
(2015) 06 MP CK 0039
In the Madhya Pradesh High Court
Case No : WP-5113-2012

K.L. Sahu

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 181, 182, 182(2)

Citation : (2015) 06 MP CK 0039

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Advocate : A.P. Shroti, Learned Counsel, for the Appellant; A.P. Singh, Learned Govt. Adv., Advocates for the Respondent

Final Decision : Disposed off

Judgement

S.K. Gangele, J—The petitioner has filed this petition against the order dated 20.3.2012, (Ann. P-24). The petitioner further challenged the jurisdiction of the Collector to continue proceedings initiated against the petitioner under Section 182(2) of M.P. Land Revenue Code 1959.

2. A Cooperative Society named as Awas Rahat Grih Nirman Sahkari Samiti Maryadit, hereinafter referred as a "Society" registered under the provisions of M.P. Cooperative Societies Act 1960 was allotted a land of 13 acres by the Government. The petitioner was a member of the Cooperative Society. The Society granted sub lease to the petitioner on 1.11.2007 in respect of plot admeasuring 3495.70 sq. ft. The lease was executed in favour of the petitioner for a period of 30 years from 1.4.1986 upto 31.3.1916. The appropriate Government granted permission to the society to use 0.30 acres of land out of 13 acres allotted to the Cooperative Society for commercial purpose, vide order dated 31.1.2007. The society granted sub lease to the petitioner for commercial purposes.

3. A show cause notice was issued to the petitioner by the Collector on

19.9.2011 under Section 182 of M.P. Land Revenue Code to show cause that as to why the lease granted to the petitioner and the society be not cancelled. The aforesaid show cause notice was challenged by the petitioner before this court in a writ petition on the ground that the Collector had no jurisdiction to issue show cause notice. The writ court vide order dated 21.11.2011 passed in W.P. No. 19625 of 2011 disposed of the writ petition with the observation that the petitioner be given opportunity of hearing at the time of hearing. Against the aforesaid order the petitioner filed a writ appeal that was registered as W.A. No. 1250 of 2011. The Division Bench of this court disposed of the writ appeal with the following directions:-

- (i) the appellant is allowed 20 days" time from today to the reply to show cause notice issued by the Collector, Bhopal supported by necessary documents;
- (ii) in the reply, the appellant can raise all the objections including the jurisdiction of the Collector in respect of issuance of notice and also the jurisdiction of the Collector for cancellation of registered sub- lease;
- (iii) if any such reply is filed to the show cause notice within a period of 20 days from today before the Collector, Bhopal by both the appellants, the Collector, Bhopal shall recall the earlier order dated 23.11.2011 and take the reply/ objection on record and thereafter to proceed in the matter;
- (iv) before considering the case on merits, the Collector, Bhopal shall decide the preliminary objections if raised by the appellant in respect of his jurisdiction as stated hereinabove and after deciding the aforesaid preliminary objections, the Collector, Bhopal may proceed further in the matter in accordance with law;
- (v) it is directed that the Collector, Bhopal shall not pass any order till 31st December 2011 in respect of the matter, which is subject matter of these appeals.

With the aforesaid directions, before the appeals are finally disposed of with no order as to costs.

4. Thereafter the Collector passed the impugned order dated 20.3.2012 which is under challenge in this writ petition. The Collector has observed that the lease was granted to the Society under certain terms and conditions by the Government and the petitioner is the sub-lease holder. If the petitioner violates terms and conditions of the sub-lease, then the Collector has power to initiate proceeding under Section 182(2) of the M.P. Land Revenue Code.

5. Learned counsel on behalf of the petitioner has contended that the Collector has no jurisdiction to initiate proceeding in exercise of powers under Section 182 of M.P. Land Revenue Code in regard to Nazul Land. It is further contended by learned counsel for the petitioner that the lease was granted to the Society under the provisions of Revenue Book Circular, hence the proceeding can not be initiated by the Collector.

6. Contrary to this, learned counsel appearing on behalf of the State has submitted that the Collector has powers and authority to initiate proceedings.

7. Section 182 of M.P. Land Revenue Code reads as under:-

182. Rights and liabilities of a Government lease:- (1) A Government lease shall, subject to any express provisions in this Code, hold his land in accordance with the terms and conditions of the grant, which shall be deemed to be a grant within the meaning of the Government Grants Act 1895 (XV of 1995).

2. A Government lease may be ejected from his land by order of a Revenue Officer on one or more of the following grounds; namely:-

(i) that he has failed to pay the rent for a period of three months from the date on which it became due; or

(ii) that he has used such land for purposes other than for which it was granted; or

(iii) that the term of his lease has expired; or

(iv) that he has contravened any of the terms and conditions of the grant;

Provided that no order of ejection of a Government lease under this sub-section shall be passed without giving him an opportunity of being heard in his defence.

8. In accordance with Section 182(2) a Government lessee may be ejected from land by order of Revenue Officer. The Section clearly prescribes that Government lessee can be ejected from his land, if he contravenes certain conditions. Section 181 of the M.P. Land Revenue Code defines Government lessee. It stipulates that every person who holds land from the State Government or the rights to occupy land as granted by the State Government or the Collector he is called Government lessee. In the present case the land was granted on lease to the Society as admitted by the petitioner himself and thereafter the society granted sub lease to the petitioner. In such circumstances, in my opinion the Collector has powers and authority to initiate proceedings against the petitioner in exercise of powers under Section 182(2) of M.P. Land Revenue Code 1959. Same principle has been laid down by the Hon'ble Supreme Court in Madhya Pradesh Housing Board Vs. Shiv Shankar Mandil and others in Civil Appeals Nos. 3840-41 of 2001 and M.P. Housing Board Vs. Shiv Shankar Mandil and Others, AIR 2009 SC 863 : (2008) 11 JT 667 : (2008) 13 SCALE 661 : (2008) 2 UJ 1329

9. Learned counsel for the petitioner has further contended that the petitioner has not violated any terms and conditions of the lease deed. The Government accorded approval to change the nature of the land for commercial purposes. Apart from this, the petitioner is willing to surrender the excess land in excess to 3000 sq. ft. land for which the society was competent to grant lease to a member. In my opinion, these are the merits of the case and in this writ petition, the petitioner has only challenged the jurisdiction of the Collector to initiate proceedings. In this view of the matter, the writ petition is disposed of with the

following directions:-

(a) The Collector has jurisdiction to initiate proceeding against the petitioner in exercise of powers under Section 182(2) of M.P. Land Revenue Code.

(b) The petitioner is at liberty to raise the grounds in regard to merits of the matter for grant of lease and he shall also submit before the authority that he has not violated any terms and conditions of the lease. The authority may consider the same in accordance with law.

10. With the aforesaid directions and observations the writ petition is disposed of.

11. No order as to costs.