

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

S.B. CIVIL WRIT PETITION NO. 12807/2014

Banshi S/o Shri Kana, aged about 70 years, by caste Hariyana Brahmin, Resident of Village Keshopura, Tehsil Sanganer, District Jaipur.

----Petitioner

Versus



1. Jaipur Development Authority, Jawahar Lal Nehru Marg, Jaipur through Secretary.

2. United Township Corporation, Head Office 29, Janpath, Shyam Nagar, Jaipur through Director/Chairman Vinay Chourdiya.

3. Smt. Sunita Devi W/o Kamlesh Kumar, by caste Hariyana Brahmin, Resident of Village Keshopura, Tehsil Sanganer, District Jaipur.

4. State of Rajasthan through Tehsildar, Sanganer District Jaipur.

5. Hanuman S/o Late Shri Kana by caste Hariyana Brahmin, Resident of Village Keshopura, Tehsil Sanganer, District Jaipur.

6. Dhanna s/o later Shri Kana by caste Hariyana Brahmin, Resident of Village Keshopura, Tehsil Sanganer, District Jaipur.

----Respondents

7. Dy. Commissioner cum Authorised Officer, Zone-7, Jaipur Development Authority, J.L.N. Marg, Jaipur.

8. Divisional Commissioner, Jaipur Division, Jaipur.

----Proforma Respondents

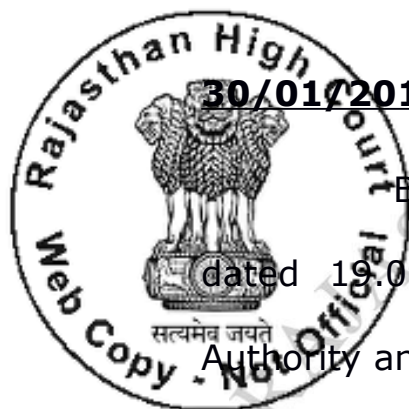
For Petitioner(s) : Mr. Kamlesh Pareek

For Respondent(s) : Mr. MK Dhakad

Mr. SS Hasan

HON'BLE MR. JUSTICE M.N.BHANDARI

Judgment



30/01/2018

By this writ petition, a challenge is made to the orders dated 19.09.2003 and 29.09.2014 passed by the Prescribed Authority and the Divisional Commissioner, respectively.

It is a case where an application under Section 90B(3) of the Rajasthan Land Revenue Act, 1956 (for short "the Act of 1956") was made. The petitioner did not raise objection against the application despite publication of notice in two News Papers. The application was allowed. He preferred an appeal after lapse of 11 years before the Divisional Commissioner. The appeal was dismissed finding it to be not maintainable. It is for the reason that appeal lies against an order under Section 90B(1) of the Act of 1956 and not to an order passed under Section 90B (3) of the Act of 1956.

The order under Section 90B(3) of the Act of 1956 was passed after causing public Notice in two News Papers namely Rajasthan Patrika and Dainik Navjyoti. The petitioner did not submit objection pursuant to the Notice and it is after 11 years

that he preferred an appeal before the Divisional Commissioner. It was with a plea that no notice was given to him despite Joint Khatedar of the land ignoring that notice to seek objection was published in two leading News Papers.

I do not find any illegality in the order passed by the Divisional Commissioner for dismissing the appeal as not maintainable. It was otherwise preferred after 11 years. The order at Annexure-2 further shows that a public Notice was published in two Newspapers namely Rajasthan Patrika and Dainik Navjyoti. There is nothing on record to explain as to why the petitioner did not respond to the Notice for raising objection, if he had any interest in the property. It is after lapse of several years that an appeal was preferred followed by this writ petition. It is moreso when the petitioner was knowing about the order, as pursuant to it, the land was mutated in favour of Jaipur Development Authority. He challenged the mutation, as alleged by the counsel during the course of argument but failed to challenge the order under Section 90B by taking appropriate remedy. The mutation is otherwise considered to be fiscal proceeding. The substantial rights are not established by it. The petitioner is now making out a new case contrary to the Section 90B(3). It by alleging that application could not have been accepted based on agreement to sale. It is in ignorance to Section 90B(3) of the Act of 1956. For ready reference the aforesaid provision is quoted hereunder:-

“90B (3) When the

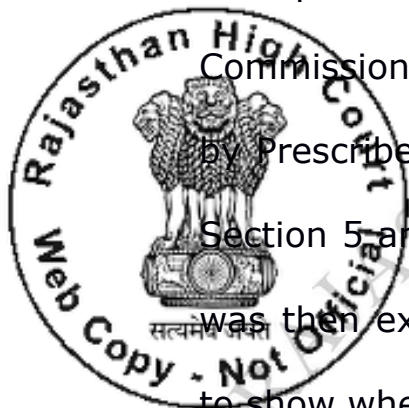
tenant or the holder of such land or any person duly authorised by him, as the case may be, makes an application to the Collector or the officer authorised by the State Government in this behalf, expressing his willingness to surrender his rights in such land, with the intention of developing such land ³["for housing, commercial, institutional, semi-commercial, industrial, cinema or petrol pump purposes or, for the purpose of multiplex units, infrastructure projects or tourism projects or, for such other community facilities or public utility purposes, as may be notified by the State Government" the Collector or the officer authorised by the State Government in this behalf, shall upon being satisfied about the willingness of such person, order for termination of rights and interest of such person in the said land and order for resumption of such land."



The provision aforesaid can be invoked by a tenant or holder of the land apart from a person authorised for it. In the instant

case land was surrendered in favour of the applicant.

Taking into consideration the overall facts of the case, I do not find any ground to cause interference in the impugned orders. Firstly, against the order of the Prescribed Authority as the writ petition suffers from latches and against the Divisional Commissioner when the appeal was not maintainable. The order by Prescribed Authority is after issuing notice to all concern. Sub-Section 5 and sub-Section 7 of Section 90B of the Act of 1956, as was then existing, are also quoted hereunder for ready reference to show when appeal can be filed:-



"90B(5) Where, after hearing the parties, the Collector or the officer authorised by the State Government in this behalf, is of the opinion that the land is liable to be resumed under sub-section (1), he shall after recording reasons in writing, order for termination of rights and interest of such person in the said land and order for resumption of the said land.

90B (7) The person, aggrieved by the order made under sub-section (5), may appeal to the Divisional Commissioner or the officer authorised by the State

Government in this behalf,
within thirty days of passing of
order under sub-section (5).”

The appeal is provided against an order under Section
90B(1) of the Act of 1956 and not against the order under Section
90B(3).



In the light of the aforesaid, I do not find any merit in
the writ petition, hence, it is dismissed.

(M.N.BHANDARI) J.

sunita/23

