
(2012) 03 MP CK 0118
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 298 of 2011

Mohd. Zakaria

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 28-03-2012

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (2012) 03 MP CK 0118

Hon'ble Judges : S.K. Gangele, J;Brij Kishore Dube, J

Bench : Division Bench

Advocate : K.N. Gupta and Mr. R.S. Dhakad, for the Appellant; Vivek Khedkar, D.A.G. for the respondent Nos. 1 to 3/State, Shri M.P.S. Raghuvanshi, Advocate for the respondent No.4/Municipal Corporation and Shri V.K. Bhardwaj with Shri Anand V. Bhardwaj, Advocate for the respondent Nos. 5 and 6, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—This appeal has been filed against the order dated 28/3/2011 passed by learned Single Judge in W.P. No. 1283/2011. The appellant/petitioner filed a petition before this Court against the order of demolition of his shop. The appellant/petitioner also prayed that possession of the appellant/petitioner be restored. The petitioner got tenancy rights of two shop situated at Jayendraganj, Lashkar, Gwalior from grand father of respondent Nos. 5 & 6 late Shri Ramchandra Gangadhar Joshi. Since then, the petitioner had been in possession of the shops. He established one shop in the name of J.K. Canteen and second shop in the name of Hafiz Noor Bux Ramzan Bux, however, the shop of the petitioner was demolished by the respondents under the Anti Encroachment Drive. The appellant/petitioner came to know the fact that a case of encroachment u/s 248 of the Madhya Pradesh Land Revenue Code, 1959 was registered against the petitioner. However, the petitioner had never been received any notice of the case.

2. The learned Single Judge dismissed the petition on the ground that the disputed questions of facts are involved for determination of the case, hence, the petition is not maintainable and the petitioner/appellant can file a civil suit.

3. The Tahsildar, Nazul Gwalior registered a Case No. 39/2010-11/A-68 against petitioner in regard to encroachment by constructing a shop having area 19"x25" feet at Survey No.635. It is alleged that the petitioner had made encroachment by way of constructing a shop in the aforesaid portion of land. Thereafter, the shop was demolished.

4. This Court has considered in detail the pleadings of the parties and return filed by the State also the legal position in W.P. No. 1379/2011 (Maa Kaila Devi Enterprises through its partners vs. State of Madhya Pradesh and Others) and held that the Nazul Tahsildar had no power and jurisdiction to initiate proceedings u/s 248 of the Madhya Pradesh Land Revenue Code, 1939. This Court further held that the persons who had been in possession over the property could not be said to be encroachers. Hence, in view of the order passed by this Court and the reasoning assign in detail in W.P.No.1379/2011 (Maa Kaila Devi Enterprises through its partners vs. State of Madhya Pradesh and others), this appeal is allowed in similar terms.

5. Consequently, this appeal is allowed. The petition filed by the petitioner/appellant is also hereby allowed and the order passed by the learned Single Judge is hereby quashed. The action of the respondents in regard to initiation of proceedings u/s 248 of the Code and recovery of possession are hereby quashed. Because, the construction has been demolished by the authorities and the area is now an open area, hence, possession of the petitioner over the land is hereby restored. Order Annexure P/1 dated 11/2/2011 is hereby quashed. The order passed by this Court in W.P.No.1379/2011 (Maa Kaila Devi Enterprises through its partners vs. State of Madhya Pradesh and others) shall be a part of this order. Office is directed to place a photocopy of the order passed by this Court in W.P.No.1379/2011 in the file of the present case.

No order as to costs.