
(2012) 11 MP CK 0010
In the Madhya Pradesh High Court
Case No : R.P. No. 501 of 2012

Jabalpur Development Authority

APPELLANT

Vs

Smt. Priyamvada Sinha and another

RESPONDENT

Date of Decision : 27-11-2012

Acts Referred:

Citation : (2012) 11 MP CK 0010

Hon'ble Judges : R.S. Jha, J

Bench : Single Bench

Advocate : R.P. Agrawal, with Mr. Anuj Agrawal, for the Appellant; Ravi Ranjan, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Jha

1. This is an application for review of the order passed by this Court in W.P. No. 7607/08 dated 12.08.2010 wherein this Court had decided the writ petition filed by the respondents in the following terms:-

9. In view of the aforesaid facts and circumstances of the case, specifically the documents filed by the respondent itself which indicate that the land of the petitioners of khasra nos. 37/1, 38/1 and 57/1, possession was taken over by the respondent/J.D.A. without being acquired or being included in the acquisition proceedings and that in similar situation, the respondent/J.D.A. has returned land for land of equal area to the affected persons and that the respondent/authority being State is required to act within the four corners of law keeping the concept of parity in mind, the petition filed by the petitioners is disposed of with a direction to the respondent/J.D.A. to take a decision in respect of the petitioners' claim for being returned 25105 Sq. ft. of land either in the same scheme i.e. Scheme no. 9 or in some different scheme of J.D.A. expeditiously in accordance with law, preferably within a period of three months from the date of furnishing a certified copy of this order on the said authority by the petitioners.

It is submitted by the learned senior counsel for the applicant/JDA that while the respondents/authorities were executing the order passed by this Court and making efforts to implement the same they received a written complaint from one Sushil Kumar Mishra, R.T.I. Activist which was handed over to the Chairman of the authority on 21.05.2012 wherein it was stated that the respondents have sold their land comprised in Khasra no. 37 and 38 inspite of which a false claim in collusion with certain officials of the authority has been projected before this Court as well as the authorities which has led to passing of the order in the writ petition No. 7607/08 filed by the respondents which would result in a projected loss of about Rs. Five crores to the authorities.

2. It is submitted that on receiving the complaint it was examined and the Chief Executive Officer of the J.D.A. constituted a committee of nine persons to examine the whole matter in terms of the allegations made in the complaint by his order dated 23.05.2012. It is submitted that the committee after collecting the necessary revenue records and conducting physical verification of the spot, prepared a map and submitted its report on 14.06.2012 and according to it an area of 13770 sq. ft. out of khasra no. 37/1 and 38/1 of village Gohalpur had gone into a road which is provided by late Raj Sujan Sinha who was the husband of respondent no. 1 to different purchasers as an access to plot and the authority had not taken into possession any piece of land of khasra no. 37 and 38 nor had they constructed a road on the said khasras at any point of time. It is stated that infact the entire area of khasra nos. 37 and 38 was sold by the respondents together with the road and stood fully exhausted as a result thereof and the authority did not include this land in scheme no. 9 notified by it nor was the said land ever acquired.

3. It is submitted that the aforesaid fact could not be brought to the notice of this Court as one Patwari Shri Nonelal and one Shri G.N. Singh who was posted in the office of the authority and was working as Land Valuation officer/ Land Acquisition Officer-cum- Assistant Engineer had filed the return in W.P. No. 7607/08 as well as in the W.A. No. 1428/2010 by suppressing the aforesaid facts or verifying the facts mentioned in the note sheets of the lay out of the scheme. It is stated that the aforesaid two officers have been issued show causes notice in respect of the illegality committed by them and the matter is pending enquiry. It has further been stated that as many as four F.I.Rs. have already been registered by the Lokayukt, M.P. against Shri G.N. Singh in respect of several irregularities and the matter is under investigation.

4. It is also stated that as the report of the committee was not available with the applicant at the time when W.P. No. 7607/08 was heard therefore, the matter be reopened and the order passed by this Court be recalled as the orders were passed on the basis of false reports and return prepared by the officers and authorities of the J.D.A. against whom action is being taken by the J.D.A.

5. The learned senior counsel for the applicant by filing additional documents has stated that the khasra entries of the year 2011-12 clearly establish that khasra

no. 37/1 is recorded in the name of the respondents having an area 0.057 hectares, khasra no. 38/1 is also recorded in the name of respondents having area 0.114 hectare and khasra no. 57/1 recorded in the name of respondents having an area of 0.149 hectares. It is submitted that when measured in sq. ft. the area of the three khasra nos. comes to 6133 sq. ft. 12266 sq. ft. and 16092 sq. ft. respectively.

6. It is stated that the total area recorded in the name of the respondent no. 1 of khasra nos. 37/1 and 38/1 comes to 18399 sq. ft. out of which 13770 sq. ft. has been sold by the respondents to various purchasers for providing a road or passage and therefore only 4629 sq. ft. remains. It is also submitted that out of total area of 16092 sq. ft. of khasra no. 57/1, 6895 sq. ft. was surrendered to the applicants and settled by the respondents themselves through a compromise deed, copy of which is filed as Document no. P/15 along with the additional rejoinder and therefore only 8077 sq. ft. of khasra no. 57/1 remains. It is concluded that only 4629 sq. ft. out of khasra no. 37/1, 38/1 and 8077 sq. ft. out of khasra no. 57/1 remain with the applicant whereas this Court by order dated 12.08.2010 passed in W.P. No. 7607/08 has ordered return of 25105 sq. ft. to the respondents which is contrary to the facts and documents on record. The learned senior counsel for the applicant submits that the aforesaid glaring apparent mistakes have occurred on the face of the record which have come to the knowledge of the applicants subsequently warranting review of the order passed in the writ petition.

7. The respondents per contra submits that the J.D.A. had filed a writ appeal against the order dated 12.08.2010 which was registered as W.A. No. 1428/10 and was dismissed as time barred by order dated 18.04.2011 in the following terms:-

The instant writ appeal has been filed 77 days beyond time. There is an application for condonation of delay. The only explanation given is usual bureaucratic delay. The impugned order merely directs the respondent of the writ petition (who is appellant before us) to take a decision.

Law of limitation is same for private individuals and for the Government bodies. If delay is condoned on this frivolous pretext, it would encourage such bureaucratic red tapism in government and semi Government organization.

In view of the aforesaid, we are not inclined to allow the application for condonation of delay. Hence I.A. No.

2020/2011 is rejected.

The appeal is dismissed as time barred.

8. It is submitted that in view of the aforesaid facts and circumstances, the application for review after dismissal of the writ appeal filed by the applicant is not maintainable in view of the decisions of the Supreme Court rendered in the cases of Haridas Das Vs. Smt. Usha Rani Banik and Others, , Bakshi Dev Raj and

Another Vs. Sudhir Kumar, and Thungabhadra Industries Ltd. Vs. The Government of Andhra Pradesh,

9. On merits it is submitted by the learned Counsel for the respondents that the contentions of the applicants raised in the review are even otherwise baseless and misconceived as is evident from the documents filed by them with the reply. It is submitted that the respondents had filed an application for demarcation of khasra no. 37/1, 38/1 and 57/1 of village Gohalpur before the Naib Tahsildar who in revenue case no. A/12/2000-2001 passed an order on 2.11.2000 directing the concerned Patwari to demarcate the aforesaid Khasras and pursuant to the order passed by the Naib Tahsildar, the Patwari conducted demarcation proceedings after giving due notice to the applicant J.D.A. and in the presence of the revenue Inspector and Patwari of the J.D.A., demarcation proceedings were conducted on 23.11.2000 in which it was found that the applicant J.D.A. had encroached upon part of the aforesaid three khasra nos. and constructed a complex and a road on the same. The report submitted by the Patwari was duly affirmed by the Tahsildar in the revenue proceedings copy of which is filed along with reply as Annexure R/1.

10. It is further stated that the contention of the applicant that the respondents had sold 15 ft. of the aforesaid khasra nos. to each of his purchasers to be used as road is patently and apparently incorrect. The learned Counsel for the respondents submits that no document has been filed by the J.D.A. to indicate that the respondents have ever sold 15 sq. ft. of aforesaid khasra nos. to each of the subsequent purchasers nor has any sale deed executed by them in favour of the purchasers to that effect been brought on record and therefore the contentions of the J.D.A. and consequently the review petition are misplaced and misconceived.

11. The respondents have also filed the entire note sheets obtained under the Right to Information Act in respect of the proceedings undertaken by the J.D.A. and the application for redemption of the land which has been encroached upon by the J.D.A. which indicate that the process as prescribed by law was duly followed by several officers of the J.D.A., on the basis of which submissions were made before this Court in Writ petition no. 7607/08 to the effect that the J.D.A. had infact taken possession of 25105 sq. ft. of their land. The respondents have further clarified that though the total area of khasra nos. 37/1, 38/1 and 57/1 comes to 34430 the claim of the respondents in the petition only relates to 25105 sq ft. after duly deducting the area 6895 sq ft. of khasra no. 57/1 which was surrendered to the applicant by the respondents after the compromise was entered into between the parties. The respondents have further stated that the J.D.A. before making any submission before this Court in W.P No. 7607/08 had obtained legal opinion of their counsel which was provided after extensively discussing the matter with one Shri Shyam Mandal employee of the applicant on 20.8.2001 in which it has been clearly opined that though the area of khasra no. 37/1, 38/1 and 57/1 has not been included by the J.D.A. in Scheme no. 9,

however, as the J.D.A. has used the property of a private individual without acquiring the same in accordance with law and hence it is bound in law to compensate the owners adequately. A copy of the legal opinion is filed as Annexure R/4.

12. It is submitted that in view of the aforesaid documents which have been filed by the respondents, no case for review is made out. Even otherwise it is stated that the allegations of the applicant only relate to 13770 sq. ft. whereas there is no dispute or objection of the applicant in respect of 12706 sq. ft. and therefore the entire claim of the applicant deserves to be rejected as even otherwise they have not been able to justify or substantiate the allegations and contentions made by them on the basis of any documents on record in respect of the disputed 13770 sq. ft.

13. I have heard the learned Counsel for the parties at length.

14. It is a settled law that rehearing or fresh arguments are not permissible in review proceedings wherein the scope is limited to looking into glaring or apparent mistake on the face of the record and no more. Keeping in mind the aforesaid limited scope the claim of the applicant in respect of the fact 13770 sq. ft. is required to be examined.

15. From the documents it is clear that no document has been filed by them to indicate that the respondents had ever sold the aforesaid 13770 sq. ft. of khasra nos. 37/1 and 38/1 as a road to any person. The applicant has also not filed any document to substantiate their submissions that the respondents have executed any sale deed in favour of the private individual to the effect that 15 sq. ft. passage would be left open for the purchasers as an access to the land purchased by them property.

16. In the absence of any documents before this Court in this regard, the contention of the applicant based merely on the subsequent enquiry conducted by them during implementation of the order passed by this Court, can not be accepted, more so, in view of the fact that the revenue authorities of the State i.e. the Naib Tahsildar and other have conducted a demarcation and given a report to the effect that the area shown in red in the demarcation proceedings has been encroached upon by the applicant and a complex and road has been constructed thereon. The report of the revenue authorities of the State is not disputed, a copy of which is filed as Annexure R/1.

17. It is also undisputed and infact agreed by the learned Counsel for the parties that Khasra entries of the year 2011-12 clearly indicate and demonstrate that khasra no. 37/1, 38/1 and 57/1 of village Gohalpur are in the name of the respondents and that total area of the aforesaid khasra nos. comes to 34430 sq. ft. out of which 6895 sq. ft. of khasra no. 57/1 has been surrendered by the respondents pursuant to the compromise entered into between the parties.

18. As the fact that aforesaid khasra nos. have been recorded in the name of the

respondents and belong to them is not disputed, their area is not disputed, demarcation proceedings of the revenue authorities Annexure R/1 are not disputed and as there is no document on record to indicate that 13770 sq. ft. out of khasra nos. 37/1 and 38/1 has been sold by the respondents as road to their subsequent purchasers, I find that there is nothing on record warranting review or recall of the order passed by this Court in the writ petition which was based on the statements and documents produced before the court at that point of time and which has been disposed of with a direction to the authorities to decide the claim of the petitioner.

19. As there is no glaring or apparent mistake on the face of the order dated 12.08.2010 passed in W.P. No. 7607/08 warranting review, the application for review is accordingly dismissed. However, it is made clear that in case the authorities feel that they have suffered any loss due to misconduct on the part of any of its employees, they would be at liberty to take proceedings against the said employee and recover the loss, if any. With the aforesaid observations, review application stands dismissed.