

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Civil Writ Petition No. 8062/2016

Neeta Garg

-----Petitioner

Versus

State Of Raj And Ors

-----Respondents

For Petitioner(s)	:	Mr. Ashish Kishore Saksena
For Respondent(s)	:	Mr. Shobhit Vyas Ms. Sakshi Tiwari for Mr. Abhi Goyal Mr. Haritabh Kumar Aditya, Dy. Commissioner, ADA

HON'BLE MR. JUSTICE SAMEER JAIN

Order

31/01/2023

At the outset, it is pertinent to note that vide order dated 17.01.2023, this Court had directed the Commissioner of ADA to mark his presence before the Court with the relevant and necessary record of the case. Thereafter, in compliance of the said order, Mr. Haritabh Kumar Aditya, Dy. Commissioner, ADA has marked his presence before the Court, who has claimed himself to be the competent authority to assist the Court in the present matter.

Learned counsel for the petitioner has drawn the attention of this court to the order dated 07.03.1968. The relevant part of which is reproduce as under:-

"For the reasons given above the land of Khasra Nos. 2189, 2213, 2212, 2215, 2190/7954, 2211, 2188, 2210, 396, 338, 394 and 341 along with land and house purchased from A. A Philips and Chand Mal are declared as personal properties of the applicant and

the rest of land in applicant's khata are his khud kast land."

Learned counsel for the petitioner has submitted that qua Khasra No. 394, it was held by the court that the same was the personal property of the applicant. Furthermore, learned counsel placed reliance upon the order of the Additional Civil Judge, Serial No. 2, Ajmer dated 18.02.1995. The relevant discussion and finding therein is reproduced as under:-

"उपरोक्त साक्ष्य के आधार पर यह देखना है कि क्या प्रतिवादी नगर सुधार न्यास को वादग्रस्त भूमि को बेचने या नीलाम करने का अधिकार है या नहीं। चूंकि यह विवाद्यक वादी को साबित करना था। वादी साक्षी से इस भूमि को प्रदर्श-2 के माध्यम से निजी सम्पत्ति खोना कथित किया है। प्रदर्श-2 मदनगोपाल बनाम राज्य के वाद में न्यायालय अतिरिक्त जिलाधीश अजमेर ने अपने आदेश दिनांक 7.3.68 द्वारा वादग्रस्त भूमि खसरा नं. 394 को निजी सम्पत्ति होना घोषित किया है और वादी ने यह भूमि उक्त वाद में निजी सम्पत्ति घोषित होने के पश्चात खरीदी है, इसके अतिरिक्त वादग्रस्त भूमि की जमाबंदी सम्वत् 2022-2025 में वादी शुभनारायण के नाम हस्तान्तरित होना अंकित है। यह जमाबंदी स्वयं प्रतिवादी ने प्रस्तुत की है। इसके अतिरिक्त राजपत्र प्रदर्श अ 2 में खसरा नं. 394 का उल्लेख नहीं किया गया है। अतः खसरा नं. का उल्लेख ना होने के कारण यह नहीं माना जा सकता कि उक्त खसरा नं. की भूमि नगर सुधार न्यास की वैशाली नगर योजना के अन्तर्गत आती हो। इस प्रकार वादग्रस्त भूमि प्रदर्श-1 के माध्यम से खरीद की गयी जिसे प्रदर्श-2 द्वारा संक्षेप न्यायालय ने निजी सम्पत्ति माना और प्रदर्श-अ 1 जमाबन्दी जो स्वयं प्रतिवादी ने प्रस्तुत की है, में वादी शुभनारायण का नाम अंकित है तथा वादी विवाद्यक सं. 1 में अपना कब्जा प्रमाणित कर चुका है वहां प्रतिवादी को वादग्रस्त भूमि को नीलाम करने और बेचने का अधिकार नहीं है। अतः यह विवाद्यक वादी के पक्ष में और प्रतिवादी के विरुद्ध निर्णित किया जाता है।"

Learned counsel for the petitioner has submitted that in light of the said judgment, the auction conducted by the respondent-ADA was a nullity as they had no right to conduct the auction upon the said property. Learned counsel for the petitioner has further placed reliance upon Annexure-8 i.e. application filed by UIT under Section 151 of CPC wherein it was categorically submitted that they had not carried out any auction proceedings

or transferred, alienated and/or acquired any property, which is a part of the present dispute. The said application filed by the UIT is *dehors* of the letter dated 12.04.1990, issued by the UIT in respect of plot No. B-25.

In this regard, learned counsel for the petitioner has further submitted that the respondent authorities have played fraud upon court for which they should be penalized and appropriate proceedings should be carried out against the arraying officer(s).

Learned counsel has also submitted an alternate argument by relying upon the clarification order dated 05.06.2022, whereby he stated that the State Government has issued necessary directions in the case of post acquisition land wherein equivalent compensation can be awarded qua the post acquisition by awarding equivalent land.

Learned counsel for the respondent-ADA, being aware of the said facts, has submitted that he wants to take necessary instructions in the matter from the higher authorities. Otherwise, he shall argue the matter on merits.

Let the matter be listed on 16.02.2023 at 2.00 PM.

(SAMEER JAIN),J