
(2013) 03 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ petition No. 1734 of 2004

Mukesh Singh Chaturvedi and Another

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 13-03-2013

Acts Referred:

Citation : (2013) ILR (MP) 1339 : (2014) 1 MPHT 536 : (2013) 3 MPJR 265 : (2013) 2 MPLJ 573

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : Anil Sharma, for the Appellant; B. Raj Pandey, Govt. Advocate for the Respondents No. 3, 4 and 5 and Shri Susheel Chaturvedi, Advocate, for the Respondent

Judgement

Sujoy Paul, J.—Petitioners have filed this petition challenging the legality, validity and propriety of the orders Annexure P-1 dated 7.6.2004, (Annexure P-14) dated 4.6.2004 and Annexure R-1 dated 26.8.2005.

Brief facts necessary for lawful adjudication of this matter are as under:-

The case of the petitioners is that they purchased the land in question pursuant to the sale deeds Annexure P-2 and P-3. After the said sale deeds, a mutation was done by order dated 9.10.2002 (Annexure P-9). The demarcation was made by way of Panchanama Annexure P-7. Thereafter, the petitioner prayed for change of land use and accordingly permission for diversion was sought for. On 6.5.2003 (Annexure P-5) no objection was given by the Nazul Officer, Gwalior. The NOC was given by Traffic Police by Annexure P-6 and by P.H.E. Vide Annexure P-11. The State Government, in turn, published a notification in the Official Gazette dated 1.8.2003 and by way of this notification dated 23.7.2003 permission for diversion was given. By order dated 11.12.2003 (Annexure P-12), Town and Country Planning granted NOC. The Municipal Corporation granted NOC by order dated 24.2.2004 (Annexure P-13).

2. Shri Anil Sharma, learned counsel for the petitioner, by taking this Court to the aforesaid documents and the reply in State Assembly submits that the Govt. has taken a stand before the Vidhan Sabha that Survey No. 1259/1/1/ to 1259/1/8 is a private land. Reliance in this regard is placed on Annexure P-15 and P-16 filed with the rejoinder. On the basis of answer to question No. 5067 and 5066, Shri Anil Sharma submits that State Government has taken a clear stand that the land in question is a private land.

3. The learned counsel for the petitioners submits that on the basis of aforesaid NOC and the notification dated 23.7.2003 (Annexure P-4), the right is accrued in favour of the petitioner. The impugned order Annexure P-1 came as a bolt from blue to the petitioner whereby the aforesaid permission was kept in abeyance and the petitioner was directed to obtain NOC from the Nazul Officer and submit it before the Joint Director, Town and Country Planning. Shri Sharma by criticizing this order submits that once the said permission was already granted to the petitioner by Annexure P-5 dated 6.5.2003, there was no occasion for the respondents to pass the aforesaid order. He submits that all the statutory authorities have granted him no objection but without considering the aforesaid, the impugned order Annexure P-1 is passed.

4. The learned counsel submits that Annexure P-14 dated 4.6.2004 is also bad in law whereby the Nazul Officer requested the Joint Director, Town and Country Planning to act in a particular manner. The learned counsel for the petitioner also assailed the order dated 26.8.2005 (Annexure R-1). He submits that in view of constant and clear stand of the Government and reflected in various documents including the stand before the Vidhan Sabha, it is clear that the land in question is a private land and, therefore, the respondents have not committed any error earlier in granting the NOC and issuing the notification dated 23.7.2003.

5. The learned counsel submits that the impugned order is assailed on two basic legal points:-

i) The respondents have taken a specific stand before the State Assembly and in Annexure P-5. They are bound by the aforesaid stand and such stand operates as "promissory estoppel" against them. The respondents cannot be permitted to resile from the earlier stand and they cannot take a "U" turn from the earlier stand.

ii) The impugned orders entail civil consequences and before issuing the said order the petitioner should have been heard.

6. Per contra, Shri B. Raj Pandey, learned Govt. Advocate submits that a bare perusal of Annexure R-1 and R-2 shows that the land in question was consistently recorded as "Raiyatwari (Govt. land)" and the nature of land was described as "Charnoi gair mumkin". He submits that later on there is some manipulation in the revenue records and, therefore, a detailed order Annexure R-1 was passed. By drawing the attention of this Court on Annexure R-1, it is stated that there is some bungling and overwriting on the strength of which later

on it was shown to be a private land. He submits that when all the original records were perused by the State authorities, it was found that it was a Government land. He further submits that vendor of the sale deed Annexure P-3 is not shown as owner in the aforesaid revenue records. The learned counsel submits that Annexure P-5 and the earlier order are passed erroneously and it is a valuable Government land which cannot be given to the petitioner as per the sweet will of any other authority or as per any mistake committed by any authority. He further submits that in nutshell, petitioner is claiming title of land and on the strength of that he is claiming other benefits including demarcation etc. He submits that for this purpose, the proper remedy for the petitioner is to file a civil suit and writ petition cannot be entertained. He drew the attention of this Court on various paras of reply of the State. Lastly, he submits that this petition be dismissed.

7. Shri Susheel Chaturvedi, learned counsel for the Municipal Corporation, submits that the Corporation granted permission as per the conditions mentioned in Annexure P-13 dated 24.2.2004. By relying on condition No. 2, it is stated that the petitioner was required to start the construction work within one year and if it is not done within that time, the permission stood cancelled automatically. If the petitioner succeeds and wants permission again, he has to prefer application afresh. No other point is pressed by the learned counsel for the parties.

8. I have bestowed my anxious consideration on the rival contentions of the parties and perused the record.

9. I deem it proper to deal with the submission of learned counsel for the petitioner point wise:-

Point (i):- The learned counsel for the petitioners has vehemently argued that various statutory authorities namely Nazul Department, Town and Country Planning, Municipal Corporation and P.H.E. have issued "No Objection Certificate" in favour of the petitioners. In view of answers to star questions before the Vidhan Sabha, it is clear that the Government has taken a specific stand that the land in question is a private land and, therefore, the Government and its authorities are bound by the said stand and cannot resile from it. He submits that the principles of "promissory estoppel" will be applicable in the facts and circumstances of the case against the Government. Before dealing with this aspect, I deem it proper to deal with the rival stand of the parties in this regard.

On the one hand the petitioner has stated that the land in question was a private land and in support thereof relied on the various NOCs. issued by different departments. On the other hand, the Government in its return has stated that when the entire revenue records were carefully perused, it was found that there is manipulation and overwriting in the revenue records. The old original revenue records shows that from Samvat 1997, the land in question is recorded as Government land and described as "Raiyatwari (Govt. land) - Charnoi gair mumkin". Later on it was found that there is overwriting in the revenue records.

The relevant portion of Annexure R-1 reads as under:-

On the strength of aforesaid, it is pleaded in the reply that after going through the complete record and on verification of the facts, the department came to the conclusion that the land in question of survey No. 1259 is recorded as Government land. It is further stated that it is a very prime land and by way of manipulation in the revenue records, it is later on shown as a private land. It is further stated that the correct facts about the land were not brought to the notice of the Government and, therefore, because of the said misrepresentation, the NOC was issued and change of land use was permitted. It is further stated that Annexure P-5 is issued by Nazul Officer on the basis of information given by Tahsildar, Gwalior, but no information is obtained about the land from Tahsildar Nazul, which should have been obtained regarding this land being a Nazul land. By placing reliance on condition number 13 of NOC (Annexure P-12), it is stated that the permission is of no consequence because of Clause 13 which makes it clear that the said permission can be used only when the person has a valid title on the land. It is further stated that the land is very prime land and in a very well designed manner it is sought to be manipulated by overwriting in the revenue records. In para 5.8 it is pleaded as under:-

There is no material placed on record to demonstrate the same on the contrary as is evident from the facts mentioned herein above and the facts which have come on record, the petitioner No. 1 was President of Municipal Council, Bind, similarly the petitioner No. 2 who is brother of petitioner No. 1, as has already been mentioned in this para was MLA from District Bind and not only that the petitioner No. 2 was MLA but was also Cabinet Minister for Housing and Environment and the manner in which the NOC has been granted, the land use has been changed and an effort is being made to raise the construction over the Government land after purchase being made vide sale deed Annex P-2 and P-3 goes to show that without verification of the fact that whether the property in question belongs to the person from whom it is being purchased and whether they are the rightful owners of the land or not, the land was purchased and land use was changed in a very hurriedly manner and effort was made to raise the construction, thus in the circumstances, the petitioners being highly influential and holding the high offices in the Government and politically capable there is every basis of presumption that to get undue advantage the action is being taken without following due procedure and rules and now when after due enquiry the fact is established that the land in question is Government land by no stretch of imagination it can be said that the action taken is because of political rivalry or on any other extraneous basis, on the contrary on the fact being established with the land belongs to Government appropriate action has been taken and even after having the knowledge of the aforesaid facts, the Tehsildar, Gwalior has duly passed an order making correction with respect to the entries made in the Revenue record and no title or ownership of the disputed land in question can be claimed being the same as Government land.

The reply of the State shows that allegation of manipulation and fraud is made by the Government. In other words, the stand of the Government is that the revenue records were manipulated and tampered with and on the strength of such manipulation, the NOCs were obtained and therefore, such NOCs cannot operate as promissory estoppel. It is stated that the land in question is very valuable public land and it cannot be permitted to be grabbed by private parties on the basis of manipulation in the revenue records. Coupled with this, allegations are made that the petitioners were holding very high office as President of Municipal Council, Bhind and Cabinet Minister in the State Cabinet and, therefore, possibility of influencing and obtaining orders in favour without following due process of law cannot be ruled out. By placing reliance on old Khasras, it is stated that the land in question is in fact a Government land.

The petitioners' whole case is based on Annexure P-5 & NOCs issued by various departments and notification whereby land use was permitted to be changed whereas the case of the respondents is based on Annexure R-1, relevant revenue entries and Annexure R-2 which contains a finding that there is a manipulation in the revenue records. In this factual back drop, the basic question is whether the stand of the Government will operate as "promissory estoppel" against it.

Before dealing with the said question, it is apt to quote para 37 from a five Judges judgment of Supreme Court reported in *M. Ramanatha Pillai Vs. The State of Kerala and Another*, -

37... In American Jurisprudence 2d at page 783 paragraph 123 it is stated "Generally, a state is not subject to an estoppel to the same extent as in an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity. An exception however arises in the application of estoppel to the State where it is necessary to prevent fraud or manifest injustice". The estoppel alleged by the appellant Ramanatha Pillai was on the ground that he entered into an agreement and thereby changed his position to his detriment. The High Court rightly held that the Courts exclude the operation of the doctrine of estoppel, when it is found that the authority against whom estoppel is pleaded has owed a duty to the public against whom the estoppel cannot fairly operate.

A microscopic reading of this paragraph shows that in American Jurisprudence it is opined that generally the State is not bound by principle of estoppel to the extent and individual or private Corporation is bound by it. Taking a contrary view, as held in American Jurisprudence, will render the Government helpless in its governance. An exception is carved out against the Government for the purpose of operating estoppel by holding that it would operate against the State where it is essential to prevent fraud or manifest injustice. The Apex Court opined that the authority against whom estoppel is pleaded owes a duty to public and, therefore, in cases where a public duty is involved, the doctrine of estoppel cannot be made applicable.

In the present case, the stand of the Government is that on microscopic scrutiny of the entire revenue record established that the stand taken by the Government earlier was not in accordance with law. In the present case, it is obligatory on the part of the respondents to examine the entire revenue record minutely before giving any finding about the nature of the land. The valuable public land is vested with the Government and it is a constitutional and legal obligation on the part of the Government to ensure that no Government land is grabbed or taken away by misrepresentation or bungling. In *Ramanatha Pillai (supra)*, it was held by five Judges bench of Supreme Court that "promissory estoppel" cannot be pleaded against an authority of the Government, who owe a duty to the public and is acting fairly. In the present case, the respondents owe a duty to the public and in view of that duty they are obliged to examine the entire relevant revenue record and ensure that a valuable Government land is not grabbed or enjoyed by anybody without any legal entitlement/title.

In a recent judgment reported in (2012) 11 SCC 1 (*Monnet Ispat Engineering Ltd. Vs. Union of India*), the Apex Court held that the doctrine of promissory estoppel can be applied against the Government where the interest of justice, morality and common fairness dictate such course. The doctrine is applicable against the State even in its governmental, public or sovereign capacity where it is necessary to prevent fraud or manifest injustice. It is made clear that the Government cannot be compelled to act in a manner it is prohibited in law under the doctrine of promissory estoppel. It is further held that in no case the doctrine of promissory estoppel can be pressed into aid to compel the Government or public authority to carry out a representation or promise which is contrary to law or which was outside the authority and power of the Government. No promise can be enforced which is against the public policy.

As per the litmus test laid down by the Supreme Court in aforesaid judgments, it is clear that "promissory estoppel" cannot be pressed into service against Government when Government is fulfilling public duty as per the public policy. In the present case, if as per the stand of the petitioners the principles of "promissory estoppel" are blindly applied, it will lead to a situation where government would be prevented from acting in public interest and would be debarred from performing public duty. At the cost of repetition, in cases of misrepresentation or fraud, no legal protection or promissory estoppel is available. Government is always at liberty to examine the record with accuracy and precision and ensure that public/Government land is not misused or enjoyed by anybody without there being any entitlement for the same. On the basis of aforesaid analysis, in my opinion, the principles of "promissory estoppel" cannot be pressed into service against the respondents in the facts and circumstances of this case. Accordingly, this point is decided against the petitioners.

Point (ii):- Shri Anil Sharma, learned counsel for the petitioners submitted that a right was accrued in favour of the petitioners pursuant to the NOC issued by various Government departments, Gazette notification whereby land use was

permitted to be changed. He submits that this could not have been taken away without affording opportunity in consonance with principles of natural justice. Before dealing with the aforesaid facet, it is apt to quote the relevant portion of impugned order which reads as under:-

A bare perusal of the said para of the impugned order shows that the respondents have taken certain objections and have stated that the matter is under examination. It is further stated that the earlier permission granted by Town and Country Planning Department is kept in abeyance with opportunity to the petitioners to obtain NOC from Nazul department.

10. In the considered opinion of this Court, the petitioners' permission has not been cancelled by Annexure P-1. Certain objections were taken in Annexure P-1, P-14 and Annexure R-1. The basis for those objections are mentioned in explicit in those orders. Petitioners are given liberty to satisfy the departments and obtain NOC from Nazul department. Since the earlier permission is only kept in abeyance and petitioners are given liberty to satisfy the department, in my opinion, there is no violation of principles of natural justice. It is open to the petitioners to satisfy the departments that the permission is in accordance with law and is not required to be stayed. If petitioners are able to satisfy the objections raised by the respondents in impugned orders, this Court has no doubt that the respondents will pass orders in accordance with law.

11. The respondents have permitted the petitioners to obtain appropriate Nazul NOC and submit it before the department. This action of the respondents is in consonance with the principles of natural justice, equity and fair play. Accordingly, it is open for the petitioners to satisfy the requirements of Annexure P-1, P-14 and Annexure R-1. This Court has no doubt that if the petitioners fulfill the said requirements, the respondents will deal with the matter in accordance with law and pass appropriate orders on it. With the aforesaid observation, the petition stands disposed of. No cost.