

CASE NO.:
Appeal (civil) 3468-69 of 2003

PETITIONER:
Municipal Corporation, Jaipur

RESPONDENT:
Shankarlal

DATE OF JUDGMENT: 03/01/2006

BENCH:
ARIJIT PASAYAT & TARUN CHATTERJEE

JUDGMENT:
J U D G M E N T
WITH
CIVIL APPEAL NO. 3470 OF 2003

ARIJIT PASAYAT, J.

These appeals are directed against the orders passed by a learned Single Judge of the Rajasthan High Court in S.B. Civil Writ Petition No.3536 of 1999 disposed of on 6.12.1999 and the order dated 10.11.2000 passed on an application filed for "seeking clarification" of the order dated 6.12.1999.

A brief reference to the factual aspects would be necessary for deciding the controversy involved.

The respondent filed a Writ Petition for a direction to the appellant-Corporation to regularize the land i.e. plot No.113, Near Central School, Bajaj Nagar, Tonk Road, Jaipur. It was the case of the writ petitioner that the regularization was to be done in view of the decision taken by the Jaipur Development Authority (in short 'JDA') dated 6.11.1989. It is to be noted that the land originally belonged to the Jaipur Urban Improvement Trust, which body was succeeded by the JDA and finally by the appellant-Corporation. The respondent stated that he had filed an application for regularization before the JDA on 18.9.1984.

The prayer in the writ petition was resisted on several grounds by the appellant-Corporation. Firstly, it was pointed out that the corporation was not bound by any decision taken by its predecessor body i.e. the JDA. In fact the respondent had filed an application for regularization on 27.9.1996 and his application was to be considered in the light of statutory provisions and regulations governing the appellant-Corporation. It was specifically urged that the writ application filed in 1999 seeking enforcement of a resolution on the basis of an application which was filed earlier to the resolution has to be ignored and the application made in 1984 is of no consequence. It was specifically pointed out that the writ petition was not maintainable on the grounds of delay and laches.

By the judgment dated 6.12.1999 a learned Single Judge of the High Court disposed of the writ application without dealing with aforesaid stands of the appellant-Corporation and inter alia gave the following directions:

"In my considered view, the application dated 18.9.1984 of the petitioner for regularization was undoubtedly pending on the decision taken by the JDA on or about 6.11.1989 when vide Agenda Item NO.42.14 the JDA decided to regularize the lands of similarly situated persons like the petitioner but his case was not regularized and according to the respondent-Corporation his case is pending consideration after receipt of the file of the petitioner's land in dispute from the JDA. However, since after the decision of the JDA the land in dispute stands transferred to the respondent Corporation, the respondent Corporation is bound to regularize the petitioner's land on the pattern of the JDA's decision taken for similarly placed land occupiers like the petitioner whose cases have been regularized by the JDA in its decision referred to above. Non consideration and not deciding the petitioner's case for regularization even after the land stood transferred from the JDA to the respondent Corporation on the pattern of the JDA is per se arbitrary. Consequently, this writ petition deserves to be allowed.

As a result of the above discussion, this writ petition is allowed. The respondent Municipal Corporation Jaipur is directed to regularize the land of the petitioner (i.e. Plot No.113, Near Central School, Bajaj Nagar, Tonk Road, Jaipur, which is in his possession) in view of the decisions dated 6.11.1989 and 17.5.1989 of the Jaipur Development Authority referred to by the petitioner in his writ petition. The orders for aforesaid regularization be passed within a period of four weeks from the receipt of certified copy of this judgment. No order as to costs."

An application was filed by the respondent seeking "clarification in the order" making a grievance that the appellant-Corporation was charging prevalent market rate. The learned Single Judge by order dated 10.11.2000 disposed of the said application and held that the action taken by the appellant-Corporation was in flagrant disregard and violation of the order dated 6.12.1999. It was further held that the direction of the Commissioner of the Corporation fixing the amount at Rs.1 crore 7 lacs was beyond the scope of the order passed by the High Court earlier and was not within the purview of the orders of the Court. Both these orders are under challenge in these appeals.

Mr. Altaf Ahmad, learned senior counsel for the appellant-Corporation submitted that the orders of the High Court are clearly unsustainable. The High Court did not consider the specific pleas of the Corporation that (a) it was not bound by any decision taken in 1989 by the JDA when it had its own prescriptions (b) the writ application was highly belated. Further, the High Court did not indicate any basis for its conclusion that the Corporation was bound by the earlier decision of the JDA in the matter of fixation of rate. It also did not record any finding on the aspect that the writ petitioner

was seeking direction on the basis of the letter which was written about five years before the decision of JDA. It was also seeking enforcement of the decision after about a decade without any explanation whatsoever being offered for the abnormal delay in approaching the Court. In any event, the resolution of the JDA on which the High Court placed reliance was in fact in the nature of enabling provision and it was by no stretch of imagination a mandatory one. It is inconceivable that the rate prevalent in 1989 was to be adopted even when the regularization was directed to be done by the High Court in 1999. The High Court clearly overlooked the same. Further, the High Court has substituted its earlier decision by a fresh one while dealing with an application stated to be for clarification. In essence and substance the High Court has re-written the judgment which is impermissible in law.

Learned counsel for the respondent supported the order and submitted that the appellant-Corporation has not come to Court with clean hands.

The orders of learned Single Judge both in the writ petition and the so called clarificatory order are clearly indefensible. As a matter of fact learned Single Judge did not consider various pleas taken by the appellant-Corporation regarding delayed approach and the effect of any decision taken by the predecessor body on it. It was not explained before the High Court as to why the respondent filed an application before the appellant-Corporation in 1996 if it was really staking his claim on the basis of an application made earlier. Maximum that could have been done by learned Single Judge in such a situation was to direct the appellant-Corporation to deal with the request made in 1996, in accordance with law. The direction given for regularization is clearly unsustainable. Learned Single Judge while dealing with application for clarification virtually substituted his earlier judgment by a fresh one. Directions which were not given in the earlier order were incorporated in the subsequent order which was also impermissible. Direction could not have been given by learned Single Judge to regularize on the basis of the earlier decision of JDA without deciding the binding effect, if any of the said decision of the appellant-Corporation.

Learned counsel for the respondent has further highlighted that the order of the learned Single Judge has been given effect to and the challenge to order before the Division Bench was dismissed and the Special Appeals were held to be not maintainable. It has also been submitted that subsequent transactions had been entered into by the respondent with the other parties. It has been pointed out by learned counsel for the appellant-Corporation that the action was taken in view of the strong words used by a learned Single Judge even going to the extent of saying that the action of the Corporation virtually amounted to contempt of Court's order. Under the threat of contempt, action was taken by the appellant-Corporation without prejudice to its claims involved in the matters before the High Court and this Court.

Once the orders passed by learned Single Judge are held to be indefensible, any consequent action to give effect to the order without prejudice to the stand taken in the appeals before this Court can by no stretch of imagination be said to have been conferred any right on the respondent, much less effecting the merits of the appeal.

The inevitable result is that orders of learned Single

Judge are to be set aside, which we direct. It is however directed that the application dated 27.9.1996 filed by the respondent shall be dealt with by the appellant-Corporation in accordance with law. The amount which is stated to have been deposited shall be adjusted against the amount, if any, fixed by the appellant-Corporation, if it chooses to regularize the land in question. However, if it decides not to regularize the land the amount shall be returned to the respondent with interest at the rate of 9% from the date of deposit till the amount is refunded.

The appeals are disposed of. No costs.

JUDIS