

(2014) 08 MP CK 0060
In the Madhya Pradesh High Court
Case No : WP. 6474/2012

Munna Singh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 19-08-2014

Acts Referred:

Citation : (2014) 08 MP CK 0060

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : D.D. Bansal, Advocate for the Appellant; Raghvendra Dixit, Govt. Advocate, Anil Saxena and P.C. Chandil, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. With the consent of the counsel for the parties, the matter is heard finally.
2. This petition in the style of Pro Bono Publico has been filed by the petitioner, claiming following reliefs:-
 - "i) the pond situated over survey no. 949 (new no. 2006) area 7 bigha 3 biswa I.e. 1.494 hectare situated in patwari halka no. 34, village Kheda Mevda, Tahsil & District Morena be recorded as government pond so that the private persons may not be in a position to encroach over it by filling it by earth/soil.
 - ii) the respondent no. 4 to 8 be restrained from making encroachment upon the pond and not to fill it by earth/soil and further they be restrained from raising any construction over and in place of the pond.
 - iii) any other relief deemed fit in the facts and circumstances of the case may also be kindly granted.
 - iv) cost may also be awarded. "
3. As per the facts culled out, one old pond was in existence at survey no. 949 in village kheda Mevda covering area 7 bigha 3 biswa. The water of the pond was

taking in use by the nearby villagers including animals. In other words, the pond was maintaining the whole area of the village. Surprisingly, it's location, was changed and converted into Banjar land and later on, the land on which the said pond was existed was exchanged by the owner Ramdeen after making connivance with the State officials, who at subsequent stage sold it out to respondent No. 5-Smt. Tarawati and from her to other sellers. Hence, in order to issue necessary directions against the respondents, the present petition has been filed.

4. It is submitted by Shri Bansal, learned counsel for the petitioner that on the land in question at Survey No. 949 there was existed a water pond which was being used by the villagers and the animals but unfortunately in the revenue papers no entry about its existence was made and the land is otherwise being taken by the State for their own purposes. In support of his contention, learned counsel for the petitioner placed reliance on the Khasra entries marked as Annexure-P/6. It is also submitted that initially the land was mutated in the name of one Ramnarayan who was the Zamindar and thereafter with the collusion of the government officials, Survey No. 949 was got mutated in the name of Ramdeen on the basis of exchange order of the land passed by the Collector, Morena on 29/6/1983 in Case No. 11/82-83/37-19(4). Thereafter, this land was transferred by Ramdeen to Smt. Tarawati and sale-deed to that effect was also executed.

5. Learned counsel by referring to his rejoinder dated 17/8/14 submitted that even if the stand taken by the respondents No. 1 and 2/State in their return is taken as true that the land comprised in survey no. 2006 (having old survey no. 949) was banjar land since samvat 2007 but this land was exchanged by owner Ramdeen which was not permissible in law. He submitted that only agricultural land of Bhumiswami can be exchanged with the Govt. agricultural land and therefore in this view of the matter, according to the learned counsel for the petitioner, the order of exchange passed by the Collector, Morena is bad in law. In this context, he placed reliance on the decision rendered in the case of Banwari Lal Gupta and Others Vs. State of M.P. and Others,

6. On the point of tenability of the petition, further reliance is placed by the counsel on the Division Bench decision of this court in the case of Rinkesh Goyal Vs. State of M.P., and submitted that in order to remove encroachments over the land of ponds and lakes, appropriate directions can be issued in Public Interest Litigation. Apart the aforesaid, it is also submitted by the counsel that as per Annexure-P/7 the villagers have made representation addressing to the Collector, Morena but no order has been passed by him. Hence, in the light of these premised arguments, it is prayed that the petition be allowed and appropriate directions be issued against the respondents.

7. Countering the allegations made by the petitioner, it is inter alia submitted by the respondents No. 1 and 2/State on the strength of the return that the grounds taken in the petition are imaginary and baseless. It is contended that after the

abolition of Zamindari, the land was exchanged by owner Ramdeen with the land belonging to survey no. 8/5 which was in the individual ownership of Ramdeen and for that purpose legal order was passed by the Collector, Morena long before on 29/6/1983. Accordingly, Ramdeen got Bhumiswami rights and therefore the land was sold by him legally in favour of Smt. Tarawati. It is also submitted on behalf of the State that in the relevant Khasra entries there were no mentioned that any water pond was ever existed in survey no. 949. So far as photographs of the pond are concerned, it is urged that merely on their basis, it cannot be presumed that pond was in existence at survey no. 949. Therefore, it is submitted that in the absence of any solitary evidence about existence of pond at survey no. 949, no such relief can be granted in favour of the petitioner. In support reliance is placed on the relevant khasra entries as well as panchnama and photographs marked as Annexures-R/1 and R/2. It is therefore prayed that the petition be dismissed being devoid of substance.

8. The respondent No. 5 by filing her return also supported the grounds taken by the respondents No. 1 and 2/State. It is submitted that earlier Ramdeen was Bhumiswami of the land who after exchange of the land disposed of the same in favour of respondent No. 5 as per the registered sale-deed executed on 13/10/94 vide Annexure-R/3 and therefore the respondent No. 5 was the bonafide purchaser of the land who subsequently sold out the land to respondents No. 6 to 8. Hence, it is submitted that there is no merit in the petition and same is liable to be dismissed.

9. The respondents No. 6 to 8 in their return also contended that there has been no pond on the land in question and the respondent No. 5 was the duly purchaser of the land and after purchasing the land from her, the respondents have mutated their names in the revenue records. Hence, it is prayed by them that the petition has been filed with malafide intention and on misrepresentation of facts, which deserves to be dismissed.

10. Having regard to the submissions of the learned counsel for the parties, entire record has been seen.

11. On perusal of the material available on record, it is clear that initially survey no. 949 was mutated in the name of ex-Zamindar and after abolition of the Zamindari land was mutated as government land and same was exchanged by Ramdeen with his land and for that purpose order was passed by the Collector on dated 29/6/1983. In none of the revenue papers it was gathered that previously there was a water pond on the land. So far as order which is stated to be passed by the Collector, Morena on 29/6/1983 is concerned, same was not challenged in any of the forums till now. Therefore after crossing the period of more than 32 years, no such ground is now available to the petitioner in absence of specific khasra entries of the water pond on the land in question. Hence, looking to this position at this stage, after elapse of 32 years, no such relief can be granted in favour of the petitioner. However, in view of the peculiar facts of the case, the petitioner is directed to submit fresh representation before the Collector, Morena

in support of the previous representation dated 17/7/12 (Annexure-P/7) and in turn the Collector, Morena is directed to examine the said representation on the following points:-

- (i) whether there was existed any water pond on the land comprised in survey no. 949 (new survey no. 2006) and if so;
- (ii) whether it holds accrual of any easementary rights of the villagers, if yes;
- (iii) then the Collector, Morena shall take appropriate action in accordance with law after giving opportunity of hearing to all the concerning parties.
- (iv) The Collector, Morena shall decide the representation on the directions given above within a period of four weeks from the date of receipt of the same alongwith copy of this order.

12. With this direction, the petition stands dismissed.