

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

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O R D E R

1. Chand Mal & Company Vs. Municipal Board, Kishangarh

S.B. CIVIL REVISION PETITION No.  
274/2001 against the order dated  
25.1.2001 in Civil Misc. Application  
No.131/2000.

2. Chand Mal & Company Vs. State of Raj. & ors.

S.B. CIVIL WRIT PETITION No.  
2211/2002 under Article 226 of the  
Constitution of India.

Date of Judgment :: April 30, 2007

**PRESENT**

HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. J.K. Singhi for the petitioner.  
Mr. S.L. Kumawat) for the respondents.  
Mr. K.N. Gupta )

BY THE COURT:

## REPORTABLE

1. Both these petitions have come up before this Court indicating a chequered long history of litigation commencing from 1964. According to the petitioner, he was allotted a land for industry by the Collector, Ajmer vide order dated 7.11.1963 of 2-1/4 bighas (2 bighas and 5 biswas or 4500 sq. yards) of Government agricultural land in khasra No.278 in Kishangarh. The allotment to this effect was made in his favour vide allotment order dated 7.12.1964 and a registered lease deed was also executed

by the Collector, Ajmer on 14.12.1964. The mutation entries were also effected in favour of the petitioner. According to the petitioner after lapse of 12 years, suddenly by an order dated 1.11.1976, the Deputy Revenue Secretary cancelled the earlier allotment order dated 28.11.1964 by holding that in view of the wrong report by the Collector about the land in question the allotment of 4500 sq. yards in khasra No.278 was made to the petitioner and, therefore, the said allotment was liable to be cancelled. The case of the petitioner is that a registered lease deed of land in question could not have been cancelled by an administrative order or letter without following due process of law for cancellation of registered lease deed in his favour or at least without giving a prior show cause notice and opportunity of hearing to him before passing the said order by the Deputy Revenue Secretary on 1.11.1976. The said order has been challenged in the connected writ petition No.2211/2002 by the petitioner. The State has not filed any reply to the writ petition despite service nor any Government Advocate appeared when the said two connected cases were taken up for hearing. However, a reply by respondent No.3 Municipal Board, Kishangarh has been filed to the said writ petition and learned counsel for Municipal Board was heard in the matter.

2. That the matter not only traveled in civil courts and firstly a decree dated 12.11.1968 in Civil Suit No.2/67 was passed in favour of the petitioner but a second appeal against the execution of said decree at the instance of objector Municipal Board was dismissed by this Court on 23.7.1986 but in a writ petition namely D.B. Civil Misc. Writ Petition No.753/1966 which came to be allowed by the Division Bench of this Court way back on 11.11.1966, the orders dated 3.8.1966 and subsequent order dated 27.9.1966 restraining the petitioner from raising any construction over the disputed land was allowed by this Court. In Execution Case No.71/1974 by the learned Munsif & Judicial Magistrate, Ist Class, Ajmer vide his order dated 16.11.1974, the learned Magistrate rejected the objections of the Municipal Board, Kishangarh wherein the Municipal Board insisted for permission to be obtained by the decree holder for raising any construction over the land in dispute. The misc. appeal filed by the Municipal Board against the said order dated 16.11.1974 also came to be rejected by this Court on 3.4.1975 (Civil Misc. Appeal No.120/1974). Against the judgment of this Court dismissing S.B. Civil Execution Second Appeal No.17/1975 dated 23.7.1986 the matter was taken by the Municipal Board, Kishangarh to the Hon'ble Apex Court by way of Civil Appeal No.2133/1987 which was came to be disposed of by the Hon'ble Apex Court on February 11, 1999 wherein the

Hon'ble Supreme Court directed as under:

"Having regard to the facts and circumstances of this case, we feel that it would be in the interest of justice to remand the whole case to the Executing Court which would consider the effect of the two documents, namely, the Government Order dated 1.11.76 by which the lease in favour of the respondent purports to have been cancelled and the Notification dated 22.1.76 by which the land in question has been included in the Municipal limits while re-hearing the objections under Section 47 CPC filed by the appellant. The appeal is allowed in the above terms, but without any order as to costs."

3. Thus, the Executing Court was directed to consider the effect of order dated 1.11.1976 and the notification dated 22.1.1976. In pursuance of this direction of the Hon'ble Apex Court the Executing Court considered the Execution Application No.131/2000 and rejected the execution application vide its order dated 25.1.2001, against which the present revision petition No.274/2001 has been filed by the petitioner along with connected writ petition.

4. Heard learned counsel for the petitioner and learned counsel for the Municipal Board, Kishangarh at length. The Government Advocate was not present during the course of arguments, nor the State Government has filed any reply in the writ petition as already indicated above.

5. The first and foremost question which is required to be considered in this case is whether the State Government by an administrative order dated 1.11.1976 could cancel the registered lease deed executed in favour of the petitioner without adopting due process of law for cancellation of such registered lease deed as admittedly no civil suit for cancellation of registered lease deed in favour of petitioner was filed by the State Government or any other person including the Municipal Board, Kishangarh. The order dated 1.11.1976 was also admittedly passed without giving any notice or opportunity of hearing to the petitioner. The said order reproduced in the writ petition indicates that the same was passed on the alleged wrong report of the Collector in respect of land in dispute. What was that report and how it was wrong is not known as the said report is not on record. In the considered opinion of this Court, such an order that too ex- parte and without giving any opportunity of hearing and considering the reasons could not have been passed by the Deputy Revenue Secretary cancelling the allotment and registered lease deed in favour of the petitioner. By an administrative order a vested property right by way of registered lease deed could not have been taken away. Moreso, if it is construed to be a quasi-judicial order, it could not have been passed without complying with the principles of natural justice, giving

a notice and opportunity of hearing and thereafter passing a speaking order. The said order is, therefore, ex-facie illegal and unsustainable and deserve to be quashed and the same is accordingly hereby quashed.

6. The other order dated 22.1.1976 is in fact the notification dated 17.1.1976 issued by the Local Self Department of the State Government extending the municipal limits of Municipal Board, Kishangarh in exercise of powers conferred U/s.4 of the Rajasthan Municipalities Act, 1959. With the extension of municipal limits the land in question is also said to have been covered within the municipal limits. Learned counsel for the Municipal Board, therefore, submitted that the land in dispute fell within the municipal limits and, therefore, vested in the Municipal Board, Kishangarh. Upon a specific query by the Court to point out any provision in the Rajasthan Municipalities Act, 1959 or any other document, statute or Rules by which merely by extension of municipal limits the land already allotted and leased to any third party could vest in the Municipal Board, learned counsel for the Municipal Board failed to point out any such provision. Section 4 of the Rajasthan Municipalities Act, 1959 which provide for delimitation of municipal limits, the State Government may, by notification published in the Official Gazette, declare any local area not included within the limits of a

municipality to be a municipality or include any such area in a municipality or exclude any local area in a municipality or otherwise alter the limits of any municipality. The said provision nor any other provision in the Rajasthan Municipalities Act has the effect of automatically vesting land of private parties in the Municipal Board when the municipal limits are notified, extended or reduced, as the case may be. Therefore, by the notification dated 17.1.1976, the question of land in dispute namely 4500 sq. yards in khasra No.278 being vested in the Municipal Board, Kishangarh could not arise. At best with the extension of municipal limits covering the land in dispute, the Municipal Board could contend that Municipal laws namely provisions of the Rajasthan Municipalities Act, 1959, Rules and Regulations framed thereunder would apply to the land in dispute but as far as ownership rights of the land are concerned or lease hold rights which stood vested in the petitioner by the registered lease deed dated 14.12.1964 are concerned, there was no question of revocation of those rights and automatic vesting of the same in the Municipal Board with the issuance of notification dated 17.1.1976. Thus, both the orders dated 1.1.1976 and notification dated 17.1.1976 could not stand in the way of the petitioner in enjoying his property in the form of 4500 sq. yards in khasra No.278 in Kishangarh.

7. Once this conclusion is arrived at as aforesaid, there would be no impediment in execution of the decree in favour of the decree holder. Since the very foundation of the impugned order in the revision petition dated 25.1.2001 was existence of the order dated 1.1.1976 and the misconstruction of the notification dated 17.1.1976 extending the municipal limits, both these grounds having been decided in favour of the petitioner, the impugned order allowing the objection of the Municipal Board and rejecting the Execution Application No.131/2000 cannot be sustained and, therefore, deserves to be set aside. The impugned order dated 25.1.2001 is accordingly set aside.

8. Consequently, both the revision petition as well as writ petition filed by the petitioner are allowed and it is directed that the Municipal Board, Kishangarh shall not interfere with the peaceful possession of the petitioner of the land in question namely 4500 sq. yards in khasra No.278 in Kishangarh in any manner.

9. The petitions are allowed with no order as to costs.

**(Dr.VINEET KOTHARI),J.**

VS/