

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: JUDGMENT ::

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.140/2015
Jaipur Development Authority, Jaipur Vs. Shri Pankaj Sharma & Anr.

D.B. CIVIL SPECIAL APPEAL (WRIT) NO.863/2014
Jaipur Development Authority, Jaipur Vs. Shri Pankaj Sharma & Anr.

30.04.2015

HON'BLE THE CHIEF JUSTICE MR. SUNIL AMBWANI
HON'BLE MR. JUSTICE AJIT SINGH

Mr.Rajendra Prasad for the appellant-JDA.
Mr.M.M.Ranjan, Senior Advocate assisted by
Mr.Rajat Ranjan for the respondent No.1.

Reportable

1. The removal of formal defects is dispensed with.
2. We had heard learned counsel appearing for the parties on 25.03.2015, and given time to the appellant to file a better affidavit, explaining the cause of delay, which may also include the circumstances, in which the statement/concession was given by the counsel appearing for the Jaipur Development Authority, on which the writ petition was decided, and to explain as to whether the counsel appearing for the Jaipur Development Authority, at the relevant time, was competent to give any such concession, with or without the consultation of the authorities of the Jaipur Development Authority.
3. An additional affidavit on delay condonation application of the Jaipur Development Authority has been filed on 21.04.2015, stating as follows:-

"1. That I am the officer-in-charge for respondents in the above noted case and I am well conversant with the facts and circumstances of the case as per the official record.

2. That the impugned order was passed on 01.05.2012. The copy of the order was received from counsel for the JDA with an opinion for not filing any appeal. The order and the opinion having been received was placed for reconsideration by HLA on 29-08-2012 who on the same day referred the matter to Director Law. The Director Law opined that the matter may be placed before the committee constituted for the purpose of deciding issue with regard to filing of appeal vide its letter dated 10-09-2012. Accordingly proposal was made for placing the matter before the committee on 13-09-2012.

3. That the initially the meeting of the committee was proposed to be fixed on 11-10-2012 at 03:30 but for some reason the matter could be placed on 11-10-2012.

4. That thereafter the committee discussed the matter and was of opinion that if lease deed is issued in this case then regularization in case of other plots will also be required. Accordingly it was proposed that the issue of appeal or no appeal should be taken after a policy decision in this regard. On 25-10-2012 it was also proposed that decision at the level of state government may be required.

5. That however when the matter was placed before JDC, on 28-10-2012 he directed for filing an appeal in the matter. Order in this regard was passed on 07-11-2012. However, due to Deewali break appeal could not be got prepared from the counsel immediately.

6. That the appeal prepared was placed for vetting of Director of Law on 27-11-2012. The appointment of Senior Advocate was also made and the appeal was also setting for vetting to him. The memo of appeal was finally

approved on 30-11-2012 with a instruction to file it immediately.

7. That the aforesaid facts are clearly borne out from the note sheet which has already been submitted by the respondent alongwith his reply to the application for condonation of delay.

8. That however the non-filing of appeal by the counsel has been explained by him in an affidavit which has already been submitted alongwith application for condonation of delay.

9. That in so far, the concession made by the counsel is concerned, there is no record available with regard to any decision taken by the authority for this purpose. It is also not clear as to in what circumstances the person representing JDA instructed the counsel to state that the JDA would have no objection if the respondent would apply for issue of lease deed for commercial user in accordance with the Master Plan. It seems that both the counsel and the person representing JDA were under impression that lease deed for commercial purpose can be issued being permitted by the master plan which was not the correct impression.

10. That it is submitted that the issuance of lease deed for commercial purpose in the facts and circumstances of the case is not permissible as per the provisions of law and therefore such concession could not have been made with or without consultation of the competent authorities of JDA.

11. That it seems that it is only when the Hon'ble Court pressed for immediate compliance in the contempt petition, the counsel for JDA enquired about the filing of appeal and filed the same on 22-05-2014. The senior counsel on 23-05-2014 also suggested the course for filing review petition and instruction for filing the review

*petition were issued on the same day. Copy of the letter dated 23-05-2014 in this regard is filed herewith and marked as **Annexure-A/1.***

4. It is submitted by learned counsel appearing for the Jaipur Development Authority that the submission made by learned Senior Counsel appearing for the Jaipur Development Authority, was completely misunderstood, on which the writ petition was decided, whereas the matter was hotly contested by the Jaipur Development Authority. It is submitted that the Jaipur Development Authority was contesting the right of the respondent, on the land, and all other persons, to whom plot Nos.1 to 27 was allotted on the 200 feet strip of road, which had to be surrendered by the Society, which had allotted the land as part of the conditions of conversion of land from agriculture to residential. The land was initially earmarked for institutional purposes. In the Master Plan 2001 it was reserved for institutional purposes, and that, in the Master Plan 2025, it was reserved for commercial purposes. The question however, on which the matter was considered by the JDA Appellate Tribunal, and on which the writ petition was filed by the Jaipur Development Authority, was with regard to the surrender of the 200 feet strip of land. All these questions raised by Jaipur Development Authority, were required to be decided by learned Single Judge.

5. The Jaipur Development Authority, considered the effect of the statement given by the Senior Counsel. The minutes of the

proceedings, and the note-sheets, demonstrate that the matter of filing of Special Appeal was under active consideration before the Jaipur Development Authority. A decision was taken to file the appeal, and before that, a review petition was also filed, which was rejected on the ground of delay.

6. Learned counsel appearing for the respondent submits that the writ petition filed against the order, which was passed on the statement given by learned Senior Counsel for the Jaipur Development Authority, is barred by gross delay, which has not been sufficiently explained. The Jaipur Development Authority could not have challenged the title of the respondent, and in any case, in the same 200 feet strip of land, two leases have been granted, and a construction of a house has been raised.

7. We have gone through the grounds for condonation of delay, in the affidavit and the additional affidavit filed by the Jaipur Development Authority, and find that the circumstances, in which the Jaipur Development Authority is placed, in view of the statement given by the Senior Counsel, which was apparently, without any authority, and in any case, was misunderstood and overlooking the facts in the title of the respondent, which was hotly contested by the Jaipur Development Authority, the matter was decided, the delay is liable to be condoned. The applications for condonation of delay are allowed.

8. With the consent of the Counsels appearing for the parties, we have heard the Special Appeals on merits.

9. These two intra-court Special Appeals arise out of the judgment passed by learned Single Judge dated 01.05.2012, by which he had dismissed the writ petition, against the order passed by the Jaipur Development Authority Appellate Tribunal and the order dated 27.11.2014, by which the review petition was dismissed, on the ground of delay.

10. A writ petition was filed against the order passed by the Jaipur Development Authority Appellate Tribunal dated 11.07.2006, by which the Jaipur Development Authority Appellate Tribunal had, on the remand made by the High Court, in S.B. Civil Writ Petition No.852/2004 dated 22.05.2005, allowed the reference, with directions to the Jaipur Development Authority, to execute the lease deed of plot No.22, Mauji Cooperative Housing Society, Mauji Nagar, Jawahar Lal Nehru Marg, Jaipur, measuring 400 sq.yards.

11. Brief facts, as mentioned in the order of the Jaipur Development Authority Appellate Tribunal, are that the plot is part of the land purchased by the Cooperative Society from khatedars. Under the Land Conversion Rules, 1981, the land was converted from agriculture to residential, after deposit of conversion charges and sub division charges. Some of the lease deeds were executed in favour of the members of the Society. According to the respondent, the Jaipur Development Authority started proceedings for acquisition of 200 feet strip of the land, adjoining JLN Road, but that, on 26.09.1998, the proceedings were dropped. The land was, at that time, reserved for

professional and research, which was later on converted into residential. The lease deed was executed in favour of some of the members, and that, a housing colony had been developed. Camps were organized thereafter to issue lease deed in favour of the allottees. On 08.07.2003, when the petitioner was trying to raise constructions, it was stopped by the officers of the Jaipur Development Authority, on the ground that until lease deed is executed in his favour, he cannot start the constructions. The respondent, after he had applied, several times, for issuing lease deeds, approached the High Court, where a defence was taken by the Jaipur Development Authority that in the year 1990. The Building Plan Committee had approved the plan, but that, in the meeting of the Building Plan Committee dated 04.01.2000, the request to make allotments on the 200 feet strip of land, adjoining JLN Road, was rejected.

12. The Jaipur Development Authority took a stand that as a part of conversion i.e. the condition of the conversion of the land, 200 feet strip of land, adjoining the road, had to be surrendered.

13. The Jaipur Development Authority Appellate Tribunal, after considering the documents filed by the Jaipur Development Authority, in which it tried to establish that 200 feet strip of the land was to be surrendered as part of the conversion, and of which no lease deed could be executed, was not accepted. The Tribunal held that any amendment, in view of Section 32 of the Rajasthan Urban Areas (Sub-Division Reconstitution and Improvements of Plots) Act, 1975, could only be made, after

giving an opportunity of hearing, and that, the decisions taken in the meeting of the Building Plan Committee of the Jaipur Development Authority, was not binding on the respondent. It held that the plot allotted to the respondent was cancelled, without giving opportunity of hearing in accordance with the provisions of the Act.

14. The Tribunal further held that the decision of the Jaipur Development Authority, not to execute lease deeds, to the plot holders on the subject land, was also not a valid decision. It was observed that one person, had managed to obtain lease deed, and had also constructed a house on the same strip of land, which clearly establishes that the Jaipur Development Authority is not adopting uniform standards, and has allowed the rules to be violated, in at least one case. On these findings, the reference was allowed, with directions to the Jaipur Development Authority to execute lease deed in favour of the respondent, within three months.

15. During the course of hearing of the writ petition, it was pointed out that in the new Master Plan 2025, which has come into existence, the area in question is shown as commercial area, and had ceased to be institutional area, and in the circumstances, learned counsel appearing for the respondent, submitted that the respondent No.1 could only seek to issue of lease deed, as per the master plan, and not contrary thereto, and would be willing to make payment of requisite charges to the Jaipur Development Authority, for issuance of lease deed for commercial purposes. It

was submitted that with the admitted change in the master plan, the only foundation of the Jaipur Development Authority's writ petition is lost, and now the land admittedly in the ownership of the respondent No.1, can be put to user, in accordance with the master plan. On this suggestion, learned Single Judge noted that Shri R.N. Mathur, Senior Counsel, made a statement as follows: -

“Mr.R.N.Mathur, Senior Advocate appearing with Mr.Sanchit Tamra would submit that if the respondent No.1 is not seeking the lease deed for residential user which would be contrary to the master plan and would apply for issue of lease deed for commercial user in accordance with the master plan, the JDA would have no objection.”

16. On the aforesaid statement given by Shri R.N.Mathur, Senior Counsel appearing for the Jaipur Development Authority, learned Single Judge, held, on presumption, that it is not in dispute that the respondent No.1 is an absolute owner of the plot No.22 in Mauji Colony, JLN Marg, which he had purchased by way of a registered sale deed. He thereafter observed that it is not in dispute that the land was neither required, nor vested either in the State Government, or the Jaipur Development Authority, and consequently, in terms of Article 300-A of the Constitution of India, the respondent No.1 is entitled to the enjoyment and user of his property, in accordance with law. With these observations, learned Single Judge proceeded to dismiss the writ petition, with following directions: -

“Consequently, I would dismiss the writ petition subject to the caveat that the JDA issue to the respondent No.1 the lease deed in terms of the order dated 11th July, 2006 passed by the JDA Tribunal not for the residential user but for commercial user on payment of requisite charges. It is expected that the lease deed by the JDA will be issued expeditiously and in any event not later than six months from the date of this order.”

17. Upon hearing learned counsel appearing for the parties and considering the background of the case, in which the Jaipur Development Authority was contesting the right of the respondent for execution of lease deed, we find that learned Single Judge wrongly assumed that the respondent No.1 is an absolute owner of the plot No.22 in Mauji Colony. He did not consider background of the case, and the stand taken by the Jaipur Development Authority, with regard to the rights of the respondent No.1, over the property. The Jaipur Development Authority had, for a long period of time, contested, that a condition of the conversion of the land, 200 feet strip of land, adjoining the road, had to be surrendered by the Society. The lease deed has not been executed by the Jaipur Development Authority in favour of the respondent No.1, and only an allotment order, in favour of the respondent No.1, was issued. The assumption therefore, that the respondent No.1 is the absolute owner, and that, right of enjoyment and user of the property, was made without considering the merits of the case.

18. We also find that the statement of Shri R.N.Mathur, Senior Counsel, was not such, which could have led to an assumption, that the Jaipur Development Authority had admitted the right and title of respondent No.1 over the property, and his right for execution of the lease deed. The statement was only given to the effect that if the lease deed sought for a user, which is not contrary to the master plan, the Jaipur Development Authority will not have any objection. This statement could not have been taken into consideration, as an admission by the Jaipur Development Authority, or concession for execution of the lease deed for commercial user.

19. We do not find that learned Single Judge has satisfactorily decided the matter. He has taken the statement given by the Senior Counsel appearing for the Jaipur Development Authority, as a concession, and proceeded to confer absolute property rights on the respondent No.1.

20. In the aforesaid facts and circumstances of the case, we are of the view that the order passed by learned Single Judge cannot be sustained.

21. The Special Appeals are allowed. The judgment of learned Single Judge dated 01.05.2012 and the order of review dated 27.11.2014 are set aside. The matter is remanded to learned Single Judge to decide the writ petition on merits, and in accordance with law. Considering the background of the matter and the long period, for which the dispute is pending, we request learned Single Judge to decide the matter as expeditiously as

possible. The interim applications are disposed of.

22. A copy of this judgment will be placed in the connected file.

(AJIT SINGH),J.

(SUNIL AMBWANI), CJ.

Skant/-, Proof Reader

All the corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Shashi Kant Gaur,
Proof Reader



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