
(1992) 05 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Special Appeal No. 94 of 1992

Suresh Mehta

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 15-05-1992

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Urban Improvement Trust Act, 1959 — Section 56

Citation : AIR 1993 Raj 61 : (1992) 1 RLW 468 : (1992) 3 WLC 267 : (1992) 2 WLN 81

Hon'ble Judges : K.C. Agrawal, C.J.;N.K. Jain, J

Bench : Division Bench

Advocate : B.L. Purohit and M.C. Bhoot, for the Appellant; K.N. Joshi, Anand Purohit and S.D. Rajpurohit, for the Respondent

Final Decision : Dismissed

Judgement

K.C. Agrawal, C.J.—This appeal has been preferred by Suresh Mehta against the judgment of the learned single Judge dismissing the writ petition filed by him on February 10, 1992 along with Asulal Sancheti and Jawaharlal for quashing of the allotment . of land made by the Urban improvement Trust. Later on Asulal Sancheti and Jawaharlal withdrew themselves from the writ petition arid, thereafter Suresh Mehta was left alone. He has filed the present appeal.

2. The learned counsel for the appellant urged that the land in dispute had been left j. put for the use for a park and that the Urban Improvement Trust had no power to let it out to Jodhpur Medical research Centre Trust (for short "Trust") for construction, of the hospital. For the submission, the learned counsel for the appellant referred to the: previous litigation when a portion of the land had been let out by the U.I.T. to the Rajasthan State Electricity Board. At that time, the allotment was challenged as invalid being against the purpose for which the land could be utilised. The writ petition was dismissed by passing the following order :--

"Mr. Calla states that only a little portion of the park has been allotted to RSEB for installing the distribution sub-station. The rest of the park would be kept and maintained as park. In view of the above statements the apprehension of the petitioner that the park will cease to be used as park is unfounded. The land covered by the park is not being transferred. The present petition is, therefore, misconceived.

The writ petition is, therefore, dismissed with no order as to costs."

3. Subsequent to this order, land measuring 1732.35 sq. yards out of 2688.33 sq. yards was leased out to the Trust, which is respondent No. 4 in the appeal for construction of a hospital.

4. The contention of the appellant's counsel was that letting-out of the land to the Trust was against the mandate and the scheme of the Urban Improvement Trust Act and, as such, the decision to let out was ultra vires.

5. When act or a certain transaction entered into by an authority with limited powers is void, it leaves the court with no discretion excepting granting of a remedy claimed.

6. Applying the aforesaid principle that transaction of letting-out was void ab initio, the Court must hold that the transaction of letting-but entered in favour of the Trust was invalid and left with it no right to make the construction.

7. u/s 29(2) of the Urban improvement Trust Act, the U.I.T. had power to prepare a scheme and to notify the various purposes for which the land let out could be used. The submission of the appellant that the land could be utilised for park, only and not other purposes has no merit. The land was described as been land and that it could not be held to be meant for use of park. That was the submission of the respondents counsel. No map had been produced either before the learned single Judge or before us notifying the land to be designated as park in the scheme prepared by the UIT.

8. Counsel for the respondents urged that after receiving the lease of the land in 1986, the respondent No. 4 had spent more than Rs. 10 lacs over the construction of the hospital, when the present appeal in 1992 was filed. It was urged that the appellant knew all the time about the leasing-out of the land and he deliberately kept himself behind by chosing not to challenge the same. He was on the look out of an opportunity when he could be in a better position to bargain and realise more black-money.

9. Counsel for the appellant challenged the aforesaid proposition, but to us there appears to be truth in the assertion of the respondent No. 4. The land is situated in the Shastri Nagar Which is a prominent, place of the town and it is difficult to believe that the appellant did not know about the leasing. The construction of the hospital was not stealthily done or made in a manner about which the public could not take notice. The appellant did not challenge the construction on the alleged right of being a public welfarer and filed the writ petition in 1991 when

sufficient money had already been spent.,

10. Use of land for public park was canvassed with vehemence by the counsel for the appellant was a public purpose which could not be served by the construction of the hospital by the Trust and as such, the counsel urged two purposes being different. The construction of the hospital and converting the open piece of land into construction could not meet the requirement of providing park to public for walking etc. The difference between the two purposes is too well known to demand detailed discussion, but the construction of a hospital generally serves greater public cause than a park. The locality where the land is situated is in the hospital area and that from the papers it appears that the matter on being taken to the Chief Minister the Government was satisfied that letting out of the land to the Trust in public interest.

11. Finding no substance in the writ petition, the learned single Judge rejected the same by deciding all the points raised in it. Before us also Sh. B.L. Purohit, who is a senior advocate practicing in the High Court has reiterated the same assertions. He cited before us a number of rulings and has been emphasizing that the Supreme Court had ordered for demolition of a six storey building where it found that the land used was against the provisions of the Act. We could not find any such ruling where the Supreme Court might have done it. Amongst the rulings, reference be made to a decision in Bangalore Medical Trust Vs. B.S. Muddappa and others, Each decision is an authority what it decides. The controversy involved in that case was altogether different than one before us. A land earmarked for park, in a scheme prepared under the Bangalore Development Act had been converted into a private nursing home. The Supreme Court held that conversion was not permissible. In that case, earmarking was done in the scheme prepared under the Act, but no scheme has been shown to us which left out the land of our case to be used for park. It was described as open land generally in some papers. An open land cannot be treated as a park. Moreover, the trust had made construction and lacs of rupees had already been spent by it. This will be a litigation started with ulterior motive.

12. In Shanta and Another Vs. Commissioner, Corporation of City of Bangalore and Another, the authorities permitted construction of a lodging house in residential area which was contrary to out-line development plan. Their Lordships of the Karnataka High Court held that there was no question of acquiescence when Corporation authorities acted in excess of their power and Court was obliged to order demolition of the construction. That has not been established and proved in the" present case.

13. Reference be made to a decision reported in Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, In this case, although the Supreme Court held that there was a change in the user, but finding it to be in public interest did not quash the Government's Order.

14. It is no doubt true that elaborate directions can be given by the Court for

vindication of the public interest. But, the Court has to take care and caution that its process is not abused or misused. It is the duty of the Court to be careful to see that Under the guise of redressing a public grievance it does, not encroach upon the sphere reserved by the Constitution to the executive authority.

15. In the instant case, the allotment of the land to the Trust was eminently just and perfectly suited to the public cause. To interfere with that allotment order at the stage when construction worth lacs have already been made would result in doing injustice. The land measuring 956 Sq. yards is still available for the purpose for which the appellant intends using it.

16. Counsel for the respondent, also asserted that the hospital had already been started functioning. In such a situation, to interfere with the allotment of the land made in favour of the Trust and directing the demolition of the building would harm the public interest instead of serving it as it ,is claimed by the appellant's counsel.

17. During the pendency of this appeal, we appointed Sh. R.C. Mathur, Superintending Engineer to visit the spot and to submit a report about the money which had already spent over the construction of the hospital. He has submitted a detailed and very lucid report that more than Rs. 18 lacs had been spent. Apart-from expenditure already incurred, the respondent-Trust had made preparation for making more construction on the land and for that purpose contracts had been entered into for installing the lift and other necessary things.

18. To interfere in such matter under the guise of the public interest litigation would result in great injustice and that no principle of law could justify the same.

19. Before finishing the judgment, we wish to record the unjustified outburst of Sh. B.L. Purohit against the Judges constituting this Bench. We did not expect an advocate who has put in more than 35 years to express his (sic) unjustified such an utterance. But, for the sake of reputation of the profession We have decided to close the matter here and hope that such a thing would not happen in future.

In the result, the appeal fails and is dismissed summarily.