
(2007) 09 MP CK 0001
In the Madhya Pradesh High Court
Case No : W.A. No. 25 of 2006

Mahadeo Chourasia

APPELLANT

Vs

Sub Engineer, P.W.D. (B. and R.) and Others

RESPONDENT

Date of Decision : 05-09-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (2008) 1 MPLJ 655

Hon'ble Judges : S.L. Kochar, J; Manjusha P. Namjoshi, J

Bench : Division Bench

Advocate : M.G. Upadhyaya, for the Appellant; Desai Dy. Advocate General For Respondent No. 4: K.C. Kabra, for the Respondent

Final Decision : Allowed

Judgement

S.L. Kochar, J.

The Appellant has filed this writ appeal against the impugned order dated 7-4-2006 passed by the learned Single Judge of this High Court in W.P. No. 1103/2004 whereby dismissing the petition of the Petitioner mainly on the ground that the disputed questions of fact cannot be adjudicated in extraordinary jurisdiction under Article 226/227 of the Constitution of India.

According to the Appellant, he was carrying on his PAN and refreshment business in a GUMTI situated in the compound of the Office of Divisional Commissioner, Moti Bungalow, Indore-Respondent No. 5. According to the Appellant he was a lessee of Public Works Department-Respondent No. 6 herein through Executive Engineer on a monthly lease of Rs. 20/- since 1979. Annexure P/I annexed with the petition is showing the situation and location of the GUMTI. The Respondent No. 4 Karmachari Society of the staff members of Respondent No. 5 Divisional Commissioner was given authority to let out the open land of Moti Bungalow compound to the persons of its choice. The Appellant being a poor man refused to satisfy the illegal demands of the Respondent No. 4 society. The Respondent in

collusion with the agency of revenue officers under the garb of powers u/s 248 of the M.P. Land Revenue Code dispossessed the Appellant on 5-10-1985. Against this action, the Appellant filed a writ petition before this High Court numbered as M.P. No. 1110/85. The Division Bench of this High Court passed an interim order dated 16-1-1986 directing Respondent Nos. 1, 2 and 3 therein (the then Dy, Collector Nazul, Tehsildar and Nazul Inspector) to restore possession of Petitioner and the Respondents in compliance with this interim order restored his possession. The Division Bench of this High Court, after hearing both the parties, passed a final order dated 1-8-1986 (Annexure P/4) allowing the petition of the Appellant. Between the Appellant and the Respondent, after Division Bench order, litigations were going on in various forums. On 11-9-1994, the Respondents No. 1 to 4 by using Bull Dozer raged the said GUMTI to the ground level without any authority of law and without following any legal procedure. The Appellants took the photographs of the location Annexures P/II-A to P/II-F. The Appellant further contended that the Respondent No. 4 society did not like continuation and business of the Appellant in the said GUMTI because the Appellant had challenged their action in the Civil Court against their demands of exorbitant rent for the piece of land adjacent to the GUMTI let out by them to the Appellant marked as THELA in Annexure P/I and its rent receipt issued by Respondent No. 4 filed as Annexure P/II-G. The Appellant further averred in the petition that against the threats of the Respondents to evict him from the rented THELA land, he filed a Civil Original Suit No. 96-A/83 (New No. 6-A/2006) on 12-4-1983 wherein the learned Civil Court passed the bi-parte judgment dated 27-1-2004 (Annexure P/12) dismissing the suit of the Appellant. Against this judgment, the Petitioner filed First Appeal and the same was dismissed. Thereafter the Second Appeal and the SLP before Hon"ble the Supreme Court also met the same fate. After dismissal of the Civil Suit, the Respondents No. 1 to 3 in connivance with Respondent No. 4 forcibly demolished the GUMTI of the Petitioner as stated hereinabove and this action of the Respondents was challenged by the Appellant by filing W.P. No. 1103/2004 which has been dismissed by the impugned order.

The Respondent No. 4 society submitted their independent return and refuted the averments made by the Petitioner. The Respondent Nos. 1 to 3, 5 and 6 denying the averments of the Appellant in the petition submitted that the petition was not maintainable, because for the same relief, the Appellant/Petitioner had already filed civil suit and the same was dismissed as mentioned herein-above. The Respondents have also stated that the petition is involving the disputed questions of facts , therefore, the same is not maintainable and the Petitioner was an encroacher on the disputed land, therefore, they had authority to remove his possession and that the provisions of Madhya Pradesh Lok Parisar Bedakhali Adhiniyam, 1974 (For brevity, "Adhiniyam") are not attracted and the Petitioner being an encroacher, has no fundamental or legal rights on the Government Land as well as after the Civil Court's judgment and decree, the Appellant/Petitioner has no case in his favour regarding the disputed land.

Learned Counsel for the Appellant has highlighted that in the impugned order, the learned Single Judge has not at all mentioned and discussed the Division Bench order Annexure P/4 passed in Misc. Petition No. 1120/85 between the same parties for the same dispute of GUMTI (Pan shop) and this order is still in operation. The Respondents have not challenged this order before the Supreme Court. In this order, the Division Bench has specifically held that the Respondents shall be at liberty to take appropriate proceedings against the Petitioner under the provisions of unauthorized occupants of public premises and directed to restore the possession of the Petitioner which was already restored in pursuance of the interim order dated 16-1-1986 (Annexure P/3). It has also been submitted that the civil suit filed by the Petitioner was for different place as shown in the map Annexure P/I and dismissal of the said suit of the Appellant for THELA and not for GUMTI would not give any right to the Respondents to forcibly dispossess him. Learned Counsel has also laid great stress in regard to legal possession of the Appellant on the disputed land/GUMTI as a lessee and he was regularly paying the rent to the Respondents.

To combat with learned Counsel for the Respondents have submitted that the Appellant was not possessing the Government land as a lessee. His possession was never recognized by any Government Authority especially the Respondents and his possession has been rightly removed after dismissal of the civil suit (judgment Annexure P/12). They have also stated that the provisions of Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 is not attracted in the dispute of the Appellant.

Having heard learned Counsel for the parties and after perusing the entire record carefully, we are of the opinion that the dispute between the Appellant and the Respondents is only for the GUMTI-land and the Civil Suit was also filed for the same land. On this issue, we fully agree with the finding of the learned Single Judge in the impugned order. In M.P. No. 1120/85, the description of the property was given as Pan-shop in the GUMTI and in Civil Suit permanent injunction was sought for betel and tea-stall in THELA-GUMTI in the judgment para 13 in civil suit, the learned Civil Judge has given finding that the Appellant made a contradictory statement in regard to CHAI-THELA and PAN-GUMTI and the oral and documentary evidence adduced is contradictory. In the Division Bench order (Annexure P/4) also there is only one land i.e. GUMTI and it is ordered that the Respondents shall be at liberty to take appropriate proceedings against the Petitioner/Appellant under the provisions of Adhiniyam. In the said Civil Suit, the Appellant sought relief of permanent injunction against the Respondents and the learned Judge dismissed the suit by judgment dated 27-1-2004 (Annexure P/12). The decree passed by the Civil Court against the Appellant in the following terms:

That the Appellant/Plaintiff failed to establish his case for grant of a decree of permanent injunction.

Looking to the circumstances of the case, both the parties shall bear their own

costs.

Advocate fee shall be paid according to schedule or certificate whichever is less.

In the Civil Suit, learned Civil Court has not passed any order in favour of the Respondents to remove the possession of the Appellant forcibly. On the basis of the Civil Court's judgment and decree, it can be construed that the Appellant was in illegal possession of the disputed land. The same verdict has already been given by the Division Bench of this High Court in M. P. No. 1120/85. For the sake of convenience, we would like to reproduce the entire order (Annexure P/4), as under:

ORDER

Sohani J.

This is a petition under Article 226 of the Constitution of India.

The material facts giving rise to this petition, briefly, are as follows:

The Petitioner has averred that he was carrying on a "Pan" shop in the "gumti" in the compound of the Divisional Commissioner's Office at Indore as a lessee of the Public Works Department of the State of Madhya Pradesh, on a monthly rent of Rs. 20/-; that in March, 1985 the Sub-Engineer of the Public Works Department, Respondent No. 6, refused to accept rent from the Petitioner; that on 4-10-1985, Respondent No. 3 the Nazul Inspector, directed the Petitioner to remove his "gumti" from the site failing which action would be taken against the Petitioner. It is further averred that on 5-10-1985, Respondent No. 3, the Nazul Inspector, forcibly and unlawfully removed the Petitioner's "guumti" from the site and dispossessed the Petitioner of the premises in question. The Petitioner has, therefore, filed this petition under Article 226 of the Constitution of India.

In the return filed on behalf of the State, it is contended that the Public Works Department had no authority to grant any lease; that proceedings u/s 248 of the M.P. Land Revenue Code were commenced against the Petitioner and a final order was passed in those proceedings on 30-9-1985 by Respondent No. 2, directing the Petitioner to remove the encroachment; that the Petitioner was served with that order on 4-10-1985 and that as the Petitioner failed to remove the encroachment, the impugned action was taken.

Shri Upadhyaya, learned Counsel for the Petitioner, contended that the Petitioner was in possession of the "gumti" and the premises in question lawfully as a lessee of the Government and his forcible eviction was contrary to law. It was further contended that proceedings under the M.P. Land Revenue Code could not be commenced in respect of the property in question as the provisions of the Madhya Pradesh Lok Parisar Bedakhali Adhiniyam, 1974 (hereinafter referred to as "the Act") would be attracted in view of the allegations made by the State that the Petitioner was in unlawful possession of public premises. In reply, Shri Kulshreshtha, learned Government Advocate for the State, contended that action

under the provisions of Section 248 of the M.P. Land Revenue Code could be lawfully taken against the Petitioner and the petition deserved to be dismissed.

Having heard learned Counsel for the parties, we have come to the conclusion that this petition deserves to be allowed. It was not and could not be disputed that provisions of the Act are attracted in respect of the premises in question in view of the allegation that the Petitioner was in unlawful possession of the premises in question. It was admitted that action for eviction of an unauthorized occupant, as required by the provisions of the Act, has not been taken against the Petitioner. The Act provides a special procedure for eviction of unauthorized occupants of public premises and hence, the provisions of a special Act would override the provisions of the general law. (See: *Damji Valji Shah and Another Vs. Life Insurance Corporation of India and Others*,). Under these circumstances, it must be held that eviction of the Petitioner was not lawful. These proceedings, therefore, deserve to be quashed. The Respondents shall be at liberty to take appropriate proceedings against the Petitioner under the Act.

For all these reasons, this petition is allowed. By an interim order dated 16-1-1986, Respondents No. 1, 2 and 3 were directed to restore to the Petitioner possession of the premises in question. The Petitioner shall be entitled to retain possession of those premises unless he is evicted therefrom in accordance with law. Respondents No. 1, 2 and 3 are also directed to restore to the Petitioner on or before 30th August, 1986, the gumti" of the Petitioner, which was removed from the premises. The Petitioner shall be at liberty to file a suit for compensation if the said Respondents are unable to restore possession of the "gumti", for any reason. In the circumstances of the case, parties shall bear their own costs of this petition.

The abovementioned order is still in force and the Respondents have not taken any appropriate action in accordance with the provisions of the Adhiniyam. In view of the Division Bench Order, there is absolutely no disputed question of fact. The Appellant was in possession of the disputed land having his GUMTI and the same was removed forcibly without following due procedure of law as directed by the Division Bench order Annexure P/4 dated 1-8-1986.

The contention of the Respondents is that the provisions of the Adhiniyam are not attracted in the case of the Appellant, but for this no reasons have been assigned by the Respondents and before the Division Bench, it was admitted that the action for eviction of an unauthorized occupant as required by the provisions of Adhiniyam was not taken against the Appellant/Petitioner. Before the Division Bench, the Respondents have nowhere averred or argued that the provisions of the Adhiniyam for eviction of the Appellant would not be applicable. No application was filed for review of the order of the Division Bench Annexure P/4 and as mentioned herein-above, the same was also not challenged before the Supreme Court. This order has attained finality and has binding effect on both the parties. In para 6, the Division Bench has ordered for restoration of possession of the Petitioner on the disputed land by Respondent Nos. 1, 2 and 4

on or before 30th August, 1998. It was also ordered that the Appellant/Petitioner shall be at liberty to file a suit for compensation if the said Respondents are unable to restore possession of the GUMTI for any reason. Now the situation is that admittedly the Petitioner/Appellant has again been dispossessed by the Respondents forcibly on 11-9-2004, which is clear from the photographs from Annexures P/I 1-A to P/I 1-F.

In view of the foregoing discussion, it must be held that the eviction of the Appellant was not lawful. Therefore, the Respondents No. 1 to 3, 5 and 6 are directed to restore possession of the GUMTI-premises to the Appellant/Petitioner on or before 31-10-2007. The Respondents No. 1 to 3, 5 and 6 are also directed to restore to the Appellant/Petitioner on or before 31-10-2007 the GUMTI of the Petitioner, which was removed from the premises. The Appellant shall be at liberty to file a civil suit for compensation, if the said Respondents are unable to restore the GUMTI for any reason. We have passed this direction/order commensurate with the order passed by the Division Bench of this High Court vide Annexure P/4. In the circumstances, no order as to costs.