

(1999) 08 MP CK 0052

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2231 of 1994 (J)

Hari Sinha

APPELLANT

Vs

District Authority-cum-Distt. Magistrate, Raigarh

RESPONDENT

Date of Decision : 10-08-1999

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 110
Petroleum Act, 1934 — Section 4

Citation : (2000) 1 MPJR 544

Hon'ble Judges : S.P. Khare, J

Bench : Single Bench

Advocate : Ravindra Shrivastava, for the Appellant; Sanjay Agrawal, Advocate for State and Mr. R.K. Gupta and Mr. R. Jain, for the Respondent

Final Decision : Allowed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India challenging the order dated 14.6.1994 (Annexure P-7) passed by the Respondent No. 1 District Authority by which the "no objection certificate" granted by the order dated 25.2.1993 (Annexure P-1) has been cancelled.

Bhagwanram was Bhumiswami of Khasra No. 449/1 in village Ghamaria, Tehsil Jashpurnagar, District Raigarh. The Petitioner claims that Bhagwanram had gifted 0.90 acre of land out of this Khasra number to him. The yigt-deed is said to have been executed on 21.6.1991 and registered on 28.6.1991. The mutation was effected by the Tehsildar on 21.6.1991. Thereafter, the Petitioner applied for licence for establishing a petrol pump on this land. For that it was necessary to have a "no objection certificate" under Rule 144 of the Petroleum Rules, 1976 framed u/s 4 of the Petroleum Act, 1934, from the District Authority (District Magistrate), Raigarh. The Petitioner applied to the District Authority showing the location of the premises proposed to be licensed for a certificate to the effect that there is no objection to the applicant receiving a licence for the site proposed.

The District Authority granted the certificate dated 25.2.1993 (Annexure P-1). The Petitioner was granted the licence also by the Deputy Chief Controller of Explosives, Agra and he became the dealer of Bharat Petroleum Corporation Limited. The Petitioner is running the petrol pump on the land mentioned above.

Bhagwanram died on 29.11.1992. Vishwanath Sharma the intervener, made an application to the Sub-Divisional Officer, Jashpurnagar on 31.7.1993 for cancellation of the mutation made by the Tehsildar. The Sub-Divisional Officer by order dated 29.12.1993 set aside the mutation and remanded the case for fresh inquiry as the procedure laid down in Section 110 of the M. P. Land Revenue Code, 1959 had not been followed in as much as no proclamation had been issued before effecting the mutation. This order was upheld in appeal by the Commissioner, Bilaspur and in revision by the Board of Revenue. After the remand the mutation has again been done in the name of the Petitioner by order dated 13.2.1996 of the Tehsildar and this order has been stayed by the Sub-Divisional Officer in appeal by order dated 19.3.1996.

At the instance of Shri Vinod Singh the Sub-Divisional Officer, Jashpurnagar initiated proceedings for cancellation of the no objection certificate dated 25.2.1993 granted by the District Authority. In this proceeding the Petitioner submitted his reply and challenged the jurisdiction of the S. D. O. to initiate such proceeding. The S. D. O. sent a report of the District Authority and he has cancelled the N. O. C. by the impugned order dated 14.6.1994 (Annexure P-7) in exercise of his power under Rule 151 of the Petroleum Rules.

The Petitioner's case is that the District Authority did not give him any opportunity of hearing and if he had done so the Petitioner would have satisfied him that he has not "ceased to have any right to use the site" because of the registered gift-deed in his favour and the cancellation of the mutation has no effect upon his right and title. The cancellation of the mutation could not be valid reason for cancellation of the no objection certificate.

In the return submitted by the Respondents it is not disputed that no notice of hearing was given by the District Authority to the Petitioner as required by the proviso to Rule 151 before cancellation of the N. O. C. It is stated that the reply submitted by the Petitioner in the proceedings initiated by the S. D. O. implies that there was sufficient notice to him. There is a dispute with regard to the title of the Petitioner on the land in dispute and therefore the N. O. C. has been rightly cancelled. The Petitioner has the alternative remedy of filing an appeal under Rule 155 (2) before the Commissioner, Bilaspur and therefore this writ is not maintainable.

The intervenor has also filed a return. According to him the alleged gift-deed in favour of the Petitioner is a fictitious document. The Petitioner does not acquire any right on the land in dispute on the basis of the said gift-deed. The land now belongs to "Sarveshwari Samuh" which is a Trust. The Petitioner's son has filed a civil suit at Varanasi and that is pending. The petrol pump does not belong to the

Petitioner but to this Trust.

The learned Counsel for both the sides were heard. This Court cannot go into the questions of the validity of the registered gift-deed. It was submitted by the learned Counsel for the Petitioner that a civil suit has been filed in the civil Court at Jashpurnagar for cancellation of this gift-deed by Shri V. N. Sharma. On the other hand it is submitted on behalf of the intervenor that the said gift-deed is also subject matter of dispute in the civil suit pending at Varanasi. Thus the validity of the gift-deed is under a cloud and that is to be adjudicated upon by a competent civil court.

In this petition only that part of the case can be considered which has a public law element. Rule 151 of the Petroleum Rules, 1976 is as under:

151 (1) -A no-objection certificate granted under the Rule 144 shall be liable to be cancelled by the District Authority or the State Government, if the District Authority or the State Government is satisfied that the licensee has ceased to have any right to use the site for storing petroleum.

Provided that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard.

(2) A district authority or a State Government cancelling a no objection certificate shall record in writing the reasons for such cancellation and shall immediately furnish to the licensee and to the licensing authority concerned a copy of the order cancelling the no objection certificate.

The proviso to Rule 151 (1) is mandatory. It is admitted that the district authority had not given any notice or any opportunity of hearing to the Petitioner before passing the impugned order, the contention of the Respondents that the Petitioner had the knowledge of the proceeding and he had submitted a reply before the S. D. O. has no substance as the rule requires an opportunity of hearing before the district authority which is to be satisfied that the licensee has "ceased to have any right to use the site". The district authority as per Rule 151 (2) has to record reasons for the cancellation of the no objection certificate and therefore the proceedings could not be legally initiated by the S. D. O. It is not the case of the Respondents that the district authority initiated the proceedings for cancellation of the no objection certificate and handed over the inquiry to be conducted by the Sub-Divisional Officer.

It is well settled that an authority who is authorised by law to take decisions must hear the person against whom the action is to be taken. It was for the District Authority to satisfy himself whether the Petitioner has ceased to have any right on the land in dispute. In this case the proviso to Rule 151 (1) specifically provides that before cancelling a no objection certificate, the licensee shall be given a reasonable opportunity of being heard. This is not simple formality. It is after hearing the licensee, the District Authority has to arrive at the satisfaction that the licensee has ceased to have any right to use the site.

There is violation of the principles of natural justice incorporated in the proviso to Rule 151 (1) of the Petroleum Rules. The prejudice to the Petitioner is evident. He was not given a fair hearing. There was "no notice" and "no hearing" by the District Authority. In such a case the decision of the District Authority is to be held as void *State Bank of Patiala and others Vs. S.K. Sharma*, . The same view has been taken in *S.L. Kapoor Vs. Jagmohan and Others*, .

It has been held in *Smt. Sawarni Vs. Smt. Inder Kaur and Others*, that mutation of a property in the revenue record does not create or extinguish title nor has it any presumptive value on title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question. The same principle has been reiterated in *Balwant Singh and another etc. Vs. Daulat Singh (dead) by L.Rs. and others*, . Therefore, merely because the mutation in the name of Petitioner has been cancelled it cannot be inferred that he has ceased to have any right to use the site within the meaning of Rule 151 (1) of the Petroleum Rules, 1976. The Petitioner is claiming right and title on the land in dispute on the basis of the registered gift-deed in his favour. As already stated the proper forum for adjudication of the validity of the gift-deed is the civil court. The Petitioner is in possession of the land in dispute and running the petrol pump. Therefore, until the challenge to the validity of this registered gift-deed is decided by the Civil Court or by the District Authority under Rule 151 of the Petroleum Rules, 1976 after hearing including recording evidence of both the sides the Petitioner is entitled to use this land for this purpose. As such the cancellation of the no objection certificate by the District Authority was not proper.

It has been argued on behalf of the Respondents that the Petitioner had an alternative remedy of filing an appeal before the Commissioner under Rule 155 and therefore this writ petition ought not to be entertained, it has been held in *L. Hirday Narain Vs. Income Tax Officer, Bareilly*, , that once the petition is admitted it should not be dismissed on the ground of an alternative remedy. The present petition was admitted in 1994 and therefore it would not be proper to dismiss it after five years on the ground of alternative remedy. Further in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, the Supreme Court has held that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

In the present case as discussed above there has been violation of principle of natural justice and therefore, this writ petition is maintainable.

It was contended on behalf of the intervenor that he was necessary and proper party in this petition and since he was not impleaded this petition cannot be allowed even though he has come as intervenor. Reliance is placed on Jhabua Municipal Corpn. v. State of M. P. 1974 MPLJ 106. In the present case the relief which has been claimed is against the Respondent No. 1 against the order of cancellation of the no objection certificate. The intervenor is not directly adversely affected. Therefore, it was not necessary to implead the intervenor as a Respondent to this petition.

In view, of the above discussion this petition is allowed. The impugned order (dated 14.6.1994 (Annexure P-7) passed by Respondent No. 1 District Authority, Raigarh is quashed.