

(2012) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3693 of 2011

Baheed Khan and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 237, 248
Waqf Act, 1995 — Section 13, 23, 25, 54, 55

Citation : AIR 2012 MP 188 : (2012) ILR (MP) 2385 : (2012) 3 MPLJ 708

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : N.K. Gupta, for the Appellant; Sangita Pachauri, Dy. Govt. Advocate for Respondent Nos. 1 to 3 and Anand V. Bharadwaj, for the Respondent

Final Decision : Allowed

Judgement

Sujoy Paul, J.—In this petition filed under Article 226 of the Constitution, the petitioners have challenged the orders, Annexures P/1 to P/4. These orders are passed by Tahsildar, Sub-Divisional Officer, Commissioner and Board of Revenue, respectively. Avoiding unnecessary details of the matter, in fact the singular question is whether the revenue authorities have power to act as an authority of first instance against the petitioners, who are allegedly occupying a wakf property. In other words, whether revenue authorities are competent to invoke section 248 of M. P. Land Revenue Code, 1959 ("MPLRC for brevity) against the petitioners who are the alleged encroacher on a wakf property.

2. The revenue authorities have admitted that the property on which the petitioners have allegedly encroached is a wakf property, which is duly notified in the Official Gazette. This finding is given by the Member, Board of Revenue also in the impugned order, Annexure P/1.

3. Shri N. K. Gupta, learned counsel for the petitioners, by placing reliance on section 248 of MPLRC submits that the said provision has no application against

the wakf property. Learned counsel by relying on certain sections of Wakf Act, 1995 submits that the said provision (section 248 of MPLRC) has no application in the facts and circumstances of the case.

4. Per Contra, Smt. Sangita Pachauri, learned Deputy Government Advocate for respondents No. 1 to 3 and Shri Anand V. Bharadwaj, learned counsel for respondent No. 4 supported the impugned orders. As per their contention, the revenue authorities are well within their jurisdiction while invoking section 248 of MPLRC against the petitioners. Shri Bharadwaj placed reliance on Govind Prasad Vs. Vidhata and Others, 1979 RN 122, Ramcharan vs. Moorti Shri Murli Manoharji Mandir; Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others, ; 1992 RN 194, State of M. P. vs. Kanchania; and Pancham Singh Vs. Mahant Ramkrishna Das and others, by placing reliance on certain provisions of Wakf Act submits that ultimate power to administer the wakf properties is also in the hands of the officers appointed by the State Government. Once such ultimate control is in the hands of the officers of the State Government, no fault can be found in the action of the revenue authorities. The petitioners have not shown any title or right to continue on the land in question, they have no right to continue and enjoy the said property. Learned counsel by placing reliance on Maharaja Chintamani (supra) submits that even if revenue authorities have no jurisdiction and if it is found that legally the petitioners have no right, no interference is warranted. The analogy is drawn to show that once it is clear that the petitioners have no right or title on the land in question, even if the revenue authorities have no jurisdiction, their orders are not liable to be interfered with in this writ petition.

5. I have bestowed my anxious consideration to the rival contentions of the parties.

6. It is relevant to refer to section 13 of the Wakf Act, 1995, which reads as under:--

13. Incorporation. -- (1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(2) Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and

shall by the said name sue and be sued.

A bare perusal of this section would show that with effect from the date a notification is published in Official Gazette, the Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed. This is an admitted position that the property in question is a notified wakf property.

7. Respondents have invoked section 248 of MPLRC, which reads as under:--

248. Penalty for unauthorisedly taking possession of land. -- (1) Any person who unauthorisedly takes or remains in possession of any unoccupied land, abadi, service land or any other which has been set apart for any special purpose u/s 237 or upon any land which is the property of Government, or any authority, body corporate, or institution constituted or established under any State enactment,] may be summarily ejected by order of the Tahsildar and any crop which may be standing on the land and any building or other work which he may have constructed thereon, if not removed by him within such time as the Tahsildar may fix shall be liable to forfeiture. Any property so forfeited shall be disposed of as the Tahsildar may direct and the cost of removal of any crop, building or other work and of all works necessary, to restore the land to its original condition shall be recoverable as an arrear of land revenue from him. Such person shall also be liable at the discretion of the Tahsildar to pay the rent of the land for the period of unauthorised occupation at twice the rate admissible for such land in locality and to a fine which may extend to five thousand rupees and to a further fine which may extend to twenty rupees for every day on which such unauthorised occupation or possession continues after the date of first ejectment. The Tahsildar may apply the whole or any part of the fine to compensate persons, who may in his opinion have suffered loss or injury from the encroachment.

(Emphasis Supplied)

8. The impugned action was taken against the petitioners way back in 1982-83. Thereafter the parties have fought a long drawn battle in the corridors of various revenue authorities and matter ultimately travelled to this Court by filing the present petition. A microscopic reading of section 248 of MPLRC would show that the powers are vested with the State authorities to take action on any unoccupied land, abadi, service land or any other land which has been set apart for any special purpose u/s 237 of MPLRC. Section 237 aforesaid deals with following kinds of land:--

237. Collector to set apart land for exercise of Nistar rights. -- (1) Subject to the rules made under this Code, the Collector may set apart unoccupied land for the following purposes, namely, --

(a) for timber or fuel reserve;

- (b) for pasture, grass bir or fodder reserve;
- (c) for burial ground and cremation ground;
- (d) for gaothan;
- (e) for encamping ground;
- (f) for threshing floor;
- (g) for bazar;
- (h) for skinning ground;
- (i) for manure pits;
- (j) for public purposes such as schools, play grounds, parks, road, lanes, drains and the like; and
- (k) for any other purposes which may be prescribed for the exercise of right of Nistar.

9. It is noticeable that an amendment was carried out in section 248 w.e.f. 8-10-2003. By this amendment, the words "or upon any land which is the property of Government, or any authority, body corporate, or institution constituted or established under any State enactment" are inserted. Thus, prior to amendment, section 248 could have been invoked only with regard to the land described in the original section as well as described in section 237. After the amendment, the lands which are property of the Government or other bodies which are constituted or established under any State enactment are also brought within the purview of section 248.

10. The pivotal question is whether the wakf property can be brought within the purview of section 248 of MPLRC ?

11. Section 23 of the Wakf Act deals with appointment of Chief Executive Officer, who shall be appointed by the State Government whereas section 25 of the said Act prescribes duties and powers of the Chief Executive Officer. The powers include inspection or causing inspection of wakf properties and account, records, deeds or documents relating thereto. It includes the power and duty to do all such acts as may be necessary for the control, maintenance and superintendence of wakfs. Section 54 provides power and methodology for removal of encroachment from wakf property. This section reads as under:--

54. Removal of encroachment from wakf property. -- (1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show

cause before a date to be specified in such notice, as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property :

Provided that no such suit shall be instituted; by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

Section 55 of the Wakf Act provides a method of enforcement of orders made u/s 54, which reads as under :--

55. Enforcement of orders made u/s 54. -- Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situate for evicting the encroacher, and, thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment or, as the case may be, vacate the land, building, space or other property and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for the purpose, take such police assistance as may-be necessary."

12. In the light of these provisions, it is required to be examined whether section 248 of MPLRC was rightly invoked by the revenue authorities.

13. A minute reading of the aforesaid provisions of the Wakf Act would show that it is a complete Code in itself. A methodology of removal of encroachment is prescribed in this special Act of Parliament. The Wakf Act nowhere gives power to

the revenue authorities to act as authorities of first instance against the encroachers on wakf property. The Land Revenue Code is a general provision whereas the Wakf Act is a special enactment. This is settled in law that the special enactment prevails over the general. Apart from this, a minute reading of section 248 of MPLRC shows that a wakf land does not fall within the scope and ambit of section 248. It is neither any unoccupied, abadi or service land nor it is a land which is set apart for any special purpose u/s 237. Later to amendment in section 248 also, only such properties which are constituted or established under any State enactment were brought within the purview of section 248. The Wakf Act, 1995, by no stretch of imagination, can be brought within the purview of the State enactment because it is enacted by Parliament in the Forty-sixth Year of the Republic of India by Act 43 of 1995. Thus, section 248 is clearly not applicable against the wakf properties.

14. The judgments cited by the respondents are mainly related with aukaf and muafi properties. In these judgments the lands in question were not wakf properties. They were the lands admittedly within the purview of section 248 of MPLRC. Thus, the judgments are clearly distinguishable and have no application in the facts and circumstances of the present case. This is settled in law that the judgments are precedent on the basis of the facts and circumstances of the case. There cannot be any straightjacket formula where one judgment can be made applicable in all situations despite difference of facts and circumstances and difference of applicability of provisions. Thus, the judgments cited by the respondents are clearly distinguishable and are not applicable in the fact situation of the present case.

15. So far as the case of Maharaja Chintamani (supra) is concerned, in that case the facts and circumstances were different. This was not a case arising out of wakf property. There was no special mechanism provided as it is provided in the Wakf Act and, therefore, in prevalent fact situation, the Apex Court gave its opinion. In the present case, there exists a specific provision of removal of encroachment in the Wakf Act. This is settled in law that if something is prescribed and required to be done as per law, the action has to be taken in accordance with the said provision or not at all. In other words, if a methodology to do certain things is prescribed in an enactment, it has to be done in the same manner and other methods are forbidden. This view is taken by Supreme Court in Dhananjaya Reddy etc. Vs. State of Karnataka, and Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, and followed by this Court in Satyanjay Tripathi and Another Vs. Banarsi Devi,

16. Considering the aforesaid, the following conclusions can be drawn :--

- (i) Admittedly, the land/property in question is a notified wakf property.
- (ii) Section 248 of MPLRC has no application qua wakf property. (iii) Various provisions of Wakf Act prescribe a methodology to deal with encroachment.
- (iv) Wakf Act 1995 is a complete Code in itself for the purpose in question.

(v) Wakf Act 1995 is a central and special Act whereas the M. P. Land Revenue Code, 1959 is a State enactment and is a general law.

(vi) The provisions of Special Act will prevail over the General Act.

17. On the basis of aforesaid analysis, there is no doubt that the revenue authorities have erred in passing the impugned orders, Annexures P/1 to P/4. Consequently, these orders are set aside being without authority and jurisdiction. However, it is made clear that this order will not preclude the competent authorities to take action against the petitioners in accordance with law. Petition is allowed to the extent indicated above.