

(2010) 07 MP CK 0024
In the Madhya Pradesh High Court
Case No : W.A. No. 161 of 2010

Gwalior Development Authority, Gwalior and Another	APPELLANT
Vs	
Nehru Grih Nirman Sahakari Samiti Ltd.	RESPONDENT

Date of Decision : 13-07-2010

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Madhy Pradesh Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, —
Section 2(1)
Madhya Pradesh Co-operative Societies Act, 1960 — Section 31, 34, 48, 48(2)

Citation : (2011) 2 MPJR 106

Hon'ble Judges : Brij Kishore Dubey, J;A.K.Shrivastava, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By taking aid of Section 2(1) of the Madhy Pradesh Uchha Nyayalaya (Khand Nyay Peeth Ko Appeal) Adhiniyam, 2005, the appellants have assailed the order dated 02/02/2010 passed by the learned writ Court allowing the writ petition of the writ petitioner/respondent by passing certain directions to the appellant.

No exhaustive statement of facts is required to be narrated for the purpose of disposal of this writ appeal, suffice it to say that the facts in detail are narrated from para 2 to 5 in the impugned order of the learned writ Court. On bare perusal of the impugned order we find that writ petitioner/ respondent in this appeal entered into four different agreements with the appellants who were arrayed as respondents before the writ Court and it was agreed between the parties that 55 % land shall be developed by the respondents and after developing said 55% land, it shall be handed over to the society who shall thereafter be authorized to sell the plots to the intending purchasers. It is not disputed that the entire land owned by the writ petitioner/respondent was handed over by writ petitioner society to the appellant but after developing the

same, appellants did not return the land and hence deprived the writ petitioner/respondent to transfer the plots. Learned writ Court, hence disposed of the writ petition by giving following directions.

(1) That the respondents are directed to allot remaining area of land to the petitioner in terms of the agreements dated 17.08.1971 after receiving development, and supervision charges by the petitioner as per the terms and conditions of the agreements at current rate.

(2) It is further directed that if the land, which was given by the petitioner to the respondent is not available for allotment the respondents may make allotment of the alternate land by way of developed plots of another scheme to the petitioner. Looking to the nature and size of the land of the petitioner, which was taken by the respondents vide agreements dated 17.08.1971 necessary orders be passed by in this regard within a period of six months from the date of receipt of copy of this order.

Vehemently, it has been contended by Shri C.S. Dixit, and Shri Raghvendra Dixit learned counsel for appellants that specific objection was raised by the appellants in their return filed before the writ Court that there is no resolution of the society empowering the President of the Society to file writ petition and therefore, the foundation stone of the case is missing and hence, learned writ Court erred in allowing the writ petition of writ petitioner/respondent in terms as mentioned in the impugned order. In support of his contention learned counsel for the appellants has placed heavy reliance of Section 31 of the M.P. Cooperative Society Act, 1960 (in short referred as "Act of 1960") and also a Single Bench decision of this Court M.P. Rajya Bhumi Vikas Nigam Vs. Sita Charan Banwari and Another, . It has been contended by the learned counsel for appellants that because there is no valid resolution in favour of the President authorizing him to file writ petition, learned writ Court has erred in allowing writ petition. It has also been put forth by learned counsel that this objection was raised in the writ court and the said objection has also been raised in the return which was filed before the learned writ Court, but the objection was not considered.

On the other hand Shri K.S Tomar, Senior Advocate arguing in support of impugned order.

After hearing learned counsel for the parties, we are of the considered view that writ appeal deserves to be dismissed.

Undisputedly the writ petitioner has handed over its land for development to erstwhile Gwalior Town Improvement Trust which was later on merged in Gwalior Development Authority by operation of law. Undisputedly the appellants who were arrayed as respondents in writ Court are legally obliged to discharge the statutory functions and duties to develop the land in question if the same has been handed over by the Society like petitioner. Undisputedly, land was handed over for its development long back but, development which was required to be carried out by appellants has not been done which would mean that appellants

have failed to discharge its statutory duties and obligations conferred to it under M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. Since, the appellants took possession of the land from the society/ writ petitioner and therefore they were bound to discharge their statutory obligations and duties by developing the said land in terms of agreements which were placed as Annexure P/1 to P/4 before learned writ Court and execution of these agreements is not at all in dispute. Hence, according to us the doctrine of promissory estoppel would come into play in the present case and for some technical defect which is also not applicable in the present case, the writ petitioner/ respondent cannot be thrown out of the Court mercilessly when the statutory authorities like the appellants have failed to discharge its statutory duties and obligations and hence, they are entitled for the relief which has been granted by the learned writ Court.

Indeed the appellants would come within the purview and ambit of Article 12 of the Constitution of India and if the appellants failed to discharge their statutory obligations and duties for which it has been constituted, certainly this Court by exercising writ jurisdiction under Article 226 of the Constitution of India can issue writ of mandamus against the appellants which has rightly been issued by learned writ Court.

We do not find any merit in the contention of learned counsel for appellants that in absence of any resolution of the society, petition cannot be filed. In support of his contention learned counsel for appellants placed heavy reliance of Section 31 and 34 of the Act 1960. Section 31 of the Act, 1960 deals with the society is a public body corporate while Section 34 pertains to proof of certain entries in the society books. On bare perusal of these two provisions we do not find anything that there is any bar in filing of the writ petition. Indeed the averments made in preliminary objection in para 2 of the return of the appellants filed before the writ Court has been emphatically denied by writ petitioner by filing rejoinder before learned writ Court. On going through para 1 (vi) of rejoinder we find that the stand of the society is that there is no necessity to pass any resolution because the President of the Society is a duly elected person having full authority in regard to business of the society and also in regard to the legal proceedings when it was required to be instituted. Learned counsel for writ petitioner/ respondent has invited our attention to Sections 31 and 48 as well as sub Section (2) of Section 48 in this regard and has submitted that the conferral of final authority in the society as provided by Section 48 of the Act vests in the President. Learned counsel for appellants could not point out any particular provision under the Act that before filing writ petition there should be a resolution authorizing the President to file writ petition.

The decision of this Court in *Sitacharan Banwari* (supra) is not applicable in the facts and facts and circumstances of the case because in that case, the petition was filed on behalf of the Corporation namely M.P. Rajya Bhumi Vikas Nigam governed by different statute. Thus according to us learned writ Court has not erred in passing the impugned order.

This appeal is found to be bereft of any substance, the same is hereby dismissed with costs. Counsel fee of Rs 3000/- if pre-certified.