

(2012) 03 MP CK 0097

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1171 of 2011

Avi Smriti Patanka Pathology Laboratory

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (2012) 03 MP CK 0097

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : Brian Da Silva and Mr. V.K. Bhardwaj, s with Mr. Pankaj Dubey, Mr. Vrushal Bhide and Mr. Anand V. Bhardwaj, for the Appellant; Vivek Khedkar, D.A.G. for the respondent Nos.1, 3 and 5/State. and Shri M.P.S. Raghuvanshi, Advocate for the respondent No. 4/Municipal Corporation., for the Respondent

Judgement

S.K. Gangele, J.—The petitioner has filed this petition for the following reliefs:

(a) The respondent authorities be directed to not to demolish/remove/disturb the position and possession of the petitioner shop as shown in Annexure P-1 except by due process of law as there is no encroachment of any kind by the humble petitioner.

(b) Cost of the petition may also be granted.

The petitioner received the tenancy rights of a shop on 06/1/1967 from Mr. Dattarey Ramchandra Joshi. Since then, the petitioner had been paying rent to Joshi Family of the shop. A No Objection Certificate was also issued by the office of Collector, Nazul on 21/6/2005. The petitioner got a licence to run a pathology from the shop in the name of Avi Smriti Patankar Pathology Laboratory under the provisions of Madhya Pradesh Upcharyagrah Tatha Rujopchar Sambandhi Sthapanaye (Registrikaran Tatha Anugyapan) Adhiniyam, 1973.

2. The Tahsildar, Nazul Gwalior registered a Case No. 44/2010-11/A-68 against petitioner in regard to encroachment by constructing two shops having area

11'3"x10'6" and 18'x3" feet at Survey No. 635. Thereafter, the shops were demolished.

3. This Court has considered in detail the pleadings of the parties and return filed by the State also the legal position in W.P.No. 1379/2011 (Maa Kaila Devi Enterprises through its partners vs. State of Madhya Pradesh and others) and held that the Nazul Tahsildar had no power and jurisdiction to initiate proceedings u/s 248 of the Madhya Pradesh Land Revenue Code, 1939. This Court further held that the persons who had been in possession over the property could not be said to be encroachers. Hence, in view of the order passed by this Court and reasoning assign in detail in W.P.No. 1379/2011 (ccc), this petition is allowed in similar terms.

4. Consequently, the petition of the petitioner is allowed. The action of the respondents in regard to initiation of proceedings u/s 248 of the Code and recovery of possession are hereby quashed. Because, the construction has been demolished by the authorities and the area is now an open area, hence, possession of the petitioner over the land is hereby restored. The order dated 01st March, 2011 passed by the Collector Gwalior is hereby quashed.

5. This Court vide an interim order dated 17/2/2011 has ordered to maintain status quo in regard to status of the property. It is alleged by the petitioner that in spite of order of status quo, the respondents deliberately demolished the shop. Office is directed to register a separate MCC under the Contempt of Court Act for violation of the interim order passed by this Court. This Court is also directed the Chief Judicial Magistrate, Gwalior to conduct an inquiry in regard to fact whether any notice was served on the affected persons by the Tahsildar Nazul or not. After receipt of report from the Chief Judicial Magistrate, this Court shall pass appropriate order in regard to fact whether there is violation of the interim order dated 17/02/2011 passed by this Court or not. The order passed by this Court in W.P.No. 1379/2011 (Maa Kaila Devi Enterprises through its partners vs. State of Madhya Pradesh and others) shall be a part of this order. Office is directed to place a photocopy of the order passed by this Court in W.P.No. 1379/2011 in the file of the present case.

No order as to costs.