

IN THE BOARD OF REVENUE FOR RAJASTHAN, AJMER

Revision No.2893/2002/LR/Sawaimadhopur :

Shrikrishna Mill Gangapurcity, through Shri Mohanlal
S/o Shri Virdichand, by caste Mahajan, R/o Gangapurcity,
District Sawaimadhopur.

... Petitioner.

Versus

State of Rajasthan.

... Non-petitioner.

++*

S.B.

Shri Satish Chand Kaushik, Member

Present :

Shri Bhawani Singh : counsel for the petitioner.

Shri Pushpendra Singh Naruka : Dy.Govt.Advocate for the State.

++*

Dated : 05.8.2016

J U D G M E N T

This revision petition has been preferred under section 84 of the Rajasthan Land Revenue Act, 1956 (in short to be referred "the Act") against the order of learned Revenue Appellate Authority, Sawaimadhopur dated 18.01.2002.

2. The factual matrix of the case is that in 1973, the petitioner started his business of oil Mill and established his business/ Mill at the disputed land bearing khasra no.157/1. According to petitioner when his business on the disputed agricultural land was started, the petitioner moved an application for conversion of the land as per rules. However, the user of the land could not be converted. As on 25.4.2000, the learned Collector, Sawaimadhopur wrote a letter bearing no. F-12(20)/Industry/Revenue/97/1001 to the Tehsildar, Gangapurcity, thereby directing to take action under section 90A of the Rajasthan Land Revenue Act, 1956 to forfeit the land and building as per rules. In compliance of the order of the learned

District Collector, Sawaimadhopur, the learned Tehsildar Gangapurcity issued a letter no. RA/2000/505 dated 4.5.2000 to the Girdawar Circle, Gangapurcity and asked for the report regarding encroachment by the petitioner Krishna Oil Mill, Gangapurcity so that action under section 90A to be taken. Under the direction of the learned Tehsildar, the Inspector Land Record, Gangapurcity submitted his report no. 52 dated 10.5.2000 before the learned Tehsildar. It was specifically mentioned in the report that in Khasra Chausala Svt. 2052 to 2055, the disputed land is the khatedari land of Mohan Lal S/o Shri Virdichand Mahajan R/o Gangapurcity and there is entry of running Mill at the disputed land, but as per the record, the conversion has not been made till date. The proprietor has informed that the regularisation proceeding is pending before the learned Collector, Sawaimadhopur. As such, the land bearing khasra no.157/1 measuring 0.16 hectare is being used for the purpose of Mill which is not the agricultural purpose. However, on 12.5.2000, learned Tehsildar Gangapurcity issued a notice under section 90A and 91 of the Land Revenue Act bearing no.560-61/RA dated 12.5.2000 thereby asking that "You are using the land against the purpose and as such you are encroaching upon the land. If you are having any reply, come up on 20.5.2000. Otherwise, ex-parte order to be passed and no objection to be considered." However, as per the notice, the petitioner appeared before the learned Tehsildar Gangapurcity and submitted its typed reply before the learned Tehsildar and specifically mentioned that since the inception of the Mill the proceedings for regularisation is pending, the applicant has established his Mill Krishna Oil Mill in 1973 and since then it is working and the land is being used for that purpose. On the application of the applicant, the then District Collector, Sawaimadhopur inspected the site and the file is still pending in the office of the learned Collector, Sawaimadhopur for conversion of the land for industrial purposes, which has now been transferred to the Additional Collector, Sawaimadhopur and is pending there. If any action is being taken till the disposal of that file, this will be the violation of the principles of natural justice as well. The applicant has already deposited the required fees with the Industrial Department and the Mill has been registered on the said land. In such a circumstance, action under section 90A and 91 will be against the law. It was requested that till the disposal of the file by the learned Collector for

conversion of agricultural land into industrial land, the action by learned Tehsildar to be kept pending. However, on the very same day i.e. on 20.5.2000, the learned Tehsildar without giving any opportunity to the petitioner of further hearing and production of evidence etc. passed an order thereby declaring that the land is being used for other purposes and as such Mohanlal S/o Virdichand Mahajan is an encroacher on the land bearing khasra no. 157/1 measuring 16 air and ordered for forfeiture of the land and building in favour of the State Government and levied a penalty i.e. 50 times of the land revenue amounting to Rs. 350/- and also ordered for the recovery of the same. Being aggrieved with that order dated 20.5.2000, the petitioner filed an appeal in the court of learned Collector, Sawaimadhopur which was registered as revenue appeal no. 52/2000 'M/s Krishna Mill Gangapurcity Vs. State'. After hearing the appeal, the learned Collector, Sawaimadhopur dismissed the appeal, thereafter the second appeal was filed before the learned R.A.A., Sawaimadhopur which was registered as appeal no. 38/01 under section 76 Land Revenue Act and after hearing the second appeal, the learned R.A.A. also dismissed the appeal of the petitioner vide his order dated 18.01.2002. Being aggrieved with that order, this revision has been preferred.

3. I have heard the learned counsel for the parties and perused the record.

4. The learned counsel for the petitioner argued that the petitioner was not provided any opportunity of hearing. Secondly, the Mill was running since 1973. The application for conversion was pending before the learned Collector, Sawaimadhopur. The learned Collector has not passed any order on that application, either accepting or rejecting it. The file was pending and in the meanwhile, the learned Collector transferred the file to the Additional Collector and thereafter all of sudden in the year 2000, even in spite of the pendency of the file because of certain unknown reasons, he directed the Tehsildar for action under section 90A vide his letter dated 25.4.2000. In compliance of that order, learned Tehsildar issued notice to the Girdawar on 4.5.2000. The learned Inspector Land Record (Girdawar) submitted his report before learned Tehsildar on 10.5.2000 and thereafter the Tehsildar issued a notice to the landholder

Mohanlal on 12.5.2000 thereby ordered him for appearance and reply on 20.5.2000. The petitioner appeared and filed his reply, but without considering the reply and without giving any opportunity of further hearing, the learned Tehsildar passed the order for forfeiting the disputed land. While in such type of matter, the provision of Land Revenue Act specifically says that :-

"Provided that the State Government may, in lieu of having such person and the subsequent transferees so ejected from the land in question, allow him or them, as the case may be, to retain such land, use the same for any purpose other than that of agriculture on payment to the State Government, in addition to the urban assessment and premium payable under sub-section (4), of such fine by way of penalty as may be prescribed."

Under this provision, the State Government has to levy the premium and fine by way of a penalty first and then in failure only, such type of land to be forfeited. This procedure has not been adopted in this matter as well, even the petitioner was not provided the opportunity to prove that his application is pending. The learned counsel for the petitioner referred the judicial pronouncement AIR 1967 Rajasthan page 179 and argued that the order passed without giving opportunity of hearing to petitioner is liable to be set aside. In the matter of State Vs. Prakash Chand RRD 1980 NUC 211, it was held that in a non-judicial matter, the opportunity of hearing must be provided and if it seems that no opportunity of hearing was provided, then the order will be liable to be set aside.

5. The second contention of the learned counsel for the petitioner is that it was not proper for the learned Collector to hear the matter when he himself ordered for action under section 90A and under his pressure, all the proceedings were taken on. It is very much clear from the facts and circumstances of the matter as well and it is also the violation of principles of natural justice because when the action was started on the letter of the then District Collector, then the same officer was not required to hear the matter as an appellate authority.

6. On the other hand, learned Dy.Govt.Advocate for the State argued that since 1973, the land is being used for purposes other than the agriculture for which the land was given to the petitioner. He has not made any effort to get the user of the land converted into the industrial purpose. It is clear cut violation of law and if a person is violating the law, he is not entitled for any relief. The illegal act cannot be permitted to go ahead. The learned counsel also argued that the principles of natural justice was followed. Notice was given to him. He appeared before the learned Tehsildar and filed his reply, but failed to produce any evidence. His arguments were heard and thereafter the order was passed. Thereafter, he filed the appeal before the learned Collector and learned R.A.A. and in both the courts he was again provided opportunity of hearing, but he has not produced any so-called evidence regarding the pendency of the proceeding of conversion before any authorised official and as such both the appeal were dismissed rightly.

7. After hearing the arguments of both the parties, the clear cut violation of principles of natural justice is appearing in this matter. The petitioner was not provided proper opportunity of hearing, he was even not given any time to establish his case and defence that his file is pending since 1973. However, it is pertinent to mention here that learned Dy.Govt.Advocate admitted that the first date of hearing was given by the learned Tehsildar was 20.5.2000 and on the very same day, the petitioner filed the reply and without providing any other opportunity and asking for additional evidence, on the very same day, the impugned order was passed. It is also admitted that the same officer who ordered action was sitting as appellate authority there at the time of deciding of the appeal.

8. As such, in view of the facts and circumstances of the case, the revision petition is liable to be admitted. In the result, the revision petition is accepted and the matter is remanded back to learned Tehsildar for fresh consideration and to pass afresh order after providing proper opportunity of hearing to the petitioner. The impugned order of learned Revenue Appellate Authority, Sawaimadhopur dated 18.01.2002 is hereby quashed. The petition is disposed of accordingly.

Pronounced in open court.

(SATISH CHAND KAUSHIK)
Member