(2013) 06 MP CK 0017

In the Madhya Pradesh High Court

Case No : Writ Petition No. 9023 of 2013

Goverdhan Prasad Choudhary APPELLANT

Vs

The State of Madhya Pradesh RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2013) 06 MP CK 0017

Hon'ble Judges : U.C. Maheshwari, J

Bench : Single Bench

Advocate : Nirmala Raikwar, for the Appellant;

Final Decision : Dismissed

Judgement

U.C. Maheshwari, J.—Heard on the question of admission. The petitioner has filed this petition under Article 226 of Constitution of India for following relief:

(i) A writ in the nature of mandamus may kindly be issued commanding the respondent No. 2 and 4 to grant Nazul Land Patta of Block No. 8 Plot No. 3/1 area 25x50=1250 sq. ft. and mutation of the land for petitioner favour of the petition the respondent No. 2 and 4 to granted Nazul land allotted to the patta and mutation of this land to the petitioner.

(ii) A writ in the nature of mandamus may kindly be issued commanding the respondent No. 2 and 4 to give all consequential benefits payments etc. with retrospective effect.

(iii) The relevant record may kindly be called for reference and perusal.

(iv) Any other appropriate writ or direction may also kindly be issued if warranted in the facts and circumstances of the case.

2. The petitioner''s counsel after taking me through the averments of the petition submits that the petitioner herein applied for allotment of plot of Nazul land measuring 25''x50''=1250 sq. ft. bearing No. No. 3/1, situated on the Land of

Block No. 8 at Jabalpur on patta, on his application after registering a Revenue Case No. 373/A20(11) 94-95 in this regard the opinion of the Municipal Corporation Jabalpur was requisitioned. In response of the same the Municipal Corporation intimated to the authorities that keeping in view the environmental situation after carrying out the fencing over such land the plantation has been carried out. Besides this the Sarvoday Samiti P.W.D. Colony, Beoharbagh Jabalpur has also taken the objection on allotment of such land. On which Nazul Officer Jabalpur had sent a letter dated 6.5.2005 (Ann. P.15) to the petitioner intimating that allotment of such plot is not possible. It was also stated that by virtue of Clause 3(4) of the Circular of Revenue Department, State of M.P. dated 24.9.2002 after deducting 20% from the deposited amount of premium remaining sum shall be refunded. The petitioner was also intimated to file his objection in this regard within a week otherwise case may be proceed ex-parte against him, on which the petitioner has filed his objection on 10.5.2005 (Ann. P.12). Subsequent to that Nazul Officer again sent him a letter dated 12.5.2009 (Ann. P.11) informing the petitioner that his application for grant of Patta of aforesaid land has been rejected, as the same is not possible. The information regarding refund of the deposited sum with further direction to appear in the office of such authority on 26.5.2005 was also given. In response of such intimation the petitioner again filed his objection dated 28.7.2005 (Ann. P.5) with a prayer for allotment of the plot. The same were not considered by the authority, on which the petitioner came to this Court with Writ Petition No. 17400/12, the same was disposed of vide order dated 5.11.2012 (Annexure P.16) by extending a liberty to the petitioner to approach the appropriate forum or to file appropriate civil suit before the civil Court permissible under the law.

3. In this back ground she argued that subsequent to the order of this Court dated 5.11.2012, (Ann. P.16) the Commissioner Jabalpur Division in Revenue Case 334/B/121/12-13 (Annexure P.18) affirmed aforesaid direction to deduct 20% sum from the sum of premium deposited by the petitioner, therefore in such changed circumstances the petitioner has come to this Court again instead to approach any other forum or the civil Court. She said that on account of non-allotment of plot the petitioner is entitled to get refund the entire money deposited by him, and 20% or any of the sum from such deposited sum could not be deducted by the respondents authorities on the basis of circular dated 24.9.2002 (Ann. P.19), and prayed for quashment of Annexure P.19, as well as the impugned orders Annexure P.15 and P.18 with a further direction to the respondents'' authorities to refund the entire sum of the premium to the petitioner along with the interest by admitting and allowing this petition.

4. Having heard the counsel keeping in view her arguments, I have carefully gone through the averments of the petition along with the annexed papers including the referred documents.

5. Before giving any findings on merits of the matter, I would like to reproduce the concerning part of the order dated 5.11.2012 passed by this Court in W.P.

No. 17433/12 (Ann. P.16). The same is as follows:

In the aforesaid premises, this petition has been filed at very belated stage and also without exhausting the remedy before the concerning authority of revenue section, hence on the ground of delay and latches, the same could neither be entertained nor could be admitted for hearing. Thus, the same is hereby dismissed by extending the liberty to the petitioner to approach the appropriate forum or to file the appropriate civil suit before the civil Court, permissible under the law for redressal of the alleged dispute.

6. Although subsequent to the aforesaid order of this Court (Ann. P.16), the respondent No. 3, Commissioner Jabalpur Division has passed the order dated 5.2.2013 (Ann. P.18) affirming the aforesaid order of Nazul Officer dated 5.2.2013 (Ann. P.15), but mere on account of passing such order (Ann. P.18), by the Commissioner in view of aforesaid earlier order of this Court, this petition could not be entertained because the petitioner has already been extended a liberty to approach the appropriate forum or to file appropriate civil suit before the civil Court, permissible under the law for redressal of the alleged dispute. So, firstly in such premises there is no scope in the present petition to reconsider the matter for giving any direction to the respondents. Consequently, this petition deserves to be dismissed at the stage of admission.

7. Apart the aforesaid in view of the letter of Revenue Department, State of Madhya Pradesh dated 24.9.2002 (Ann. P.19), the respondents'' authorities are having the authority to deduct 20% sum of the premium deposited by the petitioner for grant of Patta, if the same could not be allotted for any reason.

8. The aforesaid circular was in existence on the date of filing the application by the petitioner for grant of Patta. So, in such premises he applied and deposited the sum of premium having the knowledge of the terms and condition of such circular then on subsequent occasion on account of non-allotment of patta the petitioner did not have any authority to challenge the aforesaid terms and conditions enumerated in the circular (Ann. P.19) because such circular is binding against the petitioner. So, in such premises the petitioner is entitled to get back the 80% sum of premium deposited by him for allotment of Patta.

9. In the aforesaid premises, I have not found any illegality, either in the aforesaid circular Ann. P.19, Ann. P.18 or the orders of the authorities Ann. P.15 and Annexure P.11. Consequently, this petition being devoid of any merits deserves to be and is hereby dismissed at the stage of motion hearing.

10. So far case law cited by the petitioner in the matter of Kailashchand Vs. State of M.P. and Others, is concerned, such case was relating to the adjoining land of the existing house of the petitioner and considering such circumstance some direction was given to the State with respect of such adjoining Nazul land, which is not the situation in the case at hand, therefore, on account of distinguishable facts such citation is not helping to the petitioner. The petition is dismissed as indicted above.