
(2010) 05 MP CK 0058

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1852 of 1998

Kuldeep Singh Punjabi and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-05-2010

Acts Referred:

Madhya Pradesh Land Revenue Code, 1954 — Section 182

Citation : (2010) ILR (MP) 2068

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Ravish Agrawal, for the Appellant; Harish Agnihotri, for the Respondent

Final Decision : Allowed

Judgement

Sanjay Yadav, J.—Petitioners challenge the order dated 28.1.1998 whereby, the State Govt. Respondent No. 1 cancelled the Permanent lease of the Nazul land bearing plot No. 22, Nazul sheet No. 7 admeasuring 429 Sq. ft situated at Kareliganj, District Narsinghpur allotted to the Petitioner on permanent lease by order dated 8.2.1995; as also the consequential order dated 28.3.1998, 1.4.1998 and 16.4.1998.

2. The facts briefly are that, on an application by the Petitioner for an allotment of Nazul land and the proposal by the Collector Narsinghpur and a recommendation by Commissioner, Jabalpur Division, Jabalpur in a Revenue Case No. 83-A/20(1)-90-91, the State Government granted sanction to allot Nazul land in Nazul sheet No. 7, Plot No. 22 area 429 Sq. ft situated at Kareliganj, District Narsinghpur on a permanent lease for commercial purpose on the special conditions along with general conditions of lease.

3. In pursuant to the order of allotment and on depositing the requisite premium, additional premium, the lease rent and the interest, lease deed on 7.7.1995 was executed which was duly registered on 11.7.1995. Thereafter, the Petitioner

raised construction over the said land after being granted no objection on 2.9.1995.

4. Later on 4.12.1995 the Petitioner No. 1 sold the said land to Petitioner No. 2 vide registered sale deed. This transaction was perceived as violation of breach of the allotment order by the Nazul Officer during process of mutation who preferred the matter to Collector.

5. Collector, Narsinghpur after issuing a show cause notice and considering the reply forwarded its proposal to the State Government through the Commissioner vide memo dated 10.4.1997 for cancellation of lease, holding that the transfer of land by virtue of sale deed was in breach of condition of grant of lease. The State Government vide order dated 28.1.1998 cancelled the order of allotment dated 8.2.1995 and directed the cancellation of lease deed. Pursuant whereof the revenue authorities came in action to resume the possession.

6. The Petitioner herein challenges the order of cancellation as also the action in pursuance to such cancellation of allotment.

7. It is contended that, the proceedings on and from 31.8.1996 is a nullity as the Collector has no authority to issue notice for cancellation of lease executed by the State Government. It is further contended that, the lease deed dated 7.7.1995 did not create clog on the right of the Petitioner No. 1 to transfer the land in question. It is urged that Clause 7, instead when construed in a right perspective permits such transfer. It is further contended that prior subsequent to the proceedings initiated by the Collector, the Petitioner No. 1 deposited the lease rent which were duly accepted by the Respondent. It is urged that the acceptance of lease rent by the State Government amounted to condonation of breach of the lease as per Rule 31, Section IV, Sr. 1. No of Revenue Book Circular. The learned senior Counsel accordingly submits that the entire action of the Respondents regarding cancellation of allotment order and the lease deed is a nullity and deserves to be quashed. Relying on the judgment in AIR 1948 33 (Privy Council) , it is urged by the learned senior Counsel that there being no conditions stipulated in the agreement dated 7.7.1995 having an effect that the Petitioner No. 1 is prohibited from alienating the Nazul Land in question. It was beyond the powers of authority concern to have cancelled the lease on the ground of alienation.

8. Furthermore, placing reliance on second proviso to Clause 8 of the lease agreement, it is contended on behalf of the Petitioner that the breach, if any, of the term of lease agreement, the same is compoundable and the Respondents having not exercised such an option are not justified in cancelling the lease. It is accordingly urged that, the order canceling the allotment of Nazul land and the consequential action thereon being illegal deserves to be set aside and the Respondents be directed to restore the lease.

9. The Respondents on their turn refutes the averments. Placing reliance on the provision of Section 182 of the M.P. Land Revenue Code of 1959 that the

Petitioner being not a Bhumiswami has no absolute right over the property in question. It is further contended that the allotment of Nazul plot to the Petitioner was subject to the special conditions stipulated in the allotment letter dated 8.2.1995, where under, it was categorically mentioned under condition No. 3 that the allotted will not alienate the property in question. It is urged that non incorporating of the above terms in the lease deed dated 7.7.1995 will not absolve the Petitioner from the applicability of special conditions wherewith the Nazul land was granted to the Petitioner. It is contended that since the Petitioner No. 1 sold the land to Petitioner No. 2 in violation of the condition of allotments the authorities concern were well within their rights to cancel the order of allotment and the lease deed executed on 7.7.1995. The Respondents further refute the contention that the term of lease executed on 7.7.1995 super imposed the special terms and conditions stipulated in the allotment letter dated 8.2.1995. Furthermore, refuting the contention regarding bar being created by the provision in the revenue book circular as also the fact regarding depositing the lease rent after the proceedings, it is submitted on behalf of the Respondents that the same does disempowered the Collector to take action and that taking of lease rent does not tantamount to condonation of breach. It is urged that, there being specific breach of specific condition stipulated in the allotment letter, the action against the Petitioner is just and proper and calls for no interference.

10. Having considered the rival submissions, the question which falls for consideration is whether the right of Petitioner as lessee of a Nazul Land would be governed only by the terms of the lease deed executed on 7.7.1995 or also by the special terms which find mention in allotment letter but not expressly incorporated in the lease deed. And whether the deposit of lease rent all through would tantamount to condensation of the breach if any.

11. In respect of second aspect as to whether the deposit of lease rent all through by the Petitioner No. 1 would tantamount to condensation of breach if any, reference can be had of the judgment in *Murlidhar Jalan (since deceased) by L.Rs. Vs. State of Meghalaya and others*, wherein their Lordships were pleased to observe:

3. The Appellant had filed a civil suit for perpetual injunction seeking declaration of his title as landholder of the property. The trial Court granted the decree. But on appeal, the High Court reversed it in the First Appeal No. 58/90 dated December 20, 1996. The Division Bench of the High Court affirmed that order in appeal. The question is: whether the Appellant is entitled to the declaration of his title in respect of the property. Shri Goswami, learned senior Counsel for the Appellant, contends that initially the Appellant had come into possession of the property in his character as a tenant by virtue of perpetual lease for 99 years; after the expiry of the initial period of lease in 1965 though the Government had not renewed the lease, nonetheless, the Government had impliedly renewed the same by accepting the rent. The property was required for a public purpose and that the Government continued to be in possession of the property as a tenant

recognising title of the Appellant. Therefore, the High Court was clearly in error in rejecting the claim of the Appellant and confirming the decree of the appellate Court. In support thereof, he places reliance on Bishan Das and Others Vs. The State of Punjab and Others, . We find no force in the contention. It is an admitted position that renewal was not granted. Thereby, the previous lease stood expired and the relationship as tenant and landlord came to be terminated. He accepted the title of the Government; thus thereafter, he continued to be in possession as a trespasser. It is true that a lower level officer accepted the rent; and recognition was obviously made on a mistaken impression that the land was required for a public purpose; but on the basis thereof, it cannot be construed that the title of the Appellant was confirmed by the conduct of the Government. Accordingly, the declaration of title as land-holder cannot be granted. The High Court, therefore, was right in refusing to grant the relief. It is not a case of taking possession without due process of law. The possession only continues to a facet of the facts. Apart from that there is no other documentary evidence on the basis of which it could be concluded that the title of the Government is defeated by acceptance of the rent or by requisition of the property by mistaken act on the part of the Government.

12. In view of above, unless it is held that the Petitioner was in lawful possession of the property in question, the payment of rent would in any manner tantamount to condensation of breach. This thus leads to consideration of main issue as to whether the Petitioner was within his right to have transferred his Nazaul Land in favour of Petitioner No. 2 and the consequences thereof.

13. For ascertaining an answer necessary it would be to have a probe into respective stipulation of the allotment letter and the lease deed dated 7.7.1995.

14. The allotment of land in question vide letter dated 8.2.1995 admittedly was for commercial purpose with a stipulation that the same should not be used for any other purpose than allotted and is not to be alienated either by sale or lease. The terms of allotment further stipulates that the breach of condition would lead to cancellation of allotment and the lease and the forfeiture of the property. Condition 2,3 and 4 of the allotment letter dated 8.2.1995 were in following terms:

15. The Petitioner No. 1 and the Respondent State Government later on entered into an agreement i.e., "lease of Intra Municipal Nazul for Building purpose" which besides other terms and conditions, contained the stipulation regarding "assignment", in paragraph (7) of providing therein"

7. The lessee shall upon every assignment of the premises or any part thereof and within one calender month thereafter deliver a notice of such assignment to the Collector setting forth the names and description of the parties to every such assignment and the particulars and effect thereof. So also the lessee's successor-in-interest, whether by transfer or by inheritance, shall be bound to give a notice with similar particulars within a month after entering into possession.

16. Evidently, the special provisions as contained in the allotment letter prohibiting alienation of the lease and plot was not incorporated in the lease agreement. Whereas the condition No. 7 in clear terms provided for assignment by transfer. Therefore, going by the principle of statutory interpretation, i.e., "Expressio Unius est exclusio alterius" i.e. the express of one thing implies the exclusion of other. The specific terms of the allotment being not incorporated in the later covenant will not be binding on the parties to the agreement. The submissions by the Respondent regarding violation of the terms and conditions of allotment order dated 8.2.1995 therefore cannot be accepted.

17. In Mohammad Din (supra) their Lordships while dealing with the aspect of "proprietary rights to tenant" were pleased to observe:

10. ...The real question is whether it was competent for the executive authority under the form of granting proprietary rights to grant something very different and in fact to create an estate of a kind unknown to the law. For the result of a grant with such a condition is to deprive the grantee of proprietary rights of an essential right of property, viz, the free power of disposition and moreover to fetter it not by an absolute bar against alienation nor by such a bar except with the consent of a particular person, but by a bar against alienation "except with the concurrence of the reversionary," a body of persons presumably altering from time to time and perhaps at no time easily ascertainable. Their Lordships do not find any justification for such a condition in the Act or any Rules that have been brought to their notice.

11. ...For here the specific subject matter of the grant is "the proprietary rights." That and nothing else may be granted or refused. To purport to grant "proprietary rights" but to withhold an essential proprietary right, viz, the free power of alienation, is neither the one thing nor the other. The withholding of such a right may be referred to as a condition, but its effect, as already stated, is to create an estate unknown to the law and to grant not "proprietary rights" but something less which is not susceptible of terms of legal definition. Their Lordships think that the original grant by the Deputy Commissioner, who clearly acted within his competence, should stand and the so called condition imposed by the superior executive authority, which was in their view incompetent, should be disregarded....

18. In Union of India (UOI) Vs. Shiv Dayal Soin and Sons Pvt. Ltd. and Others, their Lordships were pleased to observe:

6. ...As a canon of statutory interpretation, *expressio unius est exclusio alterius*, what is expressly mentioned in one place but not in another must be taken to have been deliberately omitted. The argument raised by the Counsel for the Appellant proceeds on assumption that a house by its meaning and definition is capable of being used exclusively for residential purposes and not for non-residential purposes which is not a correct interpretation of Sub-clause (vii) of Clause 1 of Appendix XIII.

19. For the above reasons, this Court is of considered opinion that the order dated 28.1.1998 and the consequential orders thereof are not sustainable and are therefore quashed. However, this will not preclude the Respondents from exercising their powers under Clause 7 and 8 of the lease agreement dated 7.7.1995.

20. Lastly, though efforts were made by the Respondent to establish that the grant of lease would be governed by the provisions of M.P. Land Revenue Code 1959 and the corresponding right there under to the State Government of reentry on the breach of condition of allotment is of no avail because as revealed from the record produced by the Respondent State Government, the allotment of a Nazul land for commercial purpose being under the Revenue Book Circulars and Code of 1959, resort cannot be had for the provisions of Code of 1959 for interpreting the lease agreement.

21. The petition is allowed to the extent above. No costs.