
(1996) 10 MP CK 0026
In the Madhya Pradesh High Court
Case No : Writ Petition No. 321 of 1995

Ku. Archana Dey and Another	Vs	APPELLANT
South Eastern Coalfields Ltd. and Others		RESPONDENT

Date of Decision : 11-10-1996

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 4
Constitution of India, 1950 — Article 227
Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 1, 5A, 5B

Citation : AIR 1997 MP 103 : (1996) ILR (MP) 351 : (1997) 1 JLJ 422 : (1997) 1 MPLJ 592

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : Umesh Trivedi, for the Appellant; P.S. Nair, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition filed under Article 227 of the Constitution of India, the petitioners pray for quashing of the order dated 17-10-1989 (Annex, P-5) passed by the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, (hereinafter referred to as the Act). By the said order the petitioners have been directed to remove their unauthorised construction over the land. The petitioners further pray for quashing of the judgment of the appellate court dated 25-1-1995 passed by the District Judge, Bilaspur, whereby the appeal preferred by the petitioners, has been dismissed.

Short facts, giving rise to the present writ petition, are that a project known as Gevra project was started with the aid and assistance of the World Bank for Supplying Coal to National Thermal Power Corporation, Korba. One of the mines in the Gevra area is Dipka Augmentation Project which is exclusively meant to supply coal to N.T.P.C. Korba and the distance between the two is about 25 Kms. For supply of coal, it was decided that the 2 points be connected by railways. By

notification dated 19-10-1981, Govt. of India, under the provision of Coal Bearing Areas (Acquisition and Development) Act, 1957 acquired various plots including part of Plot No. 416. According to the respondents the Plots acquired 416/4, having an area of 0.42 decimal, 416/5 having an area of 0.30 decimal and 416/6, having an area of 0.72 decimal. It is admitted position that total area of plot No. 416 acquired is 1.44 acre. According to respondents 1 and 2 construction made by the petitioner is over a land which is part of Plot No. 416. The stand of the petitioners, however, is that the land over which the construction has been made was not acquired. According to the petitioners the total area of plot No. 416 in village Dipka is 20.44 acres and only a part thereof i.e. 1.44 acres was acquired. It is further averred by the petitioners that in the revenue records of 1943-44, the disputed land was recorded in the name of one Ghasiyageda and the land in question fell into the share of Itwar, his son. The said Itwar vide registered sale deed dated 25-7-1986 sold a part of his land to the petitioner No. 2 Islam Khan. The aforesaid Itwar, according to the petitioners executed another sale deed in favour of Usman AH who later on by registered sale deed dated 23-3-1988 sold the land to petitioner No. 1. It is the stand of the petitioners that they have constructed houses over their respective plots after investing their entire saving. It is relevant here to state that the notification for acquisition was made on 19-10-1981 and the petitioner have purchased the land after its acquisition. However, the controversy in the case pertains to the identification of the land. It is admitted position that 1.44 acres out of the total area of plot No. 416 was acquired and according to the petitioners the land over which the houses have been constructed did not form part of the acquired land whereas according to the respondents 1 and 2 the houses have been constructed over their acquired land.

The Estate Officer served a notice u/s 5A (2) of the Act on the petitioners saying that they have unauthorisedly constructed the building or raised the structure on the acquired land of plot No. 416 and called upon the petitioners to remove the building structure or to show cause why the same be not removed. The petitioners showed their cause. The Estate Officer on analysis of the evidence produced on behalf of the parties held that the building has been constructed over the acquired land. The petitioners preferred an appeal against the aforesaid order which has been dismissed by the District Judge. The aforesaid orders of the Estate Officer as also the District Judge are being impugned in the present writ petition.

It is well settled that this Court in exercise of its powers under Article 227 of the Constitution of India does not enter into the meticulous examination of fact and upsets the finding of the subordinate courts/ Tribunals unless perversity is shown. Keeping in mind the aforesaid principle, I proceed to examine the rival submission.

Shri Trivedi to show perversity in the findings of the court below and to drive home his point attempted to refer to evidence of the "persons examined in the

case. Both the courts below have referred to the evidence produced on behalf of the parties and on meticulous examination found that the buildings were constructed over the acquired land. It is relevant here to state that at the instance of the petitioners, the appellate court appointed a Commissioner, who has also submitted a report saying that the buildings were constructed over the acquired land. I do not find any perversity in the finding recorded by the two courts below.

Shri Trivedi then submits, that the Estate Officer has issued notice u/s 5A of the Act whereas the order has been passed, both under Sections 5A of and 5B of the Act. According to his submission, when the notice was issued u/s 5A of the Act, the Estate Officer had no authority to pass orders, u/s 5B of the Act.

Shri Nair, however, appearing on behalf of the respondents submits that the aforesaid objection was not raised before either of the courts below and therefore, the petitioners cannot be permitted to raise this point for the first time before this Court. I am of the view, that a pure question of law, can be raised before the writ court for the first time of course the same must be based on the facts pleaded. In my opinion, on the basis of the facts pleaded a pure question of law can be raised for the first time, before the writ court. However, this does not advance the case of the petitioners. Relevant facts constituting exercise of the power under Sections 5A and 5B have been enumerated in the notice and on the basis of those facts the petitioners showed their cause.

It is well settled that merely wrong reference of a provision of law in the notice or the order shall not invalidate the notice or the order, on this ground alone. Here in the present case the facts required for exercise of the power under Sections 5A and 5B of the Act do exist and in that view of the matter the orders of the Estate Officer cannot be faulted on the ground that in the notice only Section 5A of the Act was referred. I negative this submission of the learned counsel for the petition.

Shri Trivedi appearing in support of the writ petition further submits that the provision of the Act shall not apply. The aforesaid submission has been made on the assumption that the land over which buildings were construed, was not acquired. As I have not upset the finding of the court below that the land over which the buildings were constructed was in fact acquired, the submission made on behalf of the petitioner should not detain me. Once it is held that the petitioners have constructed the building over acquired land, the provision of the Act is clearly applicable.

Shri Trivedi then submits that there being serious over the title of the land in question, the summary proceeding under the provision of the Act is uncalled for. In fact in support of the aforesaid submission he has placed reliance on a large number of authorities of the Apex Court.

It is well settled that in case of serious dispute of title existing over the land, recourse to the proceedings under the provision of the Act, cannot be taken.

However; in the present case, there is no dispute about the title of the land much less serious dispute. In the present case, the controversy revolves around the identification of the acquired land. The Courts below on the basis of the material placed before it, came to the conclusion that the land over which the buildings were constructed was in fact an acquired land. I am of the view that no dispute much less serious dispute of title is involved. I therefore, negative this submission of the learned counsel also.

Shri Trivedi appearing on behalf of the petitioners took objection to the manner in which this writ petition is being resisted by the Estate Officer. It is submitted that Estate" Officer has filed return along with respondent No. 1 for which the land was acquired and this fact according to his submission amply demonstrates that his order does not stand the test of natural justice. According to Shri Trivedi the Estate Officer is an authority expected to adjudicate the matter independently without being influenced by the fact that he is primarily an employee of an employer, for which the land was acquired. True it is that any authority passing statutory order should not joint hands with the persons in whose favour he has passed the order. Justice must not be done but must appear to have been done is the principle which has deep roots in our system.

I am of the opinion that the conduct of the Estate Officer joining hands with respondent No. 1 by filing one return to resist the petitioners case cannot be approved. However, the same will necessarily not lead to invalidity of the order. Nothing has been pointed out to show that the conduct of the Estate Officer while he was adjudicating the right of the parties was in any way objectionable. The subsequent abrasion in the action of the Estate Officer shall not invalidate the original order.

For the reasons stated above, I do not find any merit in this writ petition. Accordingly, it is dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.