(2007) 12 MP CK 0007

In the Madhya Pradesh High Court

Anil Gupta and Another — APPELLANT

Vs

State of Madhya Pradesh and Others — RESPONDENT

Date of Decision : 01-12-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Municipalities Act, 1961 — Section 182

Citation : (2008) 3 MPHT 447 : (2008) 1 MPLJ 308

Hon'ble Judges : Sheela Khanna, J;A.K. Gohil, J

Bench : Division Bench

Judgement

A.K. Gohil, J.

Petitioners have filed this Probono Publico Petition under Articles 226 and 227 of the Constitution of India. In the petition their contention is that the State of Madhya Pradesh have allotted thousands of acres of land to the respondent No. 12-Gwalior Sugar Company Limited, Dabra for running a sugar factory but the Directors and owners of the Company in a planned manner are converting the aforesaid land into commercial plots and they are selling it through the power of attorney and respondent Nos. 1 to 11, who are the officers of the State including the General Manager of Industries Department, Sub-Registrar and President, Nagar Palika Dabra in collusion have allowed respondent Nos. 12 & 13/Company to use it for commercial purposes and helping them in transferring the same land. The petitioners, who are public spirited citizens and are businessmen paying income tax have come to the Court to stop the sale of Government land illegally, contrary to the terms and conditions of the allotment through the corrupt practices.

In nutshell, the contention of the petitioners is that in the Gwalior District, Government of Madhya Pradesh with a view to provide employment have allotted around 16000 bighas of land to Gwalior Sugar Factory, Dabra and have also reserved further land of the poor villagers for growing sugarcane so that the sugar mill may get the regular supply of sugarcane for running the sugar factory.

It is further submitted that land has been allotted for installation of a factory, plant and office and not for sale or for running commercial activities or for residential purpose. The respondent No. 13 through power of attorney has sold the land situated in the central area of Dabra City, adjoining to the road after breaking the boundary wall of the factory, to the persons and institutions for business purpose and also for residential houses; illegal activities are being carried on the said land and all the officers/respondent Nos. 1 to 11 as mentioned in the petition in connivance with the officers of the factory and respondent Nos. 12 & 13, contrary to the terms, have made illegal entries in the revenue record and allowed permission as well as allowed the transfer of the land. Copies of the sale deeds have been filed on record and their basic contention is that it is the Government land and has been allotted to the company for industrial use and the same cannot be transferred to a private party for the private use either for colonization or for commercial use and, therefore, the action of the respondents is totally illegal and the petitioners have raised an alarm against the illegal and corrupt activities of the respondents and have filed this petition in public interest.

Return has been filed on behalf of respondent Nos. 1 to 10. Earlier stand of the respondents/State was to support the case of the respondent Nos. 12 & 13 but Government has filed additional return. It has been mentioned that the Gwalior Sugar Company is also having one subsidiary company in the name of Gwalior Agriculture Company. The State has submitted that in Samvat 1998 and Samvat 2000 the erstwhile Government of Gwalior State and Jamindar had given 6 pattas and total 215.6 bighas of land in favour of the respondent No. 12 company in Case No. 527/74-75 (A-90) and the terms and conditions are mentioned in the aforesaid six pattas. It is clear that pattas were granted in Samvat 1997 till the existence of Karkhana. The land will remain in possession of the company and company will not perform any agriculture operations thereon. From the conditions mentioned in the pattas it is clear that pattas were granted for establishment of the factory. It was submitted by the State that even if the name of company has been mentioned as Bhumiswami in the revenue record, but the company cannot claim any right over the land in excess of the terms and conditions of the pattas and the respondent Nos. 12 and 13 have no right to transfer the aforesaid land of the pattas to anybody else. It is further mentioned in the return that why the Government has allotted the land to Gwalior Agriculture Company and in which cases, the original record pertaining to that is not available but in case of agriculture ceiling the Additional Commissioner Gwalior Division Gwalior in Case No. 7/78-79/A/98/B-3 vide order dated 3-2- 98 declared 3825.768 acres of land of Gwalior Agriculture Company as surplus, against which Writ Petition No. 591/99 is pending in the High Court and against the order dated 23-3-98 passed by Additional Commissioner, another Writ Petition No. 751/99 and Writ Petition No. 911/99 are also pending. The State has also filed true copies of six pattas on record.

Respondent No. 11 President Municipal Council, Dabra has also filed return. It is submitted that the Nagar Palika has not been made as a party but the petition has been filed against the President, therefore, whatever allegations have been made against respondent No. 11 are not true, but it is mentioned that u/s 182 of the Madhya Pradesh Municipalities Act, 1961, (for short ''the Act of 1961'') according to which, every person, who intends to sell or lease out any land, subject to a covenant or agreement on the part of a purchaser or lessee, to erect buildings thereon, to divide land, whether unbuilt or partly built, into building plots, to use any land or a portion thereof or permit the same to be used for building purposes, or to make or lay out a private street, whether it is intended to allow the public a right of passage or access over such street or not, shall give notice of his intention so to do, in writing, to the Council and shall, along with such notice, furnish plans and sections showing the intended level, meats of drainage, as per the bye-laws, prescribed by the Council for the approval of the Council, and u/s 182 of the Act of 1961 the rules have also been framed in 1998 by the State Government to regulate the matter of colonizing and its registration but the company has not followed the provisions either of the rules or of the Act and from time to time the Municipal Council has issued notice to respondent Nos. 12 to 14 for illegal colonization and for violation of the provisions of Section 182 of the Act of 1961 and notice has also been published in the daily newspaper and criminal proceedings have been filed against the persons concerned.

In the return Municipal Council has also supported the case of the petitioner and has clearly stated that the company has taken land for industrial use and they cannot convert the said land for the commercial and residential use nor any such permission has been obtained and no permission for such construction has been granted by the Council.

In the return filed by respondent Nos. 12 and 13, it has been mentioned that the present petition is not maintainable, as the petitioners have alternative remedy to file the civil suit. The instant petition involves several disputed questions of fact which cannot be decided by this Court. The petitioners have challenged transfer of land and claimed the relief of cancellation of the sale deeds but the purchasers have not been added as party. It was further contended that the land in question was not the Government land but it was owned by the answering respondents who got it from the then Zamindar before the abolition of Zamindari, thereafter they were holding the land as ''Pucca Tenant'' u/s 54 of the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 and after coming into force of M.P. Land Revenue Code (for short ''the Code'') all such Pucca Tenants became the Bhumiswami of the land and, therefore, they are the title holders of the land. As such, they were free to use the land in the way they wanted being owners and the Government has no concern so far as the land in question is concerned, therefore, no public interest is involved. It was alleged that the petitioners are interested in purchasing the land from the answering respondent at a very low price by exerting undue pressure and harassing them and with this ulterior motive the petition has been filed.

It is further submitted that the sugar factory was set up in the year 1940 at Dabra and Dabra Town was developed after establishment of the factory. The allegation regarding pollution by the factory or causing environment threat and it is harmful to the inhabitants of the town is incorrect. The MP Pollution Control Board carried out routine inspection at the factory and found the pollution level below the permissible limit. The respondents have set up effluent treatment plant to keep the pollution within the norms laid down by the M.P. Pollution Control Board. The proceedings under M.P. Ceiling on Agricultural Holdings Act, 1960 were initiated and by order dated 8-1-1976 they are closed. It is further submitted that the Municipal Committee Dabra had filed a suit for declaration, title and injunction but the suit was decreed in favour of the answering respondents and was affirmed by the Apex Court in SLP and this PIL has been filed after the title was confirmed. It is denied that the land was allotted by the Government to the answering respondents. The agricultural land was obtained by the Subsidiary Company namely, Gwalior Agriculture Company Limited from the then Jagirdar and now the proceedings under Act of 1960 are pending before this Court in respect of the agricultural land owned by the subsidiary company. In reply to Para 5.2 it is submitted that the sale deed executed in favour of respondent Nos. 14 to 16 pertains to the land situated outside the factory premises which was sold through the power of attorney holder of the company. No land for agriculture purpose was allotted by the State Government and no industrial land has been sold for residential and commercial purpose. In Para 5.9 it is submitted that the respondents needed capital for modernization and expansion of the factory and to clear the dues of the cane growers and the Government. In Annual General Meeting of the Company it was resolved to sell off the urban excess land for expansion and modernization of the company and a permission of the Central Government was obtained. Copy of the letter dated 22-11-1993 has been placed on record. It is further submitted that all the sale deeds have been executed properly and legally and, prayed for the dismissal of the writ petition.

Respondents No. 14 to 16 have also filed return and their submission is that Gwalior Sugar Company Limited was having land bearing survey Nos. 1760/1, 1775/1 and 1776/1, total area 9 bighas of land at Chinor-Bhitarwar Road. They have mentioned that the land belongs to respondent No. 12 and has no relation with Gwalior Sugar Company nor the aforesaid land was allotted for industrial purpose and they have purchased the land of the aforesaid khasra numbers. The sale deeds have been executed in their favour and the aforesaid question cannot be examined in a Public Interest Litigation. The aforesaid question was examined in civil suit and that has been answered in favour of the respondent No. 12 and submitted that the PIL is not maintainable as the respondents have purchased the land from the Bhumiswami, therefore, prayed for the dismissal of the writ petition.

On 27-7-2007 through LA. No. 11721/07 the Company admitted that Gwalior Sugar Company Dabra is having 109.938 acres of non-agricultural land as on

7-3-74. It was clarified that there are two different companies, Gwalior Sugar Company and Gwalior Agriculture Company. The land held by Gwalior Sugar Company is not covered by the provisions of Ceiling on Agriculture Holdings Act but covered by Urban Land Ceiling Act and so far as the land of Gwalior Agriculture Company is concerned, the Competent Authority had declared 3825.767 acres of land as surplus under the M.P. Ceiling on Agriculture holdings Act to be vested in Government vide order dated 3-2-98 and vide further order dated 23-3-98 declared 1526.143 acres of land to be vested in Government. Aggrieved by the aforesaid orders writ petitions bearing Writ Petition Nos. 591/99, 911/99 and 751/99, are pending before the Hon''ble Court for final disposal. It has been mentioned that till the aforesaid writ petitions are disposed of, the question of selling the agriculture land does not arise.

In the additional return submitted by respondent Nos. 12 and 13 it is mentioned that in this petition only land of three Survey Nos. 1760/1, 1775/1 and 1776/1 measuring 9 bighas has been challenged and the contention of the petitioners is that the answering respondents are disposing off this particular land to other persons and it is submitted that the respondent Nos. 1 to 10 have illegally and improperly changed their stand and they are stopped from challenging it under the principle of estoppel. Now it is submitted that previously Quanoon Mal Gwalior was applicable in Gwalior Estate. Section 2(39) of the said Act describes ''Kastakar Gair Mourishi''. Quanoon Mal Gwalior was repealed and substituted by Madhya Bharat Land Revenue and Tenancy Act Samvat 2007 (Act No. 66 of 50) and on the strength of the provisions of Section 54 of the aforesaid Act he became ''Pucca Tenant'' and entries have been made in the revenue record pertaining to the same and, therefore, with the aid of Section 158 of the M.P. Land Revenue Code they have acquired Bhumiswami right. Therefore, the respondents are Bhumiswami and their names have been recorded in the revenue record.

We have heard the learned Counsel for the parties at length on the pleadings, perused the record and documents filed by the parties on record. In sum and substance all the Counsel appearing for the respective parties argued at the same line in which they have filed their return.

From the averments mentioned in the petition it is clear that the petition has not been filed for any specific khasra number. This contention of respondent Nos. 12 and 13 in Para 3 of their additional return dated 29.07 that in this petition only three Survey Nos. 1760/1, 1775/1 and 1776/1 measuring 9 bighas are under challenge, is not correct. The respondent Nos. 1 to 10/State and its authorities in their additional return dated 9-8-2007 have stated that 215.6 bighas of land was allotted to the respondent No. 12-Sugar Company through six pattas granted by then Gwalior State and Jamindar for establishment of factory. Copies of pattas have been produced but in the additional return filed by respondent Nos. 12 and 13 they have not clarified any factual aspect about these pattas, though they are in possession of original pattas. The respondent Nos. 12 and 13 have tried to set up that only aforesaid three survey numbers have been challenged and there is no specific reply about the land allotted through pattas to respondent Nos. 12 and 13, and also about terms and conditions mentioned in the pattas. This contention of respondent Nos. 12 and 13 is not relevant that they are Kashtkar Gair Mourishi or became ''Pucca Tenant'' u/s 54(7) of the Madhya Bharat Land Revenue and Tenancy Act Samvat 2007. If the land was allotted through pattas for establishment of factory and for non-agricultural purposes, then this contention cannot be accepted that they were ''Pucca Tenant'' within the meaning of the aforesaid provisions of law and thereafter they have acquired Bhumiswami rights therein. From the additional return it is clear that the respondent Nos. 12 and 13 have not clarified the factual position of pattas and their specific terms and conditions on which pattas were granted to the owner of the factory till the existence of the factory. In the pattas it has been mentioned that lessee will pay land revenue to the Government and some part of the land revenue will go to the Commerce Department, Gwalior Government which clearly proves this fact that the pattas are granted by the Government. In all six pattas, khasra numbers and their area have been mentioned and the terms and conditions are common. From these pattas, it is clear that since in the various proceedings of mutation and inquiries these pattas were not produced before the Revenue Officer, therefore, the Revenue Officers have not recorded proper finding about Bhumiswami rights. These pattas were granted for the land situated at Village Ramgarh, Dabra and Chuk Dabra and total land is 215.6 bighas and the pattas were granted in Samvat 1998 and 2000 and its details have been mentioned in Annexure R-4 and because the respondent Nos. 12 and 13 are knowing the factual aspect of the matter, they must be having original copies of pattas in their possession but they have not produced them in the Court and nor submitted proper replies. Therefore, an adverse inference can also be drawn against the respondent Nos. 12 and 13 in this regard.

In the return the respondent Nos. 12 and 13 have categorically stated that they have obtained land from Jamindar before the abolition of Zamindari Act but they have not clearly specified as to how the land was obtained whether that was obtained on sale deed and/or on the pattas and if pattas were granted what were their terms and conditions or land was purchased by them from Jamindar then why they have not specified as to how and in what manner the transaction took place and where are the documents pertaining to obtaining the land. Whether it was agricultural land or non-agricultural land, if during that period they have got the entries made in the revenue record, that by itself would not be necessary because under the Zamindari Abolition Act the only land of Jamindar which was Khudkasht land was exempted. If it was non-agricultural land then certainly it would be governed by other laws. In fact, it was the burden on the respondent Nos. 12 and 13 to show that it was the Khudkasht land of the Jamindar or what was the correct factual position and how the transfer took place. Respondent Nos. 12 and 13 submitted an application (I.A. No. 11721/07) on 27-7-07 and in Para 3 of that application it has been mentioned that the total non- agricultural land 109.938 acres is possessed by the answering respondent, i.e., Gwalior Sugar Company Dabra as on 7-3-74. It means it is the same land on which pattas was granted by the State for establishment of factory on the specific condition that the land is for establishment of factory and pattas will be valid till the existence of the factory. If it is so, this contention of the petitioners as well as of the Government is true that the Government had granted pattas for establishment of factory and that pattas land cannot be converted into commercial or for residential purpose, neither can be sold nor can be utilized for any other purpose except for running the factory as per terms and conditions of pattas.

In this case when the respondent Nos. 12 and 13 were having the original documents in their possession even then they have not clarified the correct factual position on record nor produced the documents and record pertaining to their title. The respondent Nos. 12 and 13 have also submitted that they are having one subsidiary company in the name of Gwalior Agriculture Company and around 3825.768 acres of land have been declared surplus and the aforesaid orders they have challenged in Writ Petition Nos. 591/9, 751/99 and 911/99. When this Court directed for production of the records of the aforesaid writ petitions to ascertain the actual position. Shri A.K. Chitley, learned Senior Counsel appearing for the respondent Nos. 12 and 13, vehemently argued that this Court cannot look into the aforesaid record and that record cannot be summoned and this Court even cannot ask any question about the aforesaid land nor can examine the record of surplus land. This kind of argument by such a Senior Counsel is very much strange, it appears that instead of cooperating this Court by submitting the correct factual position he was trying to suppress the material facts.

In the original return filed by respondent Nos. 12 and 13 on 31-1-2007 in Para 5.9 it was mentioned that the respondents were in need of capital for modernization and expansion of the factory and to clear the dues of the cane growers and the Government and in Annual General Meeting of the Company it was resolved to sell all urban excess land but they have not clarified as to what was the khasra numbers of those excess land which was admittedly urban land with the respondent Nos. 12 and 13. In this regard legal position is very much clear that respondent can not sell excess urban land as the same would vest in the Government. The respondents have also not clarified whether they were assessed under the urban land ceiling and how much their land was declared excess from the provision of urban land ceiling Act and how much law has vested in the Government. It was also mentioned that they had obtained permission from the Central Government. The letter of the Central Government dated 2-11-1993 (Annexure R-12/6) is the letter in which the Central Government has advised the company to file declaration of compliance u/s 149(2-A)(ii) of the Companies Act. Therefore, this letter does not speak about grant of permission from the Central Government for selling the excess urban land. More so, while granting permission under the Companies Act the Central Government is required to examine the case of respondent Nos. 12 and 13/company under the urban ceiling Act and as well as under the M.P. Ceiling on Agricultural Holdings Act, therefore, respondent Nos. 12 and 13/company cannot sell or dispose off the excess urban land which has already vested in the Government under the provisions of Urban Land Ceiling Act and Local M.P. Act. In the order of SDO, Dabra dated 8-1-76 it has been mentioned that out of 109.938 acres of land owned by Gwalior Sugar Company 90.049 acres of land is reserved for other than agriculture purpose and 19.889 acres of land is for agriculture purpose. Therefore, the aforesaid land does not come within the purview of the proceedings of the M.P. Ceiling Act. From this order it is clear that the company was having 90.049 acres of land other than agriculture land and certainly the case of the respondent No. 12 will fall within the purview of the Urban Land Ceiling Act and if some land has been declared surplus, the same shall vest in the Government and cannot be sold or utilised for some other purpose and the respondents have not deliberately disclosed in the khasra that 90.049 acres of land is for non-agricultural purpose. This clearly goes to show that the true factual aspects have not been disclosed by the company in its reply and survey numbers of the aforesaid 90.049 acres of land have not been disclosed to determine the actual position whether it is the same pattas land.

Respondent Nos. 12 and 13 have repeatedly stated in the return that their subsidiary company Gwalior Agriculture Company is having the agricultural land and the same has been assessed under the Madhya Pradesh Ceiling on Agriculture Holdings Act, 1960. No particulars have been submitted or documents have been produced by the respondent Nos. 12 and 13 indicating khasra numbers which belong to the respective two Companies. The land of both the companies is joint, therefore, unless the khasra numbers of the land are disclosed and the land is demarcated, it is very difficult to know as to which is the land belonging to particular survey numbers and at which place the land is situated and the land of which survey numbers have been sold through the aforesaid sale deeds to respondent Nos. 14 to 16 and whether the same is part of urban land or the part of urban surplus land under the Urban Ceiling Act, or it is the part of the surplus land belonging to the subsidiary company and whether part of agricultural land and whether part of land declared surplus under agricultural land. Therefore, unless demarcation of entire land is done and the correct factual position is ascertained, positive finding about the land which is part of sale deed executed cannot be determined. In fact, respondent Nos. 12 and 13 have adopted the defence of suppression of facts in the case.

It is true that in a Public Interest Litigation the sale deeds cannot be set aside and for that the party has to file a civil suit for cancellation of sale deeds but as has been pleaded in the petition that it is the Government land and Government has granted pattas and that pattas has been granted for running the factory and pattas land cannot be allotted and transferred to the private party for commercial or residential purpose. In PIL, this question can be examined whether the land belongs to the Government or not. It may be true that because the pattas were granted long back in the years of 1941 and 1943 by the erstwhile state and before coming into force the provisions of M.P. Land Revenue Code, 1949 for non-agricultural purpose, therefore, during the course of transfer of powers from Gwalior State to State of Madhya Pradesh the old files with the Government Department may not be available and company has taken advantage of this situation, but since the respondent-company is claiming ownership rights and has repeatedly pleaded that they have obtained the land from erstwhile State and Jamindar, therefore, it is clear that they arc having copies of the original documents in their possession and they have not produced the same on record. Therefore, this Court has no option but to draw an adverse inference against the respondent Nos. 12 and 13 and to hold that 215.6 bighas of land is the Government land granted on pattas for running the factory and such a land cannot be transferred in any manner nor it can be sold or converted to commercial or residential purpose.

The respondent No. 11/Municipal Council Dabra has also stated in its return that the respondent Nos. 12-13/company have not complied with the provisions of Section 182 of the Act of 1961 and they have not obtained any permission or any colonizing licence and they have violated the provisions of rules under the aforesaid section. Therefore, unless the entire position is examined by the Government, it cannot be held that the aforesaid sale deeds which have been executed by the respondent Nos. 12 and 13 are valid and they do not form part of the pattas land. The company also cannot sell the excess land declared under the Urban Land Ceiling Act and also cannot sell the surplus land declared under the provisions of M.P. Ceiling on Agriculture Holdings Act, 1960, as entire excess land has vested in the Government. Since three writ petitions are pending about the aforesaid surplus land, therefore, such a dispute also cannot be decided in this PIL and, therefore, we leave that question to be decided by the Writ Court in the respective writ petitions.

It was vehemently argued by the Counsel for the respondent Nos. 12 and 13 that the petitioners are not having locus to file this PIL and PIL is not maintainable and have cited various decisions but since respondent Nos. 12 and 13 are having the Government pattas land in their possession and the same cannot be transferred for any other purpose except for running the factory, it cannot be held that to that extent PIL is not maintainable. The question of use of public property can always be examined in PIL and to that extent it can be held that the petitioners are having locus and that part can be challenged by them.

On 7-5-2007 this Court directed that as regards the urban land is concerned, the respondent-company shall intimate how the urban land is disposed off by them. No permission is granted to them to sell the agricultural farms. It was also directed that the State shall also intimate that how much agricultural land of the petitioner company in excess of ceiling limit has vested in the Government, but the respondents have not submitted any information on affidavit as directed, as to how much urban land they have disposed off. Therefore, looking to the noncooperative attitude of the respondent Nos. 12 and 13, this Court has no option but to draw adverse inference against the respondents, particularly against respondent Nos. 12 and 13. Thus, we hold that the excess urban land shall vest in the Government and shall not be transferred to any other person. So far as the pattas land is concerned, the same also cannot be transferred and if any transfer is made, that transfer is void.

Under the facts and circumstances of the case, we direct the State Government to ascertain and demarcate the pattas land on which factory is situated and also to demarcate the land declared surplus and vested in the Government under the Urban Land Ceiling Act. Respondent Nos. 1 to 11 may protect the aforesaid surplus land vested in the Government in the manner as prescribed by law.

(i) So far as the agricultural land is concerned, the same should also be demarcated and surplus land which has vested in the Government should also be demarcated and its management shall be subject to the final orders in the pending writ petitions.

(ii) The demarcation work of both non-agricultural and agricultural lands of both the companies shall be carried by the Revenue Authorities under the supervision and orders of the Collector of the district in accordance with law.

With the aforesaid direction this petition is finally disposed of with no orders as to costs. Security amount shall be deposited with the High Court Legal Service Authority.