

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

D.B. CIVIL WRIT PETITION NO.19102/2018

**PETITIONERS:**

Ravindra Sharma

*Versus*

**RESPONDENTS:**

State of Rajasthan & Ors.

**I N D E X**

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**COUNSEL FOR THE ANSWERING RESPONDENTS**

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*Asstt.to Addl. Advocate General*

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ADDITIONAL AFFIDAVIT

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TO,

HON'BLE THE CHIEF JUSTICE AND HIS  
OTHER COMPANION JUDGES OF THE HIGH  
COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR.

MAY IT PLEASE YOUR LORDSHIPS,

I, Rajendra Singh ..... S/o Shri  
....., Aged about ....  
years, presently working as  
Py. Commissioner, J.P.A., Jodhpur .....  
.....; do hereby swear in the name of god and state that  
:-

1. That I am the officer in-charge in the present case and am competent to file the present additional affidavit.

2. That it is most humbly stated that an interim reply to the writ petition has already been filed on behalf respondent no. 1 and 7 and the present additional affidavit is being filed by the respondent state to further substantiate the assertion that RIICO is an authority competent to act in furtherance of RIICO Disposal of Land Rules, 1979 and the unified building by laws of 2017, and has been so authorized by the State while exercising the powers conferred under the Constitution of India and the relevant in enactments.
  
3. That as submitted in the reply that land vests in RIICO, in pursuance of Rule 11 A of the Rules of 1959 and RIICO is authorized to take action and make decisions with respect to the above land, which is in the nature of industrial area notified by the State Government, in accordance with provisions of Rule 11 A and Rule 12.

At the outset it is most humbly submitted that any decision taken by RIICO in accordance with the mandate of Rule 11 A and 12 does not change the nature of industrial area and consequently the same does not have any impact on the master plan. The above submission is being made on the basis of the definition of the industrial area provided under the Rule of 1959 itself. In the master plan where an area is identified as an industrial area and the definition of industrial area provided in the Rules of 1959 itself, provide for activities within the industrial area which are not purely industrial in nature, it can be stated that any action on the part of RIICO to change the land use from one permitted use to another within the industrial area, does not change the nature of

industrial area and consequently does not disturb the master plan. Further, as it has already been stated hereinabove, that there is no interference with the master plan, RIICO while permitting land use change from permitted activity to another is not interfering or transgressing with the power reserved for any other authority of the State or local body.

4. That it is already been stated in the reply that RIICO has been authorized to act in accordance with the Rules of 1979, and has been permitted to take consequential actions with regard to plots allotted to the entrepreneurs. A bare perusal of Rule 12 reveals that the functioning of RIICO, in relation to the allotted plots has a statutory force in the Rules of 1979, which though admittedly not framed under any statutory enactment, have acquired statutory force. In this regard reliance is being placed upon the judgment of the Hon'ble Supreme Court in the case of M.G. Pandke and Ors. Vs. Municipal Council Hingangath District Wardha and Ors. 1993 Supp (1) SCC 708, where a Secondary School Code, which did not have any parent statutory enactment, was declared as having statutory force since there was reference to certain provisions of the Code in Rules/Regulations which were having statutory force and were framed under a parent statutory enactment. It was further held by the Hon'ble Supreme Court that there exists a Code, which has acquired statutory force, as a result of reference being made in a legislation, no other authority, though having independent statutory power can enter the sphere of functioning of the Code, which is already holding field.

On the same principles, it is submitted that the Rules of 1979, and the functioning of RIICO with



respect to an industrial area is having statutory force and no authority other than RIICO, in the present case Nagar Nigam and JDA, is competent to take decisions with respect to the industrial area under the control of RIICO.

5. That so far as, the power of the State to authorize RIICO to permit land use change from one permitted activity to another permitted activity in an industrial area, and take other decisions is concerned, it is most humbly submitted that the same is contained in the Land Revenue Act of 1956, the Rajasthan Land Revenue (Industrial Areas Allotment) Rules, 1959, Entry 18, Entry 24, Entry 32 of the list 2 of the 7<sup>th</sup> schedule of Constitution of India and the interpretation of the term "regulation" and the term "land" made by the Hon'ble Supreme Court in various judicial pronouncements.
6. That the relevant entries of List 2 are being reproduce herein under for ease of reference:-

*Entry 18. Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization.*

*Entry 24. Industries subject to the provisions of <sup>37</sup> (entries 7 and 52) of list 1.*

*Entry 32. Incorporation, regulation and winding up of corporations, other than those specified in list 1, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies.*

7. That so far as law regarding interpretation of entries in the 7<sup>th</sup> schedule is concerned it is a settled position that the words conferring the right of legislation should be interpreted liberally and the powers conferred should be given the wildest amplitude. In this regard interpretation of the Entry 18 made by the Hon'ble Supreme Court in Union of India and Ors. Vs. Valluri and Ors. 1979 3 SCC 324 acquires relevance. Wherein, the Hon'ble Supreme Court observed that entry 18 in List 2 of the 7<sup>th</sup> schedule covers land and building and covers land of every description i.e. agricultural land, urban land, or any other kind of land. It is most humbly submitted that the Hon'ble Supreme Court in other judicial pronouncements has been pleased to hold that the legislative entry regarding land takes in not merely the tangible immovable property one normally describes as land but also all kinds of intangible right or interests, in or over land in a broad sense. The phrase which follow the words "right in or over land" are illustrative and not restrictive.

In light of the above it is most humbly submitted that the State is competent to legislate land which would obviously include industrial land. Also under entry 24, industry is a subject in relation to which the State can legislate.

8. That entry no. 32, lists as a subject for legislation within the capacity of the State, *regulation of corporations*. The term regulation appearing 7<sup>th</sup> schedule has been interpreted to mean by the Hon'ble Supreme Court as the capacity to control, govern or direct by Rule or Regulation. In reference to house accommodation the word Regulation was interpreted to include within it all aspects as to who is to make the construction, under what conditions construction

can be altered, who is to occupy the accommodation, on what term it is to be occupied, when and under what circumstances the accommodation is to be utilized. From the above it is clear that the word regulation for a particular subject matter has been given interpretation of widest amplitude (Indu Bhushan Bose Vs. Rama Sundari Devi and Anr. 1969 (2) SCC 289). Applying the above analogy in the present case the State is competent to regulate a corporation and such competency includes the power of the state to identify the manner in which the corporation has to function and identify the sphere of functioning of such corporation. At this stage, a reference to Section 100, Rajasthan Land Revenue Act, 1956 would be relevant, wherein, it has been provided that the State may make Rules regulating sale of lands in industrial and commercial areas. The term regulating would empower the State in every possible manner to make Rules regarding, the manner in which industrial area is to be managed, the entity competent to manage the industrial area, the limits and the powers of such body including all the ancillary and incidental matters.

9. That Rules of 1959 have been formulated by the State, while exercising powers under Section 100 of the Act of 1956, in order to, regulate the industrial area. The Rules of 1959 empower the RIICO to deal with the industrial areas notified and allotted to RIICO by the State Government, thereby, acting in furtherance and exercising authority to regulate "sale of land" in industrial area and "regulating functioning of a corporation", as explained hereinabove. The above exercise is being done by the State Government with reference to entry 18, 24 and 32 of the 7<sup>th</sup> schedule, Section 100 of the Act of 1956.



10. That it would be relevant to mention here that the RIICO is a government company, a public sector undertaking and a state financial corporation. Much has been submitted regarding the above aspect in the reply submitted by RIICO and the answering respondents. It is true that RIICO has not been incorporated under statutory enactment, however, considering the development of law on the subject regarding, a corporation/entity having statutory force/status though not being incorporated under statutory enactment, it is submitted that what is to be seen is not how a juristic person is born but why it has been brought into existence ("Ajay Hasiya and Ors. Vs. Khalid Mujib and Ors. (1981) 1 SCC 722). The thrust is now not upon the composition of body but the duties and functions performed by it (Zee telefilms Ltd. and Anr. Vs Union of India and Ors. (2005) 4 SCC 649). The primary question is whether, but for the existence of a statute, a corporation would have functioned the way it is functioning or the area of functioning of the corporation would have become nullity.

In the present case, the functioning of corporation (RIICO) with respect to industrial area is regulated in terms of Rule 11 A, Rule 12 of the Rules of 1959 and had it not been for the authorization under the Rules of 1959, the executive power of State under Article 298 of the Constitution of India, RIICO would not have functioned the way it is functioning and discharging its rules and responsibilities with respect to industrial land thus it is clear that RIICO is a government company functioning under the authority of law dealing with industrial area in State of Rajasthan.



11. That in the background of the above submissions it is most humbly submitted that RIICO has been authorized to action according with Rules of 1979 and take all ancillary and consequential decisions. It is already been stated that the definition of industrial area itself includes certain activities which are not industrial in nature. The extent to which such activities, not industrial in nature, which can be undertaken in an industrial area is restricted to 15% of the total scheme area of the industrial area concerned out of this 15% area where, any of the permitted activities commercials/institutional or other activities is sought to be undertaken RIICO permits land use change in accordance with Rules of 1979, which explained above are having statutory force. It would also be relevant to mention here that there was no intention of the legislature to restrict commercial use which is evident from the definition of industrial area itself, so also from Sub Rule 13 of Rule 11 B, where commercial activities has been specifically restricted. Further Clause 5 of Rule 11 A authorize RIICO to recover charges as may be determined by it. Thus it is clear it requires amply authority to deal with industrial area under mandate of Rules of 1959.
  
12. That the interpretation of Rule 8 being extended by the petitioner is totally absurd and is a result misconstruction of the Rule of 1959 in its entirety. Rule 8 exists in the Rules of 1959 not with respect to the industrial area allotted to RIICO. A specific restriction regarding the use of land has been contained in clause 7 of Rule 11 A, which is in consonance with the definition of industrial area contained in the Rules of 1959, itself, wherein, within an industrial area activities not purely

industrial nature already stands permitted. It would be relevant to submit here that the State has absolute power to regulate industrial activities/ industrial area, RIICO has been empowered to undertake activities with respect to the industrial area defined under the Act of 1959 and allotted to RIICO. Therefore, Rule 8 has no application. The interpretation being extended by the petitioner cannot be accepted as the same defeats the very definition of industrial area, Rule 11A and 12 of the Rules of 1979.

13. That it would not be out of place to mention here that in the petition filed by the petitioner no challenge has been made to any of the provisions of Rules of 1959, the building by laws of 2017 and the Rules of 1979 have also not been challenged, in these circumstances it is clear that the petitioner has utterly fail to establish any incompetency on the part of RIICO or the State. Vague and bald assertions have been made having no substance and therefore, it is most humbly submitted that the writ petition in the present form is not maintainable and the Hon'ble Supreme Court in its various judicial pronouncement has observed that such vague and basely challenged to the authority of state without reference to the basic lacunae, the relevant provisions of the constitution and statute should be rejected out rightly.
14. That the facts stated in the present affidavit are true and correct to my personal knowledge and legal submissions are true to my belief based on the legal advice.

DEPONENT

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I, the above named deponent do hereby solemnly state on oath that the facts mentioned in the Para no.1 to last of this affidavit are true and correct to my personal knowledge. No part of it is either false and nothing has been concealed.

SO HELP ME GOD

DEPONENT