

SB Civil writ Petition No.1855/2002Devendra Kumar Nagda v.State of Raj. & Ors.Date of Order :: 19th December, 2005HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.P.Joshi, for the petitioner.

Mr. Lalit Kawadia]

Mr. Rajesh Panwar] for the respondents.

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By instant writ petition following directions are sought by the petitioner:-

(i)the respondent No.3/U.I.T., Udaipur may kindly be directed to regularise the old possession of the petitioner on the land in question or it may be directed to allot the strip of land in question to the petitioner in accordance with the Rules of 1974;

(ii)the respondent/U.I.T. may kindly be directed not to take any action for evicting the petitioner from the land in question on demolishing the building raised by the petitioner on the said land till the matter of the petitioner for regularisation/allotment of strip of land in question is decided by the U.I.T., Udaipur;

(ii)the respondent/U.I.T., Udaipur may be restrained from taking any action against the petitioner without issuing any notice to the petitioner to show cause against the proposed action of eviction/demolition;"

It is stated by the petitioner that he is holding a land measuring 120x120 ft. on Udaipur-Chittor

High way and presently he is running a petrol pump on the land referred above. The petitioner is having possession over the land measuring 840 sq. ft. adjacent to the land on which his petrol pump is situated. According to the petitioner, respondent U.I.T., Udaipur without regularising his possession over the land referred above is going to remove him without adhering the provisions of Section 92-A of the Rajasthan Urban Improvement Act, 1959 (hereinafter referred to as "the Act of 1959"). The petitioner is claiming regularisation of strip of land under Rajasthan Urban Improvement (Disposal of Land) Rules, 1974 (hereinafter referred to as "the Rules of 1959").

A reply to the writ petition has been filed on behalf of the respondents stating therein that entire writ petition is misconceived and is filed without having any cause of action. It is also stated in reply to the writ petition that the petitioner never submitted any application for allotment of strip of land in question in accordance with the Rules of 1974. It is emphasised by counsel for respondent UIT, Udaipur that the petitioner according to averments contained in the writ petition is an encroacher and, therefore, he is having no right to retain the public land encroached by him. It is further stated that if any illegal construction is made by the petitioner then necessary action in accordance with the provisions of the Act of 1959 is required to be taken by competent authorities.

Counsel for the petitioner frankly admitted that no application has been filed by the petitioner for allotment of strip of land or for regularisation of his possession on the land in dispute. In view of this admitted position the relief claimed by the petitioner in present writ petition with regard to regularisation of the old possession over the land in dispute is premature. Counsel for the petitioner also failed to show any reason for valid apprehension of demolition of the building raised by him on 840 sq. ft. of land which is said to be in his old possession. In view of it no relief as claimed by the petitioner can be granted in present writ petition.

However, looking to all the facts and circumstances of the case I consider it appropriate to direct respondent UIT, Udaipur to consider the representation and application for allotment of strip of land if any submitted by the petitioner within a period of 15 days from today.

At this stage, it is stated by counsel for the petitioner that an interim order is operating in his favour since 18.6.2002 to maintain status quo in respect to the property in question, therefore, on disposal of present writ petition respondent U.I.T. May demolish construction on the land in dispute without adhering due process of law.

In my opinion, the apprehension of counsel for the petitioner is ill-founded as U.I.T. Being a statutory local body is always expected to take action in accordance with law.

With the observations above the writ petition is disposed of.

No order as to costs.

(GOVIND MATHUR), J.

kkm/ps.