

Supreme Court of India

National Institute Of Medical ... vs State Of Rajasthan And Ors. on 9 November, 2017

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE TO APPEAL (CIVIL) NOS. 38040-38041 OF 2012

National Institute of Medical Science University
Rajasthan & Anr.

Petitioners

versus

State of Rajasthan & Ors.

Respondents

WITH

SLP (C) NOS. 38332-38333 of 2012

JUDGMENT

Madan B. Lokur, J.

1. These petitions are illustrative of how some interests can frustrate the rule of law and get away with it. What the petitioners are responsible for, apparently along with several others, is creating a water shortage in Jaipur City and also ensuring that Ramgarh Lake which was made famous in the Asian Games held in 1982 is now completely dry and the catchment areas of Ramgarh Dam are rendered completely useless. This is a tragedy of enormous proportions and rather unfortunately neither the State of Rajasthan nor the Jaipur Development Authority has thought it fit to take stern remedial action. They are thereby compounding the woes of the residents of the city of Jaipur. It is often said that power comes with responsibility and so should it be with the State and the authorities and the petitioner, particularly when it concerns the interests of the people.

2. The origin of these petitions can be traced back to the decision of the Rajasthan High Court in Abdul Rahman v. State of Rajasthan. ¹ In this decision, the High Court attempted, through a series of directions, to ensure free flow of water in the catchment areas of Ramgarh Dam (near Jaipur) and through Tala River and Banganga River. The directions were the conclusion of a public interest litigation in which a public spirited person approached the Rajasthan High Court and highlighted the necessity of protecting tanks and ponds in Rajasthan for a proper and healthy environment to enable the people to enjoy quality life, the essence of the right of a citizen guaranteed by Article 21 of the Constitution.

3. What is the significance of Ramgarh Dam? The dam was constructed in 1903 having a catchment area of about 769.20 sq. km. spread over four Tehsils, namely, Jamvaramgarh, Amer, Shahpura and Viratnagar. The water harnessed by the dam was, till 1978, a source of irrigation. Thereafter, it became a source of drinking water DBCWP No.1536 of 2003 decided on 2nd August 2004 for Jaipur City. During the Asian Games held in India in 1982 Ramgarh Lake was one of the highlights of the Games and events relating to water sports were held in the Lake. Unfortunately, today the Lake is dry and apparently heavily encroached upon due to the omissions and commissions of various departments of the Government of Rajasthan. What is worse is that with the Lake drying up and the catchment areas without any water, Jaipur City is faced with a scarcity of water.

4. With these ground realities in mind and while entertaining the Public Interest Litigation (PIL) initiated by Abdul Rahman, the High Court passed an order on 18th July 2003 requiring the State Government to undertake a general survey to identify the catchment areas of Ramgarh Dam that were misused for construction and mining purposes. This was in the context of what appeared to the High Court as indiscriminate mis-utilization of the catchment areas for construction and mining purposes which prevented lakes, reservoirs, rivers, ponds, etc., from receiving water even during the monsoon season. The survey was also intended to study the effect of utilization of the catchment areas for construction, mining and other purposes. The State Government was also required to suggest measures for restoring the catchment areas to their original shape and use.

5. Pursuant to the directions given by the High Court on 18 th July 2003, the State Government constituted an Expert Committee which gave a report that makes for some very sad reading. However, the Expert Committee also gave as many as 15 valuable suggestions for restoring the catchment areas to their original shape and use. These suggestions were accepted by the High Court and directions issued to the State Government to consider the recommendations of the Expert Committee and chalk out a plan to take effective steps to restore the catchment areas. Three months time was granted to the State Government to give concrete and positive shape to the suggestions.

6. Not surprisingly, no seriousness was attached to the decision and directions of the High Court in Abdul Rahman and matters were allowed to drift.

Suo motu proceedings

7. Under these circumstances, due to the lack of any positive and visible action by the State Government in preserving and protecting the catchment areas of Ramgarh Dam, a learned Single Judge of the Rajasthan High Court was persuaded to initiate suo motu proceedings titled as *Suo Motu v. State of Rajasthan* (registered as SBCWP No.11153 of 2011).

8. On 23rd August 2011 the learned Single Judge noted that the catchment areas of Ramgarh Dam were not being given the deserved importance due to a lack of coordination between various departments of the Government of Rajasthan. The learned judge also noted that no effective steps had been taken for implementing the directions issued in Abdul Rahman particularly with reference to Ramgarh Dam and that there was a lack of willingness on the part of the State Government to take required measures. Accordingly, the learned judge felt that some monitoring action was

necessary for saving the water resources in Rajasthan and initially with reference to Ramgarh Dam. In view of this, the learned judge appointed a two member Monitoring Committee for implementing the directions relating to Ramgarh Dam in terms of the judgment in Abdul Rahman. The learned Single Judge also gave certain directions on 23rd August 2011 some of which included the following:

(i) All the Departments involved in the present matter like Revenue, Forest, Irrigation, PHED, Environment, Mining, Panchayati Raj are directed to cooperate with each other to stop encroachment and illegal construction in the drainages, channels, nalas, river etc. in the four tehsils named above.

(ii) State Government will ensure stoppage of encroachment and construction in the catchment area of Ramgarh Dam.

(iii) xxx xxx xxx

(iv) State Government will come out with the plan for removal of encroachments so as to restore the position as was existing on 15.08.1947.

xxx xxx xxx

9. A perusal of the proceedings in the suo motu petition indicates that the Monitoring Committee put in considerable efforts and gave valuable inputs through its reports. In its written submissions filed before the learned Single Judge, it was noted that there is a problem of scarcity of water and even Ramgarh Dam, which was considered the only reservoir of water supply to Jaipur City had become dry due to encroachments and obstructions. The dam was unable to get water due to land grabbers, property dealers, constructions and farm houses, club houses, resorts, etc.

10. In its written submissions, the Monitoring Committee noted that the petitioners before us had made massive encroachments in the catchment areas of Ramgarh Dam. The learned Single Judge took note of the reports and submissions of the Monitoring Committee and passed a final order on 29th May 2012 giving a series of directions with the expectation and hope that the directions would not remain only on paper but would be implemented in reality. Remedial steps

11. The sequence of events over the last 15 years indicates that the effort made by the Division Bench of the High Court in Abdul Rahman as well as the effort made by the learned Single Judge in the suo motu proceedings hardly yielded any positive results at least insofar as they relate to the petitioner - the National Institute of Medical Sciences University or NIMS.

12. However, before detailing the steps concerning NIMS, it must be stated that the Government of Rajasthan prepared an Initial Action Plan in July 2012 followed by a report prepared by a Technical Committee on 9th January 2013 on Less/no inflow in Ramgarh Dam (District Jaipur) Despite Average and Above Average Rainfall and Remedial Measures to Restore Inflow.

13. During the hearing of these petitions, we had enquired from the learned counsel whether there is any water in Ramgarh Lake but were told that it is still bone dry. It appears to us, therefore, that the Initial Action Plan and the report of the Technical Committee as well as expectations and hope of the learned Single Judge that the directions, plans of action and remedial measures would not remain only on paper but would be implemented in reality have been completely belied. This is a pity.

Facts relating to NIMS

14. The petitioner is a University and presumably it is a University of some repute and responsibility. It made an application for allotment of land in village Jugalpur, Tehsil Amer in District Jaipur to the District Collector of Jaipur on 10th May 2002. However, the application for allotment did not include Khasra No.526 with which we are concerned. NIMS apparently did not receive any reply to the application.

15. For reasons that are not quite clear, NIMS sent a letter to the Chief Minister of Rajasthan on 28th February 2005 to the effect that it had allegedly encroached upon Khasra No. 526. Having denied the allegation, NIMS then sought allotment of that Khasra being No. 526 Rakba 14.44 hectare.

16. According to NIMS, it made several subsequent representations for allotment of Khasra No. 526 but received no reply from any of the authorities for as long as 10 years. During this period, NIMS presumed that the silence of the State Government meant that it had no objection to the allotment. Accordingly, it claimed to have purchased several parcels of land including Khasra No. 526 from various Khatedars and claimed that demarcation of the land was also carried out by the Revenue authorities. On the presumption that there was no objection to the allotment of the land, NIMS made massive construction on Khasra No. 526.

17. Eventually and since no favourable action was taken on the representations made, NIMS filed S.B. Civil Writ Petition No. 1814 of 2012 in the High Court praying that directions may be issued in its favour for allotment of land including Khasra No. 526 for its University. The writ petition came to be dismissed by a learned Single Judge of the High Court by a judgment and order dated 1st November 2012.

18. Around that time, NIMS was issued a notice dated 13th February 2012 under Section 72 of the Jaipur Development Authority Act, 1982 in respect of the alleged encroachments on Khasra No. 526.

19. Feeling aggrieved by the notice, NIMS preferred Appeal No. 37 of 2012 before the Appellate Tribunal, Jaipur Development Authority. After hearing NIMS, the Appellate Tribunal dismissed the appeal by its judgment and order dated 12th October 2012. This led NIMS to prefer S.B. Civil Writ Petition No.16836 of 2012 in the High Court. This writ petition was clubbed along with S.B. Civil Writ Petition No. 1814 of 2012 and both were dismissed by a learned Single Judge on 1st November 2012.

20. Feeling aggrieved by the dismissal of both the writ petitions, NIMS preferred special appeals before the Division Bench of the High Court and these were registered as D.B. Civil Special Appeal (Writ) Nos. 1455-1456 of 2012. Both the appeals were heard by the Division Bench and dismissed by the impugned judgment and order dated 26th November 2012.

Decision of the learned Single Judge

21. A perusal of the judgment and order passed by the learned Single Judge indicates that in fact the land in dispute namely Khasra No. 526 originally vested in the State Government. By a Notification issued on 1st October 2007 it then vested in the Jaipur Development Authority and was brought within the limit of the Jaipur Development Authority. Therefore, from 1st October 2007 only the Jaipur Development Authority had jurisdiction over the land bearing Khasra No. 526.

22. The learned Single Judge also noted that the Appellate Tribunal had required measurements to be carried out with reference to Khasra No.526 and on 11th September 2012 it was found that NIMS had encroached upon land measuring 8125 sq. mtrs. in Khasra No. 526 and also in certain other areas. But as we have mentioned above we are only concerned with Khasra No. 526. With regard to the inaction on the representation made by NIMS for allotment of land, the learned Single Judge noted that merely because the concerned authorities had not taken any decision on the representation, NIMS was not entitled to presume that there was no objection to its taking possession of the land and constructing thereon. Accordingly, the learned Single Judge found no error in the view taken by the Appellate Tribunal holding that NIMS had encroached on 8125 sq mtrs. of land in Khasra No. 526 and that NIMS was not entitled to make any construction thereon. While dismissing the writ petitions by judgment and order dated 1st November 2012 the learned Single Judge directed the Jaipur Development Authority to demolish the construction. However, it was further directed that demolition would not take place till 7th November 2012.

Decision of the Division Bench

23. NIMS appealed against the decision of the learned Single Judge. While deciding the appeals, the Division Bench accepted the view expressed by the learned Single Judge and dismissed the appeals.

24. Before the Division Bench, it was contended by NIMS that the land in dispute was pasture land and that it could be allotted to NIMS under the local laws including the Rajasthan Land Revenue (Allotment of Unoccupied Government Agricultural Lands for the Construction of Schools, Colleges, Dispensaries, Dharamshalas and Other Buildings of Public Utility) Rules, 1963 as well as the Rajasthan Tenancy Act, 1956 and the Rules framed thereunder. Reference was also placed on the Rajasthan Improvement Trust (Disposal of Urban Land) Rules, 1974. The Division Bench took note of all these provisions and observed that in its initial application dated 10th May 2002 made to the Collector, no request was made by NIMS for allotment of Khasra No. 526. For the first time such a request was made by NIMS on 28th February 2005 to the Chief Minister of Rajasthan and not to the concerned Collector who alone was competent to make the allotment. The Division Bench also made a reference to Section 16 of the Rajasthan Tenancy Act, 1955 and noted that Khatadari rights could not accrue in pasture land and therefore it was not available for allotment.

25. The Division Bench held that even otherwise, after 1st October 2007 Khasra No. 526 vested in the Jaipur Development Authority and therefore the allotment could be made only by that Authority in terms of Section 54 of the Jaipur Development Authority Act and not by the State Government. The High Court noted that no application

54. Land to vest in the Authority and its disposal. (1) Notwithstanding anything contained in the Rajasthan Land Revenue Act, 1956 (Rajasthan Act No. 15 of 1956), the land as defined in section 103 of that Act, excluding land referred to in sub-clause (ii) of clause (a) of the said section and Nazul Land placed at the disposal of a local authority under section 102-A of that Act in Jaipur Region shall, immediately after establishment of the Authority under section 3 of this Act, be deemed to have been placed at the disposal of and vested in the Authority which shall take over such land for and on behalf of the State Government and may use the same for the purposes of this Act and may dispose of the same by way of allotment, regularization or auction subject to such conditions and restrictions as the State Government may, from time to time, lay down and in such manner, as it may, from time to time, prescribe:

Provided that the Authority may dispose of any such land

(a) without undertaking or carrying out any development thereon; or

(b) after undertaking or carrying out such development as it thinks fit, to such person, in such manner and subject to such covenants and conditions, as it may consider expedient to impose for securing development according to plan.

(2) No development of any land shall be undertaken or carried out except by or under the control and supervision of the Authority.

(3) If any land vested in the Authority is required at any time by the Nagar Nigam, Jaipur for carrying out its functions, or by the State Government for any other purpose, the State Government may, by notification in the Official Gazette, place such land at the disposal of the Nagar Nigam, Jaipur or any Department of the State Government on such terms and conditions, as may be deemed fit.

(4) All land acquired by the Authority, or by the State Government and transferred to the Authority, shall be disposed of by the Authority in the same manner as may be prescribed for land in sub-section (1).

was made by NIMS to the Jaipur Development Authority for allotment of Khasra No. 526 or any other Khasra of village Jugalpura.

26. Under these circumstances, the Division Bench took the view that NIMS had encroached upon Khasra No. 526 and had raised constructions thereon without any permission or sanction and that it was not possible to ignore the illegalities committed by NIMS.

27. NIMS contended before the Division Bench that since massive constructions had already been made, no useful purpose would be served by demolishing the construction. It was submitted that demolition would not serve any public purpose. This submission was rejected by the Division Bench by relying upon a decision of this Court in Jagpal Singh v. State of Punjab³ to the effect that if land is not available for allotment and construction is made thereon, then that construction must be demolished.

28. The High Court also took the view that if appropriate steps are not taken to remove the encroachment, it would encourage others to encroach upon land and to seek regularization of any illegal construction made thereon.

29. As far as the decision rendered by the Appellate Tribunal is concerned, the Division Bench noted that the report of 11th (2011) 11 SCC 396 September 2012 was unimpeachable and there was no doubt that NIMS had encroached on 8125 sq. mtrs. of land in Khasra No. 526. Proceeding in this Court

30. It was submitted by learned counsel for NIMS that no encroachment was made by NIMS and that in any event there were a large number of encroachers in the catchment areas. According to learned counsel there was no reason why only NIMS should be singled out for adverse or punitive treatment. We are not at all impressed by the submissions made by learned counsel.

31. What is before us is really only a factual dispute. NIMS has not been able to show any perversity, on facts, in the orders passed by the Appellate Tribunal or by the learned Single Judge or by the Division Bench.

32. One of the factual conclusions arrived at by the High Court is that NIMS had made a request for allotment of Khasra No. 526 for the first time only on 28th February 2005 and that too before the Chief Minister who was not the competent authority to make the allotment the competent authority being the Collector of Jaipur district. Why NIMS chose to directly approach the Chief Minister is a mystery which can be solved only by NIMS.

33. Post 1st October 2007 there was no request made by NIMS to the Jaipur Development Authority for the allotment of Khasra No.

526.

34. Assuming there was no response from the Chief Minister to that or any other representation made by NIMS to any authority including the Jaipur Development Authority for allotment of Khasra No. 526, NIMS had no right to assume that its request for allotment had been accepted (or not rejected) by the Chief Minister or the Jaipur Development Authority and on that assumption to make constructions on the land without any permission or sanction.

35. It has also come on record as a matter of fact that NIMS had encroached upon 8125 sq. mtrs. in Khasra No. 526. It has also come on record that in fact NIMS had not filed any objections to the

Report dated 11th September 2012 before the Appellate Tribunal. It has also come on record that as a matter of fact due to the illegal and unlawful construction having been made in the area by several parties including NIMS, Ramgarh Lake is now absolutely dry and the residents of Jaipur city are suffering from water shortage because of this - since water from the region was being supplied to Jaipur city before the area dried up. These undisputed facts are enough to dismiss the petitions filed by NIMS. There is no law that supports the brazenness of NIMS in wantonly encroaching on Khasra No. 526 and then making huge constructions thereon.

36. Learned counsel for NIMS did not place before us any law or decision to support the encroachment by NIMS on Khasra No. 526. But, learned counsel for the Jaipur Development Authority as well as learned counsel for Dinesh Kumar Saini a reporter of Current Jwala (Respondent No. 2) drew our attention to Section 16 of the Rajasthan Tenancy Act, 1955 which prohibits accrual of Khatedari rights in pasture land. 4 It was submitted that in view of this provision, assuming the land in Khasra No. 526 to be pasture land, NIMS could not have acquired Khatedari rights as claimed. Conclusion

37. It is most unfortunate that despite orders passed by the Rajasthan High Court in Abdul Rahman and in the suo motu petition and views expressed by the Monitoring Committee appointed by the High Court as well as the Expert Committee set up by the State Government and plan of action having been prepared by the State Government, nothing substantive appears to have been achieved on the ground over the years.

38. Under the circumstances, we have no option but to dismiss the petitions but with costs of Rs.10 lakhs per petition for the brazen

16. Lands in which Khatedari rights shall not accrue Notwithstanding anything in this Act or in any other law or enactment for the time being in force in any part of the State Khatedari rights shall not accrue in

(i) pasture land;

(ii) to (xiv) xxxx Provided that ..

encroachment. The amount should be deposited by NIMS in the Registry of this Court within six weeks.

39. In our opinion, merely dismissing the petitions would serve no useful purpose since it appears to us that NIMS is a rather powerful and influential entity. We say this because it has been able to successfully frustrate its eviction and demolition of the construction for at least one decade. Even before us an attempt was made to take an adjournment so that it could possibly use its influence over whoever it may be to get some favourable executive orders.

40. In M.I. Builders Pvt. Ltd. v. Radhey Shyam Sahu and Ors⁵ this Court directed enforcement of the rule of law by demolition of unauthorized constructions. It was held as follows:

The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters.

Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will (1999) 6 SCC 464 be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.

41. This view was followed and endorsed in Jagpal Singh in the following words:

In *M.I. Builders (P) Ltd. v. Radhey Shyam Sahu* the Supreme Court ordered restoration of a park after demolition of a shopping complex constructed at the cost of over Rs. 100 crores.

In *Friends Colony Development Committee v. State of Orissa* 6 this Court held that even where the law permits compounding of unsanctioned constructions, such compounding should only be by way of an exception. In our opinion this decision will apply with even greater force in cases of encroachment of village common land. Ordinarily, compounding in such cases should only be allowed where the land has been leased to landless labourers or members of Scheduled Castes/Scheduled Tribes, or the land is actually being used for a public purpose of the village e.g. running a school for the villagers, or a dispensary for them.

In many States government orders have been issued by the State Government permitting allotment of Gram Sabha land to private persons and commercial enterprises on payment of some money. In our opinion all such Government orders are illegal, and should be ignored.

42. Keeping in mind the view expressed by this Court in these and other decisions, we also direct the demolition of the unauthorized construction by or on behalf of NIMS on Khasra No. 526. The demolition should be carried out by the Jaipur Development Authority with the assistance of the State Government and the (2004) 8 SCC 733 Collector of Jaipur District on or before 30 th November, 2017. The Director General of Police of Rajasthan is directed to render all necessary assistance in the process of demolition. The cost of demolition and removal of rubble etc. will be at the expense of NIMS. Any pending application made by NIMS for compounding the unauthorized

construction or regularizing it stands superseded in view of our decision.

43. We are giving these peremptory time bound directions in view of the fact that the learned Single Judge felt it appropriate, while dismissing the writ petitions filed by NIMS, to grant interim relief limited to only 7 days. More importantly, we are of opinion that the possibility of water being now made available to Jaipur City in due course of time takes far greater precedence over the interests of NIMS and those associated with it.

44. The petitions are dismissed with the above directions.

.....J
(Madan B. Lokur)

New Delhi;
November 9, 2017

...J
(Deepak Gupta)