

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.**

ORDER

S.B. Civil Writ Petition No.2207/1986

Bhanwarlal vs. The State of Raj. & ors.

Under Article 226 of the Constitution of India.

Date of Judgment: December 19, 2005.

PRESENT

HON'BLE MR. PRAKASH TATIA,J.

Mr. M.C. Bhoot for the petitioner.

Mr. O.P. Rathi, Deputy Govt. Advocate for the State.

Mr. A.K. Rajvanshy for respondent no.2.

Mr. R.K. Soni for respondent no.3.

Mr. K.N. Joshi for respondents no.5 and 6.

BY THE COURT:

This writ petition is pending since 1986 before this Court. The petitioner's case is that the petitioner was having a shop known as 'Peddy' bearing no.19. In the year 1950 it was decided by the Municipal Council, Udaipur that certain structure is required to be removed so that the area of Ghantaghar, which is the important market area of the Udaipur may be developed properly. According to the petitioner, his peddy fell in that area which was proposed to be removed. The petitioner filed a regular civil suit for injunction against the Municipal Council, Udaipur seeking injunction against them from interfering in the

peaceful enjoyment of the said Peddy of the petitioner. The said suit was decreed by the trial court and appeal against the said decree was dismissed on 31.1.1953 and according to the petitioner, the second appeals preferred by the said Municipal Council were decided by this Court vide judgment dated 21.1.1958. This Court modified the decree and the operative part of the judgment of this Court delivered in the civil regular second appeals No.153,154 and 155/1953 is as under:-

“In view of the conclusions at which I have arrived above, I partly allow these appeals and modify the decrees granted by the courts below in favour of the plaintiffs respondents by adding a rider that the appellant Corporation, in the event of its still requiring the properties in question for the purpose of winding any public street or for any other lawful purpose, shall be within its rights in obtaining them on payment of reasonable compensation in accordance with law. As the appeals have failed in substance, the respondents will be entitled to their costs in this Court. Leave to appeal is refused.”

The petitioner further submitted that in the year 1975, the matter was settled between Municipal Council, Udaipur and the petitioner Bhanwarlal and a deed was executed, copy of which Annx.1. It was agreed between the parties that the petitioner will surrender his peddy of 3 ft. x 5 ft. and in lieu of that, the Municipal Council, Udaipur will allot a shop to the petitioner in the Sarafa Bazar area. It was decided that in case the allotted shop shall have more area then the cost of the said shop shall be paid by the petitioner. It appears that said agreement was not executed and another agreement was executed on

12.4.1976 ('Annx.2). By this agreement, it was decided that the petitioner will surrender the shop and the respondents shall give the land to the petitioner and shall charge the cost of the land which may be in excess to the land of the petitioner, as mentioned in the agreement dated 12.4.1976(Annx.2). According to the petitioner, on 19.9.1976(Annx.3), plot no.7 measuring 150 sq.ft. was allotted to the petitioner but in fact, this plot was not handed over to the petitioner. The petitioner went on submitting the representations, upon which the Municipal Council, Udaipur again recommended the petitioner's case to the Urban Improvement Trust, Udaipur, as by that time, the trust was formed. After some correspondence, ultimately the Urban Improvement Trust, Udaipur vide communication dated 28.1.1985 (Annx.8) informed petitioner Bhanwarlal that the petitioner may propose other commercial plot so that the matter may be examined and the land may be allotted. The petitioner proposed plots no.11 and 40C in Hathipol Delhi Gate Scheme.

In the backdrop of these facts, the petitioner when failed to get the plot, preferred this writ petition. The reply has been filed by the respondent-Urban Improvement Trust, Udaipur and the respondent-Urban Improvement Trust contested the claim of the petitioner by submitting that in fact the petitioner occupied 3 ft. Space only on the platform of the clock-tower and he has mixed up his claim with the

claim of the persons who had constructed shops with them. It is submitted that the petitioner was in occupation of small piece of land only.

It appears from the facts that respondents no.5 and 6 raised a claim that they purchased plot no.24G situated in Hathipol Delhi Gate Scheme of Udaipur from respondent no.3 in public auction on 17.5.1976 but the Urban Improvement Trust, Udaipur allotted plot no.40E in lieu of plot no.24G to them vide order dated 9.7.1976. According to respondents no.5 and 6, the trust failed to hand over possession of the land to respondents no.5 and 6, upon which respondents no.5 and 6 approached the Chairman, U.I.T., Udaipur, who on 20.3.1985 directed the Secretary, U.I.T., Udaipur to allot plot no.40B to respondents no.5 and 6 but that plot was also not given to respondents no.5 and 6 and, therefore, respondents no.5 and 6 filed a suit against the Urban Improvement Trust, Udaipur in which the appellate court granted ad-interim injunction order in favour of respondents no.5 and 6 in relation to plot no.40C. According to respondents no.5 and 6 because an stay order was granted by this Court, the plot no.40C was not given to respondents no.5 and 6. According to the petitioner, when the petitioner came to know that without mentioning about any claim for plot no.40C, respondents no.5 and 6 got the injunction order in relation to plot no.40C from the appellate court, therefore, respondents no.5

and 6 became necessary party in the present writ petition and, therefore, petitioner submitted application to implead respondents no.5 and 6 as party in the present writ petition, upon which they impleaded as party.

It appears that the matter was taken up by this Court and during the course of arguments, efforts were made for settlement, upon which a proposal dated 21.2.2002 was submitted by the Municipal Council, Udaipur. The Municipal Council, Udaipur offered that the Municipal Council is prepared to pay compensation to the petitioner for his peddy and in alternate prepared to give one shop which the Municipal Council, Udaipur is proposing to construct over plot no.40C. The proposed map was also annexed by the Municipal Council, Udaipur along with the proposal dated 21.2.2002(Annx.R/2) and the third alternate suggestion was that the Municipal Council, Udaipur will recommend for allotment of a plot to the petitioner to the Urban Improvement Trust, Udaipur. This proposal as such was not accepted by the petitioner as submitted by the learned counsel for the petitioner today because according to the petitioner, as per the agreement he was entitled to take the plot and in case the plot has excess land, he is ready to pay the market price of the plot as existing today and there is no reason for accepting the one of the shops on the plot no.40C. The learned counsel for the petitioner also pointed out that though in the year 2002, there was proposal for

construction of the shops as suggested by the Municipal Council, Udaipur in their proposal dated 21.2.2002 but now there is no plan of the Municipal Council, Udaipur or the Urban Improvement Trust, Udaipur of raising constructions of the shops as proposed in the map annexed with the proposal dated 21.2.2002, therefore, the petitioner is still willing to have the entire plot no.40C on condition that 1/3rd of the plot be allotted to the petitioner free of cost and the petitioner shall pay the market value of the plot as available today to the respondents Urban Improvement Trust, Udaipur or the Municipal Council, Udaipur, as may be decided by them.

The learned counsel Mr. R.K.Soni appearing for the Urban Improvement Trust, Udaipur submitted that plot no.40C is not vested in the Urban Improvement Trust, Udaipur and is now vesting in the Municipal Council, Udaipur. However, the Urban Improvement Trust, Udaipur submitted that the Urban Improvement Trust, Udaipur is prepared to give a piece of land to the petitioner on market price of the land as existing today. By this the Urban Improvement Trust, Udaipur is accepting the recommendation of the Municipal Council, Udaipur only.

The learned counsel Mr. A.K. Rajvanshy appearing for the Municipal Council, Udaipur submitted that today factual position is not available about plot no.40-C but as far as his knowledge the Municipal Council, Udaipur is still prepared to give one of the shops which may be

constructed by the Municipal Council, Udaipur, if the Municipal Council intends to raise construction there and the land of plot no.40C is available for that purpose and in case the Municipal Council, Udaipur is not proposing to raise construction of the shops as proposed in the map annexed with proposal dated 21.2.2002 then the Municipal Council, Udaipur is prepared to give land of one shop as shown in the map annexed with the proposal.

The learned counsel for the petitioner at this juncture further submitted that in case only the plot of one shop is given by the Municipal Council, Udaipur then that will be made available to the petitioner free of cost in lieu of his claim.

In view of the above facts which are substantially not in dispute, it will be just and proper to direct the Secretary, UDH to look into the matter because interests of the Municipal Council, Udaipur as well as the Urban Improvement Trust, Udaipur are involved and he may take an appropriate decision on this aspect of the matter. The petitioner be given full opportunity of hearing to put forward his claim and the matter may be examined after going through the entire record and the contentions of the Municipal Council, Udaipur as well as of the Urban Improvement Trust, Udaipur so that such an old matter may be amicably settled. This order is being passed because of the reason that even in the year 2002, the proposal was submitted by the Municipal Council,

Udaipur through this Court for settlement between the parties admitting the claim of the petitioner.

At this juncture, it may be pointed out that the petitioner's first allotment letter Annx.1 described the property to be on 3 ft. X 5 ft., whereas in the allotment letter dated 19.9.1976(Annx.3), the Urban Improvement Trust, Udaipur allotted the land measuring 150 sq.ft. In the allotment letters Annxs.1,2 and 3, there is no mention of rate also but now the petitioner is reconciling and prepared to pay the market cost of the land, therefore, any land if allotted to the petitioner in excess to his claim, then that shall be on the market rate as prevailing today,i.e. 19.12.2005.

In case any fresh allotment order is passed in favour of the petitioner and he feels aggrieved, he shall be free to challenge the said order of the Secretary, UDH and in case no dispute survives then the proper recommendations may be made by the competent authorities on behalf of the respondents, in favour of the petitioners.

Though it is a petition filed by the petitioner but it appears that respondents no.5 and 6 have also purchased the plot in public auction in the year 1976 and interim order was passed in favour of respondents no.5 and 6, therefore, it will be just and proper to permit respondent no.5 and 6 to submit their claim before the Secretary, UDH who may examine the matter and may pass appropriate order of allotment of plot

in the light of the facts that the respondent no.5 and 6 purchased the plot in public auction in the year 1976 and they deposited the entire amount with the Urban Improvement Trust, Udaipur. It is made clear that respondents no.5 and 6 shall not have any claim on plot no.40C as proposed in Annx. R.2/1 dated 21.2.2002.

The Secretary, UDH shall pass the appropriate order within a period of three months from the date of submitting certified copy of this order by the petitioner and by respondents no.5 and 6 for their respective claims.

The writ petition of the petitioner is, therefore, disposed of as indicated above.

(PRAKASH TATIA),J.

mlt.