
(2014) 05 MP CK 0234
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2757 of 2012

Amar Singh Kwatra

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 05-05-2014

Acts Referred:

Cantonments Act, 2006 — Section 108, 122, 258, 259

Citation : (2014) 2 JLJ 424 : (2014) 4 MPHT 34 : (2014) 3 MPLJ 584

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Advocate : Vivek Sharan, Assistant Solicitor General, Advocate for the Respondent

Final Decision : Dismissed

Judgement

S.C. Sharma, J.—The petitioners before this Court have filed this present writ petition being aggrieved by the alleged action of the Indian Army in closing/obstructing the alleged road which is adjoining to the defence land and the land belonging to the petitioners. Contention of the petitioners is that they have purchased land vide registered sale-deeds dated 8.5.2007 and 14.2.2008 bearing Survey No. 864 admeasuring 0.715 hectares and 0,143 hectares respectively in village Telikhedi, Mhow, District Indore. The adjoining land belongs to the Indian Army (Army Golf Club) situated in GLR Survey No. 168. It has been further stated that the Army Authorities in the year 1983 in order to utilise the land in question have entered into a lease agreement with the predecessor in title and a small culvert was also constructed to provide free access for the golfers on the land in question across river Gambhir. The lease deed was later on extended in the year 1998. In the month of April, 2008 the petitioners after purchasing the land served a notice to the respondents informing about the sale of the land and the Army Authorities (respondent No. 5) vide letter dated 13.8.2008 also paid lease rent to the petitioners. Thereafter the petitioners made an effort for extension of the lease, however, the lease was not

extended and on 16.3.2009 the petitioner No. 1's father requested the Army Authorities to vacate the land. Respondent No. 5 informed the petitioners that they will be vacating the land by the end of 2009. Petitioners have further stated that the Army Authorities started threatening the petitioners by blocking the access of the petitioners as well as other family members to their land and the petitioners approached the Revenue Authorities to carry out a field survey regarding alternative route to Survey No. 814. A Panchnama was prepared by the Revenue Authorities which is also on record dt. 29.11.2010 and the Army also vacated the land. On 2.12.2010 the respondent No. 5 has informed the petitioners that the land has been vacated and they are constructing a boundary wall. Contention of the petitioners is that the Army Authorities while constructing a boundary wall are blocking the existing road which is impermissible in law keeping in view section 258 of the Cantonments Act, 2006. The petitioners thereafter served notices to the respondents requesting them to stop construction of the boundary wall and as the Army Authorities continued with the construction of the boundary wall, the present writ petition has been filed. It has also been stated in the present writ petition that certain land belonging to the State Government on the east river bank of river Gambhir has been encroached by the Army Authorities and as the existing road has been blocked the same is violative of section 258 of the Cantonments Act. It has also been stated that the petitioners do not have access to their land and therefore, the action of the Army Authorities deserves to be set aside. The petitioners have prayed for the following reliefs:

(i) Issue a writ, direction or order in the nature of certiorari or other appropriate writ, calling for the records of the petitioners' case from the respondents.

(ii) Issue a writ, direction or order in the nature of mandamus or other appropriate writ restraining from obstructing/obliterating the public road which has been in existence from time immemorial and for greater clarity has been shown in the plan annexed hereinabove as Annexure P-15.

(iii) Issue a writ, direction or order in the nature of mandamus or other appropriate writ directing the respondents to restore to then original condition the above public road (as per Annexure P-15) as also the light and heavy motorable bridge damaged/destroyed by them which connected the said road on the east bank of the Gambhir River with the lands situate on the west bank in village Telikhedi, Tahsil Mhow.

(iv) Award the costs of the present petition to the petitioners and

(v) Grant such other relief or reliefs as this Hon"ble Court deems fit.

2. A detailed reply has been filed on behalf of the respondents No. 1 and 4 and it has been stated that the land in question which is in dispute was lying vacant and was not being utilised by the predecessor in title. The land was given on rent by the predecessor in title to the Golf Course and the Defence Forces were using the land for playing golf and for conducting other training. It has also been

stated that the Government of India has sanctioned Rs. 19.72 crores for construction of key location planning accommodation for infantry batallion and a boundary wall is required to ensure security and safety of defence installations which is as per Works of Defence Act, 1903. It has been further stated that the land on which boundary wall is being constructed is A(1) defence land. It has also been stated that the boundary wall is being constructed with due approval of the Competent Authority, financed by the Ministry of Defence in respect of which the respondents have enclosed administrative approval of the work and the budget allotted. Respondents have further stated that section 258 of the Act of 2006 is applicable to the roads under the cantonment and not to the roads under local military authority, i.e., under Defence A(I) land. It has been further stated that the defence authorities can regulate within unit access/use of own roads located in their area and the respondents have enclosed the relevant rules along with the reply. It has also been stated on affidavit that villagers of Telikheda are using main road, i.e., Telikheda Mhow Road and not the so-called alleged passage which the petitioners are stating to be a road. It has been further stated that no road exist on the east bank of Gambhir river and the portion of land which has been stated as road by the petitioner is nothing but a "Kacha" track which was used by the Golf players to proceed towards Green Poles and was purely temporarily used by the Golf course at the relevant point of time. It has also been stated that the petitioners have purchased the land only in the year 2007-2008 and, therefore, it is incorrect on the part of the petitioners to state that they had an age old access to the Army Area. The respondents have further stated that the land in question as it was not required by the Army Authorities and as accommodation for an infantry batallion is being constructed the boundary wall is necessary and they are rightly constructing a wall exclusively on the land belonging to the Ministry of Defence. It has also been stated that the land in question has never been used for agricultural purposes at any point of time and the petitioner has made an attempt to mislead this Court by making incorrect statements. The respondents have prayed for dismissal of the writ petition.

3. Heard learned counsel for the petitioner at length as well as Mr. Vivek Sharan, learned Asstt. Solicitor General for the Union of India along with Brigadier Prakash Chandra, Station Commander and perused the record.

4. In the present case, the petitioner No. 1 is a retired Major and the petitioner No. 2 is wife of a Retired Wing Commander. It is an admitted fact that they have purchased land vide registered sale deed dated 8.5.2007 and 14.2.2008 bearing Survey No. 864 admeasuring 0.715 hectares and 0.143 hectares respectively in village Telikhedi, Mhow, District Indore. The land in question was given on lease to the Indian Army and was part of the Army Golf Club. The predecessor in title in the year 1998 entered into an agreement and used to receive rent from the Indian Army. It was only in April 2008 after the land was purchased by the petitioners, the petitioners started demanding rent and they were also paid rent by the respondents. The petitioners thereafter requested for extension of lease,

however, as the land was not required by the Army, the lease was not renewed and the Army has vacated the land and has also informed the petitioners that they have vacated the land. Petitioners, in the present case, are aggrieved by the construction of a boundary wall over A(1) land which belongs exclusively to local military authority (under defence A(1) Lands). The land falling in a Cantonment Area under the Cantonment Act are divided in various categories and the relevant statutory provisions governing the field relating to classification of the land under the Cantonment Act read with Cantonment Land Administration Rules, 1937, reads as under:

CHAPTER III

CLASSIFICATION AND MANAGEMENT OF LANDS:

LAND USE NORMS AND PLANNING FOR KLP PURPOSES

3.0 General,--Management of defence land is a very complex issue as it is not covered by any statute since land is a State subject while all defence lands are Central Government holdings. A large number of administrative orders starting from British times exist for its management and these have never been consolidated at one place for the easy and quick reference of the practitioner who deals with A-1 lands. For effective management of the defence land, it is classified under rules 4, 5 and 6 of CLAR, 1937. Management of different classes is vested in various agencies such as Local Military Authorities (LMA), Defence Estates Officer (DEO) or Cantonment Executive Officer (CEO). Defence land within Cantts is classified and managed as listed subsequently.

3.1 Classification and Management of Defence Land.

3.1.1 A-1 That land which is actually used or is under the active occupation of the Military Authorities, for the purposes of fortifications, barracks, stores, arsenals etc (see rule 5(1) of CLAR). Management of this land is vested in LMA (see rule 14 of CLAR). This category of land is of interest to us as it is in our physical possession and is also used for KLP purposes. All public funded works can only be executed on land classified as A-1 and on none other. At the same time non public funded works cannot be executed on this land.

3.1.2 A-2 That land which is kept reserved for specific future expansion and must not be built upon either on temporary or permanent basis till its classification has been changed to A-1 Management of this land, if not physically held by QMG's branch, is vested in DEO. However, being vacant, large scale encroachments have been reported in almost all Cantts since these had been leased in the past by DEOs and ex-lessees are now not vacating these lands. It is in our interest to get these lands reclassified to A-1 and handover management responsibility to units as per approved zonal plans. While preparing zonal plans, if deficiency exists in A-1 land, then all unencumbered and encroachment free A-2 category of land is considered for use before any other category.

3.1.3 B-1. That land which is under occupation of any Central Government

Department other than MOD. It is managed by the user department of the Central Government. This category of land is not taken into account when planning to make up deficiency of land for KLP or zonal planning purposes.

3.1.4 B-2. That land which is under occupation of any Department. It is managed by the user department of the State Government. This category of land is not taken into account when planning to make up deficiency, KLP or zonal planning purposes.

3.1.5 B-3 That land which is held by private persons under terms/leases, subject to conditions under which the Central Government reserved to themselves, the proprietary rights in the soil. A separate devoted to leased lands. These lands are managed as under:

3.1.5.1 Land within the jurisdiction of CBs manage. This is generally land of bazaars and civil areas.

3.1.5.2 Land outside the jurisdiction of CBs manage this is generally land of the bungalow colloquially grant bungalows (OGBs).

3.1.6 B-4. That land which does not fall under any other C1 as mentioned above in 3.1.1 to 3.1.5. The Army keeps this land vacant for expansion or use. The management of this land is vested in the DEO. It is for us to note that we should insist upon the DEOs to handover vacant these lands for KLP purposes and then reclassify them to A-1 to make up A1 defence lands for zonal plan purposes. In case we first reclassify to and then takeover their possession we will be saddled with the excesses not vacate these lands. Therefore, if reclassification is sought to A-1, th be only for those lands which are unencumbered and free of encro unauthorised constructions.

3.1.7 C. That land, management of which is vested Municipal or other public purposes, u/s 108 of the Cantts (section 122 of the Act of 2006). This category of land is not taken I when planning to make up deficiency of land for KLP or zonal planning.

3.1.8 Analogous to A-1 Land outside cantt is not classi analogous to A-1. The management of such land remains with the department of the service concerned for whom the land is held. This approval of the Government may be placed under management of DEO purposes. This category of land may be considered for zonal planning preferably as outdoor training areas, ranges, driving tracks for mechanic training, butcheries, storage of ammunition and other stores etc. since the a certain distance from the main townships. In our Command there are disused camping grounds (details are available at each nearest Station disused air fields of WW II vintage and at least six known disused rifle the cantonments. A consolidation exercise was done at HQ Central on 22 August, 2006 and minutes of the conference held with all DEOs were.....

5. In the present case, it is an undisputed fact that the land in question is A(1) category land, which means that it is a land under the active occupation of the military authorities. (Annexure P-1) which is a map enclosed by the petitioner in

respect of Cantonment boundary wall does not establish that the street in question is in existence adjoining the petitioners land and A(1) category land. (Annexure P-2) is again a map also does not establish that there was a street in existence adjoining the village/petitioners land. The petitioner himself has admitted in the Writ Petition that the land in question was used by the Army Authorities for the purposes of Army Golf Club. A Map enclosed as Annexure P-15, which is again a Google Map does not establish that a road as alleged by the petitioner is in existence, however, it does establish that the land in question is adjoining the Army Golf Course. The Revenue authorities have certainly stated that there was an access through A(1) land to the petitioners land but it does not mean that there was a road in question in existence since time immemorial. The present case reflects a very sorry state of affairs. The petitioners who are well versed and well acquainted to the defence system of the country bought the land with open eyes, adjoining A(1) category land. They did make a request to the Army Authorities to continue the lease agreement, however, as it was A(1) land and the Army Authorities were constructing the accommodation for infantry batallion under the key location planning, to ensure safety of the land, safety of its troops living in the accommodation which is being constructed for an infantry batallion, their request was not accepted. There is no authentic document on record which establishes that an old public road was in existence along with river Gambhir. The "Kacha" track was exclusively used by the Army Golfers and the petitioners were very much aware of the same which is established from the fact that they have requested the authorities to continue the lease with the Army Golf Club in respect of the land in question.

6. Mr. Vivek Sharan, has informed this Court that large number of attacks have been carried out by the insurgents on defence installations all over the country resulting in loss of valuable life of Indian soldiers and, therefore, the Army Authorities all over the country are ensuring protection of their troops either by barricading their own land or by constructing wall over their own land. This is the case where in order to ensure safety of troops which is of paramount importance, the Army Authorities are constructing a wall over A(1) defence land.

7. Section 258 of the Act is not at all applicable in the present case. Not only this, the villagers of village Telikheda, for going to Mhow Market are using main road, i.e., Telikheda - Mhow Road and not a single villager was using nor is using the petitioners land for going to Mhow. Not only this, there is no road in existence on the east bank of Gambhir river. The petitioners cannot claim as a matter of right a road to be constructed adjoining A(1) land and their own private land.

8. This Court while issuing notices on 22.3.2012 has directed the parties to maintain status quo and a contempt petition has also been filed alleging non compliance of the order passed by this Court directing the parties to maintain status quo.

9. A detailed reply has been filed to the Contempt Petition and photographs are

also on record. The photographs establishes that the Army Authorities have not constructed a portion of the wall which adjoins the petitioners land and the Army A(1) land and therefore, this Court is of the considered opinion that no case for passing any order in respect of the Contempt Petition, i.e., Contempt Petition No. 658/2012 is made out.

10. Not only this, while arguing the matter, learned counsel for the petitioner has also argued that the Army Authorities have again violated subsequent order passed by this Court dated 15.7.2013. The photographs on record and the reply of the Indian Army establishes that they have still not constructed the boundary wall over the disputed portion and, therefore, this Court is of the considered opinion that the respondents have again not violated the order dated 15.7.2013 passed by this Court.

11. The Army Personnels while posted at peace stations are also sometimes subjected to attacks by insurgents and other elements and it is the duty of the nation and every citizen to ensure protection of its troops while they are at a peace station. The construction of a boundary wall under the key location plan accommodation for an infantry batallion cannot be stopped only on flimsy and frivolous grounds. The land in question is exclusively A(1) category land. A wall is being constructed by obtaining necessary permission keeping in view the Works of Defence Act, 1903 by obtaining necessary budget under the Ministry of Defence Budget and the same cannot be stopped at the behest of the petitioners for no rhyme or reason.

12. Section 258 of the Cantonment Act, 2006 empowers the Cantonment Board for opening any street for public use and for closing any street which is for public use.

13. Section 258 of the Cantonment Act, 2006 reads as under:

258. Closing and opening of streets.--(1) A Board may open any street for public use.

(2) A Board shall not permanently close any street without the prior permission of the General Officer Commanding in Chief, or the Principal Director: Provided that no such street shall be closed for reasons other than the security reasons and without giving a public notice inviting objections and suggestions from the general public.

(3) The Chief Executive Officer may, by public notice, temporarily close any street or any part of a street for repair or for the purpose of carrying out any work connected with drainage, water- supply or lighting or any other work which he is by or under this Act required or permitted to carry out:

Provided that where, owing to any works or repairs or from any other cause, the condition of any street or of any waterworks, drain, culvert or premises vested in the Board, is such as to be likely to cause danger to the public, the Board shall--

(a) take all reasonable means for the protection of the adjacent buildings and land and provide reasonable means of access thereto;

(b) cause sufficient barriers or fences to be erected for the security of life and property, and cause such barriers or fences to be sufficiently lighted from sunset to sunrise.

14. The Andhra Pradesh High Court while dealing with a Public Interest Litigation in the case of Father (Parish Priest), Holy Family Church, Trimulgherry, Secunderabad and others v. The Government of India, Ministry of Defence, New Delhi and others (Public Interest Litigation No. 361 of 2012) was dealing with the issue of blocking a road known as Empress Road which was connecting a Church, Schools etc., It was a case where a road which was in existence over A(1) defence land was blocked by the Army Authorities and it was certainly a public road being used by various institutions. The Division Bench of the Andhra Pradesh High Court in the aforesaid case has held as under:

We have heard the learned counsel for the parties.

The main grievance of the petitioners in this public interest litigation is that respondents No. 5 and 6, being the military authorities have blocked the road known as "Empress Road". According to the petitioners, the said authorities are constructing a wall in between to block the approach road to the Holy Family Church, St. Joseph's School, St. Joseph's Junior College, Holy Family Girls High School, Zilla Parishad Boys High School, M.B.R. Talent School and Shastri Nagar Colony, which would cause great hardship and inconvenience to the students and general public of the said area,

While opposing the said contentions, the respondents have filed a counter affidavit wherein it is specifically stated that as per rule 9 of Cantonment Land Administration Rules, 1937 (for short "the Rules"), the management and control of land inside the Cantonment solely vests with the military authorities. Rule 5(i) of the said Rules defines Class A(I) land as defence land. It is further stated that Empress Road is a Military road and it is located entirely within G.L.R. Nos. 291 and No. 309, which are Class A(I) defence lands and the Secunderabad Cantonment Board is no way concerned with the same and hence, sections 258 and 259 of the Cantonment Act have no application to the facts of the present case. It is further stated that the petitioners' lands are situated at G.L.R. No. 287, which is part of Trimulgherry Bazar and well connected to Main Bazar Road on the Northern side and Siddipet National Highway on the Western side. Hence, the petitioners have no need to enter the military area or use the military roads. It is further stated that the entire area on which the road is situated is Class A(1) Defence Land, which belongs to military authorities.

Further, the said road has been laid by the military authorities and is not a public thoroughfare and these roads being narrow internal roads, they cannot take heavy traffic. It is also stated that the Holy Family Church and other Civil Colonies are located to the North of GLR 309 and the access to the petitioners

and others into the Empress Road is neither permissible under law nor based upon any ground situation. In these circumstances, the respondents pleaded that the petition be dismissed.

After considering the facts and circumstances of the case and after perusing the counter affidavit filed by the respondent-authorities, it appears to us that since the land in question comes within the category of Class A(1) defence land and the whole area is managed and controlled by the military authorities, it is the right of the military authorities to use the said road and the same cannot be permitted to be used as a public thoroughfare. Hence, in our opinion, the petitioners or the general public have no right to use the same.

Hence, we do not find that there is any merit in the petition.

The Public Interest Litigation is accordingly dismissed.

15. The Public Interest Litigation was dismissed as it was A(1) defence land and the Division Bench has also observed that it is the right of the military authorities to use the road and the same cannot be permitted to be used as public thoroughfare. In the present case, there is no such public road at all, though the petitioner is claiming it to be a "kacha" road adjoining A(1) category defence land and the petitioners' land. Even if it is assumed for a moment that it was some "kacha" public road, the Army Authorities can certainly construct a wall over A(1) defence land as they are empowered under the Cantonment Land Administration Rules, 1937 to administer A(1) defence land as per their requirement keeping in view various other factors.

16. This Court, in the light of the aforesaid judgment, is of the considered opinion that the petitioners have failed to make out a case for grant of any relief of whatsoever kind and the writ petition is accordingly dismissed.

17. The Contempt Petition No. 658/2012 is also accordingly dismissed. No order as to costs.