. The petitioner applied for conversion of his agriculture land measuring 905 sq. yard for residential purpose under the provisions of the Rules of 1981. After due inquiry, the application preferred by the petitioner was accepted by the Authorised Officer and the land use was ordered to be converted from agriculture to residential purpose. A patta of the land was issued in favour of the petitioner on 22.09.1986.

3. After the conversion of the land as aforesaid vide notice dt. 24.11.1987 the petitioner was directed to deposit the conversion charges for use of the land for commercial purpose so also the penalty for unauthorised use of the land for commercial purpose. The notice was responded by the petitioner vide reply dt. 29.11.1998 stating therein that since part of the petitioner's agriculture land was used for public way therefore, he was assured orally by the Administrator of the

Municipal Board, Nathdwara that he shall be permitted to raise construction of the shops by the road side without levying any further charges. However, it was submitted by the petitioner that he has raised construction of only a Gaushala in the area measuring 10 x 8 sq. ft. Thereafter, on payment of conversion charges quantified at Rs. 19,910/-, the residential land of the petitioner was ordered to be converted for commercial purpose vide order dt. 18.12.1992. It is relevant to note that while passing the order for conversion of the land for commercial purpose, no penalty was ordered to be levied from the petitioner.

4. After lapse of about 4 years, vide communication dt. 24.08.1996/04.09.1996 issued by the District Collector, Rajsamand, the Tehsildar, Nathdwara was directed to recover a sum of Rs. 29,865/- from the petitioner as penalty for unauthorised use in terms of the provisions of Rules 13 and 19 of the Rules of 1981. A copy of the said communication was endorsed to the petitioner as well. In response to the said communication, vide application dt. 03.10.1996 the petitioner clarified the position that he has already deposited the conversion charges for commercial use of the land in pursuance of the order passed by the Authorised Officer and his land already stands converted for commercial purposes vide order dt. 20.01.1993 passed by the Authorised Officer. It was further clarified that the construction of the shops over the land was raised only after conversion of the land for commercial purpose and therefore, no penalty is leviable.

5. After consideration of the application made by the petitioner, the District Collector, Rajsamand relying upon the notice dt. 24.11.1987 and a reply thereto filed on behalf of the petitioner opined that the land was unauthorisedly put to commercial use by the petitioner immediately after conversion of the land from agriculture to residential purpose and for this reason the conversion charges were deposited by him. Accordingly, vide order impugned dt. 17.12.1996, the petitioner has been held liable for penalty in terms of Rule 19 of the Rules of 1981 quantified at Rs. 29,865/- and the directions have been issued to the Tehsildar, Nathdwara to recover the said amount from the petitioner. Hence, this petition.

6. The learned Counsel for the petitioner submits that the notice dt. 24.11.1987 was responded by the petitioner vide reply dt. 29.11.1988 and it was clarified therein that he has raised construction only of one Gaushala in the area measuring 10 x 8 sq. ft and after due consideration of the reply vide order dt. 18.12.1992, the land use was ordered to be converted from residential to commercial purpose on depositing the difference of conversion charges a sum of Rs. 19,910/-. The learned Counsel submits that while passing the conversion order, no penalty was levied inasmuch as, before the conversion of the land as aforesaid, the land was not put to commercial use by the petitioner as alleged by the respondents. The learned Counsel submitted that construction of a Gaushala on the land measuring 80 sq. ft. by no means can be construed to be the use of the land for commercial purpose. The learned Counsel submitted that the

respondent No. 2 has presumed the unauthorised use of the land for commercial purpose solely on the basis of the reply filed on behalf of the petitioner wherein he has only admitted the construction of Gaushala raised in the area measuring 80 sq. ft. Accordingly, it is submitted by the learned Counsel that without there being an iota of evidence on record showing that the land was put to commercial purposes before its conversion for the purpose, the finding arrived at by the respondent No. 2 is ex facie perverse and therefore, the order impugned deserves to be quashed and set aside.

7. Per contra, the learned Counsel appearing on behalf of the respondents submits that the land was put to commercial use immediately after conversion and only for this reason notice dt. 24.11.1987 was issued to the petitioner. The learned Counsel submitted that in view of the admission of the petitioner that the land was put to commercial use by raising construction of Gaushala, the finding arrived at by the respondent No. 2 cannot be faulted with. The learned Counsel submitted that while issuing the conversion order, the penalty was not levied and therefore, vide communication dt. 24.8.1996 the Tehsildar, Nathdwara was directed to recover the penalty amount in terms of Rule 19 of the Rules of 1981. The learned Counsel that the order impugned has been passed after giving due opportunity of hearing to the petitioner and the finding arrived at by the respondent No. 2 regarding the unauthorised use of the land for commercial purpose is based on material on record and cannot be said to be perverse.

8. I have considered the rival submissions and perused the record.

9. Admittedly, the proceedings for levy of conversion charges and penalty for unauthorised commercial use of the land converted for residential purpose were initiated vide notice dt. 24.11.1987. From the contents of the reply to the notice dt. 24.11.1987 filed on behalf of the petitioner in no manner it can be inferred that the petitioner has admitted the commercial use of the land after its conversion from agriculture to residential purpose prior to issuance of the notice dt. 24.11.1987. In the reply, the petitioner has only admitted that he has constructed a Gaushala on the land in question covering the area measuring 10 x 8 sq. ft. In considered opinion of this Court, the construction raised in such a small area for shelter of the cattle can hardly be treated to be the use of the land for commercial purpose. Even if, it is assumed for the sake of arguments that construction of Gaushala by the petitioner in a small area falls within the definition of "commercial use" then, penalty for unauthorised use in terms of Rule 19 could have imposed only for area which is put to commercial use, not for the entire land measuring 905 sq. yard.

10. Admittedly, while passing the conversion order dt. 18.12.1992 which is presumed to be passed after considering the reply filed on behalf of the petitioner, he was not held liable to pay penalty for alleged unauthorised use of the land for commercial purpose, therefore, the reason for initiating the fresh proceedings for levy of penalty for alleged unauthorised use of the land cannot be said to be justified. Moreover, there is nothing on record to show that the

fresh proceedings for levy of penalty vide notice dt. 24.08.1996 was initiated on the basis of some fresh material coming to the knowledge of the respondents showing that the land was put to commercial use by the petitioner before its conversion for commercial purpose vide order dt. 18.12.1992/20.01.1993. The presumption regarding unauthorised commercial use of the land drawn by the respondent authority solely on the basis of notice dt. 24.11.1987 and treating the reply thereto filed on behalf of the petitioner to be an admission on his part of unauthorised commercial use of the land is not sustainable in eye of law, particularly, in view of the fact that after the consideration of the reply filed on behalf of the petitioner, the land was ordered to be converted from residential to commercial purpose by the competent authority only on payment of conversion charges without levying any penalty in terms of Rule 19 of the Rules 1981. Suffice is to say that unless it is proved on the basis of the cogent evidence on record that the land has been put for actual use otherwise than for residential purpose, no violation of Rule 19 of the Rules of 1981 can be inferred so as to levy the penalty in the terms of Rule 13 of the Rules of 1981. On the facts and in the circumstances of the case, in considered opinion of this Court, the finding arrived at by the respondent authority about alleged unauthorised commercial use of the land immediately after the conversion of the agriculture land for residential purpose is based on no evidence on record and ex facie perverse and, therefore, cannot be sustained.

11. In the result, the writ petition succeeds, it is hereby allowed. The order impugned dt. 17.12.1996 is quashed. No order as to costs.