

(1997) 07 MP CK 0039
In the Madhya Pradesh High Court
Case No : M.P. No. 2216 of 1984

Dhanraj Govindramaji Varma

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14
Madhya Pradesh Municipal Corporation Act, 1956 — Section 418A, 419, 422
Madhya Pradesh Nagariya Kshetron Ke Bhoomihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 — Section 1, 2, 3(1)

Citation : (1998) 2 MPLJ 394

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : S.K. Jain, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

Dipak Misra, J.

Common questions of law being involved in both the writ applications, they were heard analogously and are disposed of by this common order.

The factual matrix as depicted in M. P. No. 2216/84 is that the petitioner is in occupation of piece of land where his forefathers had put up structures for the residence of family. The structures have been standing on the said land for the last several years and the Indore Municipal Corporation, the respondent No. 2, has been realising house tax in respect of those structures. The petitioner by virtue of long possession has perfected his title by way of adverse possession. It is further stated in the petition that recently, Legislature of M. P. has enacted an Act namely M. P. Nagariya Kshetron Ke Bhoomi Hin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (hereinafter referred to as Act") which was published in the M. P. Gazette Extraordinary on 17th April, 1984. Thereafter, Ordinance No. 7 of 1984 was promulgated on 1-5-1984 amending several provisions of Act. It is averred in the petition that the purpose of the Act is to

confer lease hold rights on landless persons in respect of sites for dwelling houses in the urban areas in the State. The Act has been made applicable to all the District Headquarters and town having population more than one lakh according to the last census. Section 3A of the Act provides that the Act would also apply in respect of the land vested in the Municipal Corporation if the Municipal Corporation by resolution decides to implement the provisions of the Act in respect of any land vested in it. To enable the Corporation to pass such a resolution the M. P. Municipal Corporation Act, 1956 was also amended by Ordinance No. 6/84 promulgated on 24-4-1984. Later on, to carry out the provisions of Sections 419 and 422 of the Municipal Corporation Act were also amended providing for supersession of the Corporation, in case of non-compliance with the directions issued by the State Govt. It is further averred in the petition that in exercise of powers u/s 418-A the State Government issued a direction to the Indore Municipal Corporation on 24-4-1984 to pass a resolution in terms of Section 3-A of the Act. The Corporation accordingly passed a resolution resolving to confer benefits of the Act on those landless persons who were occupying Municipal land on 10-4-1984. The directions of the State Government and the resolution passed by the Indore Municipal Corporation have been brought on record as Annexures-B and C to the writ application. It is further alleged that the said resolution of the Indore Municipal Corporation was not in terms of Section 3-A of the Act. By virtue of said resolution, the Municipal Corporation granted "pattas" of lease hold rights to the tenants residing in the superstructures constructed on Municipal land but belonging to other persons like the petitioner. Further case of the petitioner is that the settlement of land u/s 3 of the Act has no relation to "dwelling house" and the definition of "landless persons" is not a rational one. There is also challenge to the definition of the term "dwelling house". There is also challenge to Section 5 of the Act on the ground of arbitrariness and lack of legislative competency. Validity of provisions of Section 3 of the Act are also called in question on the ground that the cut off date stipulated therein has no rational basis and in fact has been brought in to favour certain persons and has created a classification which is impermissible in law. It is also pleaded in the petition that the combined effect of Section 3-A of the Act and Sections 418-A, 419 and 422 of the Municipal Corporation Act, 1956 amounts to reposition of unbridled and uncanalised power with the State Government as it can compel the Municipal Corporation to pass a resolution which is violative of long cherished principles of local self government and in spirit runs contrary to various provisions of Municipal Corporation Act. With these averments the prayer has been made for declaring Section 3 of Act as ultra vires the Constitution of India being violative of the fundamental rights; the definitions of "landlord", and "dwelling house" being arbitrary, discriminatory and violative of Article 14 of the Constitution; and the fixation of cut off date as 10-4-1984 being violative of Article 14 of the Constitution. There is also prayer for declaring Sections 418-A, 419 and 422 of the Municipal Corporation Act, 1956 as ultra vires the Constitution.

No return has been filed by the respondents but Mr. R. S. Jha, Dy. Addl. Advocate General has entered appearance on behalf of the State and made his oral submissions on the ground that all the averments are in the arena of pure questions of law and he is entitled to combat them without traversing the facts. Mr. S.K. Jain learned counsel for the petitioner in support of the writ application has drawn our attention to Sections 2, 3 and 3-A of the Amending Act. They read as follows :-

"2. Definition. - In this Act, unless the context otherwise requires,-

(a) "Authorised Officer" means a Sub-Divisional Officer or any other Assistant Collector or Deputy Collector in the district as the Collector may by order specially authorise to exercise the powers of the Authorised Officer in such area as may be specified therein;

(b) "dwelling house" means a single storeyed hut or a single storeyed super-structure but shall not include any building owned by the Government or any local or statutory authority.

(c) (omitted)

(d) "landless person" means a person who does not. -

(i) own any land in an urban area where he is actually residing;

(ii) occupy land exceeding 50 sq. metres either himself or through any other member of his family;

Explanation : For the purpose of this clause family includes husband, wife, minor son, unmarried daughter or any relation by blood wholly dependent on the landless person.

(d-1) "Occupy" means occupation of Government Land in urban area for residential purpose.

(e) words and expressions used but not defined in this Act and defined in the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) shall have meanings, respectively, assigned to them in that Code."

"3. Settlement of Land - (1) Notwithstanding anything contained in any law for the time being in force, the land occupied by a landless person in any urban area on the 10th day of April 1984 shall subject to the provisions of Sub-section (2) be deemed to have been settled in his favour on the said date.

(2) The Authorised Officer may either settle the land in actual occupation of the landless person not exceeding 50 Sqr. metres in leasehold rights in his favour or settle in leasehold rights in his favour any other land upon 50 Sqr. metres;

(3) The leasehold rights accrued under Sub-section (1) shall not be transferable by sub-lease or in any other manner whatsoever except by inheritance.

(4) If the landless person to whom the leasehold rights have accrued in respect of any land under this Act, transfer such land in contravention of the provisions of Sub-section (3), the following consequences shall ensue, namely :-

- (i) the lease shall stand cancelled on the date of such transfer,
- (ii) such transfer shall be null and void;
- (iii) no leasehold rights shall accrue to the transferee in respect of such land."

"3-A. Act to apply to the land vested in the Municipal Corporation or Municipal Council. - Notwithstanding anything contained in any law for the time being in force -

(i) if a Municipal Corporation or Municipal Council by resolution decides to implement the provisions of this Act in respect of any land vested in it under the law under which it is constituted, the provisions of this Act shall apply mutatis mutandis in respect of such land;

(ii) the authority to settle such land shall vest in the authorised officer."

The submission of the learned counsel is that the definition of the term "landless person" and "occupy" are not in furtherance of achieving the purpose of the Act and these definitions are irrational. The aforesaid submission is made on the basis that a person who has large chunk of land outside city limit but has no land in the urban area would have the status of a landless person, and further a person who has a large piece of land in any other urban area also would qualify under the definition clause to be a landless person. It is also highlighted that a lessee who holds the land for 99 years would also be covered under the aforesaid definition. The definition of the term "occupy" is also attacked on the ground that a person occupying non-government land would still be a landless person. The submissions in our considered view do not merit any consideration as we find that the objects of the Act is to confer leasehold rights on landless persons in respect of sites for dwelling houses in urban areas. Scrutinising the dictionary clause we find that certain restriction and limitations are provided in Clause 2(d) (ii) of the Act and on a fair reading of the same we are of the considered view that the purpose of legislation is to cover a different class of persons. That apart, the apprehension of the learned counsel that a lessee holding a land on lease for 99 years is also covered in the ambit and sweep of the aforesaid definition is not well founded inasmuch as the long term leases of 99 years always stands in a different footing all together and by no stretch of imagination it would be covered within the definition of landless. We would like to observe that the explanation to Clause 2(d)(ii) also adds further qualification so as to include occupation of land by husband, wife, minor son, unmarried daughter or any relation by blood wholly dependent on the landless person. Taking objective view of the definition we do not find that it anyway defeats the purpose of the Act or there is any discrimination as pointed out by the learned counsel for the petitioner. In fact, a classification has been made for the benefit of the down-trodden and the have

nots and that being in consonance with the mandate of the Constitution and not coming within the inhibition of the equality clause we find it is not ultra vires the Constitution. Undoubtedly, the present piece of Legislation is for welfare measure and "doctrinaire pedantic" approach is not called for. In this context we may refer to the decision rendered in the case of Union of India and another Vs. Pradeep Kumari and others, wherein the Apex Court held as under :

"In relation to beneficent legislation, the law is well settled that while construing the provisions of such a legislation, the Court should adopt a construction which advances the policy of the legislation to extend the benefit rather than a construction which has the effect of curtailing the benefit conferred by it."

Mr. Jain has also drawn our attention to the terms "dwelling house" occurring in Section 2(b) to emphasise that the said definition is discriminatory and creates a distinction between a single storeyed super-structure and multi-storeyed houses. He has also referred us to Section 5 of the amending Act which deals with penalties for certain acts done in respect of the dwelling houses. It is worthwhile to reproduce Section 5 of the Act. which reads as under:

"5. Penalties. - Any person who -

(i) wrongfully dispossesses or attempts to dispossess an occupier of a dwelling house; or

(ii) recovers or attempts to recover rent in any manner from the occupier of dwelling house,

shall be punished with rigorous imprisonment which shall not be less than three months but which may extend to three years and with fine which shall not be less than five hundred rupees but which may extend to one thousand rupees."

On reading the aforesaid provision we do not find any discrimination as the Legislature has decided to confer lease hold rights on landless persons in respect of sites for dwelling houses. The definition of "dwelling house read conjointly with that of the "landless person" make it plain as day that a different class of people are required to be covered by this legislation. The area of occupation is restricted in the definition of landless person. The same has to be kept in view while appreciating the connotative meaning of the terms "dwelling house" as has been defined in the Act. Certain protection has been given to the landless person u/s 4(1) of the Act which reads as under :

"4. Restoration of possession. - (1) If any landless person to whom leasehold rights have accrued in the land u/s 3 is dispossessed from the land or any part, thereof otherwise that in due course of law the Authorised Officer shall on an application made to him by the said landless person within six months from the date of dispossession restore such possession."

On a fair reading of the provisions envisaged Under Sections 4 and 5 of the Act we find that this provision covers a different class all together and the protection

given is in furtherance of the object of the Act and does not create any kind of discrimination.

Mr. Jain learned counsel for the petitioner has urged with vehemence that the fixation of cut off date i.e. 10th of April 1984 as envisaged u/s 3 (1) of the Act is arbitrary, irrational and palpably unreasonable. It is his submission that no criteria is discernible for fixing such a date. It creates a classification between two classes of person, namely one who had come into possession immediately before 10-4-1984 and who has been forcibly evicted in spite of long occupation immediately before the said cut off date. In this context we may refer to the decision rendered in the case of Union of India (UOI) and Another Vs. Parameswaran Match Works and Others, wherein the Apex Court held that the choice of a date as basis of classification cannot be always dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances. Their Lordships have further observed there is no mathematical or logical way fixing it precisely and the decision of Legislature or its delegate must be accepted unless it can be said that it is very wide of any reasonable mark. Again in the case of Dr (Mrs) Sushma Sharma and Others Vs. State of Rajasthan and Others, the Apex Court approved the view expressed by Justice M. C. Kenna in *Metropolis Theater Company v. City of Chicago* (1912) 57 L.Ed. 730 wherein it was held that wisdom of the Legislature in this regard cannot be questioned unless it is shown that the same is palpably arbitrary. In the case at hand the act came into force on 17-4-1984 and the cut off date has been fixed to be 10th of April, 1984, a week before its commencement. The hypothetical attack made by the learned counsel for the petitioner is not convincing and on that basis it cannot be said that the date fixed is very wide of the reasonable mark or picked up out of the hat. A classification can be struck down as violative of Article 14 of the Constitution but the burden lies upon him who attacks it. There is presumption of constitutionality of statutory provisions. The Apex Court in the case of *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, has expressed this view and the said decision has been accepted as "*locus classicus*". In absence of any acceptable reason to hold that the date fixed is arbitrary or unreasonable we are inclined to hold that there is no infirmity in fixing the cut off date.

The learned counsel for the petitioners has faintly argued before us that State Legislature is not competent to legislate on this aspect as the said enactment directly impinges the central Act, namely, the Transfer of Property Act and also directly contravenes some of the provisions of M. P. Accommodation Control Act, 1961 which is a piece of legislation in the concurrent list. The submission of learned counsel for the petitioner is that the relationship between the landlord and tenant falls under Entry 6 of List 3 of the 7th Schedule of the Constitution of India i.e. concurrent list, and the present enactment, as it falls under the said List, could not have been brought by the State Legislature without the assent of the President of India and, therefore, the Act is ultra vires having been passed without legislative competency. Entry of List 3 deals with the field of legislation of

"transfer of property other than agricultural land, registration of deeds and documents". The learned counsel for the petitioner has not been able to demonstrate how the present piece of legislation encroaches in the field covered under Transfer of the Property Act or is repugnant to any of the provisions of M. P. Accommodation Control Act, 1961. We are also unable to perceive any repugnancy. In fact, the area of operation is quite different. The present enactment has come into force to confer certain benefits on the landless persons to provide them sites for dwelling house. The definition of the "dwelling house" read conjointly with the definition "occupy" and protection conferred u/s 5 of the Act in no manner encroached in the legislations mentioned by the learned counsel for the petitioner.

The contention that the rights of the landlords are affected does not stand to reason as there is no provision in the Act which touches the rights of the landlords. On a fair reading of the provisions we find that the government land in occupation of a person to a particular extent is given on lease for having dwelling house and certain protections are given to these categories of persons. The penal provision has been provided u/s 5 of the Act so that the persons occupying these dwelling houses on conferment of the lease hold rights in respect of the sites are protected. In our opinion, the legislation deals with land sites and does not deal with the rights of landlords or tenants. Thus if a land-less person becomes a lessee and constructs a dwelling house on such sites he has been given protection Under Sections 4(1) and 5 of the Act. In our considered view the present piece of legislation is not beyond the competency of State Legislature.

The next contention of the learned counsel relates to the validity of Sections 418-A, 419 and 422 of the M. P. Municipal Corporation Act, 1956 on the ground that the said provisions run contrary to the mandates of other provisions of Municipal Corporation Act where specific function of the Corporation relating to the disposal of the Municipal properties have been provided. To appreciate the said submission of the learned counsel the aforesaid provisions are reproduced below :

"418-A. Power of State Government to issue directions for implementation of welfare measures. - (1) If the State Government desire to implement certain welfare measures in respect of housing, sanitation or health of the public it may issue directions to the Corporation for implementing the welfare measures specified in the directions.

(2) On receipt of directions under Sub-section (1) the Corporation shall comply with the said directions."

"419. Procedure by Government when Municipal authority fails to take action. - (1) If within the period fixed by any order issued u/s 418, or directions issued u/s 418-A, any action directed there under has not been duly taken, or cause has not been shown as aforesaid, the Government may, by order -

(a) appoint some person to take the action so directed;

(b) fix reasonable remuneration to be paid to him; and

(c) direct that such remuneration and the cost of taking such action shall be defrayed out of the Municipal Fund and, if necessary that any or more of the taxes authorised by Chapter XI shall be levied or increased."

"422. Power of Government to supersede Corporation in case of incompetency or default or excess of abuse of powers. - (1) If at any time upon representations made or otherwise it appears to the Government that the corporation is not competent to perform, or persistently makes default in the performance or the duties imposed on it by or under this Act or any other law for the time being in force, or exceeds or abuses its powers, the Government may, after having given an opportunity to the Corporation to show cause why such an order should not be made, issue an order directing that all the Councillors shall retire from office as and from such date as may be appointed and declare the Corporation to be superseded for a period to be specified in the order. Such order shall be published in the Gazette and the reason for making it shall be stated therein.

Provided that if the directions as contemplated in Section 418-A are of such a nature which require immediate implementation in public interest and the Corporation fails to comply with such directions, the State Government may, after giving seven days' notice to show cause about the non-implementation of the directions, issue that order contemplated in this sub-section.

(2) The Government may from time to time, after any enquiry made by an order published in the Gazette, direct that the period of super-session with all the consequences aforesaid shall be continued until such date as is specified in the order.

(3) The total period of supersession Under Sub-section (1) together with its extension under Sub-section (2), if any, shall in no case exceed two years.

(4) Notwithstanding anything contained in Sections 20 and 23, all councillors shall vacate their office from the date mentioned in any order, under Sub-section (1)."

The main challenge is with regard to the power conferred on the State Govt. to issue directions as contemplated u/s 418-A of the Municipal Corporation Act. On reading of the aforesaid provisions in proper perspective we find that the Legislature has conferred the power on the State Govt. to issue directions to the Corporation for implementation of welfare measures in respect of housing, sanitation and the health of the public. The basic requirement is welfare measure. The Legislature has not conferred an arbitrary power on the State Govt. In fact the power given has been specified and relates to welfare measures on specified field. The fields, in our opinion, are in public interest as they relate to the aspects of housing, sanitation or health of the public. The guidance being there and power being conferred in the interest of public in respect of specified areas, we are of the considered view that the said provisions do not offend any

of the provisions of the Municipal Corporation Act nor do they come within the concept of excessive delegation. If a direction issued by the State Govt. contravenes those specified areas and welfare measure is not spelt out, it goes without saying, the same can be a subject-matter of challenge. The provisions Under Sections 419 and 422 provide for the remedial measures when the Municipal Authorities fail to take action. As we have already held that the power conferred on the State Govt. u/s 418-A is not ultra vires, consequently the power conferred on the State for remedial measure cannot be regarded as ultra vires. In fact, it is in the interest of public and in furtherance of the conscience of the Constitution.

Though the grant of "patta" by Indore Municipal Corporation has been referred to in paragraph 5 of the writ petition M.P. No. 2216/84 affecting the individual rights of the petitioner no specific prayer has been made in that regard. Challenge has been made solely on the ground of constitutionality of the provisions of the Act. As we have already held provisions to be "intravires" the petitioner cannot succeed on that score. However, if any action has been taken in contravention of the provisions of the Act it is open to the petitioner to seek appropriate remedy in accordance with law. This observation would also be applicable to the petitioner in M. P. No. 2981/86.

In view of the preceding analysis we find no justification to interfere and accordingly the writ applications, being devoid of merit, are hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs. Security amount, if any, be refunded to the petitioners.