

CASE NO.:
Special Leave Petition (civil) 24912 of 2005

PETITIONER:
State of Rajasthan & Ors

RESPONDENT:
Pareshar Soni

DATE OF JUDGMENT: 20/11/2007

BENCH:
G.P.Mathur & Altamas Kabir

JUDGMENT:
J U D G M E N T

Altamas Kabir, J.

1 Since the issue to be decided in this special leave petition is limited to the interpretation of Section 173-A of the Rajasthan Municipal Act, 1959 (hereinafter referred to as 'the Act'), it was decided to hear out the special leave petition at the admission stage itself.

2 The facts involved in the special leave petition, in brief, are as follows:

3 The respondent herein, Pareshar Soni, purchased an old house situated at Moti Chowk, Jodhpur, from one Smt. Shanti Kumari Lodha by a registered sale deed dated 15.5.1987. It appears from the judgment forming the subject matter of the special leave petition that Smt. Shanti Kumari acquired the ownership and possession of the said property pursuant to a judgment and decree passed by the Calcutta High Court on 6.6.1972 in Civil Suit No.867 of 1934. After purchasing the property the said respondent filed an application before the Municipal Corporation, Jodhpur, under Section 170(1) of the Act seeking permission to construct a residential house and a few shops on the said property. Inasmuch as, the Municipal Corporation did not take any step on the said application, a notice was sent on behalf of the respondent herein to the Corporation under Section 170(8) of the Act providing for a response within 15 days of receipt of the notice. It appears that the Corporation did not pay any heed even to the said notice, and accordingly, by invoking the deeming clause the respondent started construction work on the said property.

4 On 24th May, 1997 the Municipal Corporation raised a demand upon the respondent for a sum of Rs.1,66,874/- by way of conversion charges and compounding fees. The respondent objected to the said demand and filed a representation challenging its validity on the ground that the property in question is nearly 200 years old and reference thereto had been made in a Patta of the year 1865 pertaining to a neighbouring house, showing the property to be a free-hold property. Consequently, according to the respondent, no commercial charges could be levied thereupon. The respondent, however, deposited a sum of Rs.1,619 towards construction fees. As the representation filed by the respondent did not

yield any result, the respondent was compelled to file a writ petition before the Jodhpur Bench of the Rajasthan High Court, being SBC Writ Petition No.2159 of 1997. The Municipal Corporation, Jodhpur, which is the petitioner No.2 in the present special leave petition filed its reply contending that Section 173-A of the Act permits the State Government to allow any person to use the land for the purposes other than for which it was originally allotted. It was also contended that the regulation of the areas, markets etc. were all within the compass of the Act and the Patta said to have been issued by the earlier State would also remain subject to the Act. One other stand which was taken before the learned Single Judge was that the respondent/writ petitioner had failed to produce a copy of the Patta for the property in question to indicate the rights and the conditions of usage of the land provided therein. Upon hearing the parties the learned Single Judge by his judgment and order dated 19th July, 1999 dismissed the writ petition solely on the ground of non-production of the Patta by the respondent herein.

5 The respondent thereupon filed a Special Appeal before the Division Bench of the aforesaid High Court, being DB (Civil) Special Appeal No.1109/1999. Before the Division Bench the main contention advanced on behalf of the respondent herein was that the property in dispute was a free-hold Hindu Undivided Family (HUF) property which was nearly 2 centuries old and at the relevant point of time the erstwhile State had allotted the same on a free-hold basis. Consequently, the provisions of Section 173-A of the Act would not apply in the instant case.

6 It was also contended on behalf of the respondent that the impugned demand notice was illegal and without any legal validity because the said property had neither been allotted nor sold to the respondent or her predecessor-in-interest by the Municipal Corporation or the State Government, as contemplated in Section 173-A of the Act, and as such no conversion charges or compounding fees could be levied and demanded by the Municipal Authorities.

7 While deciding the appeal, the Division Bench on a bare reading of Section 173-A of the Act observed that in order that the said section should apply, two conditions were necessary : (i) that the land has been allotted or sold to any person by the Municipal Corporation or the State Government, and (ii) that the allotment or sale of the land by the Municipal Corporation or the State Government was subject to the condition of limiting its use for a particular purpose. The Division Bench also observed that if either of the two conditions were not fulfilled the provisions of Section 173-A would not apply. Basing its decision on the contention advanced on behalf of the respondent that the said property had never been sold or allotted to them being a HUF property, the Division Bench affirmed the view taken by the Single Judge and, after going through the registered sale deed, came to the conclusion that the property had neither been allotted nor sold by the Municipal Corporation or the State Government and that too for specific purpose. The Division bench also came to a finding that there was no evidence on record to suggest that the land in question had come into the hands of respondents herein with

certain conditions limiting its use. Noting that the averments in the writ petition stood unrebutted the Division Bench also concluded that it had been established that the respondent herein acquired the ownership and possession over the land by the registered sale deed without any condition or restraint on its use. On the basis of its aforesaid finding, the Division Bench allowed the appeal filed by the respondent herein and set aside the order of the single Judge. Consequentially, the writ petition filed by the respondent herein was allowed.

8 On behalf of the petitioners it was submitted that the only point which required an answer in the instant special leave petition was whether the provisions of sub-section (4) of Section 173-A of the Act which had been introduced by amendment in 1999 would apply to the case of the respondent when admittedly she had acquired title to the property on 15th May, 1987 long prior to the said amendment. It was submitted that since the amendment had been effected, the Municipal Corporation was entitled to raise a demand on the basis thereof on account of the change of user of the land by the respondent.

9 It was also submitted that the single Judge had not committed any error in dismissing the writ application on the ground that the writ petitioner/respondent herein had failed to produce the \021Patta\022 of the property which would have clearly indicated the use to which the said property could be applied. In the absence of any evidence to the contrary, produced by the writ petitioner/respondent herein, the single Judge had very rightly held that it was not possible to accept the bald statement made on behalf of the writ petitioner/respondent herein that the property had not been allotted or sold to her predecessor-in-interest either by the Municipal Corporation or the State Government.

10 The submissions made on behalf of the appellant were controverted on behalf of the respondent and it was urged that the registered sale deed by which the respondent herein had acquired the property had not indicated any condition relating to specific user of the property in question. Apart from the above, reference had been made to a \021Patta\022 of 1965 issued in favour of the owner of the adjoining property which indicated that the said property was free-hold on which there could be no levy of commercial charges. The said statement of fact had not been rebutted by the petitioner and the representation filed by the respondent remained unattended to and unanswered by the petitioner. It was submitted on behalf of the respondent that in the absence of any evidence produced on behalf of the Municipal Corporation, the Division Bench had not committed any error in coming to the conclusion that the respondent had been able to establish that she had acquired ownership and possession over the property by a registered sale deed without any condition placing any limitation on its use.

11 On the question of application of Sub-section (4) of Section 173-A, as introduced in the Act by the amendment of 1999, it was submitted that, in any event, the same could have no application since the respondent by raising a residential house and shops had not violated any of the provisions of the Act in force at

the relevant time, since there was no restriction on the user of the land when it was acquired by the respondent.

12 In view of the difference in the unamended provisions of Section 173-A and the amendments introduced therein by the Rajasthan Municipalities (Amendment) Act, 1999, it would be appropriate at this stage to set out the unamended provisions of Section 173-A as well as the amendments effected therein by the aforesaid Amending Act of 1999.

13 Section 173-A of the Act prior to its amendment was as follows:

\023173-A (Power of the State Government to allow change in the use of land \026

(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 realised 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 of 1999 reads as follows:

\023173-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

(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.\022

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), the State Government or any authority authorised 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 purposes.

(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 authorised 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 regularisation of said use and upon regularisation of the change of use of land he shall deposit the amount contemplated under sub-section (3).\024

14 From the submissions made on behalf of the respective parties and the materials on record, admittedly the respondent herein acquired title to the

property in question by a registered sale deed dated 15.5.1987. It is also not denied that her predecessor-in-interest acquired ownership and possession of the property pursuant to a judgment and decree passed by the Calcutta High Court on 6.6.1972 in Civil Suit No.867 of 1934.

15 There is also no dispute that the respondent filed an application under Section 170(1) of the Act on 5.1.1996 seeking permission to construct a residential house and shops on the property in question and not having received any response thereto, a notice was given on her behalf under Section 170(8) of the Act, which was also not replied to and consequently on the basis of the deeming provision the respondent started construction invoking such deeming clause contained in sub-section (8) of Section 170 itself.

16 While it is true that the respondent had not produced a copy of the \021Patta\022 for the property in question she had all along contended that the property in question had never been allotted to her predecessor-in-interest either by the Municipal Corporation or by the State Government, which stand stood un rebutted on behalf of the petitioner. There is also no denial by the petitioner that the property had been acquired by the predecessor-in-interest of the respondent by virtue of a decree passed by the Calcutta High Court in respect of the ancestral properties of the parties to the suit.

17 In such circumstances, we do not think it will be proper for this Court in the special leave petition to once again embark on an inquiry, without any evidence on record, as to whether the property had been allotted either by the Municipal Corporation or the State Government. In either case, some record would have been maintained either by the Municipal Corporation or the State Government, which was not produced either before the Court in the writ proceedings or before us.

18 We, therefore, have to accept the conclusion of the Division Bench that the property had neither been allotted by the Municipal Corporation or by the State Government or that any restriction had been placed on its user. Consequently, the question of demanding conversion charges for change of user would also not arise and the amended provisions of Sub-section (4) of Section 173-A would also have no application to the facts of the case, since it is controlled by the very opening words that 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. If the basis on which sub-section (4) of Section 173-A could be applied, is not available to the petitioner the demand raised by it towards conversion charges also is not maintainable.

19 We, therefore, have no hesitation in holding that Section 173-A as amended in 1999 would not apply to the case of the respondent and the Division Bench of the Rajasthan High Court at Jodhpur had correctly allowed the appeal by the respondent.

20 In that view of the matter, the instant special leave petition is dismissed, but there shall be no order as to costs.