

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 240 OF 2013

(Arising out of SLP(C) No.11907 of 2009)

Municipal Corporation Rajasthan ... Appellant

Versus

Sanjeev Sachdeva and others Respondents

WITH

CIVIL APPEAL Nos.242 & 241 OF 2013

(Arising out of SLP(C) Nos.34347 & 14304 of 2009)

ORDER

Delay condoned.

Leave granted.

Heard learned counsel on either side.

We are in these cases concerned with the interpretation of Section 173-A of the Rajasthan Municipalities Act 1959, as amended by the Rajasthan Municipalities Amendment Act 1999 (Act No.19 of 1999), which deals with the power of the State

Government to allow change in use of land on payment of conversion charges.

The Division Bench of the Rajasthan High Court, following the judgment of this Court in ***State of Rajasthan and others v. Pareshar Soni*** (2007) 14 SCC 144, disposed of all the appeals, holding that the Municipal Corporation is not empowered to demand any amount for change of use of the land. We may refer to the facts in Civil Appeal No.240 of 2013 @ SLP(C) 11907 of 2009 for disposal of all these appeals, since common questions arise for consideration in all these appeals.

Respondents herein purchased a plot of land, with a house, on 9.9.2002, situated in a residential area by way of a registered sale deed. Later, an application under the Rajasthan Municipalities (Change of Land Use) Rules, 2000 (for short '2000 Rules') was preferred for conversion of land use from residential to commercial. They also deposited self-assessment amount of Rs.10,500/- for the said purpose. Municipal Corporation, while considering the said application gave a public notice on 22.7.2003 inviting objections, if any, under Rule 4(1) of the 2000 Rules. The

Land Use Change Committee of the Corporation, on 23.2.2004, approved the request for conversion of land use. Municipal Corporation then demanded an amount of Rs.5,70,300/- as land use conversion charges in accordance with the 2000 Rules read with Section 173-A, as amended.

Respondents herein filed a Writ Petition No.1844 of 2004 challenging the vires of amended Section 173-A of the Act and to quash the demand notice dated 2.4.2004. In the meanwhile another Writ Petition No.879 of 2003 was also filed by one Mewa Ram challenging the vires of the amended Section 173-A. The Division Bench of the Rajasthan High Court vide its judgment in **Mewa Ram v. State of Rajasthan** reported in 2007 (1) WLC (Raj) 1, was pleased to uphold the vires of Section 173-A as inserted by Act No. 19 of 1999. Following that judgment, the Division Bench of the Rajasthan High Court, on 28.11.2007, remanded the matter to the learned single Judge to decide whether the writ petition be entertained or not. The case was later registered as D.B.C. Writ Petition No.430 of 2008.

The learned Single Judge, however, placing reliance on the judgment in ***Pareshar Soni's case*** (supra) allowed the writ petition and the notice dated 2.4.2004 was quashed, though it was contended by the Corporation that the applicability of Section 173-A (evidently as amended) was neither argued nor considered by this Court in ***Pareshar Soni*** case. The Municipal Corporation then took the matter in appeal before the Division Bench in DB Civil Special Appeal No.159 of 2009. The court dismissed the appeal holding that the issue raised stood covered by the judgment in ***Pareshar Soni's*** case (supra).

Dr. Manish Singhvi, learned Additional Advocate General, appearing for the State of Rajasthan submitted that the High court has committed an error in taking the view that the issue raised stood covered by the judgment of this Court in ***Pareshar Soni's*** case (supra). Learned counsel pointed out that this Court was dealing with the un-amended Section 173-A of the Act in that case, but, so far as the present appeals are concerned, applications have to be considered by the amended Section 173-A read with 2000 Rules.

Mr. Sushil Kumar Jain, learned counsel appearing for the respondents, on the other hand, submitted that there is no illegality in the judgment of the Division Bench of the High Court of Rajasthan warranting interference by this Court. Learned counsel submitted, in any view of the matter, the land in question falls in a commercial area as per the latest approved Master Plan and hence there is no question of paying any conversion charges.

We are, in these cases, concerned with the question whether the judgment of this Court in ***Pareshar Soni's*** case (supra) would apply to the demand notices issued by the Municipal Corporation on the basis of Section 173-A, as amended by Act No. 19 of 1999.

We may, at the very outset, point out that this Court in ***Pareshar Soni's*** case (supra) was dealing with the un-amended Section 173-A of the Act. For a proper consideration of the question raised, it would be profitable to refer to the un-amended Section 173-A as well as the amended Section 173-A of the Act. Section 173-A of the Act, prior to its amendment, reads as follows:

“173-A (Power of the State Government to allow change in the use of land)

- (1) Notwithstanding anything contained in this Act, where any land has been allotted or sold to any person by a municipality or the State Government subject to the condition of restraining its use for a particular purpose, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of such land to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charges as may be prescribed.

Provided that the rates of conversion charges may be different for different areas and for different purposes.

- (2) The conversion charges so realized shall be credited to the Consolidated Fund of the State or to the fund of the Municipality as may be determined by the State Government.
- (3) Such charges shall be the first charge on the interest of the person liable in the land the use of which has been changed and shall be recoverable as arrears of land revenue.”

Section 173-A of the Act as amended by the Amending Act No.

19 of 1999 reads as follows:

“Section 173-A - Restriction on change of use of land and power of the State Government to allow change of use of land:

- (1) No person shall use or permit the use of any land situated in any municipal area, for the purpose other than that for which such land was originally

allotted or sold to any person by the State Government, any municipality, and other local authority or any other body of authority in accordance with any law for the time being in force or, otherwise than as specified under a Master Plan, wherever it is in operation.

- (2) In the case of any land not allotted or sold as aforesaid and not covered under sub-section (1), no person shall use or permit the use of any such land situated in a municipal, area for the purpose other than that for which such land-use was or is permissible, in accordance with the Master Plan, wherever it is in operation, or under any law for the time being in force.
- (3) Notwithstanding anything contained in sub-section (1) of sub-section (2), the State Government or any authority authorized by it by notification in the Official Gazette, may allow the owner or holder of any such land to have change of use thereof, if it is satisfied so to do in public interest, on payment of conversion charges at such rates and in such manner as may be prescribed with respect to the following changes in use:-
 - (i) From residential to commercial or any other purpose; or
 - (ii) From commercial to any other purpose; or
 - (iii) From industrial to commercial or any other purpose; or
 - (iv) From cinema to commercial or any other purpose;

Provided that rates of conversion charges may be different for different areas and for different purpose.

- (4) Any person who has already changed the use of land in violation of the provisions of this Act in force at the time of change of use, shall apply to the State Government or any authority authorized by it under sub-section (3), within six months from the date of commencement of the Rajasthan Municipalities (Amendment) Act, 1999 (Act No.19 of 1999) for regularization of said use and upon regularization of the change of use of land he shall deposit the amount contemplated under sub-section (3).
- (5) Where the State Government or the authority authorized by it under sub-section (3) is satisfied that a person who ought to have applied for permission or regularisation under this Section, has not applied and that such permission can be granted or the use of land can be regularized, it may proceed to determine the conversion charges after due notice and hearing the party/parties and the charges so determined shall become due to the municipality and be recoverable under sub-section (7).
- (6) The conversion charges so realized shall be credited to the fund of the municipality.
- (7) Charges under section shall be the first charge on the interest of the person liable to pay such charges with respect to the land, the use of which has been changed and shall be recoverable as arrears of land revenue."

On a bare reading of un-amended Section 173-A(1) of the Act would indicate that the conversion for change of Land Use

charges could only be realized if the land was allotted by the Municipality or the State Government and there was a condition for restraining use for a particular purpose only. Therefore, in the absence of land being allotted by the State Government/Municipality and in absence of any specific stipulation regarding use of land, the conversion charges could not be claimed. This was the ratio laid down in ***Pareshar Soni's*** case (supra) interpreting the un-amended Section 173-A of the Act. The Legislature, with a view to ensure planned and regulated development of the urban area felt it necessary to charge for the change of use in certain circumstances of those lands which were not sold or allotted by municipality or by the State Government. Further it is also felt that such a change of user be permitted only "in public interest". In this connection, we may refer to the Statement of Objects and Reasons of the Amendment Act, 1999, which reads as under:

"Statement of Objects and Reasons:

The existing provisions contained in Section 173-A of the Rajasthan Municipalities Act, 1959 provide that where any land has been allotted or sold subject to the condition of restraining its use for a particular purpose, to any person by a Municipality or the State

Government, the State Government may, if it is satisfied so to do in public interest, allow the owner or holder of the land, to use it for any other purpose other than the purpose for which it was originally allotted or sold, on payment of such conversion charge as may be prescribed.

With a view to ensure planned and regulated development of the urban areas it is necessary to restrict and bar the change of use in certain circumstances of those lands also which were not sold or allotted by Municipality or the State Government. However, the power of the State Government or any other authority authorized by it, to allow change of use of land, on payment of conversion charges is sought to be retained.

With a view to achieve the aforesaid objective, the existing section 173-A of the Rajasthan Municipalities Act, 1959 is proposed to be substituted.”

Amended Section 173-A not only restricts the change of use of land, as the same has been allotted by the municipality or the State Government, but also put restrictions if the land has been allotted by any other local authority. Section 173-A(2) covers the cases which are not even covered by Section 173-A(1) and brings in its fold even the change of use of land which is not in consonance with the Master Plan. Further Section 173-A(1) (2) and (3) also contemplates a situation wherein the State Government is entitled to levy conversion charges if the change

in use from one purpose to other purpose. Amendment was necessitated since the State Legislature thought the provision of Section 173-A (un-amended) stood as an impediment for proper planning of urban areas. In other words, with a view to ensure planned and regulated development of urban areas, it was felt that some restrictions have to be imposed and it was for that purpose that Section 173-A was amended.

We may, in this respect, also indicate that, in exercise of powers conferred under Section 297 read with Section 173-A of the 1959 Act, 2000 Rules were promulgated. It is under the above-mentioned Rules that the respondents filed an application on 16.7.2003 for change of land use from residential to commercial. Following those Rules, the Corporation issued public notice inviting objections. Later, the Land Use Committee met and approved the conversion for which a demand notice of Rs.5,70,300/- was raised by the Corporation on 2.4.2004. We are of the view that the demand is legal and valid and in accordance with the provisions of Section 173-A, as inserted by Amendment Act 19 of 1999 read with 2000 Rules. We are also of

the view that the Rajasthan High Court has committed an error in applying the Judgment of this Court in ***Pareshar Soni's*** case (supra) which was dealing with the un-amended provision of Section 173-A.

Learned counsel appearing for the respondents, however, submitted that the area in question is notified as commercial area under the Master Plan and, therefore, there is no question of any conversion of the residential property to commercial. We notice that this point was not raised before the High Court and we are, therefore, not called upon to decide that question. However, the respondents, if so advised, may take up this issue before the Corporation and it is for the Corporation to consider that issue in accordance with law. Appeals are accordingly allowed and the judgments of the High Court are set aside. However, there will be no order as to costs.

.....J.
(K. S. RADHAKRISHNAN)

.....J.
(DIPAK MISRA)

New Delhi,
January 8, 2013.

SUPREME COURT OF INDIA



JUDGMENT