(1972) 04 MP CK 0042

In the Madhya Pradesh High Court

Case No : M.P. No. 82 of 1969

Municipal Council, Mandsaur APPELLANT

Vs

State of M.P. and others RESPONDENT

Date of Decision : 04-04-1972

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248, 57
Madhya Pradesh Municipalities Act, 1961 — Section 100, 101

Citation : (1972) JLJ 966

Hon'ble Judges : S.R. Vyas, J;G.L. Oza, J

Bench : Division Bench

Advocate : S.D. Sanghi and B.P. Jhanjariya, for the Appellant; S.L. Dube, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Oza, J.—This is a petition filed by the Municipal Council, Mandsaur.

2. According to the petitioner, the Mandsaur Municipal council was first constituted as a body corporate under the provisions of the Gwalior State Municipalities Act, Samvat 1993, and the limits of the Mandsaur Municipality were defined under that Act. This Act was repealed by the M.B. Municipalities Act, 1954, which came into force from 10th January 1954. It is alleged that by virtue of section 2 of this Act the limits of the Mandsaur municipality, defined under the Gwalior Act, and the Municipal Committee constituted under that Act were continued as section 2 of the Madhya Bharat Act provided that it shall be deemed to be constituted under the new Act. The Madhya Bharat Act was repealed by the M.P. Municipalities Act, 1961, which came into force from 1st February 1962. Section 2 of this Act provides for existing municipalities, and the Mandsaur Municipality continued as if it was constituted under the new Act. It is alleged that section 24 of the Gwalior Act provided for the acquisition of property by the municipality either by way of transfer in its favour or by other means. According to the petitioner, by Circular No. 3 of Samvat 1998 published in the

Gwalior Government Gazette dated the 23rd March 1952, the Gwalior State Government ordered that all open lands within the limits of the municipality, which were not assessed to any land revenue, shall be recorded in the name of the municipal committee in the settlement papers. By this circular in the settlement papers the Mandsaur Municipal committee was recorded as the owner of such lands. These lands which vested in the Municipal committee under the Gwalior State continued to vest in the Mandsaur Municipal council after the Madhya Bharat Act came into force and also after the M.P. Municipalities Act came into force. According to the petitioner section 100 of the M.P. Municipalities Act provided for vesting of such lands in the municipal council. It is alleged by the petitioner that the Khasra entries, copies of which have been filed along with the petition, showing that all such open lands, which were not assessed to land revenue, were recorded as municipal property and they continued to be so recorded until 1966-67. On 10th September 1964 the State Government issued certain instructions with respect to unoccupied lands lying within the limits of the municipality stating that the Gwalior State Circular, referred to above, did not amount to transfer of all rights of the State in favour of the Municipal Council. It was also stated in these instructions that the possession of such land by the municipal council was only administrative or managerial, and they had no absolute power of disposal of such lands. These instructions were issued by the Government to the Collectors of the revenue districts. It is alleged by the petitioner council that on 27th March 1965 the Council passed a resolution saying that the open lands within its municipal limits belonged to it by virtue of the Gwalior State Circular No. 3, and the Council was entitled to be benefitted by transferring such lands by way of sale or lease, and in fact it has been so doing. Along with this resolution, a communication was sent to the Collector, Mandsaur on 5th June 1965. On 28th September 1967, the Nazul Officer, Mandsaur Sub-division, Madsaur, wrote to the Tahsildar, Tahsil Mandsaur that the lands lying within the municipal limits of the Mandsaur Municipal Council have been declared by the Collector on 23rd August 1967 to be Nazul lands and instructed the Tahsildar to correct the entries in the revenue papers accordingly. Along with this letter, the Nazul Officer also sent to the Tahsildar a list of unoccupied lands lying within the municipal limits. A copy of this letter was also sent to the petitioner Council. According to the petitioner, the Council had granted leases from month to month of portions of these unoccupied lands situated within the municipal limits, which were recorded in the name of the Council in revenue papers so far. The petitioner has also given particulars of various lessees and the lands leased out to them. It is alleged that on 20th March 1969 the Nazul Officer, Mandsaur, served notices on all the lessees of the municipality informing them that the lands occupied by them were Nazul lands, and the payment of lease-rent by them to the petitioner Council was not valid. They were also asked to get new leases from the Nazul office and pay rent to the Nazul Officer. It was also stated in the notices that on default the lessees would be evicted from the land. A specimen of these notices is also filed along with the petition. It is alleged that on 25th June, 1969, the Nazul Department removed the temporary structures of one of the petitioner''s tenants, namely Shankarlal, on the ground that it was an encroachment on Nazul land. The petitioner has, therefore, filed this petition before this Court.

3. In the return filed on behalf of the State, most of the facts are not disputed. The main contention appears to be that by the Circular issued by the Gwalior Government, in Samvat 1998, no ownership has been vested in the Municipal Council. It is contended that in fact, these lands vested in the municipality only for the purposes of management in the capacity as a trustee and not as owners.

4. Shri S.D. Sanghi appearing for the petitioner contended that section 24 of the Gwalior State Municipalities Act provided that the municipality would be a body corporate having powers to acquire property. He also contended that u/s 87 of the Gwalior Act the municipality was entitled to hold the property, and it was also entitled to hold it in ownership rights. According to the Learned Counsel, the Circular issued by the Gwalior Government in Samvat 1998 conferred on the municipality rights in all open lands which were unoccupied He contended that after the coming into force of the Madhya Bharat Act, section 48 of that Act provided for the vesting of the property in the municipal committee, and on the coming into force of the M.P. Municipalities Act, section 100 of that Act provided for the vesting of the property in the Municipal Council. Learned Counsel contended that even if it is accepted that the Municipal Council had no absolute rights in the property so vested in it, still the Collector, by an executive order, could not divest the Council of the rights which vested in it under a statute. He contended that the administrative instructions of the Government, and following those instructions the order passed by the Nazul Officer directing the Tahsildar to correct the entries in the revenue records, are not justified. According to the Learned Counsel, the properties that vested in the Council in whatever rights under a statute could not be taken away by administrative action.

5. Shri Dubey, Government Advocate appearing for the State, contended that under the scheme of the M.P. Land Revenue Code, 1959, all lands belonged to the Government. After reading extensively and at length various provisions pertaining to assessment of land revenue is the M.P. Land Revenue Code, Shri Dubey contended that the whole scheme of the Code indicates that all lands in the State vest in the State Government. According to him, only the powers to manage were transferred to the municipalities under the Circular issued by the Gwalior Government, and the provisions of the Madhya Bharat Act and the Madhya Pradesh Act only vest in the Municipal Council authority to manage these lands as trustees. As these provisions indicate, the Municipal Council was entitled to put these lands to use for the purposes of this Act. He could not contend that the Revenue Book Circular, under which the Nazal lands are administered by the Nazul Officer, has any statutory sanction. But he contended that these are instructions of the Government, and the Government, being the ultimate owner of the lands could instruct its officers to manage the properties in a particular manner, and on this basis the Nazul authorities had every right to instruct the

Tahsildar to make relevant entries in the revenue records and administer, the open lands lying within the municipal limits. He also at length contended that neither the Circular nor the Gwalior Act and nor even the Madhya Bharat Act conferred any proprietary rights in the Municipal Council.

6. Circular No. 3 issued by the Gwalior Government in Samvat 1998 was about the municipalities in the Gwalior State. The existence of the Circular is not in dispute. The relevant portion of that Circular reads thus-

This Circular indicates that unoccupied lands lying within the municipal limits were; vested in the Municipalities, and it was ordered that they should be so recorded in the Revenue Papers. This Circular indicates that it was intended that in the settlement papers such lands should be recorded as ''Milkiyat'' of the municipalities.

7. Section 87 of the Gwalior State Municipalities Act provided for the vesting of such properties in the municipality. It reads thus-

This provision clearly lays down that such properties shall vest in the municipality and shall be in its possession, the only restriction being that municipality shall be entitled to use and spend these properties for the purposes of the Act. After the formation of Madhya Bharat, the M.B. Municipalities Act came into force and section 48 thereof provided as under-

"48. All property of the nature hereinafter in this section specified, and not being specially reserved by the Government shall be vested in and belong to the municipality, and shall, together with all other property, of what nature or kind so ever not being specially reserved by the Government, which may become vested in the municipality, be under their direction, management and control, and shall be held and applied by them as trustees, subject to the provisions and for the purposes of this Act, that is to say-

"(a) all public town-walls, gates, markets, slaughter-houses, manure and night-soil depots, and public buildings of every description.

(b) all public streams, tanks, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water-works, and all bridges, buildings, engines, works, materials and things connected therewith or appertaining thereto, and also any adjacent land (not being private property) appertaining to any public tank or well;

(c) all public sewers and drains, and all sewers, drains, tunnels, culverts, gutters and water-courses in, alongside or under any streets, and all works, materials and things appertaining thereto, as also all dust, dirt, dung, ashes, refuse, animal matter, filth, night-soil or rubbish of any kind collected by the municipality or by customary or private sweepers from the streets, houses, privies, sewers, cess pools, or elsewhere.

(d) all public lamps, lamp-poss, and apparatus connected therewith, or appertaining thereto;

(e) all lands transferred to them by the Government or by gift or otherwise, for local public purposes;

(f) all public streets, and the pavements, stones and other material also thereof and also all trees, erections, materials, implements and things provided for such streets." -

This section also provides that except for reservations made by the Government all property of the nature specified in that provision shall vest in the municipality and it will be under the management and control of the Municipality. The restriction in this section was that the Municipality shall hold and apply it as trustee subject to the provisions and for the purposes of the Madhya Bharat Act. Section 100 of the M.P. Municipalities Act provides as under-

"100. (1) Subject to any special reservation made or to any special conditions imposed by the State Government, all property of the nature hereinafter in this section specified within the limits of the Municipality, shall vest in and be under the control of the Council and with all other property which has already vested, or may hereafter vest in the Council, shall be held and applied by it as trustees for the purposes of this Act, that is to say-

(a) all public town-walls, gates, markets slaughter houses, manure and night-soil depots and public buildings of every description which have been "constructed or maintained out of the Municipal fund;

(b) all public streams, tankes, reservoirs, cisterns, wells, springs, aqueducts, conduits, tunnels, pipes, pumps and other water-works, and all bridges, buildings engines, works, materials and things connected with or appertaining thereto, and also adjacent land not being private property, appertaining to any public tank or well;

(c) All public sewers and drains and all sewers drains, tunnels, culverts, gutters and water courses in, alongside or under any streets and all works, materials and things appertaining thereto;

(d) All dust, dirt, dung, ashes, refuse, animal matter, filth, night-soil or rubbish of any kind collected by the council or by any customary or private sweepers from the streets, houses, privies, sewers, cesspools or elsewhere;

(e) all public lamps, lamp-posts and apparatus connected there-with, or appertaining thereto;

(f) All public streets, not being land owned by the State Government and the pavement, stone and other material thereof and also trees growing on and erections, materials implements and things provided for such street;

(g) all lands and/or other property transferred to the council by the State Government or acquired by gift purchase or otherwise for public purposes;

(2) The State Government may, by notification direct that any property which has vested in the council shall cease to be so vested; and thereupon the property specified in the notification shall cease to be so vested, and the State Government may pass such orders as it thinks fit regarding the disposal and management of such property.

(3) The State Government may resume any immovable property transferred to the Council by itself or any other local authority, where such property is required for a public purpose without payment of any compensation other than the amount paid by the Council for such transfer and he market value at the date of resumption of any building or works subsequently erected or executed thereon by the Council:

Provided that before taking any such action, the State Government shall obtain and take into consideration the view or objections of the Council:

Provided further that compensation need not be paid for building or works constructed or erected in contravention of the terms of the transfer".

It is clear from this provision also that subject to the reservations, if any made by the Government, the property enumerated in the provision vests in the municipal council. It is no doubt true that this section provides that the property shall be applied by the council as a trustee for the purposes of this Act. Sub-sections (2) and (3) of this section provide for the Government taking back the property if it so chooses, and for that purpose a procedure has been prescribed. It is not the case of the Government that they had chosen to act under these sub sections. Even if they choose to act under these sub-sections, apart from following the procedure laid down it will have to be seen as to how far it could be done when the properties vested long before the M.P. Act was brought into force. In any event, that not being the question before us, it is not necessary for us to go into it. Section 101 of the M.P. Act also contemplates transfer of Nazul lands to a municipal council even under the provisions of the M.P. Act, and in that event the Council is entitled to manage the lands in accordance with the bye-laws made by the Council with the approval of the Government, In the present case, the question does not, however, arise as Nazul lands have not been transferred to the Municipal council. But, the provisions only indicate that a municipal council managing open lands and leasing them out to respective persons in accordance with the provisions of the M.P. Act is a situation which is contemplated even under the said Act.

8. These provisions clearly go to show that the open lands, which were not assessed to land revenue and which fell within the municipal limits, were transferred to the municipal committee during the times of the Gwalior State by the Circular referred to above. These properties continued to vest in the municipal committee under the Gwalior Act, the M.B. Act and now under the M.P. Act. It is not necessary for us in this petition to go into the question of extent of the right that the municipal council had over these open lands, admittedly these

properties vested in the Municipal Council with some rights as were conferred under the respective enactments and maintained under the various Acts enacted for that purpose. In our opinion, therefore, the question about the extent of the right over these open lands vested in the municipality is not a question to be decided before us. The Collector, Mandsaur, acting under the advisory instructions of the Government declared all these open lands, which were recorded in the name of the Municipal Council, Mandsaur, as Nazul lands, and the Nazul Officer has proceeded to take possession of these lands and has also directed the Tehsildar to make entries in the revenue papers so as to correct entries in favour of the municipalities and record the lands as Nazul lands. The only question, therefore, before us for decision is whether, under the executive order of certain officer, acting under the Revenue Book Circular which admittedly has no statutory sanction, a municipality can be divested of its rights which are vesting in it.

9. The scheme of the M.P. Municipalities Act has even made a provision that in case the Government wants to divest a municipality of such lands, that could be done in a particular manner. Admittedly the Nazul Officer is not acting under that provision or under any provision of law. Learned Government Advocate laid much emphasis on section 57 of the M.P. Land Revenue Code Section 57 is as under-

"57. (1) All lands belong to the State Government and it is hereby declared that all such lands, including standing and flowing water, mines, quarries, minerals and forests reserved or not and all rights in the sub-soil of any land are the property of the State Government: Provided that nothing in this section shall be deemed to affect any rights of any person subsisting at the coming into force of this Code in any such property.

(2) Where a dispute arises between the State Government and any person in respect of any right under sub-section (1) such dispute shall be decided by the Sub-Divisional Officer.

(3) Any person aggrieved by any order passed under sub-section (2) may institute a civil suit to contest the validity of the order within a period of one year from the date of such order.

(4) Where a civil suit has been instituted under sub-section (3) against any order, such order shall not be subject to appeal or revision."

It cannot be doubted that this provision itself saves the rights which are already vested in various persons in respect of certain lands in the State. Consequently, if the rights are already vested in the municipality on open pieces of lands lying within its municipal limits long before the M.P. Land Revenue Code was enacted, section 57 of the Code saves such rights and so the contention advanced by the learned Government Advocate is without any substance. It cannot, therefore, be doubted that certain rights vest in the municipality, under respective municipal laws, in open pieces of lands lying within the municipal limits. These rights are conferred under a statute and have been saved and protected under the successive enactments enacted from time to time for the purposes of municipal administration. Consequently, the right so vested under a statute and protected by a successive statute cannot be taken away by an executive order of the Government or anyone of its officers. The contention of the learned Government Advocate is that the State being the absolute owner of all lands can always withdraw the rights which it had conferred on the municipal committees for the purposes of management of the land within its municipal limits. This argument cannot be accepted as the rights have been conferred by a statute on the municipal councils and have been protected by legislative enactments, and the rights conferred and protected by legislative enactments cannot be disturbed by executive orders.

10. Learned Government Advocate also placed reliance on State of M.P. v. Narmada Prasad 1968 RN 547 and State of Madhya Pradesh Vs. Atmaram, . In State of M.P. v. Narmada Prasad (supra), the question was about unoccupied area within a municipality which neither vested in nor was given for management to the municipal council, and in that context it was held that the Tehsildar had jurisdiction to take action u/s 248 of the M.P. Land Revenue Code. This decision is based on the admitted circumstances that the land in question neither vested in the Municipal council nor at any time was transferred to it for management, and it these circumstances that decision can be of no assistance in the present case. The decision in State of M.P. v. Atmaram (supra) also is of no assistance in the present case. In that case, while considering the provisions of the C.P. and Berar Municipalities Act, 1922, a Single Judge of this Court held that the Tehsildar had jurisdiction u/s 248 of the M. P. Land Revenue Code to eject a person who is found to have encroached upon an unoccupied land. This decision is based on the assumption that if the municipal committee does not take any action against a person who has encroached upon a public road, the Tehsildar can proceed against him u/s 248 of the M.P. Land Revenue Code. As regards the question of Nazul Officers and the Rules, it has been observed in this decision as under :-

"Lastly it is contended that the power of the Tahsildar u/s 248 of the Code is either taken away or controlled by the Nazul rules. It was however, conceded that the Nazul rules are not statutory. and, if that is so, the positive provisions of a statutory enactment like section 248 of the Code cannot be negatived or controlled by such rules."

In these circumstances, therefore, the question about the extent of the rights of the Municipal council is not necessary to be gone into.

11. In view of the discussion above, the petition must be and is allowed and the order dated the 25th September 1964 declaring all open lands lying within the Municipal limits as Nazul lands and the order dated the 28th, September 1967 directing the Tehsildar to correct revenue entries, and other proceedings by the Nazul Officer against the lessees of the petitioner or the petitioner itself are quashed. The petitioner is entitled to the costs of this petition. Counsel''s fee Rs.

250. The amount of security deposit shall be refunded to the petitioner.

