
(2010) 09 CHH CK 0045
In the Chhattisgarh High Court

Vijay Ratan Lal Rathi and Another

APPELLANT

Vs

State of Chhattisgarh

RESPONDENT

Date of Decision : 08-09-2010

Acts Referred:

Chhattisgarh Municipal Corporation Act, 1956 — Section 2, 423(1), 80(5)
Constitution of India, 1950 — Article 14, 19(1), 227

Citation : (2010) 09 CHH CK 0045

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.

Writ Petition under Article 227 of the Constitution of India

1. Heard learned Counsel for the parties.

2. By this petition, the petitioners seek to challenge the legality and validity of the order dated 07/08/2001 (Annexure P/9) and the order dated 20/03/2003 (Annexure P/1), by which the State Government in purported exercise of powers under Sub-section (5) of Section 80 of Chhattisgarh Municipal Corporation Act, 1956 (for short "the Act, 1956") has refused to accord sanction in respect of the lease deed executed in favour of the petitioner.

3. The facts, in brief, for disposal of the case, are that the land in dispute was initially allotted to Babu Hari Singh Darbar, who constructed the cinema hall. According to the petitioner, Babu Hari Singh Darbar leased out the cinema hall to the father of the petitioner on 24/3/1956. Babu Hari Singh Darbar died on 21/4/1972 and on his death, his son, Prithviraj Singh Darbar was brought on record, as his legal representative. Prithviraj Singh Darbar further executed a lease deed in favour of the father of the petitioner on 11/10/1976 for a period of 10 years. Prithviraj Singh died on 19/8/1980. Thus, the property devolved on his adopted son namely; Rajendra Singh Darbar. Rajendra Singh Darbar also

executed a lease deed in favour of the father of the petitioner for a period of 10 years w.e.f. 1/11/1983. There is no dispute that the land was never allotted to the petitioner by the Municipal Corporation on lease or otherwise. The petitioner claiming to be assignee, it appears, continued to be in possession of the cinema hall constructed on the land in dispute. According to the learned Counsel for the petitioner on the basis of agreement, which led to withdrawal of civil suit No. 10-A/82 filed by Rajendra Kumar on 25/2/1987 (Annexure - P/4), the respondent Corporation in exercise of its power u/s 423(1) (x) of the Act, 1956 resolved to allot the land in dispute to the father of the petitioner namely; Ratan Lal Rathi on certain conditions. The resolution of allotment of lease for a period of 30 years was subject to approval of State Government, which was rejected by the impugned order dated 7/8/2001 (Annexure - P/9). Thus, this petition.

4. Learned Counsel appearing for the petitioners submits that the respondent authorities passed the impugned orders in a cryptic & mechanical manner and without application of mind. The petitioners being the assignee of Babu Hari Singh Darbar have vested right of renewal in view of the provisions of Section 2 of the Act, 1956. The impugned order is void ab initio and is per se without jurisdiction and suffers from non-application of mind. The respondents have acted arbitrarily and unfairly in dealing with the case of the principles enshrined under Articles 14 and 19(1)(g) of Constitution of India. Even otherwise, the impugned order was passed against a person who died during pendency of the recommendation before the State Government. Thus, the impugned order is null & void and the same may be quashed.

5. On the other hand, while supporting the impugned action taken by the respondent authorities, learned Counsel appearing for the State as well as respondent Corporation submit that the respondent authorities have rightly passed the impugned orders after considering all the aspects of the matter in its letter and spirit, thus, the same do not warrant any interference by this Court and the petition may be dismissed, as the petitioners are not entitled to any relief from this Court.

6. With regard to the contention of the petitioners that since the order was passed against a person who died during pendency of the recommendation before the State Government is concerned, the contention of the petitioner is rejected on the ground that the resolution was passed for grant of lease in favour of Ratan Lal Rathi on 03/04/1987 when he was alive. A letter dated 09/07/2001 was sent to the State Government for approval of the resolution and during pendency of the said approval Ratan Lal Rathi died. The resolution dated 03/04/1987 was not approved by the State Government vide order dated 07/08/2001. Thus, impugned order, on the ground of mentioning the name of Ratan Lal Rathi in the subject matter, is not vitiated, as no step has been taken by the petitioner to substitute the name of Ratan Lal Rathi by any application, before the State Government.

7. As far as the second contention of the petitioner that since the impugned

order was passed in review filed by son of Ratan Lal Rathi is concerned, the said contention is further noticed to be rejected on a simple ground that mere mentioning of name of Vijay Ratan Lal Rathi (the present petitioner) in the revisional order also does not vitiate the earlier order passed by the State Government.

8. The dispute with regard to the fact as to whether the father of the petitioner was or not assignee, cannot be decided in this writ petition. The fact remains that resolution to allot the land in dispute on permanent lease of 30 years by the respondent Corporation does not confer any right on the petitioner, as the same was subject to approval of the State Government, which was ultimately rejected. The resolution does not confer any right seeking execution of the lease deed pursuant to the resolution. Since the petitioner has not acquired any right, no writ or order directing enforcement of non-existent right can be passed by this Court.

9. For the reasons mentioned hereinabove, the writ petition, being bereft of merit, is liable to be and is hereby dismissed. However, it is open to the petitioner to take recourse to alternative forum that may be available to the petitioner seeking declaration of his right through the lease executed between the father of the petitioner and Babu Hari Singh Darbar and his legal representatives, if so advised.

10. There shall be no order as to costs.