

(2019) 01 RAJ CK 0278

In the Rajasthan High Court

Case No : Civil Review Petition No. 253 Of 2018 In Special Appeal (Writ) No. 1294 Of 2014

Suresh Chand Agrawal

APPELLANT

Vs

Shri Siddeshwar Mahadev Mandir Samiti And Ors

RESPONDENT

Date of Decision : 07-01-2019

Acts Referred:

Limitation Act, 1963 — Section 5

Rajasthan Municipalities (Disposal Of Urban Land) Rules, 1974 — Rule 23, 23(2), 32

Citation : (2019) 01 RAJ CK 0278

Hon'ble Judges : Mohammad Rafiq, J;Goverdhan Bardhar, J

Bench : Division Bench

Advocate : S.K. Saxena

Final Decision : Dismissed

Judgement

There is delay of 125 days in filing of review petition. Application No. 940/2018 under Section 5 of the Limitation Act has been filed seeking condonation of delay in filing of the review petition.

For the reasons mentioned in the application, the application is allowed. Delay in filing of the review petition is condoned.

Heard learned counsel for the review petitioner on the review petition.

This review petition has been filed seeking review of judgment dated 03.04.2018 passed by the Division Bench of this Court by which the appeal filed by the review petitioner challenging the judgment dated 29.05.2014 passed by the learned Single Judge of this Court was disposed of.

The petitioner-appellant purchased Plot No. D-108, Shastri Nagar, Ajmer vide registered sale deed executed on 12.09.2002, which was registered on 26.09.2002 in the Office of Sub-Registrar, Ajmer. The petitioner-appellant filed an application to the Commissioner, Municipal Council, Ajmer for allotment of a strip of land situated adjacent to the northern side of Plot No. E108. The General Body

of the Municipal Council vide proposal no. 447 resolved to allot the aforesaid strip of land to the petitioner-appellant. The matter was sent to the Government. The Deputy Director (Regional), Department of Local Self, Ajmer vide its communication dated 13.08.2004 conveyed the Additional Director, Local Self, Jaipur that the aforesaid strip of land measuring 190 Sq. Yards was adjacent to Plot No. E-108 and could not be put to any other independent use and therefore recommended allotment of the said strip of land to the petitioner-appellant or else there was apprehension that it could be encroached upon. The Commissioner, Municipal Council, Ajmer vide communication dated 20.11.2004 addressed to the Director, Local Self Department, Jaipur submitted that the representatives of Shri Siddeshwar Mahadev Mandir Samiti were given opportunity of hearing but they were not inclined to pay the cost of strip of land and the strip of land could not be sold by public auction. The Municipal Corporation, Ajmer issued a demand note to the petitioner-appellant on 12.06.2013. The petitioner-appellant deposited amount of Rs. 22,80,000/- against the allotment of aforesaid strip of land and Rs. 14,250/- against lease money for the year 2013-14 in compliance of demand note. Respondent No. 1 challenged the aforesaid allotment by filing S. B. Civil Writ Petition No. 15693/2013, which was allowed by the learned Single Judge vide judgment dated 29.05.2014 holding that the allotment was made in breach of the provisions of law and that the land could be disposed of only by way of public auction and also directed that if any encroachment existed over the disputed land, the same should be removed. It is this judgment, which has been upheld by the Division Bench of this Court vide judgment dated 03.04.2018.

Mr. S. K. Saxena, learned counsel for the review petitioner has submitted that learned Division Bench of this Court has recorded a finding that the land measuring 190 square yards cannot be considered as strip of land ignoring Rule 23 of the Rajasthan Municipalities (Disposal of Urban Land) Rules, 1974 (for short 'the Rules of 1974') which in the Explanation thereto provided that whether a particular area is a strip of land or not, shall be decided by the Corporation or Council or Board, as the case may be. Rule 32 of the Rules of 1974 empowers the State Government to relax the operation of the rules in the case of hardship. These two provisions confer power on the Municipal Corporation, Ajmer in respect of the relaxation in rules with regard to allotment of strip of land in question. It is argued that this Court has wrongly applied Rule 23(2) of the Rules of 1974 relating to auction.

We are afraid that the learned counsel for the review petitioner is seeking to argue the entire matter all over again in the grab of review petition. Learned Single Judge, while allowing the writ petition, has considered Rule 23 of the Rules of 1974 which clearly provides that a strip of land shall mean a piece of land adjoining an existing plot which cannot be put to independent use and which shall in no case exceed 150 Square Yards in area. There could be no relaxation of rules by the Municipal Corporation merely because it had passed a resolution. The Division Bench of this Court has upheld the judgment of the learned Single Judge of this Court even considering the Rule 32 of the Rules of 1974 which

confer the power of relaxation on the State Government and not on Municipal Corporation. The review-petitioner has failed to point out any error apparent on the face of the record so as to justify the review of the judgment passed by the Division Bench of this Court.

There is no merit in this review petition and the same is accordingly dismissed.