
(2019) 08 RAJ CK 0091

Rajasthan High Court

Case No: Spl Appl. Writ No. 1103 Of 2017

LRs Of Teja Ram And
Ors

APPELLANT

Vs

State Of Rajasthan And
Ors

RESPONDENT

Date of Decision: Aug. 19, 2019

Acts Referred:

- Rajasthan Tenancy Act, 1955 - Section 42, 42(b), 88, 175
- Code Of Civil Procedure, 1908 - Order 2 Rule 2
- Constitution Of India, 1950 - Article 226, 243(W)

Hon'ble Judges: S. Ravindra Bhat, J; Dinesh Mehta, J

Bench: Division Bench

Advocate: S.M. Parihar, L.K. Purohit, L.K. Purohiti

Final Decision: Partly Allowed

Judgement

Dinesh Mehta, J

The present intra-court appeal has been preferred against the order dated 11.10.2017, passed by the learned Single Judge accepting the writ petition

filed by the Municipal Board, Sirohi (respondent no.6 herein).

The facts relating to the present appeal are that one Teja Ram- (the appellants), belonging to a Scheduled Caste community sold his 35

bighas and 4 biswas land to the Municipal Board, Sirohi by way of a registered sale deed dated 16.11.1988. The land was purchased by the Municipal

Board under the Integrated Development Scheme; out of which, about 11 bighas of land was got fragmented for the development of a housing colony

by an order of the competent authority namely SDO, Sirohi.

Before the plots could be offered for allotment, the Tehsildar, Sirohi (respondent no.5 herein) moved an application under Section 175 of the Rajasthan

Tenancy Act, 1955 (hereinafter referred to as the Tenancy Act or the Act of 1955), before the Assistant Collector, Sirohi seeking eviction of the

Municipal Board, alleging that the transaction between the Municipal Board and Teja Ram was in violation of Section 42 (b) of the Rajasthan Tenancy

Act, 1955. While impleading Teja Ram, it was inter alia, averred in the application that since the sale deed dated 27.3.1989 executed by Teja Ram, in

favour of Municipal Board was void, not only was the land in question liable to be resumed by the State Government, but the purchaser-Municipal

Board was also liable to be evicted.

However, a letter dated 4.10.1995 was filed by the Tehsildar, seeking withdrawal of the application under Section 175 of the Act, in furtherance of a

communication dated 29.9.1995, sent by the District Collector, Sirohi. It was inter alia stated by the District Collector in the said communication that

since the purchaser Municipal Board is an institution and not a person, the transaction in question was not hit by the provisions contained in Section

42(b) of the Tenancy Act. The Assistant Collector, accepted the application and dropped the proceedings by his order dated 9.10.1995, however,

without any adjudication.

The Municipal Board, then, moved an application for mutation of the subject land in its name, which was rejected by the Tehsildar by his order dated

29.6.2005, observing that the transaction was in defiance of Section 42(b) of the Act of 1955. The Municipal Board, Sirohi preferred a mutation-

appeal against the Tehsildar's order, was allowed by the Addl. Collector, Sirohi on 4.1.2006 and the matter was remanded to the Tehsildar to

carry out the mutation in view of the Circular dated 9.12.2005, issued by the State Government. The state had clarified that the Municipal Board is a

caste-neutral entity and thus, the transaction does not fall foul to Section 42(b) of the Act of 1955.

The District Collector, Sirohi wrote a letter dated 15.12.2005 to the State Government and sought its opinion/guidance in this regard. The State

Government in turn wrote a letter dated 20.12.2005 and opined that as the Municipality is a Constitutional body, the mutation can be done in its name.

On 18.3.2006, the land was mutated in the name of Municipal Board. After some time, the District Collector, Sirohi received another communication

dated 15.9.2006, whereby the earlier communication dated 20.12.2005 was withdrawn. Such being the position, the Tehsildar by order dated

29.12.2006, recalled his earlier order (18.03.2006) and mutation entry in the name of Municipal Board was deleted.

Simultaneously, the Tehsildar filed an application under Section 175 of the Tenancy Act, before the Assistant Collector and prayed that it be declared

that the land had vested in the State while also seeking eviction of Municipal Board, Sirohi from such land. It was highlighted that the Municipal Board,

Sirohi had purchased the land from the first respondent, a member of Scheduled Caste, hence, the sale was void being contrary to Section 42(b) of the

Act of 1955. It was also brought on record that though a temple, school and building housing the Income Tax Department had been constructed on the

land, nevertheless the remaining land, which was converted and developed into plots was lying vacant.

The Municipal Board filed a preliminary objection cum reply on 4.2.2008 in response to the notice issued by the Assistant Collector, but without even

waiting for an order by the Assistant Collector, approached this Court by filing a writ petition under Article 226 of the Constitution of India, with the

contention that the proceedings under Section 175 pending before the Assistant Collector were illegal and without jurisdiction. It was claimed in the

writ petition that the communication dated 15.9.2006, issued by the State Government, the order dated 29.12.2006, canceling the mutation entry in its

favour; and the proceedings under Section 175 of the Act of 1955 instituted by the Tehsildar be quashed.

With a view to complete the factual matrix, it may be noted that during the pendency of the writ petition, the seller Teja Ram passed away and his

legal representatives (the appellants herein) came to be substituted in his place.

The learned Single Judge found the proceedings to be illegal on various counts: because the earlier application filed by the Tehsildar under Section 175

of the Act of 1955 had been dismissed as withdrawn on 4.10.1995; the suit under Section 88 of the Act filed by Bhanwar Lal, had been dismissed; and

most importantly, keeping in view the fact that the land in any case, cannot be reverted back to the vendor and would vest in the State. The learned

Single Judge was of the view that the petitioner, Municipal Board is a statutory body established under Rajasthan Municipalities Act, 1959, which had

purchased the said land in furtherance of its obligation under Article 243(W) of the Constitution of India, therefore, it had to be allowed to retain the

possession.

The reasoning of learned Single Judge in support of the impugned judgment was that the Municipal Board can acquire the land under the provisions of

Land Acquisition Act, even if it were owned by a member of Scheduled Caste, there was no legal impediment in purchasing the land, for the purpose

of development of a residential colony.

The learned Single Judge allowed the writ petition filed by the Municipal Board and quashed the communication dated 15.9.2006 issued by the State

Government; as a result whereof mutation in favour of the Municipal Board was rendered irregular (the transfer being barred by Section 42(b) of the

Act). The learned Single Judge also quashed the consequential order dated 29.12.2006, whereby the mutation in favour of the Municipal Board was

canceled.

The appellants, legal representatives of the vendor Teja Ram have preferred the present intra-court appeal assailing the order of the learned Single

Judge.

Mr. Parihar, learned counsel for the appellants contended that the impugned order is clearly contrary to law, inasmuch as the Municipal Board may be

a body constituted under the Municipalities Act, 1959 and/or having constitutional obligation, nevertheless, the sale of land by a member of Scheduled

Caste community is, in any case contrary to Section 42(b) of the Tenancy Act. He argued that section 42 does not refer to any person, company or

body; it rather provides that any transfer, gift or bequeath by a Khatedar tenant belonging to Scheduled Caste shall be void, if the purchaser is a

person, who is not a member of Scheduled Caste. He argued that the communication dated 15.9.2006, issued by the State Government was not only in

sync with the statutory provision but also in conformity with the judicial pronouncements on the subject.

The learned counsel cited a Full Bench decision dated 10.5.2010, of this Court in the case of State of Rajasthan vs. Uka & Ors (RLW 2010(3) Raj

2636); the judgment of Division Bench dated 15.7.2001 in the case of VS Friendship Solar Park Pvt. Ltd. Vs. State of Rajasthan & Ors reported in

RLW 2011(4) Raj. 2966; and the judgment of the Supreme Court in the case of State of Rajasthan & Ors. Vs. Aanjaney Organic Herbal Pvt. Ltd

(2012) 10 SCC 283 to support his argument that the communication/order dated 15.9.2006 issued by the State Government was just and valid and the

same ought not have been quashed by the learned Single Judge.

While challenging that part of the learned Single Judge's order, whereby the order dated 29.12.2006, reviewing/recalling the mutation recorded in

the name of Municipal Board, Sirohi, was quashed, it is argued that setting aside mutation entries in exercise of powers under Article 226 of the

Constitution of India was not warranted or justified, especially when a remedy under the Tenancy Act itself was available to the Municipal Board.

Mr. LK Purohit, learned counsel appearing for the State could not dispute the above position of law that a sale by a person belonging to a Scheduled

Caste community to anyone, other than a person belonging to such caste was void. He however, submitted that the land has been in ownership and

possession of Municipal Board, Sirohi for a considerable period, and that it is meant to be used for housing. Therefore it was stated that such

appropriate orders as are deemed expedient in the facts of the case may be passed by the court.

Mr. Manoj Bhandari, learned counsel appearing for the respondent Municipal Board, Sirohi firstly questioned the locus of the appellants and argued

that the appellants have got themselves substituted as legal heirs of Teja Ram, whereas one of them Bhanwar Lal, had filed a suit under Section 88 of

the Tenancy Act, which suit was dismissed by the competent Revenue Court and such order has been attained finality. According to Mr. Bhandari the

appellants, despite being legal representatives of the vendor Teja Ram cannot maintain the present appeal, unless an appropriate decree from civil

court is obtained, as had been held by the learned Assistant Collector, while rejecting suit filed by Bhanwar Lal "son of Teja Ram and one of the

appellants herein.

It was further argued on behalf of the Municipal Board that it is a bonafide purchaser having bought the land in question by way of registered sale

deed, after paying due consideration to Teja Ram; the land had been fragmented and that a residential colony has been planned and duly plotted.

Having regard to the overall facts and circumstances in the case and considering that the Municipal Board is discharging its constitutional obligation of

providing housing to the residents, even if there is some irregularity, counsel submitted that the court may take a lenient view, and instead of upturning

the transaction, ratify the action in public interest, since the sale had taken place about 30 years ago. This court has heard learned counsel for the

parties and perused the material available on record.

Before proceeding to pronounce upon the issues involved in the present appeal, it is necessary to bear in mind that by way of filing the writ petition,

the Municipal Board had challenged the proceedings under Section 175 of the Act, pending before the Assistant Collector, which were initiated

pursuant to the application dated 13.8.2007 filed by the Tehsildar and a case (No. 53/2007) was been registered in his court. The learned Single Judge

allowed the writ petition filed by the Board, but did not pass any order in relation to the proceedings, though a specific claim was made in the petition

and arguments too were advanced. By the order under consideration, the learned Single Judge merely quashed the communication/clarification dated

15.9.2006 (Annex.13), issued by the State Government and the order of the Tehsildar dated 29.12.2006, making correction in the mutation entry. The

consequence of the order of learned single Judge is, that the land stands mutated in the name of the Municipal Board.

This court cannot be oblivious to the fact that the learned Single Judge has made observations and has delved into the legality of the proceedings under

Section 175 of the Act of 1955 pending before the Assistant Collector, though those orders have not been quashed. Therefore, this court deems it

appropriate to deal with that aspect too, and consider the validity of the root cause of the controversy.

The communication dated 15.9.2006, issued by the State Government in the opinion of this court does not suffer from any infirmity. It is rather in

conformity with the correct position of law. By way of the communication dated 15.9.2006, the State Government had withdrawn its earlier

clarification dated 20.12.2005, wherein it was stated that since the Municipal Board is a constitutional institution, the provisions of Section 42(b) of the

Act and the circular dated 19.11.2005 do not apply.

A reading of Section 42(b) of the Tenancy Act and the Full Bench judgment of this Court rendered in the case of State Vs. Uka (supra) leaves no

room for ambiguity that a sale, transfer or bequeath by a member of Scheduled Caste to any person, may it be, a company, corporation or Board, is

void.

It is pertinent to note that the Full Bench of this Court had specifically overruled the Division Bench judgment dated 9.1.2003, rendered in the case of

State of Rajasthan Vs. Indian Oil Corporation, held that a corporation being a company registered under the provisions of the Companies Act, is no

doubt a juristic person but does not have a caste. Therefore, it was held that the sale by a member of Scheduled Caste to juristic person is not hit by

Section 42 of the Tenancy Act.

The Municipal Board had placed heavy reliance upon the Division Bench judgment dated 9.1.2003. However since that view has been reversed, the

foundation of the Board's case that the transaction in question is not hit by Section 42(b) of the Tenancy Act, is suspect.

It will not be out of place to refer to paras nos.28 and 29 of the Full Bench judgment of this Court rendered in the Uka's case (supra), in which the

Division Bench judgment of Indian Oil Corporation's case has been dealt with and overruled:

“28. In State of Rajasthan Vs. Indian Oil Corporation Ltd. (supra), it was held that the provisions of Section 42 shall not be attracted in the case of

transfer of the land or interest therein by a member of Scheduled Caste/Scheduled Tribe to a juristic person, being having no caste. On examination of

relevant provisions, I find that the judgment aforesaid is based on misreading of statute and is also prone to misuse.”

29. Section 42 of the Act of 1955 provides that the sale-gift or bequest by a khatedar tenant shall be void, if such sale, gift or bequest is by a member

of Scheduled Caste in favour of a person who is not a member of Scheduled Caste, or by a member of Scheduled Tribe in favour of a person who is

not a member of Scheduled Tribe. Meaning thereby, a member of Scheduled Caste may transfer his interest in whole or a part of his holding only to

the member of Scheduled Caste and a member of Scheduled Tribe, may to a member of the Scheduled Tribe only. The emphasis of Section 42 is to

maintain rights of a member of Scheduled Caste/Scheduled Tribe in their own category. The transferee should be a member of Scheduled Caste, if

the transferor is from Scheduled Caste, and same will be the position in the case of Scheduled Tribe also. As a matter of fact Section 42 does not

permit transfer of interest in a land holding by a member of Scheduled Caste/Scheduled Tribe even to a person who is not having any caste. The

reasoning given by Division Bench in State of Rajasthan Vs. Indian Oil Corporation Ltd. (supra), therefore, is not in consonance with the provisions of

Section 42. “

Reference of another Division Bench judgment in the case of VA Friendship Solar Park Pvt. Ltd. & Anr. vs. State of Rajasthan & Ors (supra),

especially para no.12 thereof can be made, which reads thus:-

“12. The submission raised by learned counsel appearing on behalf of the petitioner that since the sale was in favour of the company, the bar of the

provision of Section 42(b) is not attractive. Merely by the fact that company is a juristic person, provision of Section 42(b) shall not be applicable,

cannot be accepted. The word “person” includes such juristic person, if the submission is accepted, it would frustrate the basic purpose of the

provision, in our opinion, bar of Section 42(b) is clearly attracted. The protection of interest of Scheduled Caste and Scheduled Tribe is equally

important as that of development and solar energy. Interest of such down-trodden people cannot be ignored and overlooked. Our view is fortified by

the decision of Full Bench of this Court in State of Rajasthan Vs. Uka & Ors., D.B. Civil Special Appeal (W) No.158/2004 along with other appeals

decided on 10.5.2010 in which the correctness of the decision in Asuram Vs. Tehsildar, Sanchoe, AIR 2000 Rajasthan 345M has been upheld.”

In view of the above authoritative pronouncements, this court is of the considered opinion that the communication dated 15.9.2006, issued by the State

Government was in consonance with the statutory provision and the law on the subject. The learned Single Judge has therefore erred in quashing the

same.

As far as the observations of the learned Single Judge that since the proceedings under Section 175 had earlier been dismissed as withdrawn, de-novo

proceedings under Section 175 of the Act of 1955 are not maintainable, is concerned, we are unable to support such view.

It is relevant to note that the earlier proceedings under Section 175 of the Tenancy Act were dismissed as withdrawn, in pursuance of the direction

given by the Collector in light of the clarification given by the State Government. Once the position of law changed, the State was justified in issuing

the clarification in line with the law. Therefore, in the changed circumstances and in view of the subsequent judgments, if the Tehsildar has filed

another application, such a course of action cannot be said to be barred by principle of res-judicata or hit by the provisions of Order II Rule 2 of the

Code of Civil Procedure, given the fact that the application under Section 175 was withdrawn on the opinion of State Government and transaction in

question was fundamentally void.

The submission that the appellants cannot maintain the present appeal, as a suit under Section 88 of the Act of 1955, filed by one of the appellant

Bhanwar Lal was dismissed, is also insubstantial. By the judgment dated 29.8.2001, the learned Assistant Collector, Sirohi had dismissed the suit filed

by Bhanwar Lal in which he had challenged the transfer made by Teja Ram "his father, on the ground that the land in question was ancestral land

and that his father had no right to alienate the same without effecting partition. Since the issue and ground raised in the suit filed by Bhanwar Lal were

entirely different, dismissal of such suit and the fact that the order has attained finality, hardly has any bearing on the appeal at hands.

As an upshot of the discussion foregoing, the appeal is allowed. The impugned order dated 11.10.2017, passed by the learned Single Judge is quashed.

As a result of the acceptance of the appeal, both the communication dated 15.9.2006 issued by the State Government as well as mutation entry dated

29.12.2006 stand revived.

This court further holds that though the learned Single Judge has not specifically quashed the proceedings under Section 175 of the Act (being case

no.53/2006) pending before the Assistant Collector, yet this court holds that it remained alive. For the purpose of clarity, the Assistant Collector is

hereby directed to take up the proceedings under Section 175 of the Act of 1955 and decide the same in accordance with law, after giving due notice

to all concerned.

At the same time, however, this court is of the opinion that in case, the Assistant Collector allows the application under Section 175 of the Act of 1955,

and passes an order of vesting the land in the State, the State Government shall be free to pass appropriate orders allotting such land to the Municipal

Board in accordance with law, considering the fact that it (the land) had been purchased by the Municipal Board, which is under a statutory and

Constitutional obligation to provide housing facility to the residents. The State shall also give due regard to the fact that the school, Income Tax

Department Building and a Temple are already in existence on such land, which was transferred by the vendor-Teja Ram way back in the year 1989.

In case, the State Government passes any such order and decides to transfer/allot the land in question to the Municipal Board, it will be incumbent

upon the Municipal Board to compensate the present appellants in appropriate manner and for such purposes, we feel that to meet the ends of justice

it will be apt to direct the Municipal Board to allot one plot admeasuring 30'x60' (1800 Sq. ft.) each to the appellant Nos.1 to 4 (total 4 plots),

free of cost.

The appeal is partly allowed, in the above terms.