
(2003) 05 MP CK 0090

In the Madhya Pradesh High Court

Case No : Writ Petition No. 425 of 2003

Mosamlal and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Ancient Monuments and Archaeological Sites and Remains Act, 1958 — Section 14, 19, 2(a), 2(i), 2(j)

Citation : (2004) 2 MPLJ 82

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : D.N. Shukla, for the Appellant; R.S. Patel for Respondent Nos. 1 and 2 and Ms. Seema Agrawal, Government Advocate for Respondent Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

Petitioners in this writ petition have claimed for the relief to quash show cause notice issued for removal of the houses and other structure which they are occupying at Rajeshwari Ward, Mandla.

Show cause notice has been issued to the petitioners under the provision of Ancient Monuments and Archaeological Site and Remains Act, 1958 (hereinafter referred to as "Act of 1958"). Notice has been issued under rule 38 of the Ancient Monuments and Archaeological Site and Remains Rules, 1959. It has been mentioned in the notice that the Govt. of India has notified "Shah Burz" as protected monument. No construction activities or mining operation can take place within 300 mtrs.; 100 mtr. area is prohibited and 200 mtrs. area, beyond that is regulated area. The violation of notification is punishable under rule 39 with 3 months imprisonment or fine of Rs. 5,000/- or both. Petitioners have been required to show cause within 7 days from the receipt of notice why their structure be not dismantled.

It is averred in the petition that Pattas were issued to the petitioners under provision of M.P. Nagriya Kshetron Ke Bhumi Heen Vyakti (Patta Dharit Adhikaron Ka Pradaya Kiya Jana) Adhiniyam, 1984 (hereinafter referred to as "Adhiniyam of 1984"). Some of them have constructed the houses and few of them are occupying huts and small Kachha construction. Reply P/3 was submitted to the notice. Representation P/4 was also submitted to the Collector. However, threat is meted out to dismantle the structures. Petitioner submits that the Central Government has no power under the Act of 1958 to take action. There is no power to remove the structures. M.P. Ancient Monuments and Archaeological Sites and Remains Act, 1964 is not applicable where the central Act is applicable. It is averred that if the petitioners are living in the prohibited area, there is no power to remove their structures. If it was a prohibited area, Collector ought not to have granted pattas to the petitioners. Once patta has been granted, it cannot be cancelled in violation of the provisions of the Adhiniyam of 1984. Hence, the present writ petition has been filed.

A return has been filed by respondents No.1 and 2. It is contended that the site in question "Shah Burz" Satkanda is situated at the bank of river at Kila Ghat, Mandla and has been declared as ancient monument by name "God Fort in Mandla called Satkanda and the tower of Rajghat called Shahburz and the temples therein." Gazette notification R/1 was published on 17th December, 1992 under the Act of 1958. State Government or its officers had no power to grant any licence for patta in any manner. No houses can be constructed within the prohibited/regulated area. It is well recognized by law that declaration of any site as ancient monuments and site of national importance has definite purpose of public interest behind it. Petitioners are liable to be evicted. Notices have been issued to the petitioners under rule 38(1) of Ancient Monuments and Archaeological Sites and Remains Rules, 1959. Said rule provides that the Central Government may, by order, direct the owner or occupier of an unauthorised building in a prohibited area or in a regulated area or of a building or part thereof which has been constructed in contravention of any of the conditions of a licence, granted under rule 35 to remove such building or part thereof within a period specified in that order. SRO No. 1764 dated 16-6-1992 has been relied on. Area upto 100 Mt. adjoining the protected monument has been declared as the prohibited area for that monument and beyond that upto 200 Mt. has been declared as the regulated area to that monument imposing restrictions for mining and constructions or both. Hence, the act of constructions of houses made by the petitioners is patently illegal. No right accrues to remain in the periphery of prohibited or regulated area.

Shri D.N. Shukla, learned counsel appearing for the petitioner has submitted that the petitioners are holders of lease granted under the Adhiniyam of 1984. They have raised construction under the valid grant made by respondents No. 3 and 4. Thus, they cannot be evicted. His alternative submission is that in case structures are removed, respondents No. 3 and 4 be directed to resettle them at an appropriate nearby place.

Shri R.S. Patel, learned counsel appearing for the respondents No. 1 and 2 submitted that once the area is prohibited/regulated and has been notified, Act of 1958 and Rules of 1959 come into play. Construction raised are wholly unauthorized and it is not in the public interest that such constructions exist within the prohibited/regulated area as same is wholly unauthorized act under the Act of 1958 and Rules of 1959 and SRO dt. 16-6-1992. Pattas were granted illegally by the State Authorities. Show-cause notices have been issued, thus, no interference is called in the present writ petition.

Ms. Seema Agarwal, learned Govt. Advocate appearing for the respondents No.3 and 4 submitted that the matter is mainly in between petitioners and the respondents No. 2 and 3. Notices have been issued by respondents No. 1 and 2 which have been assailed in the writ petition.

First question for consideration is whether petitioners have the right on the basis of pattas if any granted to some or all of them by respondents No. 3 and 4 to protect their structures and action as proposed by notice R/1 cannot be initiated against them. "Ancient monument" has been defined u/s 2(a) of the Act, 1958. The definition reads thus:

2(a) "Ancient Monument" means any structure, erection, or monuments, or tumulus or place of interment, or any cave, rock sculpture, inscription or monolith, which is of historical, archaeological or artistic interest and which has been in existence for not less than one hundred years, and includes-

- (i) the remains of an ancient monument;
- (ii) the site of an ancient monument,
- (iii) such portion of land adjoining the site of an ancient monument as may be required for fencing or covering in or otherwise preserving such monument, and
- (iv) the means of access to, and convenient inspection of an ancient monument.

It is clear from the above definition such land adjoining site of ancient monument is covered. The means of access to, and convenient inspection of, such monuments is also covered in the definition of "Ancient monument".

"Protected area" is defined in section 2(i),thus:

2(i) "protected area" means an any archaeological site and remains which is declared to be of national importance by or under this Act;

Definition of "protected monument" is under section 2(j),thus:

2(j) "protected monument" means an ancient monument which is declared to be of national importance by or under this Act.

The fact is not in dispute that "Shah Burz" and other temples has been declared to be protected monuments under the Act of 1958 prohibited/regulated area. Section 14 provides of maintenance of certain protected monuments by the

Central Government. Director General assumes the guardianship of the monument u/s 5. Section 19 deals with protected area. Section 19 is quoted below:

19. Restrictions on enjoyment of property rights in protected area.- (1) No person, including the owner or occupier of a protected area, shall construct any building within the protected area or carry on any mining, quarrying, excavating blasting or any operation of a like nature in such area, or utilise such area or any part thereof in any other manner without the permission of the Central Government:

Provided that nothing in this sub-section shall be deemed to prohibit the use of any such area or part thereof for purposes of cultivation if such cultivation does not involve the digging of not more than one foot of soil from the surface.

(2) The Central Government may, by order, direct that any building constructed by any person within a protected area in contravention of the provisions of sub-section (1) shall be removed within a specified period and, if the person refuses or fails to comply with the order, the Collector may cause the building to be removed and the person shall be liable to pay the cost of such removal.

Section 19 prohibits construction of building within the protected area or any such operation of like nature in such area. State Government cannot authorise any person to undertake any act of excavating or other like operation as provided u/s 24. Section 30 deals with penalties if an act is done in derogation of the Act. Section 38 confers power to frame rules to carry out the purpose of the Act. Rules were framed in the year 1959. Under Rule 10, it is necessary to obtain permission for construction, that is to be granted by the Central Government. Licence is required under rule 11. Once notice of intention is given to declare prohibited area under rule 31 after considering the objection if any received within the said period by notification made under rule 32, thereupon the bar created in rule 32 come into play. No person other than an archaeological officer shall undertake any mining operation or any construction in the prohibited area or in the regulated area, except under and in accordance with the terms and conditions of a licence granted by the Director-General. Rule 38 deals with removal of unauthorised buildings. Rules 38 reads thus:

38. Removal of unauthorised buildings.- (1) The Central Government may, by order, direct the owner or occupier of an unauthorised building in a prohibited area or in a regulated area or of a building or part thereof which has been constructed in contravention of any of the conditions of a licence granted under rule 35 to remove such building or part thereof within a period specified in that order.

(2) If the owner or occupier refuses or fails to comply within an order made under sub-rule (1), the Central Government may direct the District Magistrate to cause the building or part thereof to be removed, and the owner or occupier shall be liable to pay the cost of such removal.

Rule 39 deals with penalty. Same is quoted below: "39. Penalty.- Whoever-

(i) unlawfully undertakes any mining operation or construction in a prohibited area or in a regulated area, or

(ii) contravenes any of the conditions of a licence, or

(iii) fails or refuses to comply with an order made under sub-rule (1) of rule 38,

shall be punishable with imprisonment which may extend to three months or with fine which may extend to five thousand rupees or with both.

It is clear from the above discussion of provisions of the Act of 1958 and the Rules of 1959 that there is power to remove such unauthorized constructions with the respondents No. 1 and 2 in case the structure is within the prohibited/regulated area. Once the monument was declared protected; under the Act of 1958 and the rules framed therein in the year 1992 it was not open to the respondent State Government to grant the patta in the year 1998. The grant of patta is wholly unauthorized act of respondents No. 3 and 4. It is not the case of the petitioners that the permission of the Central Government was obtained. Thus, grant of patta is illegal and void and no rights accrues to occupy the area, even otherwise as the structures are in prohibited/regulated area, it was not open to raise the construction without permission. Such structure can be dismantled. Notice issued by respondents No. 1 and 2 are absolutely in accordance with law and I find no ground to make an interference in the proposed action as per notice P/1.

Coming to second, alternative and last submission raised by learned counsel for the petitioner that the State granted the pattas to the petitioner and certain constructions were raised and some huts are existing and Kaccha structure were put up. In my opinion in the circumstances, respondents No. 3 and 4 are obligated to resettle such persons to whom pattas were granted under the Act of 1984 at the other appropriate site which may not obstruct the protected monument in question.

Resultantly, the writ petition is partly allowed to the extent mentioned above. I find no ground to make interference. The structures of the petitioner have to be obviously removed forthwith. Action taken as per notice P/1 is held to be legal. No order as to costs. Direction made to respondents No. 3 and 4 be carried out as far as possible within 3 months.