
(1999) 10 MP CK 0016
In the Madhya Pradesh High Court
Case No : Writ Petition No. 2550 of 1998

Kallu

APPELLANT

Vs

Jabalpur Development Authority and another

RESPONDENT

Date of Decision : 01-10-1999

Acts Referred:

Madhya Pradesh Town Improvement Trust Act, 1960 — Section 71(2)

Citation : (2000) 1 MPJR 273 : (2000) 1 MPLJ 313

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

Bench : Single Bench

Advocate : P.N. Dubey, for the Appellant; S. Nagu for respondent No. 1 and V.K. Shukla, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.P. Khare, J.

This is a petition under Article 226 of the Constitution of India for a direction to the respondents that they would not interfere with the possession of the petitioner on the lands in dispute.

The petitioner was Bhumiswami of Khasra Nos. 251 and 252/1 area acres in Gohalpur, District Jabalpur. This land was acquired by the Improvement Trust, Jabalpur on 26-1-1968 for its scheme No. 3 u/s 71(2) of the M.P. Town Improvement Trust Act, 1960. The physical possession of the land was taken on 8-7-1970. An amount of Rs. 9,000/- was assessed as compensation by the Tribunal but the petitioner did not accept the same. The Improvement Trust, Jabalpur was succeeded by respondent No. 1 Jabalpur Development Authority. The petitioner sold portions of the land mentioned above to Sitaram Soni and three other persons by registered sale-deeds dated 21 -10-1974 and 10-11 -1975.

The petitioner's case is that by letter dated 28-6-1990 (Annexure P-3) addressed to Sitaram Soni the respondent No. 1 has expressed that it has

released from acquisition the area of the two Khasra numbers 251 and 252/1 except the area which was required for building M.R. 5 (road) in favour of the cultivator from whom it had been acquired. The condition of the release was that no compensation would be payable to the cultivator for that portion of the land which had been used for construction of the said road. Similar release letters had been issued to Kunjbihari and others in the year 1983 and their claim on the basis of the release letters has been upheld by this Court by judgment dated 21-9-1993 (Annexure P-6) in M.P. No. 353 of 1990. The petitioner claims that his claim should also be upheld.

The case of the respondents is that the alleged letter dated 28-6-1990 (Annexure P-3) is forged. It was never issued by the respondent No. 1. However, it is admitted that such release letters were issued in the year 1983 in favour of some persons who had filed M.P. No. 353 of 1990.

The petitioner has filed a rejoinder stating therein that letter dated 28-6-1990 is genuine and it has been despatched under serial number 4189 from the despatch register of the office of the respondent No. 1. The petitioner has filed an affidavit that he obtained a copy of this despatch register after submitting a proper application for that purpose. In reply to this the respondent No. 1 has stated that the said original despatch register is missing from its office.

The point for determination is whether the land which had been acquired could legally be released and whether in fact it was done so.

It is admitted that the land had been acquired in the year 1968 u/s 71(2) of the M.P. Town Improvement Trust Act, 1960. Section 71(2) provides that when a notice under Sub-section (1) is published in the Gazette the land shall, on and from the date of such publication, "vest absolutely in the Trust" free from all encumbrances. Section 69 lays down that the sanction of the State Government has to be obtained by the Trust for acquisition of the land. u/s 70 the State Government grants sanction if it is satisfied that the acquisition is in public interest. In this case the possession of the land was also taken by the Trust in the year 1970. The effect of the acquisition was that the title of the petitioner in the land in dispute was extinguished and the Improvement Trust became absolute owner of the land. There was no provision in the M.P. Town Improvement Trust Act, 1960 to enable the Trust to resort to withdrawal of the acquisition proceeding. After the vesting of the land in the Trust the petitioner had no right to transfer the land to Sitaram Soni or to any other person. The transferee did not acquire any right or interest in the land on the basis of the sale-deed executed in his favour by the petitioner. There is no provision in the Act by which land statutorily vested in the Trust could revert to the owner. After vesting of the land in the Trust it could not be divested of it.

Section 71(2) of the M.P. Town Improvement Trust Act, 1960 is in pari materia with section 16 of the Land Acquisition Act, 1894. It was held in *Laxmichand and Others Vs. Gram Panchayat Kararia Chauraha, Lashkarpur and Others*,

interpreting section 16 that there can be no withdrawal from the acquisition proceeding after the possession is taken. It has been held by the Supreme Court in H.M. Kelogirao and Others Vs. Govt. of A.P. and Others, that after vesting there is no provision for divesting. Further, in State of Kerala and others Vs. M. Bhaskaran Pillai and another, it has been held that surplus land should be put to auction and not to be sold to erstwhile owner.

The letter dated 28-6-1990 (Annexure P-3) even if it was issued by the Chief Executive Officer of the Jabalpur Development Authority could not legally divest the Authority of the land which had vested in it. There could be release of the land in the same manner in which it had been acquired. The Chief Executive Officer had no power or authority to release any part of the land in favour of erstwhile Bhumiswami. The Improvement Trust was abolished and was succeeded by the Jabalpur Development Authority under the provisions of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973. In this Act there is no provision either for acquisition or release of the land which had been acquired earlier. Section 56 of this Act provides for acquisition of land by the State Government under the provisions of the Land Acquisition Act, 1894.

The letter dated 28-6-1990 (Annexure P-3) is shrouded with suspicion. In case the Jabalpur Development Authority had taken a conscious decision to release the land in favour of the petitioner it would have written the letter addressed to him. The letter Ex.P-3 is addressed to Sitaram Soni who had no rights on this land. The respondent No. 1 has denied that any decision for release of the land was taken by it. Therefore, the letter Ex.P-3 does not confer any right on the petitioner. The learned counsel appearing on his behalf has strongly relied upon the judgment dated 21-9-1993 in Sheikh Barkatulla vs. Jabalpur Development Authority, M.P. No. 353 of 1990. A perusal of this judgment shows that it was on a different set of facts. In that case, the letter dated 9-9-1983 was written to the Bhumiswami. That judgment was primarily based on the doctrine of promissory estoppel. In the present case there is no letter of the respondent No. 1 addressed to the petitioner. It is well settled that there can be no estoppel against a statutory provision. The law does not permit release of the acquired land and therefore the Chief Executive Officer of the Jabalpur Development Authority could not legally write to Sitaram Soni that the land in dispute has been released to the cultivator from whom it had been acquired under the law. The only remedy available to the petitioner is to take the amount of compensation which had been determined by the Tribunal.

This petition is dismissed.