

SMT. SHANTI DEVI AND ORS.

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v.

STATE OF RAJASTHAN AND ORS.

AUGUST 31, 1994

[K. RAMASWAMY AND N. VENKATACHALA, JJ.]

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Practice and Procedure—Constitution of India, Article 136—New plea in appeal on the basis of fabricated document made part of record for the first time in the Supreme Court—Held, a case of blatant abuse of the process of court—Code of Civil Procedure, 1908 Order 41 Rule 27.

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Costs—Writ Petition and Civil Appeal questioning land acquisition proceedings after notification already finally upheld by the Supreme Court earlier—Held, blatant abuse of process of the court deserving dismissal with exemplary costs of one lakh each to be paid to the Supreme Court Legal Aid Committee—Supreme Court Rules, 1966—Constitution of India, Articles 32, 142.

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Pursuant to a notification in 1960 under S.4 of the Rajasthan Land Acquisition Act, 1953, an award was made and the lands of B were acquired and posession handed over to the Jaipur Development Authority (JDA) in April, 1971. B sold the lands to A and his partner S who in turn sold it to Appollo Co-operative Housing Society in February, 1970. In May, 1971 Appollo sold the plots to the Appellant. S's Writ Petition challenging the acquisition failed before the High Court and the notification was upheld finally by the Supreme Court in 1975.

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Claiming that the Chairman, Urban Improvement Trust, Jaipur had offered the land for sale to Appollo which had been accepted, unauthorised construction was started on the land. When JDA resisted this, appellants unsuccessfully moved the civil court for a perpetual injunction. Observing that Appollo did not have title, the High Court also dismissed the Civil Revision Petition in February, 1986. In 1988, when JDA began demolishing the structures, the appellants filed a writ petition which was dismissed by the High Court.

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In the Supreme Court the Appellants produced for the first time an order dated November 4, 1985 whereby the Additional Collector (South)

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- A purported to convert agricultural lands to a non-agricultural. It was urged that since the plots had not been handed over to JDA yet, it continued to vest in government. The Collector had regularised the construction by receiving conversion charges and thereby the title in the land stood vested in the appellants. In a separate writ petition under Article 32, the Appellants challenged the S.4 notification.

B Dismissing the Appeal and Writ Petition with exemplary costs, this Court

- HELD : 1. The order of regularisation purported to have been made on November 4, 1985 appears to be a proped up document brought on record for the first time. Not only a new case has been set up on the basis of a fabricated document but it is also pressed into service for consideration by the Court. The case, therefore, is absolutely a case of blatant abuse of the process of the court. [6-G, 7-B]
- D 2.1. The appeal is liable to be dismissed with exemplary costs of rupees one lakh. [7-C]

2.2. The writ petition is also a blatant abuse of process of the court and stands dismissed with exemplary costs of rupees one lakh. [7-D]

- E 2.3. The costs should be paid to the Supreme Court Legal Aid Committee. In case of non-payment, the Legal Aid Committee is free to have it recovered by execution of the order. [7-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5802 of
F 1994.

From the Judgment and Order dated 26.11.88 of the Rajasthan High Court in D.B.C.W.P. No. 2956 of 1988.

WITH

G Writ Petition (C) No. 423 of 1989.

(Under Article 32 of the Constitution of India.)

P.R. Kumaramangalam, Vipin Gogia, Pavan Kumar, G.L. Parikh and
H S.K. Jain for the Petitioners.

Mrs. Pratibha Jain for the Petitioner/Respondent. A

V.R. Reddy, Additional Solicitor General, B.D. Sharma and Aruneshwar Gupta for the Respondents. B

The Judgment of the Court was delivered by C

K. RAMASWAMY, J. Leave granted. B

Notification under section 4 of the Rajasthan Land Acquisition Act 24 of 1953 (for short 'the Act') was published in the State Gazette on May 13, 1960 acquiring large tracts of land including the land in Khata Nos. 261, 263-267, 269, 270, 272, 273, 520 and 521 situated in Bhojpara village which is now part of Jaipur city for planned development. Declaration under s.6 was published on May 11, 1961. Following the procedure, an award was made on January 9, 1964. Possession was taken on April 6, 1971 and was handed over to the Jaipur Urban Development Authority on the same day under a duly drawn panchnama. Thus the title in the property of Bhurelal, the original owner was divested and stood vested in the Jaipur Urban Development Authority free from all encumbrances. Bansidhar Aggarwal and his partner Surajmal purchased the lands from the Khatedar Bhurelal who in turn sold on February 28, 1970 to Appollo Cooperative Housing Society. A writ petition was filed by Surajmal questioning the acquisition. The Single Judge by his judgment dated March 31, 1971 dismissed the writ petition which was confirmed in appeal on April 12, 1973, reported in AIR (1974) Raj. 116. On further appeal to this Court, this Court dismissed the appeal on September 17, 1974 reported in *Indrapuri Griha Nirman Sahkari Samiti Ltd. v. The State of Rajasthan & Ors.*, [1975] 4 SCC 296. Thus the notification under s.4(1) stood confirmed. The Apollo Nagar Housing Society said to have sold the plots to the appellants and allotted the same on May 31, 1971. It would appear that during the pendency of the writ petition and writ appeal stay of dispossession was obtained and it was claimed that the Chairman U.I.T., Jaipur had offered allotment of the lands to the Appollo Nagar Housing Society on January 5, 1972 @ Rs. 8 per sq. yard which Appollo was claimed to have accepted on January 15, 1972 and started construction on the land. When the Munsif Magistrate was moved for stay of unauthorised construction, ultimately petition was dismissed. But when the Urban Development Authority resisted their construction they invoked the jurisdiction on the Civil Court by filing a suit for perpetual injunction. Ultimately in Civil Revision No. 769 of 1985 dated February 14, H

- A 1986, the High Court dismissed the revision with certain observations to wit that Appollo Nagar Greh Nirman Sehkari Samiti had neither *prima facie* nor had balance of convenience been proved nor had irreparable loss that would be caused been established.
- B On August 30, 1988 when the Jaipur Development Authority started demolition of the structures, the appellants filed Writ Petition No. 2956 of 1988 and sought for declaration that the land in question stood acquired or construction regularised in their favour and for perpetual injunction to restrain the respondents from interfering with their constructions in respect of their plots. It may be relevant to mention at this juncture that the
- C appellants amended the writ petition and also filed additional affidavit. In the writ petition the case set up was that the government invited, by public notice, applications for conversion of the agricultural lands into urban lands and regularisation of the construction made thereon and pursuant thereto they had deposited the total sum of Rs. 91006.58 p. The government had accepted the same. A letter in proof thereof was issued by the Addl. Collector (South) on November 22, 1985 and marked in the High Court as Annexure-8. And it was also pleaded that the appellants were hopeful that the government would deacquire the property and regularise the unauthorised construction they had made. Instead, the respondents had chosen to demolish part of their construction on August 30, 1988 and
- E repeated the demolition of the remaining construction by August 31, 1988. The Division Bench of the High Court in the impugned judgment dated November 26, 1988 dismissed the writ petition. Thus this appeal by special leave.
- F Sri Rangarajan Kumaramangalam, the learned counsel for the appellants contended that the Addl. Collector in his proceeding dated November 4, 1985 converted the agricultural lands into non-agricultural lands and allotted the lands to the appellants under Rajasthan Land Revenue Allotment, Conversion and Regularisation of Agricultural Lands Rules, 1981 for short 'the Rules'. Under s. 17A of the Act, unless by an order, possession is transferred to J.D.A., the land remains to be the property of the government, though the Collector had acquired the land and taken possession under s. 16 or 17 and make over to the local authority upon payment of the cost of the acquisition. So the land did not vest in the J.D.A., local authority. There is no evidence placed on record that J.D.A. had paid the
- H cost of the acquisition to the state and an order of transfer was made by

the Collector in its favour. The land, therefore, continues to vest in the government. The Addl. Collector as a delegate of the Collector under the Rules had regularised the construction by the receiving conversion charges etc. Thereby the title in the land stood vested in the appellants and that they are the owners. The action taken by the respondents in demolishing their houses or attempt of demolition of part thereof is illegal, unwarranted and unauthorised. The High Court, therefore, committed error of law in dismissing the writ petition in this behalf. It is also contended that the appellants are challenging the very notification issued under s.4(1) in the writ petition.

Having given our anxious consideration to the contention, our *prima facie* view was that the contention is unexceptionable and that the appellants have a case for interference. But, when we went deep into the facts it shocked our conscience to notice that the order of regularisation by the Addl. Collector, Jaipur (South) purported to have been made on November 4, 1985 appeared to be a propped up document brought on record for the first time in this Court. That document had never seen the light of the day when proceedings in two stages were pending in the High Court and a new case, for the first time, has been advanced before us on its foundation. It is seen that in the High Court, though the appellants had opportunity which they availed of and to amend the pleadings and file additional affidavit, had not pleaded that the Addl. Collector had converted the agricultural lands into urban lands regularised the authorised constructions and that allotment of the government plots of land was made in their favour nor was it argued before the division bench. Though we have doubt whether Addl. Collector could allot government land after regularisation under the Rules, we need not go into nor record any findings in the view we are taking on the facts. The intrinsic evidence on record falsifies the stand and leads us to an irresistible interference that the said order of the Addl. Collector must have been a document brought up subsequent to the dismissal of the writ petition by the High Court. The Addl. Collector in his letter dated June 17, 1985 to the J.D.A. stated that Appello Nagar Greh Nirman Coop. Society made an application on July 21, 1974 for conversion. The J.D.A. had not recommended for transfer of the land to that society and, therefore, their letter was rejected on October 31, 1984. This letter is made part of the record as Annexure R-I. In the order dated November 4, 1985, the Addl. Collector has purported to note that a total sum payable towards transformation fee and penalty for construction area and land allotment fee would be Rs. 92189.48 p. and the amount deposited was Rs. 91006.58p.

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- A and direction was given to deposit the balance amount of Rs. 1182.90 p. In the letter dated October 15, 1985 addressed by Appollo Nagar Housing Coop. Society, he requested the Addl. Collector to issue receipt for a deposit of Rs. 91006 and also requested for allotment of the land in accordance with the government decision dated September 1, 1984. In the letter addressed by the Addl. Collector to the Senior Town Planner of
- B J.D.A. while intimating of the letter it was stated as November 22, 1985 i.e. after the date of the purported regularisation that the appellants had deposited only Rs. 91006.58 p. In other words as on November 22, 1985 there is no mention of either deposit made by the appellants for the balance amount of Rs. 1182.90 p. or of the order dated November 4, 1985 of the
- C alleged regularisation and allotment. Moreover, there is no reference in that letter to the letter dated November 4, 1985 regularising the illegal construction by converting agricultural lands into non-agricultural lands and collection of the total amount and calling upon the appellant to pay the balance amount of Rs. 1182.90 p. It is not the case of the appellants that they had ever deposited the balance amount pursuant to the letter of
- D allotment dated November 4, 1985. The High Court dismissed civil revision petition on February 14, 1985 (2nd stage of the litigation) holding that there is no *prima facie* title established for issuance of an injunction order in their favour. One would legitimately expect the production of the purported order dated November 4, 1985 and pressed the appellants' case on its basis
- E as title for claiming an injunction. As seen the admission in the pleadings, the writ petition (3rd stage) is that the government have not chosen to regularise the conversion and that the relief was for the declaration of deemed regularisation. During the course of the arguments when the counsel for the J.D.A. asserted that the land stood vested in them, no attempt was made even at that stage of the assertion of the alleged
- F regularisation and conversion of the land into urban area and adjustment of deposit amount towards the conversion charges, allotment charges and penalty and allotment of the land. Thus it is clear that as on date of disposal of the writ petition in the High Court, the alleged regularisation order dated November 4, 1985 did not see the light of the day. Obviously it must be a fabricated document propped up thereafter and for the first time it
- G was made part of the record in this court and a new plea was found for the relief on its basis. Thus not only a new case has been set up in this Court on the basis of fabricated document but also the fabricated document is pressed into service for consideration by this Court. The case thus clearly indicates the need for the amendment of the Supreme Court Rules
- H to insist upon raising grounds only on the case set up and argued in the

courts below on the basis of the pleadings and the evidence placed before the High Court or the Courts below unless leave of this court is sought and obtained. If any additional evidence is to be made part of the record, an application in this behalf under the Rules and Order 41, Rule 27 C.P.C. should be made. Until then they cannot be looked into. Lest the party gets scot free introducing new documents which have no foundation or fabricated documents find free passage into the record of this court for which no one takes responsibility. The respondents would have no opportunity to properly verify the authenticity of the documents etc. The case, therefore, is absolutely a case of blatant abuse of the process of the court. The appeal is, therefore, liable to be dismissed with exemplary costs of rupees one lakh. The Govt. of Rajasthan shall get investigation made into the fabrication of the order purported to be issued by the Addl. Collector, Jaipur (South) and said to be dated November 4, 1985 and to take appropriate steps in that behalf. The writ petition is also a blatant abuse of the process of the court. The acquisition proceedings have become final and the notification was upheld by this Court, as stated already. Therefore the writ petition also stands dismissed with exemplary costs of Rs. 1,00,000. The appeal is accordingly dismissed with costs of rupees one lakh. Cost should be paid to the Supreme Court Legal Aid Committee. In case of non-payment, the Supreme Court Legal Aid Committee is free to have it recovered by execution of this Order.

S.M.

Appeal and Petition dismissed.