

(1996) 12 MP CK 0004
In the Madhya Pradesh High Court
Case No : L.P.A. No. 197 of 1996

Mullo Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Constitution of India, 1950 — Article 226

Madhya Pradesh Town Improvement Trust Act, 1960 — Section 52, 71(1)

Citation : (1997) J LJ 204 : (1997) 2 MPLJ 308

Hon'ble Judges : T.S. Doabia, J; A.S. Tripathi, J

Bench : Division Bench

Advocate : P.L. Dubey and R.V. Sharma, for the Appellant; K.N. Gupta, for respondent No. 1, J. Maheshwari, for respondent No. 2, P.N. Kelkar and A.M. Naik, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Doabia, J.

This letters patent appeal is directed against the order of a learned single Judge of this Court wherein he came to the conclusion that the writ petition bearing No. 295 of 1995 preferred by the present appellant is liable to be dismissed on the ground of delay and laches. This opinion expressed by the learned single Judge is being assailed in the present appeal. In this appeal, additional grounds which have been taken be also noticed :

(i) that, the appellant-Mullo Bai was also a person interested and she was required to be given a separate notice;

(ii) that, it is also contended that a notice as required u/s 46 of the Madhya Pradesh Town Improvement Trust Act, 1961, was not served on the present appellant, and therefore, all subsequent proceedings taken are null and void.

With a view to appreciate the arguments raised by the learned counsel for the appellant, a brief history vis-a-vis these acquisition proceedings be noticed.

The Gwalior Town Improvement Trust framed a scheme. This was duly accorded sanction by the State Government. Notification u/s 52 of the M.P. Town Improvement Trust Act, 1960 (hereinafter referred to as the Act) was published. A copy of this has been placed on the file of writ petition as annexure R/12. This is dated 1st January, 1972. Thereafter, further steps were taken u/s 68 of the aforementioned Act and a notification u/s 71(1) of the aforementioned Act was also issued.

It be seen that when a notification has been issued u/s 52 of the Act, then it is a conclusive proof that all procedural steps were duly taken. It would be apt to refer to a judgment given by the Supreme Court in *Laxmichand Vs. Indore Improvement Trust, Indore and Another*, . In para 11, it was observed that "At any rate Sub-section (2) of section 52 puts a final seal of imprimatur on the scheme after publication of the sanction of the Government. The submission, is therefore, devoid of merit."

In this regard, it would also be apt to refer to a recent decision given by the Supreme Court of India in the case reported as *Malwa Oil Mills v. State of M.P.*, JT 1996(6) SC 44. This very Act was under consideration before the Supreme Court. The Supreme Court was of the view that in view of the provisions contained in section 71 of the Act, it would be presumed that all procedural steps were taken and the land would come to vest in the trust free from all encumbrances. Para 3 of the judgment is relevant and be noticed :

"A reading thereof would clearly indicate that on publication of the notification, the right, title and interest of the erstwhile owners stood divested and the land stood vested in the trust free from all encumbrances. As a consequence, the previous owners have no right or title to alienate the property to any third party. The sale made to the appellants in the aforesaid sale deed, therefore, is a void sale. It does not confer any right. It is also not in dispute that the scheme envisaged was for housing purpose. Unless the scheme is modified and duly published, no non-residential scheme can be brought up. The appellants came to be in possession of the land. It can at best be only illegal possession. The High Court gave a categorical finding that the appellants were not in possession and only sign board was put up in the property. Under these circumstances, they did not acquire any right to the property."

In view of the aforementioned two judgments of the Supreme Court of India, there can be no dispute that when a notification u/s 52 of the Act and further notification issued u/s 71 of the Act, then it would be presumed that all procedural steps were duly taken by the authorities under the Act.

Independently of the above, it has come on the record that Birkha was the original owner. He preferred objections. These objections have been placed on the file of writ petition as annexure R/10. The same have been disposed of by passing an order, annexure R/11. The order, annexure R/11 has been placed on the file of writ petition. It be seen that objections, annexure R/10, has been duly

thumb marked by Birkha. The present appellant is the daughter of Birkha. As the father of the present appellant was duly served, it can safely be said that the procedural safeguard of giving notice to the owner as recorded in the revenue records was duly given. If this be the position, then the argument raised by the learned counsel for the appellant that notice as required under the Act was not issued would not come to his rescue.

The learned counsel for the appellant has placed reliance on M/s. Neyvely Lignite Corpn. Ltd. Vs. Special Tahsildar (Land Acquisition), Neyvely and others, and K.S. Paripoornan Vs. State of Kerala and Others, ." We are of the opinion that the aforementioned authorities would not be attracted to the facts of this case.

Another argument has been raised by the learned counsel for the appellant. He submits that this aspect of the matter has not been taken note of by the learned single Judge, and therefore, the matter should be remanded. We are of the opinion that judicial system is burdened as it is. It should not be further burdened by passing unnecessary orders of remand. If a particular issue can be settled in appeal then it is totally unnecessary to remand the matter back. As such, the above argument is also liable to be rejected.

The learned counsel for the appellant has argued that during the life time of Birkha 1/6th of the property was given to the present appellant-Mullo Bai. We are of the opinion that there is no evidence on the record in this regard.

So far as delay aspect is concerned, the Supreme Court of India in the case reported as Aflatoon and Others Vs. Lt. Governor of Delhi and Others, , has held that if there is inordinate delay in the matter of challenging section 4 notification of Land Acquisition Act, 1894, then the writ petition can be dismissed on the ground of delay. Similar view has been expressed by the Supreme Court in a recent decision reported as State of Tamil Nadu v. L. Krishnar, (1996) 1 SCC 250 . The view expressed by the learned single Judge that the petition is highly belated calls for no interference.

We are of the opinion that this appeal is without merit and is dismissed with no order as to costs.