

S.B.CIVIL WRIT PETITION NO.928/1995

Ramlal
V.
State of Rajasthan & Ors.

DATE OF ORDER :: 28th February, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.S.Singhvi, for the petitioner.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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The promotion to the junior scale of Rajasthan Administrative Services against the vacancies of the year 1994-95 was denied to the petitioner being suffered with minor punishment under the order dated 18.10.1989 passed by the Collector, Pali and the order dated 6.7.1990 passed by the Chairman, Board of Revenue for Rajasthan, Ajmer, hence this petition for writ is preferred claiming the reliefs as under:-

“(i)by an appropriate writ, order or direction the charge-sheet dated 9.2.1987 and the orders dated 18.10.89, 3.12.1990 and 20.6.1993 be declared illegal and be quashed;

(ii)by an appropriate writ, order or direction, the charge-sheet dated 1.12.1988 and the orders dated 6.7.1990 Annexure.10 communicated vide order dated 19.7.1990 be declared illegal and be quashed;

(iii)by an appropriate writ, order or direction the respondents may be directed to re-consider the case of the petitioner for

promotion to the Junior Scale of R.A.S. Against the vacancies of 1994-95 by ignoring the penalties imposed by them in pursuance of the charge-sheet dated 9.2.1987 and 1.12.1988 and if the petitioner is found suitable for promotion then he may be given such promotion with all consequential benefits.”

During pendency of this petition the order dated 6.7.1990 has already been set aside by the Governor of Rajasthan while exercising powers under Rule 34 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 (hereinafter referred to as “the Rules of 1958”), therefore, the prayer made under clause (ii)) has become infructuous, thus this petition for writ is pressed only to the extent it relates to prayer clauses (i) and (iii).

The case of the petitioner as laid in the petition is that under a memorandum dated 9.2.1987 issued under Rule 17 of the Rules of 1958 the petitioner was charged for misconduct as follows:-

“आरोप नंबर-1:-

आप श्री रामलाल विश्नोई, तहसीलदार, सहाड़ा, के पद पर कार्यरत हैं। तथा उप पंजीयक का कार्य भी करते हैं। श्री कन्हैयालाल वल्द मोहनलाल चौबे नि. गंगापुर द्वारा आराजी नंबर ११२।६ रकबा ४ बीघा १४ विस्वा किस्म मंगरी विलानाम आबादी का बेचान विक्रय पत्र द्वारा श्री शंकरलाल वल्द मिश्रीलाल, प्रकाशचंद्र प्रहलादराय वल्द मिश्रीलाल नौलखा नि० गंगापुर, चंद्रप्रकाश वल्द चांदमल सुखलेचा नि० रायपुर एवं श्रीमति कमला देवी पत्नि अर्जुनलाल सिंघवी नि० भीलवाड़ा को दिनांक 9.10.86 को निष्पादित किया गया था। आप द्वारा उप पंजीयक की हैसियत

से उक्त दस्तावेज का पंजीयन दिनांक 9-10-86 को किया। उक्त विक्रय पत्र के पंजीयन से पूर्व नगरपालिका गंगापुर द्वारा उनके पत्र दिनांक 1-10-86 से आपको सूचित किया गया था कि उक्त आराजी नगरपालिका गंगापुर की है। इसलिये अवैध क्रय विक्रय को पंजीबद्ध नहीं करावे। इस प्रकार आपको इस बात की जानकारी हो चुकी थी कि उक्त भूमि क्रेता की न होकर नगरपालिका की है फिर भी आपने उक्त दस्तावेज को पंजीबद्ध कर दिया गया। आप उप पंजीयक के अलावा भू धारक भी है। भू धारक की हैसियत से आपको किसी भी दस्तावेज के पंजीयन से पूर्व भारतीय पंजीयन अधिनियम की धारा 21 की पालना सम्पुष्टतः करवानी चाहिये थी लेकिन इस और भी आपके द्वारा पंजीयन से पूर्व कोई ध्यान नहीं दिया गया। इससे स्पष्ट जाहिर है कि आप द्वारा प्रतिकूल पक्ष को अनुचित लाभ देने हेतु उक्त दस्तावेज का पंजीयन किया गया। इस प्रकार अपने नियमों का उल्लंघन कर अपने अधिकार एवं पद का दुरुपयोग करते हुए अपने कर्तव्य के प्रति गौर लापरवाही बरती है। आपका यह कृत्य दुराचरण है।

आरोप नंबर-2:-

आप श्री रामलाल विश नोई तहसीलदार (उप पंजीयक) सहाड़ा से उप खण्ड अधिकारी, गंगापुर द्वारा उनके पत्र दिनांक 3-10-86 से आराजी नंबर ११२।६ रकबा ४ बीधा १४ विस्वा भूमि का अवैध रूप से क्रय विक्रय के संबंध में जांच रिपोर्ट चाही तदनुसार आपको उक्त आराजी के अवैध बिकाव के बाबत पूर्ण जानकारी हो चुकी थी ऐसी दशा में आपको इस संबंध में जांच प्रतिवेदन भिजवाते हुए स्पष्ट निदेशन प्राप्त करना चाहिये था लेकिन आपने ऐसा नहीं करके उक्त अवैध क्रय विक्रय के दस्तावेज की पंजीबद्ध करवा दिया। इस प्रकार आपने जानबुझकर अपने से उच्च अधिकारियों के आदेश एवं निदेश का पालन नहीं कर अवज्ञा की है जो अनुशासनहीनता होकर कर्तव्य की प्रति लापरवाही बरती है।"

The petitioner explained his stand for the allegations levelled by reply dated 23.2.1987, relevant portion of that reads as follows:-

“जहां तक मेरी जानकारी भूमि के स्वामित्व के सम्बन्ध में है तो यह मेरे द्वारा पूर्व में ही स्पष्ट निवेदन किया जा चुका है कि राजस्थान रजिस्ट्रीकरण नियम 39 के अन्तर्गत मेरे द्वारा दस्तावेज की विधि मान्यता के आधार पर निस्पादक व सम्पत्ति न होने पर रजिस्ट्री करने से इन्कार करना उक्त नियमों के अन्तर्गत गलत होगा। जहां तक भूमि धारी होने के नाते भारतीय पंजीयन अधिनियम की धारा 21 की पालना का है तो उक्त नियमों के अन्तर्गत दस्तावेज में पूर्ण ब्यौरा अंकित किया गया है। उक्त नियमों के अनुच्छेद में सम्पत्ति का वर्णन व पहचान अंकित की

गई है। अनुच्छेद दो में नगरों में गृहों के बारे में है जिसका उक्त दस्तावेज से सम्बन्ध नहीं है। अनुच्छेद 3 के अनुसार भूमि का वर्णन किया गया है पड़ोस अंकित किये गये हैं व उक्त सम्पत्ति का नक्शा भी संलग्न किया गया है। जो आबादी भूमि दर्ज होने से आवश्यक था। अनुच्छेद 4 में मानचित्र व रेखांक भी उक्त दस्तावेज में समाविष्ट था ऐसी स्थिति में उक्त नियम की पालना पूर्णरूपेण की गई है। इसके साथ साथ ही यह भी स्पष्ट है कि इसमें प्रतिकूल पक्ष को लाभ मात्र पंजियन की कार्यवाही से नहीं दिया जा सकता है जबकि पंजियन से मुद्रांक एवं पंजियन फीस के द्वारा राज्यहित अवश्य हुआ है।"

The disciplinary authority after providing an opportunity of personal hearing held the petitioner guilty for misconduct and imposed a penalty of stoppage of one annual grade increment without cumulative effect by order dated 18.10.1989. The appeal as well as the review petition preferred by the petitioner also came to be rejected by orders dated 3.12.1990 and 20.6.1993 respectively.

while giving challenge to the orders aforesaid the contention of counsel for the petitioner is that no violation of Section 21 of the Registration Act, 1908 (hereinafter referred to as "the Act of 1908") is proved against the petitioner, hence he rightly registered the document concerned and, therefore, the imposition of penalty under the order dated 18.10.1989 is illegal. It is asserted that as a matter of fact the petitioner while discharging duties of a registering authority under the Act of 1908 could have refused to register a document only under a law and not merely on the basis of some information given by the Municipal Board.

In reply, it is urged by counsel for the State that the petitioner despite getting information from the Municipal Board about the dispute of title of the land registered the document that clearly proves the misconduct alleged and, therefore, he was rightly dealt with by a disciplinary authority under the order impugned. An objection is also raised for entertainment of the grievance of the petitioner in present petition at belated stage.

Heard counsel for the parties.

Before adjudicating validity of the order imposing penalty upon the petitioner, I consider it appropriate to deal with the preliminary objection raised by the respondents for entertaining grievance of then petitioner raised in petition for writ at a belated stage.

The present petition was presented on 21.1.1995 giving challenge to the order dated 18.10.1989 that was affirmed by the appellate authority on 3.12.1990 and by reviewing authority on 20.6.1993. The delay, therefore, in filing the writ petition is of about 18 months. Such a delay in a case of disciplinary action is not material as no right accrued in favour of any third party due to delay

caused. Beside that, it is also pertinent to note that on basis of the order of penalty aforesaid the promotion was denied to the petitioner in the year 1994-95 and on knowing about that the petitioner immediately approached this Court by way of filing the instant petition for writ. In such circumstances, I do not find any force in the preliminary objection so raised and, therefore, the same is over-ruled.

According to counsel for the petitioner the order dated 18.10.1989 and subsequent orders affirming it deserve to be quashed as under the Act of 1908 the petitioner while discharging the duties of a registering authority was having no alternative but to register the document concerned if there was no violation of any provisions of the Act of 1908 or any other law. It is asserted by counsel for the petitioner that the allegation against the petitioner was of violation of the provisions of Section 21 of the Act of 1908 but that was satisfactorily explained by the petitioner under the reply dated 23.2.1987. The disciplinary authority also under the order impugned dated 18.10.1989 nowhere found the petitioner guilty for not adhering the provisions of Section 21 of the Act of 1908, therefore, the petitioner could have not been punished merely on the count that he registered the document despite an information from the Municipal Board about some dispute of title of the land.

This Court in the case of Smt. Kishni Devi v. State of Rajasthan & Ors., reported in RLR 1990(2) 524, held that the registration of a document cannot be refused if that is not barred under any law. The relevant portion of the judgment referred above reads as follows:-

“7.It is clear from a perusal of the various provisions of the Act that the powers of the Sub-Registrar and Registrar have been clearly defined and demarcated by the Act. The Act authorises the Sub-Registrar to refuse to register a document if it is not properly executed or presented or the subject matter of the document lay beyond the territorial jurisdiction of the Registrar or Sub-Registrar, as the case may be. The Sub-Registrar can refuse to register a document under section 21 of the Act, if it does not contain the description of the immovable property sufficient to identify the same; under section 23, if a document is not presented within 4 months of the day of its execution; under section 28, if the document is presented for registration in the office of the Sub-Registrar within whose sub-district the whole or some portion of the property is not situated; under sec.32, if the document to be registered is not presented by the person executing it of claiming under the same or by representative or assign of such person; under section 35, if the Sub-Registrar is not satisfied about the identify of the person/persons they represented themselves to be, or such a

person or persons do not admit the execution of the document, or a person or such persons appear to be minor or lunatic or idiot or if the person by whom the document purports to be executed is dead and his representatives or assigns deny its execution.

8.Rule 39, Rajasthan Registration Rules, 1955 runs as under:-

“39.Registering Officers not concerned with validity of documents:-Registering Officers should bear in mind that they are in no way concerned with the validity of documents brought to them for registration and that it would be wrong for them to refuse to register on any such grounds as under:-

- (1)that the executant was dealing with property not belonging to him;
- (2)that the instrument infringed the rights of third persons not parties to the transaction;
- (3)that the transaction was fraudulent or opposed to Public policy;
- (4)that the executant had not agreed to certain conditions of the document;
- (5)that the executant was not acquainted with the conditions of the document;
- (6)that the executant declared that he had been deceived into executing; and
- (7)that the executant is blind and cannot count.

These and such like are matters for decision, if necessary, by competent courts of law, and registering officers, as such have nothing to do with them. If the document be presented in a proper manner, by

a competent person, at the proper office, within the time allowed by law and if the registering officer be satisfied that the alleged executant is the person he represents himself to be, and if such person admits execution, the registering officer is bound to register the document without regard to its possible effects. But the registering officer shall make a note of such objections of the kinds mentioned in grounds (1) to (7) above; as may be brought to his notice in the endorsement required by section 58."

Rule 42 of the Rules said as follows:-

"Registration to be completed necessarily:-

(1) If the executant appears and admits execution and his identity is established, the registration should be completed even though one or both of the parties may, after this stage, desire to withdraw the document from registration. If after admission of execution the executant refuses or neglects to sign the endorsement, the registering officers should not treat this refusal as prescribed in section 58 of the Act.

(2) If after admission of execution and the necessary identification of the parties, the presenter (irrespective of the executant's action) refuses to proceed or to sign the endorsement, the registration should nevertheless be completed and a note of the refusal to sign endorsed on the document. The document if not claimed, should be kept for one month under rule 22 and then sent to the District Registrar."

9.The Sub-Registrar and the Registrar are the creation of the statute and they draw their authority therefrom. The powers and duties are defined under the Act and Rules. Their statutory functions could not be curtailed by any executive instructions issued by the State Government of any authority. The Sub-Registrar could not refuse to register the sale-deed on the ground that inquiry report had not been received from the Secretary, Urban Improvement Trust, Jodhpur.”

In the instant matter the only allegation against the petitioner was that he registered the document without adhering the provisions of Section 21 of the Act of 1908. In explanation the petitioner in quite unambiguous terms stated that description of property and maps as required under Section 21 of the Act of 1908 were available on record, therefore, he was having no option but to register the document. The disciplinary authority in the order while imposing penalty upon the petitioner have not taken into consideration this aspect of the matter. The disciplinary authority imposed the penalty upon the petitioner merely on the count that the petitioner registered the document though there was some dispute about the title and information in this regard was given to him by the Municipal Board concerned. I am of the considered opinion that the approach of the disciplinary authority is erroneous as under the Act of 1908 and the Rules framed thereunder a registering

authority could have refused for registration of document only if there was any violation of law. The disciplinary authority failed to point out violation of any such law and as such the order imposing penalty upon the petitioner i.e. of stoppage of one annual grade increment is absolutely illegal. The appellate authority as well as the reviewing authority also failed to consider this aspect of the matter and, therefore, their orders too are bad in eye of law.

The respondents denied promotion to the petitioner to junior scale of Rajasthan Administrative Services against the vacancies of the year 1994-95 only on the count of two minor penalties, reference of those are given in preceding paras. The order dated 6.7.1990 has already been quashed by the Governor of Rajasthan while exercising powers under Section 34 of the Rules of 1958 and the another order dated 18.10.1989 has already been declared bad in eye of law by this Court as above, as such the respondents are required to consider candidature of the petitioner for the purpose of promotion of the petitioner to junior scale of Rajasthan Administrative Services against the vacancies of the year 1994-95 afresh.

For the reasons mentioned above, this petition for writ succeeds and, therefore, the same is allowed. The order dated 18.10.1989 passed by the collector, Pali and the orders passed by the appellate

authority as well as the reviewing authority affirming the order dated 18.10.1989 are hereby quashed. The respondents are directed to reconsider candidature of the petitioner for the purpose of promotion to the junior scale of the Rajasthan Administrative Services against the vacancies of the year 1994-95 without taking into consideration the order of penalties dated 18.10.1989 and the order dated 6.7.1990.

No order to costs.

(GOVIND MATHUR),J.

kkm/ps.