

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

JUDGMENT

**Surendra Kumar Jain Vs. Jaipur Development Authority & Others
(S. B. Civil Writ Petition No.3026/2002)**

**S.B. Civil Writ Petition under Article 226 of
the Constitution of India.**

Date of Judgment: **April 30th, 2009**

PRESENT

Hon'ble Mr. Justice R. S. Chauhan

Mr. Krishna Verma, for the Petitioner.

Mr. Mahendra Goyal, for the respondents No.1 & 2.
Mr. A.K. Pareek, for the respondent No.3.

Per Court:

Aggrieved by the order dated 16-7-2001, passed by Deputy Commissioner, Zone B, Jaipur Development Authority, Jaipur, whereby the learned Deputy Commissioner had cancelled the allotment of plot in favour of the petitioner, aggrieved by the order dated 10-1-2002 passed by the Jaipur Development Authority, Appellate Tribunal ('the Tribunal' for short), whereby the learned Tribunal had upheld the order dated 16-7-2001, passed by the learned Deputy Commissioner, the petitioner has challenged the same before this Court.

2. The battle is with regard to Plot No.14 in Scheme No.2, Jai Jawan Colony, Tonk Road, Jaipur. According to the petitioner Scheme No.2 was prepared by the Jai Jawan Grah Nirman Sahakari Samiti ('the Samiti' for short). The said plot was allotted to one N.K.Jain. The petitioner claims that subsequently he purchased the plot from Mr.N.K.Jain. The Samiti transferred and re-allotted the plot in the name of the petitioner vide allotment letter dated 30-12-1995. The Samiti also issued a site-plan in favour of the petitioner. Ever since then, the petitioner claims to be in possession of the said plot. Furthermore, while carrying out the proceedings under section 90-B of Rajasthan Land Revenue Act, 1956, the petitioner was asked to deposit regularisation charges by the Jaipur Development Authority ('the JDA', for short). Vide challan dated 14-3-2001, the petitioner deposited Rs.6951/- as regularisation charges. Vide order dated 17-3-2001, the said plot was regularised in the name of the petitioner by the JDA. However, vide letter dated 12-6-2001, the learned Deputy Commissioner called upon the petitioner to submit the allotment letter, the site-plan, the one-time lease-money and the lease-deed. Consequently, the petitioner appeared before the learned Deputy

Commissioner on 21-6-2001. During the course of enquiry, it was discovered that the JDA has also regularised the same exact plot in favour of one Krishna Kumar Gelda, respondent No.3 before this Court. The petitioner further claims that he enquired as to how his plot could have been regularised in favour of Mr.Gelda. However, he did not receive any satisfactory answer from respondent No.2, the learned Deputy Commissioner. But, vide order dated 16-7-2001, the learned Deputy Commissioner cancelled the allotment made in favour of the petitioner. According to the order dated 16-7-2001, the plot was regularised in favour of Mr.Gelda, in pursuance of an Award dated 1-6-1989, passed by an Arbitrator, Anil Kumar Garg, Deputy Registrar, Co-operative Societies, Jaipur. The petitioner further claims that before issuing the order dated 16-7-2001, no notice whatsoever was given by the learned Deputy Commissioner. Since the petitioner was aggrieved by the said order, he filled an appeal under Section 83, sub-section 8(a) of the Jaipur Development Authority Act ('the Act', for short), before the learned Tribunal. However, vide order dated 10-1-2002, after hearing the parties, the learned Tribunal dismissed the said appeal. Hence, this petition before this Court.

3. Mr. Krishna Verma, the learned counsel for the petitioner, has vehemently argued that before any adverse order can be passed against a person, an opportunity of hearing has to be given to the person under the principles of natural justice. However, in the present case, the learned Deputy Commissioner did not give any opportunity to the petitioner. Therefore, his rights under the principles of natural justice have been violated. Secondly, the learned Deputy Commissioner does not have jurisdiction to decide the issue of title. The issue of title, can be decided only by a Civil Court. Therefore, the learned Deputy Commissioner has over stepped his jurisdiction, while cancelling the allotment duly made by the JDA in favour of the petitioner. Thirdly, these two facets of the case have not been appreciated by the learned Tribunal. Therefore, neither the order dated 16-7-2001, nor the order dated 10-1-2002 are sustainable in the eyes of law.

4. On the other hand, Mr. Mahendra Goyal, the learned counsel for the JDA, has strenuously defended the action of the learned Deputy Commissioner and of the learned Tribunal. According to Mr. Goyal, this case is a paradigm example of not only abuse of

process of the Court, but also of fraud being played upon this Court. According to the learned Counsel the petitioner has not come before this Court with clean hands, but has suppressed material facts from this Court. In fact, the entire story, as narrated by the petitioner, is a bundle of mis-statements made by the petitioner in order to intentionally mislead the Court.

According to the learned Counsel Mr.Gelda had bought a plot No.12, admeasuring 630 sq. yards from the Samiti as far back as 24-6-1971. However, subsequently the members of the Samiti requested him to return the allotment letter and the site-plan, as certain corrections were needed to be made therein. Mr.Gelda returned the same to the members of the Samiti. But, later on, he discovered that members of the Samiti had started allotting plots to other persons, who were not the original members of the Samiti. Therefore, Mr.Gelda raised a dispute before Anil Kumar Garg, who was appointed as Arbitrator in his capacity as Deputy Registrar, Co-operative Societies. The petitioner, the son-in-law of the President of the Samiti, appeared before the Arbitrator and conducted the case on behalf of the Samiti. Thus, the petitioner was well aware of the

dispute that existed between Mr.Gelda and the Samiti. According to the learned Arbitrator, the plot No.12 was illegally divided into two separate plots, namely Plot No.14 and 15. One of these plots was subsequently sold by the Samiti to one Ratan Kumari Shah. After going through the oral and documentary evidence, the learned Arbitrator, vide Award dated 1-6-1989, directed that Mr.Gelda cannot be dispossessed from Plot No.12 and declared him as the allottee and the owner of the said plot. He further directed the JDA to carry out correction in the number of plots and to re-allot the said plot to Mr.Gelda. According to the learned counsel, despite having the knowledge of the award dated 1-6-1989, the petitioner has withheld all these facts. Instead, he applied for regularisation of plot No.14 in his favour in 2001. Thus, the petitioner had cleverly mislead the JDA. However, when this fact was brought to the notice of learned Deputy Commissioner, he issued the letter dated 12-6-2001, calling upon the petitioner to produce the letter of allotment, the site-plan, the certificate of depositing lease-money, and the lease deed. After discovering the fraud, and after giving opportunity of hearing to the petitioner, vide order dated 16-7-2001, the learned Deputy Commissioner cancelled the petitioner's allotment. Since, a fraud had

been played on JDA, the learned Deputy Commissioner was justified in cancelling the said allotment. Moreover, the learned Tribunal has appreciated this fact, and by a detailed order has dismissed the petitioner's appeal. Lastly, according to the learned counsel, since relevant facts have been withheld from this Court, the petitioner is not only abusing the process of the Court, but is also playing fraud upon this Court. Therefore, the writ petition deserves to be dismissed on this ground alone. In order to buttress this contention, the learned counsel has relied upon S.P.Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs [(1994)1 SCC 1].

5. Heard learned counsel for the parties and perused the material available on record.

6. Every person does have the right to defend his interest, but not at the cost of polluting the stream of justice. A litigant when he goes to the Court, enters the "temple of justice". Like a worshiper, he must enter the temple with clean hands. A litigant who comes to the court with unclean hands, with ulterior motive in his mind, and with fraud in his heart, does not deserve the benevolence and mercy of the court. For, the Court can not be a party either to a fraud, or to an abuse of

process of law. Goddess Justicia—carries a sword in her hand. Symbolically, it is the power of chastisement and punishment. While the Court renders justice, the Court also punishes the guilty.

7. A bare perusal of the Award dated 1-6-1989, clearly reveals that the petitioner had appeared on behalf of Samiti before the learned Arbitrator. In fact, he had pleaded the entire case on behalf of Samiti. Therefore, the petitioner cannot pretend and claim that he was ignorant about the controversy regarding regularisation and grant of Plot No.14 in favour of Mr.Gelda. Knowing fully well that an Award had been passed in favour of Mr.Gelda, knowing fully well that an appeal had been filled by Simiti against the said Award, knowing fully well that the said appeal was dismissed by the Rajasthan Co-operative Societies Tribunal, still the petitioner withheld all these facts from JDA and sought regularisation of plot. Thus, clearly he played fraud on JDA. Interestingly, in the writ petition filled by the petitioner, he does not claim that he had personal knowledge of all these facts. Instead, he claims that 'he has come to know'. Therefore, he has twisted the entire facts of the case in order to intentionally mislead this Court. Thus, he continues to practice fraud even on this Court.

8. In the case of A.P. State Financial Corporation V. M/s. Gar Re-rolling Mills [(1992)2 SCC 647], the Apex Court observed that “A court of equity, when exercising its equitable jurisdiction under Article 226 of the Constitution must so act as to prevent perpetration of a legal fraud and the Courts are obliged to do justice by promotion of good faith, as far as it lies within their power. Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law.”

9. In the case of K.D. Sharma Vs. Steel Authority of India Ltd. (2008)12 SCC 481, the Apex Court has observed that where the petitioner makes a false statement, or conceals material facts, or misleads the Court, then it is the duty of the High Court to reject such a writ petition at the threshold itself without considering the merits of the petition.

10. It is, indeed a settled principle of law that fraud vitiates the entire proceeding. Since, the petitioner has come with unclean hands before this Court, the present writ petition deserves to be dismissed on this ground alone.

11. In these circumstances, the writ petition is, hereby, dismissed.

There shall be no order as to costs.

(R. S. CHAUHAN) J.

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