

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

1. S.B. Civil Writ Petition No.8544/06
Suresh Kumar Jain Vs. The Chairman
Municipality Baran & Ors.
2. S.B. Civil Writ Petition No.8546/06
Smt. Usha Jha Vs. The Chairman
Municipality Baran & Ors.

31.08.2007

Hon'ble Mr. Justice Mohammad Rafiq

Shri Shailesh Prakash Sharma for
petitioner.

Shri B.K. Sharma, Dy. GA
Shri Jitendra Pandey for respondent no.4.

Though the facts of these petitions are different but issue raised are common, they are therefore being decided by this common judgment on the basis of facts of the Writ Petition No.8544/06 for the purpose of convenience.

Heard learned counsel for the parties.

This writ petition has been filed by the petitioner with the prayer that action of the respondents in not issuing patta for the land bearing khasra no.347 measuring 33930 sq. feet / 2770 sq. yard may be declared illegal and they be directed to issue such patta in the name of the petitioner and alternatively it has been prayed that if that land is not available, the land of the same size be allotted to the petitioner elsewhere. An additional prayer has been made that the action of the Authorized Officer namely SDO, Revenue Village Baran in not considering case of the petitioner for regularization under Section 90-B of the Land Revenue Act and incorporating name of Shri Om Prakash Barwadia respondent no.5 herein for 1.53 hectares of land be

declared to be illegal and quashed and set aside and further, the action of the Municipal Corporation in making allotment of the aforesaid land vide letter dated 4.2.2005 in favour of the aforesaid Om Prakash Barwadia be held to be contrary to Land Conversion Rules of 1981 and be quashed and set aside. The aforesaid allotment letter dated 4.2.2005 is in substance patta issue in favour of respondent no.5 Om Prakash Barwadia consequent upon regularization order passed in his favour by the Authorized Officer under Section 90-B of the Land Revenue Act.

Learned counsel for the petitioner argued that in spite of regularization of the aforesaid chunk of land in favour of the respondent no.5,

the petitioner is still left with some more portion of the land but the respondents are not considering his case for regularization and are not issuing patta in his favour. It is claimed that the said land was purchased by the petitioner from respondent no.4 Bheru Lal on payment of sale consideration. Part of it was claimed by respondent no.5 Om Prakash Barwadia to be his own and the SDO illegally passed the order in his favour under Section 90-B.

Shri B.K. Sharma, the learned Dy. Government Advocate and Shri Jitendra Pandey, the learned counsel for the respondent no.4 Bheru Lal have opposed the writ petition and argued that there is no land left with the petitioner and in fact, respondent no.4 Bhairu Lal never

sold any such land to the petitioner. In fact, respondent no.4 Bhairu Lal never sold any such land to the petitioner. Learned counsel representing the respondent no.4 Bhairu Lal has produced for perusal of the Court certified copy of the FIR which has been lodged at his instance against the petitioner for offence under Section 402, 467, 468 / 471 and 120B IPC in which it has been stated that alleged sale deed was forged document. This is however contested by the learned counsel for the petitioner on the premise that the FIR has been lodged on 17.3.2007 after receipt of notices of this writ petition in order to create a defence.

In view of totality of circumstances however, the question

whether the petitioner is still left with possession of some part of the disputed land or whether sale deed is genuinely registered or as alleged by the respondents, is forged one, all being disputed questions of fact, cannot be possibly adjudicated by this Court in its extraordinary jurisdiction under Article 226. The petitioner can have either by filing a civil suit or by applying to SDO concerned under Section 90B which may then be dealt with in accordance with law. In so far as the order already passed by the SDO in favour of respondent no.5 under Section 90-B, the remedy that is available to the petitioner is by way of appeal before the Divisional Commissioner under sub-section (7) of Section 90B of the Land Revenue Act. In

so far as the delay caused in filing the appeal before Divisional Commissioner by petitioner is concerned, the petitioner would be at liberty to apply for condonation of delay giving the reasons as to why he did not timely approach the appellate Court which, it goes without saying shall be considered by the Divisional Commissioner in accordance with law.

I do not therefore find any merit in this writ petition. The writ petition is dismissed accordingly.

(Mohammad Rafiq),J.

Rs/-