
(2006) 03 MP CK 0066
In the Madhya Pradesh High Court
Case No : Writ Petition No. 993 of 2000

Akhil Agrawal

APPELLANT

Vs

Indore Development Authority and Another

RESPONDENT

Date of Decision : 21-03-2006

Acts Referred:

Evidence Act, 1872 — Section 115

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 85

Citation : (2008) 2 MPJR 2

Hon'ble Judges : S.L. Kochar, J

Bench : Single Bench

Advocate : V. Asudani, for the Appellant; S.D. Bohara, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

Respondent No. 1 Indore Development Authority (IDA) published Notification Inviting Tenders (for Short NIT) bearing No. 79/94 on 27/7/1994 for sale of residential plots ad-measuring 50 Ft. x 70 Ft. in size on deposit of Rs. 10,000/- by Bank Draft along with tender. Copy whereof is Annexure P.1. In response to the aforesaid NIT the grandmother of the Petitioner Leelavati Rampal Agrawal submitted tender which was accepted by the Respondent being highest. In pursuance of acceptance of highest tender, Respondent No. 1 IDA by order No. 2-2/5627/78/94/10995 dated 6/9/ 1994 issued allotment order for Plot No. 27/F/A/55 in Scheme No. 78 Annexure P.2 is the copy of allotment order.

The grandmother of the Petitioner died on 19/5/1999 whereafter the allotted plot was mutated in the name of the Petitioner. According to the Condition No. 4 of the NIT and agreement, Petitioner deposited 25% of the premium and annual lease rent for first year aggregating total Rupees 82,274/-by Cheque No. 655177 dated 7/11/1994 along with covering letter dated 7/11/ 1994 (Annexure P.3.). It is further submitted by the Petitioner that the State Government in exercise of

powers conferred u/s 85 of the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 (for short "the Adhiniyam") framed the rule called as "Madhya Pradesh Nagar Tatha Gram Nivesh Viksit Bhumiyon, Griho, Bhavano, Tatha Anya Sanrachanao Ka Vyayan Niyam, 1975" (hereinafter refereed to as "Rules, 1975"). According to Rule 33 when the plot becomes ready for delivery and it is so notified by the authority, the purchaser shall obtain permission of the plot within 60 days of the receipt of notice and shall obtain sale deed from the authority. But in the instant case, the authority has not complied with Rule 33 read with Clause 4 of the Agreement (Annexure P.1) by handing over the physical possession of the said plot immediately on payment of premium at 25% and annual lease rent for first year. Authority has also failed to serve any notice in writing to the Petitioner to obtain possession of the plot or hand over physical possession of the plot even after repeated request of the Petitioner for handing over physical possession of his alleged plot.

This Court does not find any substance in the objection of the Respondents that Petitioner has no locus-standi to challenge the revival order issued in his name because he is not the legal heir of his grandmother Leelavati in whose name the said plot was allotted. The Respondents have not denied the submission of the application by the Petitioner for mutation of his name in place of his grandmother Smt. Leelavati who died on 19/5/199. Along with his application he also submitted affidavit of all the four sons of Leelavati who have relinquished their right on the said plot and given consent in favour of the Petitioner to mutate the plot. These documents have been filed by the Respondents as Annexure R.1. Only thereafter impugned order Annexure P.7 calling upon the Petitioner to deposit the amount within 30 days from the date of issuance of this letter for revival of the plot in his name has been issued, shows that the Respondents have accepted the letter (Annexure R.1) submitted by the Petitioner along with affidavit showing the relinquishment of right on the plot by four sons of late Smt. Leelavati. Out of four sons one named Ashok Agrawal is the father of the Petitioner.

The judgment relied upon by the learned Counsel for Respondents passed in case of Shanti Prasad Jain (supra) is not helpful to the Respondents. In this case, while interpreting Section 115 of the Evidence Act, the Orissa High Court has held that "a counsel's admission of a point of law cannot be binding upon a Court; and Court is not precluded from deciding the rights of the parties on a true view of the law". In the case in hand, there is no admission of the counsel but there is acceptance of application submitted by the applicant for mutation of his name on the strength of relinquishment of right by the four sons of the deceased including father of the Petitioner and Petitioner is also the grandson of the deceased, therefore, also falling within the category of legal heir of deceased. In another judgment Shantilal (supra), the Rajasthan High Court has held that "oral admission by the operator regarding permit of route is inadmissible unless he is entitled to give secondary evidence of the contents of the permit. Such admission given in ignorance of the legal rights of the operator are not conclusive

proof and the same will not operate as Estoppel against him". This proposition of law is not also applicable in the fact and circumstances of the present cases. In the instant case, Petitioner's application has been accepted by the Respondents on the strength of affidavit submitted by the legal heirs of Leelavati, therefore, now they cannot say that the application was accepted illegally. The affidavit submitted by four sons is clearly showing that they had relinquished their right in favour of the Petitioner who is the grandson of late Leelavati and none else has ever claimed any right over the plot initially allotted in the life time of Leelavati. Therefore, this Court does not find any substance in the argument of learned Counsel for Respondents. 5. Learned Counsel for Respondents has not argued any other point.

In view of Rule 33 and Rule 40 of the Rules, in the facts and circumstances of the present case, the Respondents could not demand lease rent and other taxes from the Petitioner / lessee by the impugned order (Annexure P.7)

According to Rule 33 it is obligatory on the part of the Respondents/ Authority (IDA) to notify for delivery of the plot when plot becomes ready and the purchaser shall obtain permission of the plot within 60 days of the receipt of the notice and shall obtain sale deed from the authority. No such notice was ever notified by the Authority regarding readiness of the plot for delivery and according to Rule 40, the Respondents / IDA was required to notify the date for taking possession of the plot by the lessee and lease of the plot shall commence from the date irrespective of the fact whether possession of the plot has been taken or not and the lessee shall pay all the rates and taxes.

In the instant case, this is the admitted position that no date was fixed or notified by the Respondents for delivery of possession to the Petitioner, therefore the lease of the plot has not commenced and Petitioner is not liable for payment of lease amount and other taxes, charges etc as demanded in impugned order (Annexure P.7). The similar view is taken by this Court in order passed in case of Bubulal (supra).

It would be apposite to mention here that in Clause 4 of Agreement (Annexure P.1) the agreed condition between the parties is that after deposition 25% premium amount and one year lease rent by the lessee, the Respondent / Authorized officer shall inform the lessee the date and time for delivery of possession and on such date possession would be taken by the Petitioner, if he would not remain present on the notified date for taking possession, it would be deemed that possession was taken by the lessee and lease rent would be leivable from that date. This Clause 4 of the agreement is in consonance with Rules 33 and 40.

In the result, since the Respondents have not complied with the conditions of agreement (Annexure P.1) as well as mandatory Rules 33 and 40 of the Rules, 1975 as discussed herein above, the petition succeeds and is hereby allowed. The impugned demand (Annexure P.7) dated 24/3/2000 is hereby set aside by

issuance of writ of certiorari. It is however made clear that Respondent IDA would be free to proceed against the Petitioner in accordance with the Rules in relation to plot in question.