

(2017) 04 MP CK 0141
In the Madhya Pradesh High Court
Case No : 133 of 2017

In reference

APPELLANT

Vs

Mahendra Tiwari

RESPONDENT

Date of Decision : 28-04-2017

Acts Referred:

[Madhya Pradesh Municipal Corporation Act, 1956](#), [Section 305](#)

Citation : (2017) 04 MP CK 0141

Hon'ble Judges : Hemant Gupta, Alok Verma

Bench : Division Bench

Advocate : Durga Shankar Gandharv, Madhuban Dubey, Mini Ravindran, Aniket Naik, Lokendra Joshi

Judgement

1. Challenge in the present appeal is to an order passed by the learned Single Bench on 30.1.2017, whereby writ petition filed by the appellants seeking a direction to respondent No.5 to allow the land bearing Survey No.394, 395, 397 as per Master Plan 2021, Layout No.RI-1 to permit the appellants to continue in possession in respect of which they have been given Patta (permission); to cancel the allotment of land measuring 3.19 Hectares, made on 5.12.2014 and to direct the construction of 2000 square foot - two storied building in lieu of demolition of the house of the appellants. The appellants have also made grievance in alleging that the road alignment has been changed so as to give undue advantage to respondent No.7, who is building a commercial complex over his land; and, other ancillary reliefs.

2. The learned Single Bench referred to an order passed by the Hon'ble Supreme Court reported in (2017) 1 SCC 667 [Ravindra Ramchandra Waghmare Vs. Indore Municipal Corporation and others], wherein challenge to an action taken by Municipal Corporations, Bhopal and Indore under Section 305 of the MP Municipal Corporation Act, 1956 remained unsuccessful.

3. In the return it has been pointed out that permission was granted to the father

of the appellant under the MP Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (hereinafter called "Act of 1984"); MP Nagriya Kshetro Ke Bhumihin Vyakti (Pattadhurti Adhikaron Ka Praday Kiya Jana) Niyam, 1998. It is pointed out that Annexure 23 is the permission as per Rule 7 of 1998, which is a temporary patta and in case of cancellation of such temporary patta, alternative accommodation is to be given. The patta in favour of the appellants was cancelled on 24.9.2012 and vide resolution dated 209 dated 30.9.2012, it has been resolved to allot flats, to ousted persons including the present appellants, constructed under the Jawaharlal Nehru National Urban Renewal Mission in Scheme No.134. The appellants were allotted Flat No.E-207, in Block E. The petitioner/appellant did not respond to said communication and did not take any positive measures in this regard.

4. First some undisputed facts. Originally the writ petition was filed by appellant No.1, claiming right through his father Kashiram and his wife, the Appellant/petitioner No.2. Appellant No.1 is now said to be a practicing Advocate, but in the year 1998 when temporary patta, was given, he was a Naib Tehsildar.

5. Annexure 23 is the letter of allotment dated 22.7.1998, allotting land for a period of 30 years under the Act of 1984. Clause 4 of the said allotment is that if the land is required in public interest, then pattedar will be relocated.

6. In Writ Petition No.509/2013 filed by the appellants earlier, the learned Single Bench has recorded a following finding on 13.08.2012, as under:- "Undisputedly, the house allotted was constructed on the piece of land. It was allotted to one Kashiram who was the father of Durgashankar, presently an Advocate and at the relevant time he must be Patwari and was promoted as Tehsildar. There is nothing on record to demonstrate that in what category Patta was allotted to the father of the petitioner under the MP Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (hereinafter called "Act of 1984") and the MP Nagriya Kshetro Ke Bhumihin Vyakti (Pattadhurti Adhikaron Ka Praday Kiya Jana) Niyam, 1998. However, since the fact remains that the house of the petitioner has been removed under the provisions of the Act and if the possession is taken under the provisions of the Act and if the possession is taken then the alternative arrangement has to be made, therefore the authorities are directed to look into the matter and do the needful within a period of 6 months in accordance with law."

(Emphasis supplied)

7. It is said order which the appellant seeks to enforce by way of the present writ petition, now in appeal.

8. The Act of 1984 was enacted to settle land in favour of landless persons in any urban area. The cut-off date has been extended from time to time in terms of Section 3, of the Act of 1984. The lease hold rights conferred under sub-section (3) of Section 3 are not transferable by sub-lease, sale, gift or mortgage or any

other manner except by way of inheritance.

9. A "Landless person" who is entitled for allotment of land under the Act of 1984 means a person who does not own either in his own name or in the name of any member of his family any house or land in an urban area where he is actually residing. As per the policy, patta can be given to those persons who are "urban poor"; who do not have any means to purchase land and construct houses in the urban locality.

10. The father of appellant No.1 claiming to be "unauthorized occupant" of the public land claims to have right for settlement of land. Land measuring 529 square feet was allotted to the father of appellant No.1 and similar piece of land was allotted to wife of the appellant No.1. As per the appellants, the allotment was made in the year 1984 but the letter of allotment was issued on 22.7.1998. The appellants have attached certain documents alongwith the memorandum of appeal.

11. The appellants also rely upon an order passed by a Division Bench of this Court on 23.4.2014 in Writ Appeal No.325/2010 [Om Prakash Dhangar and others Vs. Principal Secretary, Department of Revenue, State of MP and others] and other connected matters, disposed of the matters wherein the directions were sought to the State to modify the Nazul Maintenance Khasra Numbers in accordance with the Revenue Book Circular (IV-1)(a).

12. A perusal of Annexure A/5 shows that the Collector has passed an order on 24.9.2012 that the house of 13 holders of settlement were coming in the alignment of LIG Link road. All the settlers agreed to shift in view of the larger public interest of construction of road. It was decided that about 60-80 houses are available in Scheme Nos.103 and 134 respectively, which can be allotted to the persons whose land was falling within road alignment, who were to be resettled. After consider the respective contentions, the Collector passed an order that no further settlement shall be made on the Nazul land falling in the road alignment and that all settlers who fall within the road alignment shall remove the encroachments. It was also directed that 13 settlers whose houses are coming in way of construction of road from LIG to Ring Road, they shall be given alternate accommodation in Scheme No. 103 or 134, in accordance with the Rules.

13. The appellants have also attached communication dated 22.9.2012 - Annexure 32, wherein the appellants were informed that the houses constructed on the land allotted is required to be removed and that for an alternative land the appellants should appear in the Office of Collector on 24.9.2012. On 24.9.2012 vide Annexures A-34 and A-35, the appellants were informed that flats are available in Scheme No.103 or Scheme No.134. The appellants were called upon to appear in the office for the said purpose. Still further, the appellants have attached the reply submitted on behalf of respondent No.5 on 17.7.2016, wherein allotment of Flat No.E- 207 to appellant No.2 vide letter of

allotment dated 4.10.2013 which was changed to Flat No.E-214, on 26.11.2014 - Annexures R/2 and R/3 have been appended.

14. The Executive Engineer of Indore Development Authority has filed an affidavit today itself, wherein it has been interalia mentioned that the Flats were allotted to the appellants as per Resolution dated 30.11.2012, but the appellants have not undertaken any action for completion of formalities till date. Hence, possession of these flats could not be handed over.

15. With this background, we need to examine the stand of the appellant for allotment of alternate site.

16. Appellant No.1 was working as Patwari, as recorded by this Court in the order-dated 13.8.2012 in Writ Petition No.509/2013. It has also been recorded that there is nothing on record to demonstrate that in what category patta was allotted to the father of the petitioner i.e. appellant No.1. Though appellant No.1 denies that he was never posted at Indore, but the fact that the allotment of patta was made in favour of his father and wife in the year 1998 cannot be said to be an honest act of allotment of settlement of his near relations. The family of the Appellant no.1 does not fall in the category of landless person and urban poor. The allotment was lacking in bona-fides.

17. Even if, it is assumed that the allotment was proper, but in view of the finding recorded by the Collector on 24.8.2012 that 13 settlers, including the present appellants, have willingly agreed to remove the construction to facilitate widening of road with a condition that the suitable alternate arrangement was to be made. As per appellants themselves, an offer for allotment was made and later allotment was made in the year 2013-2014. As a "settled person" on a "public land", the settlers have a right to be accommodated in the alternative accommodation, but not to be accommodated as per the size and in the colony desired by the appellants. The stand of the appellants is that they cannot accept alternative accommodation as they cannot satisfy the condition of the category "Below Poverty Line". Be it as it may, the fact remains alternative accommodation is to provide shelter over the head of the settlers, but not to provide a source of income or an investment for the settlers. It appears that the appellants have sought a direction for allotment of a Plot of 2000 square feet, with a further direction that the respondents should construct double storied house for them, means that it is not a shelter over their head which the appellants are looking, but an investment for financial gains. The entire process adopted by the appellants for allotment of alternate accommodation cannot be said to be fair and reasonable, which may warrant consideration in the present intra court appeal.

18. Accordingly, the appeal stands dismissed.