

(2013) 11 MP CK 0101
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1967 of 2006

Devendra Prakash Mishra and Another	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 1 MPHT 12 : (2014) 1 MPLJ 588

Hon'ble Judges : A.M. Khanwilkar, C.J.;Ajit Singh, J

Bench : Division Bench

Advocate : Dinesh Upadhyaya, for the Appellant; Samdarshi Tiwari, Govt. Advocate for the Respondent Nos. 1 to 4, Mr. Amit Seth, Advocate for the Respondent No. 5 and Mr. Siddharth Gupta, Advocate for the Respondent Nos. 6 and 7, for the Respondent

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J.—By this petition, filed as Public Interest Litigation, the petitioners have prayed for a declaration that the construction put up by respondents Nos. 6 and 7 on Khasra Nos. 398, 400 and other Khasras of Ganesh Nagar Colony, Bhopal (Bawariya Kalan) of the hotel and building are illegal; and to issue direction to the State Authorities to remove the same immediately. The petitioners have also asked for a direction to appoint independent agency out of State of Madhya Pradesh to enquire into the illegal activities resorted to by the respondents with the connivance of the Government officials; and to register offence against the guilty persons. It is further prayed that the respondents be directed not to legalise or regularize the illegal construction put up by the private respondent Nos. 6 and 7. This petition is resisted by the respondents by filing detailed reply affidavits. In the petition although diverse assertions have been made, however, during the arguments broadly three grounds have been urged by the Counsel for the petitioners. The first ground is that the sale-deed executed in favour of respondent Nos. 6 and 7 by the respondent No. 8 was misleading and has resulted in causing loss to public exchequer due to connivance and acts of

commission and omission of the Government officials. The second ground is about violation of the conditions imposed by the Sub-Divisional Officer (SDO) while permitting diversion of the usage of the land in question from agricultural to non-agricultural purpose, in particular condition Nos. 4, 5, 6 and 9 thereof. It is lastly contended that FIR has been registered on the basis of complaint made by the petitioners as back as on 11-9-2009, which has not been enquired into and no effective steps have been taken for the reasons best known to the Police Authorities.

2. During the rejoinder, Counsel for the petitioners made an attempt to argue one more contention to the effect that the respondent Nos. 6 and 7 have put up construction on Government/Municipal lands, as can be discerned from the observations found in communication dated 22-7-2002 (Annexure P-26), appended to the rejoinder filed by the petitioners in response to the reply affidavit filed by respondent Nos. 1 to 4 and the additional reply affidavit filed by respondent Nos. 6 and 7.

3. The respondents, however, have contested this petition not only on merits, but also by pointing out that the petition filed by these petitioners is motivated petition to espouse personal interest out of vengeance. Inasmuch as, the father of the petitioner No. 1 had filed a suit before the Civil Court asserting easementary rights in the subject land owned and possessed by respondent Nos. 6 and 7, which eventually came to be dismissed as withdrawn on the finding that the plaintiff had no right, title or interest therein. The father of the petitioner No. 1 sought liberty from the Civil Court to resort to the writ petition before this Court but, instead, has put up the petitioner No. 1, his son, to pursue the same cause of action in the name of Public Interest Litigation. The petitioner No. 2 has been made namesake petitioner. The respondents have also placed on record that the petitioners attempted to extract money from respondent Nos. 6 and 7 to the extent of Rs. 10 lacs for withdrawing the present Public Interest Litigation, which fact is recorded in the audio tape recording and placed on record in the form of CD and transcript thereof. The respondents further contended that the petitioners without challenging any of the Statutory Orders have sought vague and wide reliefs in this Public Interest Litigation, which cannot be countenanced. In addition, it is submitted that the petition has been filed almost after two years from the date of commencement of construction activity on the site. In that, the respondent Nos. 6 and 7 after obtaining all statutory compliances and permissions from the concerned authorities commenced construction on the disputed plot sometime in December, 2004, whereas the present petition has been filed in January, 2006, only after the suit filed by the father of the petitioner No. 1 was withdrawn on 21-11-2005. On merits, the respondents have placed reliance on the Statutory Orders passed from time to time by the concerned authorities permitting the said respondents to commence the construction work on the subject plot. We shall make reference to those documents at appropriate places while dealing with the submissions of the petitioners.

4. Reverting to the first contention of the petitioners that the sale-deed was executed on 30-4-2003 without referring to the material fact that the land was already allowed to be diverted for non-agricultural usage as back as on 15-1-1963, as a result thereof the authorities registered the sale-deed as if the land was still an agricultural land. Thereby loss has been caused to public exchequer in the shape of stamp duty charges and other incidental revenue. This loss is required to be recovered from respondent Nos. 6 and 7. This submission proceeds on the basis of the order passed by the Sub-Divisional Officer, Bhopal, dated 15-1-1963, permitting diversion of the land in question. Indeed, the recital in the sale-deed executed on 30-4-2003 mentions that the piece of land was unirrigated agricultural land and on that basis stamp charges were paid by the respondent Nos. 6 and 7. This argument, in our opinion, has been justly rebutted by the respondents by pointing out condition No. 4 in the order passed by the Sub-Divisional Officer dated 15-1-1963. The same reads thus:--

(iv) The land diverted shall be developed according to the approved layout plan within three years from the date of this order and in case the land is not developed within this period, the applicant-Corporation will seek reapproval of the layout plan within six months from the above period from the Chief Town Planner, as well as this Court. In case, the applicant Corporation failed to develop the land within the extended period after three years, the cash amount of Rs. 3,250/- now deposited and Rs. 17,000/- to be deposited later on shall be liable to be forfeited to the State Govt. and the amount to the extent of surety will be recovered from the surety as arrears of land revenue.

5. On plain language of this condition it is obvious that the permission for diversion was to remain valid for a period specified therein. In the present case, there is nothing on record to indicate that after expiry of the stated period any attempt was made by the land owner to get the same extended. As a result of the self-operating condition, the diversion permission stood extinguished and/or revoked. The land owner was required to file fresh application thereafter for diversion of the usage of the subject land from agriculture to non-agriculture. As a concomitant thereof, the land would continue to be agricultural land as it could not be used for non-agricultural purpose. It is on that premise, the sale-deed has been executed on 30-4-2003. In that view of the matter, the first ground urged by the petitioners is completely devoid of merits and is founded on misreading of the order dated 15-1-1963. It is matter of record that after purchasing the land by way of registered sale-deed on 30-4-2003, the respondent Nos. 6 and 7 applied for necessary permissions including for an order of diversion of the usage of the land for non-agricultural purpose. The same has been placed on record by the petitioners themselves, dated 4-6-2003. The argument of the petitioners, however, is that, the said document indicates that the officials were more than anxious to grant permissions to the respondent Nos. 6 and 7. Inasmuch as, the said document (Annexure P-8), dated 21-5-2003, refers to the permission granted on 23-5-2003. Such anomaly, however, in our opinion, cannot be the basis to assume that the officers did not act bonafide in granting permissions. It

is matter of record that respondent Nos. 6 and 7 had made application for diversion permission in May, 2003, which was finally accepted only on 4-6-2003. Thus, it was not issued in undue haste, as is suggested by the petitioners. We are, therefore, not at all impressed by the first ground urged by the petitioners.

6. That takes us to the argument about violation of condition No. 4 of the order dated 15-1-1963, as already extracted hitherto. We fail to understand as to how this argument can be taken forward considering the fact that respondent Nos. 6 and 7 have placed on record due permissions and approvals granted by the Planning Authority before commencement of construction of the building on the suit plot. It is indisputable that after coming into force of the Madhya Pradesh Town and Country Planning Act, 1973, the Planning Authority is the Director, Town and Country Planning. The permission for construction and approval of plans was thus required to be issued by that Authority. It is noticed from the record before us that the said Authority has granted necessary approvals for construction of the building on the suit plot. It is, therefore, incomprehensible as to how respondent Nos. 6 and 7 can be said to have violated condition No. 4.

7. As regards argument regarding violation of condition No. 5, even the same is devoid of merits. Condition No. 5 reads thus:--

(v) No alterations in the approved plan shall be made by the applicant Corporation without the approval of the Chief Town Planner and this Court.

As aforesaid, before commencement of the construction on the disputed plot, all approvals and permissions have been obtained by the respondent Nos. 6 and 7 including from the Town and Country Planning Authority. After coming into force of the Act of 1973, the said Authority was the Appropriate Authority. Therefore, non-obtaining of prior approval of the Chief Town Planner or the Sub-Divisional Officer is of no consequence. Accordingly, even this submission does not commend to us.

8. That takes us to the next grievance of the petitioners about violation of condition No. 6. We deem it apposite to reproduce condition No. 6 contained in the order dated 15-1-1963. The same reads thus:--

(vi) That the land reserved for School, Parks and open spaces shall be vested to the local body, i.e., Gram Panchayat or H.C. as the case may be.

9. As regards this grievance, our attention has been invited by respondent Nos. 6 and 7 to the plan as existed in the year 1964 bearing Annexure AR/6-5 at page 25, appended to the additional reply on behalf of respondent Nos. 6 and 7. The said plan unambiguously shows that the reservation in respect of open space etc. has been made on the plot, which is unconnected to the plot owned and possessed by respondent Nos. 6 and 7. There is no such reservation on the plot of respondent Nos. 6 and 7, except provision for high tension line. The documents on record indicate that the high tension line has been shifted as per the permission granted by the Electricity Board on 4-8-2004. Even that decision

of the Electricity Board is not the subject-matter of challenge in this petition. Suffice it to observe that the petitioners have made an attempt to persuade this Court to undertake a roving enquiry without providing any material to substantiate the grievance about the violation of the afore-stated conditions.

10. We may now turn to the argument about violation of condition No. 9. Condition No. 9 of the order dated 15-1-1963 reads thus:--

(ix) As the high tension line passing through this land, the applicant-Corporation will leave a clearance of 35 on both the sides as required by the Chief Town Planner.

We have already dealt with this aspect while rejecting the arguments of the petitioners about not reserving the land for the specified purpose referred to in condition No. 6 of the order of the Sub-Divisional Officer. Accordingly, for the same reasons this grievance of the petitioners deserves to be stated to be rejected.

11. The last submission canvassed by the petitioners also deserves to be stated to be rejected. In our opinion, that argument is an argument of desperation. No material facts are forthcoming as to how and in what manner the respondent Nos. 6 and 7 have encroached upon any Government/Municipal land. Reliance placed on document (Annexure P-26), appended to rejoinder of the petitioners will be of no assistance to the petitioners. The same is dated 22-7-2002. The sale-deed in favour of respondent Nos. 6 and 7 is dated 30-4-2003. Moreover, the factual position mentioned in this communication does not indicate that respondent Nos. 6 and 7 have encroached upon any Government/Municipal land by putting up any construction thereon. As noted earlier, respondent Nos. 6 and 7 commenced construction only after obtaining prior approval/permission from the concerned authorities. If the construction undertaken by the said respondents is not in conformity with the sanctioned plan, it is for the Planning Authority to take appropriate action in that behalf. Suffice it to observe that the document (Annexure P-26), dated 22-7-2002, issued under the signatures of Joint Director, Town and Country Planning Authority is of no avail to buttress the ground under consideration.

12. In our opinion, this petition is devoid of merits and ought to be dismissed. We are also inclined to accept the arguments of the respondents that the petitioners cannot be permitted to seek vague and wide reliefs, as claimed in the petition, that too without challenging the permissions granted by the Competent Authorities in exercise of Statutory Powers conferred on them. Moreover, no explanation is forthcoming as to what prevented the petitioners to approach this Court immediately after noticing that the construction was being put up by the respondent Nos. 6 and 7 on the disputed plot. Instead, present petition has been filed only in January, 2006, after the father of the petitioner No. 1 had withdrawn his suit on 21-11-2005. The petitioners are, therefore, espousing their personal cause and not public interest. In the fact situation of the present case, we are

inclined to accept the submission of the respondents that the petition should not only be dismissed, but the petitioners should be directed to pay exemplary cost of Rs. 5 lacs keeping in mind the exposition of the Apex Court in the case of Ashok Kumar Pandey Vs. The State of West Bengal and Others, thereof. Indeed, the petitioners would argue that merely because interim relief was granted in the present petition that did not prejudice respondent Nos. 6 and 7 as the said respondents have already disposed of the constructed premises. That argument cannot be the basis to show any indulgence to the petitioners, who, with full knowledge, have approached this Court on the basis of vague and unsubstantiated allegations. We may also usefully advert to the other decisions of the Apex Court, which have been relied upon by the Counsel for respondent Nos. 6 and 7, in the case of Neetu Vs. State of Punjab and Others, , wherein the Apex Court has observed that the Court should be loath in entertaining petitions filed in the name of public interest espousing private interest of the parties, as in the present case. The Apex Court in the case of Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, , has restated the settled legal position that when the petitioners have other alternative efficacious remedy, could not have approached the High Court by way of Public Interest Litigation. As aforesaid, the petitioners have not chosen to challenge the orders/permission granted by the Competent Authorities. Reliance can also be placed on the decision of the Apex Court in the case of Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others, , that the conduct of the petitioners filing Public Interest Litigation is very crucial and the Court should be circumspect in entertaining any challenge at the instance of unscrupulous petitioners. For the reasons recorded hitherto, this petition is dismissed with exemplary cost quantified at Rs. 5 lacs, to be paid to respondent Nos. 6 and 7 within six weeks from today, failing which the Collector shall recover the said amount as arrears of land revenue from the petitioners and make over the same to respondent Nos. 6 and 7 within four weeks thereafter. Compliance report in that behalf be filed in the Registry of this Court within twelve weeks from today: Besides receiving exemplary costs, respondent Nos. 6 and 7 are free to pursue any other remedy against the petitioners including for damages, if so advised, which will have to be decided in accordance with law. All I.As. are accordingly disposed of.