(2018) 12 RAJ CK 0283

In the Rajasthan High Court

Case No : Special Appeal Writ No. 1386 Of 2018

Urban Improvement Trust — APPELLANT

Vs

Prakash Singhvi And Ors — RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Rajasthan Land Revenue (Allotment Of Industrial Area) Rules, 1959 — Rule 2, 2A, 7, 8
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 RAJ CK 0283

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

Bench : Division Bench

Advocate : Satya Narayan Kumawat

Final Decision : Dismissed

Judgement

Challenge in the instant special appeal has been made to the order dated 20.08.2018 passed by learned Single Judge.

Facts of the case in nutshell are that the District Collector, Kota, by its Order No.2033-9 dated 10.07.1991 accorded conditional provisional sanction for allotment on lease basis for 99 years under Rajasthan Land Revenue (Allotment of Industrial Area) Rules, 1959 of 4 Bigha land ahead the land already allotted towards western side of Khasra No. 399 in Village Lakhawa, Tehsil Ladpura, District Kota to the respondents for the purpose of setting up unit of manufacturing cement bricks. After lapse of 11 years of the aforesaid conditional provisional allotment order dated 10.7.1991, lease deed of the allotted land was executed on 15.2.2002 and registered on 8.3.2002. On 20.7.2007, notice seeking explanation was issued to the respondent allottee with regard to breach of Rules 7 and 8 of the Rules of 1959 and also condition no. 4 (iv, v and vi) of the Lease Deed, which was replied on 10.8.2007. Thereafter the District Collector summoned and obtained Site Report from the Tehsildar Ladpura, Kota. The Tehsildar, Ladpura, Kota, in his Report reported that the land is not being used for industrial purpose and resultantly on the basis of the aforesaid report, the allotment was cancelled vide order dated 16.10.2007. According to the petitioner-appellant, upon cancellation of the allotment, the land was recorded as sawai chak and accordingly the District Collector, Kota, by its Order No. 2230- 55 dated 31.3.2008 set apart the land Rakba 1.44 hectare of Khasra No. 399 for residential development in favour of the UIT, Kota, in lieu of consideration and in compliance thereof as per land DLC rate, an amount of Rs. 3,98,92,532/- was deposited by the UIT, Kota, through challan No. 40 dated 26.03.2009 and 27.03.2009 in the State Government and thereafter it was recorded in the name of UIT, Kota, in the revenue record. Against the order dated 16.10.2007, the respondent allottee preferred an appeal before the Appellate Authority which was partly allowed vide Judgment dated 22.09.2008 and the matter was remanded but again allotment was cancelled vide order dated 04.03.2011 but the said order dated 04.03.2011 was quashed and set aside by the Revenue Appellate Authority vide order dated 28.09.2012 while allowing the appeal of the respondent and thereafter the Board of Revenue vide order dated 11.02.2015 dismissed the appeal of the appellant- UIT. Against the order dated 11.02.2015 passed by the learned Board of Revenue, the petitioner preferred writ petition before the learned Single Judge which was dismissed vide order dated 20.08.2018. Hence, the instant special appeal was filed.

Learned counsel for the appellant argued that the impugned orders dated 28.9.2012 passed by the learned Revenue Appellate Authority and 11.2.2015 passed by learned Board of Revenue are totally in disregard of the provisions of the Rajasthan Land Revenue (Industrial Area Allotment) Rules 1959 and also Rule 7 thereof in particular, which deals with setting up of industries and envisages that "Industries shall be set up within a period of two years on the land allotted for the purpose, failing which the land shall revert to the Government unless the period of two years is extended by the allotting authorities for valid reasons. Provided that if such land could not be used for industrial purposes within the period as prescribed above, the State Government may extend the period further as deemed proper. In such cases, the applicant shall move application through the Divisional Commissioner who after examination of the case, forward the same to the State Government with his comments." It is argued that both the courts have ignored that the allotment of land was made to the respondent allottee on 10.7.1991 and he was required to set up the industry within two years from that date as per mandatory provision of Rule 7 of the Rules but he did not set up the industry within the said period and also the said time period was not extended by the State Government. As such the said land was reverted into the State Government for non setting up of industry despite lapse of two years time period from the date of allotment by virtue of the Rule 7 of the aforesaid Rules. It is further aruged that after Rule 2 of the Rules 1959, a new Rule as Rule 2A has been inserted vide Notification No.F.11 (1) Rev.6/2004 /21 dated 31.7.2012 published in the Gazette on 23.8.2012 and the provision for executing of lease deed of the allotted land was inserted, which is as under:-

"Rule 2A Execution of Lease Deed- The Lease Deed shall be executed in Form A. The allotting authority shall issue notice to the allottee to submit requisite stamps for execution of lease deed. The allottee shall submit requisite stamps within 30 days of receipt of such notice. The possession of allotted land shall be given to the allottee after execution of lease deed.

Provided that the allottee who did not execute the lease deed of allotted land prior to commencement of the Rajasthan Industrial Area Allotment Amendment Rules 2012, such allotment may be regularized by the allotting authority on payment of penalty of Rs.3000/-. The allotting authority shall issue notice of one month to such allottee to requisite stamps for execution of lease deed and deposit penalty and all dues of State Government. If the allottee submits the requisite stamps, deposit penalty and all dues, lease deed may be executed in favour of such allottee for the remaining period of lease."

Thus, it is clear that there was no provision of executing lease deed in favour of the respondent allottee as on date of allotment but still after 11 years of alleged allotment dated 10.7.1991, the lease deed was executed in favour of the respondent allottee on 15.2.2002 which was registered on 8.3.2000 without disclosing the circumstances in which at this belated stage lease deed was executed and no reason for such delay was explained. Even both the Subordinate Courts too did not enquire the matter on the point of delay and thus have committed serious error of law in passing the impugned orders. It is also argued that both the Subordinate Courts have committed grave error of law and Rules in not calculating the time period of two years from 10.7.1991 when the land was allotted and counted the same from 15.2.2002 and 8.3.2002 when the lease deed was executed and registered, whereas in this regard Rule 7 of the Rules 1959 is clear that the allottee is required to set up industry within two years from the date of allotment. It is an admitted fact that the allottee did not set up the industry up to 10.7.1993 from the date of allotment 10.7.1991 as such the land stands automatically reverted into the State Government by virtue of Rule 7 of the Rules 1959. Therefore the Additional District Collector in its order dated 4.3.2011 has concluded that the respondent has breached and violated provisions of Rule 7, 8 of the Rules 1959 and also the condition No.4(iv, v and vi) of the Lease Deed and accordingly cancelled the allotment dated 10.7.1991. Thus, the order passed by the learned Additional District Collector dated 4.3.2011 is in accordance with the mandatory position of the Rules and based on terms and conditions of the Lease Deed as well as admitted factual position of the case. It is further argued that both the Subordinate Courts have failed to consider and appreciate that upon cancellation of the allotment, the land was recorded as sawai chak and accordingly the District Collector, Kota, by its Order No.2230- 55 dated 31.3.2008 set apart the land Rakba 1.44 Hectare of Khasra No.399 for residential development in favour of the UIT Kota in lieu of consideration and in compliance thereof as per land DLC rate an amount of Rs.3,98,92,532/- was deposited by the UIT Kota through challan No.40 dated 26.3.2009 and 27.3.2009 in the State Government and thereafter it was recorded in the name of UIT Kota in the revenue record. As such presently the said land is owned by the UIT Kota and is recorded in its khatedari in the revenue record. After the land was set apart in favour of the UIT, it is developing residential scheme on the said land and after removing the encroachment in the year 2011, the UIT Kota has constructed roads and made other developmental works and also plotted the land into residential plots. Therefore, also now in between the residential area no industrial activities can be allowed to run.

We have heard learned counsel for the appellant, perused the impugned judgment passed by the learned Single Judge and have scanned the entire material available on record.

The appellant failed to establish that the respondent allottee breached the Rules 7 and 8 of the Rules of 1959 and also condition No.4(iv) and (vi) of the lease deed.

The finding recorded by the learned Single Judge while upholding the Judgment passed by the learned Board of Revenue was that that the Board while considering the appeal of the appellant noted that the allotment made in favour of the respondent could not have been cancelled as it has come on record that the respondent had already started industrial activity within two years of the allotment and thereafter the order of cancellation of allotment in favour the respondent was per se illegal. Thus, the finding recorded by the learned Single Judge is a finding of fact. Moreover, the learned Revenue Appellate Authority vide order dated 28.09.2012 and the learned Board of Revenue vide order dated 11.02.2015 set aside the order of cancellation of the allotment dated 10.07.1991 and recorded finding against the Allotting Authority with regard to setting up unit of manufacturing cement bricks industry within two years from the date of allotment.

It is pertinent to note that the Judgment in appeal against the order passed by the learned Single Judge is passed in exercise of powers vested in this Court under Article 226 of the Constitution of India. The Division Bench does not wield any extra power. It is extension of the same power of judicial review under Article 226 of the Constitution of India which the Division Bench exercises in the facts of the case. The learned Single Judge has taken a particular view. Unless it is shown that the view taken by the learned Single Judge was so erroneous which on the given material was not a possible view, the Division Bench would not be justified in reversing the view taken by the learned Single Judge.

We, therefore, do not find any illegality in the impugned Judgment passed by the learned Single Judge. The special appeal is, therefore, accordingly dismissed in limine.