(1981) 07 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 43 of 1981

Nandakishore APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 15-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226
Urban Land (Ceiling and Regulation) Act, 1976 — Section 20, 20(1)

Citation : AIR 1982 MP 33 : (1983) JLJ 595 : (1982) 27 MPLJ 168

Hon'ble Judges : K.N. Shukla, J;H.G. Mishra, J

Bench : Division Bench

Advocate : L.P. Bhargava, for the Appellant; Kulsreshtha, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

H. G. MISHRA, J.

This petition under Article 226 read with Article 227 of the Constitution of India is for issuance of an appropriate writ or direction for quashing the order dated 22-3-1980 (An-nexure P-2), rejecting the application submitted by the petitioners claiming exemption u/s 19 and Section 20 of the Urban Land (Ceiling and Regulation) Act No. 33 of 1976, passed by the Dy. Commissioner, Land Records and Settlement, Govt. of Madhya Pradesh, in pursuance of an order passed by the Government of Madhya Pradesh in Land Records and Settlement department and conveyed vide letter No. 5-103/8-91/79-Bhopal, dated 23-1-1980 (Annexure R/5).

Briefly stated the facts giving rise to the present petition are as under : The petitioners allege that they are Bhumiswamis of the land comprised in survey No. 1354/1/1, in area 1.996 hectares, situated in village Nizatpura, Uj-jain. The petitioners further allege that a Ginning and Pressing Factory, called ''New Cotton Ginning and Pressing Factory'' is situated on the aforesaid land and that factory building, factory office, godown, sheds and servant quarters are also built thereon. The area on which the various buildings are standing comes to 35830 square feet. The rest of the open land is being used for the purposes of the factory, for example, for storing Kapas, Kapasia and cotton by the factory, the cultivators and businessmen. Although the factory was running up to 1972, but thereafter it is not running due to financial reasons and the petitioners intend to run the factory in future and all formalities for obtaining the licence for the year, 1980-81 have been completed by the petitioners. The petitioners submitted an application (Ex. P/1) dated 6-4-1977 to the State Government under Sections 19 and 20 of the Urban Land (Ceiling and Regulation) Act No. 33 of 1976 (for short, the Act) for exempting the land comprised in survey No. 1354/1/1 from the operation of the provisions of the Act. The petitioners have been informed of the fac-tum of rejection of this application, vide order dated 22-3-1980, by the Deputy Commissioner of Land Records and Settlement, Govt. of Madhya Pradesh (An-nexure P/2), Aggrieved by this order the petitioners have submitted this petition.

The petition is resisted by the respondent State on the grounds that the petitioners were heard prior to passing of the order dated 22-3-1980; that the petitioners were given opportunity to lead evidence, but they had failed to lead evidence in support of their claim. As such the petition is liable to be dismissed.

Shri L. P. Bhargava, learned counsel for the petitioners contended that the State Government before rejecting their application claiming exemption did not hear the petitioners; that in view of the provisions of Section 20(1)(b) of the Act, which are applicable to the situation, hearing of the petitioner was necessary and that the impugned order is illpgal because it is not based on considerations, which are relevant. Shri Kulshrestha, Dy. Government Advocate for the State submitted that there is no force in the aforesaid contentions and contended that the satisfaction postulated by Section 20(1)(b) of the Act is subjec-tive satisfaction and that it was not obligatory on the State Government to have heard the petitioners before rejecting their application for exemption. Having heard the learned counsel for the parties, we have come to the conclusion that the petition deserves to be allowed to the extent indicated hereinafter.

The controversy between the parties centres round the question with regard to the nature of the power conferred on the State Government by Section 20 of the Act. Section 20 of the Act reads as under:

"Section 20. Power to exempt.-- (1) Notwithstanding anything contained in any of the foregoing provisions of this Chapter, --

(a) where any person holds vacant land in excess of the ceiling limit and the State Government is satisfied, either on its own motion or otherwise, that, having regard to the location of such land, the purpose for which such land is being or is proposed to be used and such other relevant factors as the circumstances of the case may require, it is necessary or expedient in the public interest so to do, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter;

(b) where any person holds vacant land in excess of the ceiling limit and the State Government, either on its own motion or otherwise, is satisfied that the application of the provisions of this Chapter would cause undue hardship to such person, that Government may, by order, exempt, subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of this Chapter.

Provided that no order under this clause shall be made unless the reasons for doing so are recorded in writing.

(2) If at any time the State Government is satisfied that any of the conditions subject to which any exemption under Clause (a) or Clause (b) of Sub-section (1) is granted is not complied with by any person, it shall be competent for the State Government to withdraw, by order, such exemption after giving a reasonable opportunity to such person for making a representation against the proposed withdrawal and thereupon the provisions of this Chapter shall apply accordingly."

Clause (a) of Sub-section (1) of Section 20 of the Act empowers the State Government to exempt any vacant land in public interest; whereas Clause (b) thereof empowers the State Government to grant exemption to any person who holds vacant land in excess of the ceiling limit, where such exemption is considered necessary to avoid undue hardship to such person. The second schedule to the Act inter alia prescribes Rs. 10/- as court-fees stamp to be paid on an application for exemption of vacant land u/s 20 of the Act. The power to exempt so conferred on the State Government carries with it an obligation to exercise that power on a case being made out for the purpose. Of course, the power to exempt is exercisable by the State Government on its own motion, but the same can be exercised otherwise also. This is what flows from the use of the expression "either on its own motion or otherwise" used in Clauses (a) and (b) of Section 20(1) of the Act. The words "or otherwise" cannot be construed ejusdem generis and are indicative of the fact that the power is exercisable on being invoked in any other manner. The natural corollary of this position of law is that the petitioners have right to submit a petition invoking the exercise of the power of exemption so conferred on the State Government. This Legislative intendment is also clear from the provision of court-fee on an application for exemption of vacant land u/s 20 of the Act made in Schedule 2, as stated above. The power to exempt by its very nature in cases to which Clause (a) of Section 20(1) of the Act is applicable, appears to be exercisable in public interest; whereas so far as Clause (b) of Section 20(1) of the Act is concerned, the power is exercisable for the benefit of the holders so that undue hardship on account of operation of the Act may be avoided. In present case the petitioners appear to invoke the power vested in the State Government u/s 20(1)(b) of the Act. Now, in order that the power to exempt may be exercised under the aforesaid Clause (b), it is necessary that the State Government should be satisfied that the application of the provisions of the Chapter III (in which Section 20 is placed) would cause undue hardship to the person who holds the vacant land in excess of the ceiling limit. On a case of undue hardship being made out, the State Government may by order exempt subject to such conditions, if any, as may be specified in the order, such vacant land from the provisions of the said Chapter. Thus in essence the provision is for the benefit of the holder and its object appears to be to grant exemption so as to avert causing of undue hardship to him by operation of the law. If the State Government feels satisfied that a case has been made out for grant of exemption claimed, then an order of exemption may be passed even without hearing the claimant. An order in favour of a party can be passed behind his back even. But the question is whether an order affecting the interests of the claimant adversely can be passed without hearing him. Having regard to the object which the provisions placed in Section 20(1)(b) of the Act have to achieve and also having regard to the serious consequences which will ensue in case the claim for exemption is rejected without hearing the claimant, it has to be held that the claimant has to be heard before refusal of his claim for exemption, so that he may show that there will be undue hardship to him in case exemption is not granted. Section 20(1)(b) of the Act does not negate natural justice and in absence of express exclusion of the rule of audi alteram partem, it is fair, indeed fundamental, that the person claiming exemption should not be prejudiced by action without opportunity to show the contrary.

The power of exemption has the effect of restoring the applicability of the general law by taking away the exemption to it created by the special law, Accordingly, the power to claim exemption is a valuable right. Where under the provisions of an Act an authority is empowered to grant exemption and a person has a right to claim it on fulfilment of statutory conditions, the authority is bound to hear him and pass a speaking order giving reasons in support of its finding that he is not entitled to the exemption.

Faced with this situation Shri Kul-shreshtra contended that the satisfaction postulated by the aforesaid provision is subjective satisfaction merely and that in absence of a corresponding provision in Clause (b) of Section 20(1) for giving an opportunity of hearing, as placed in Sub-section (2) of Section 20 of the Act, hearing of the petitioners prior to passing of the impugned order was not necessary.

Satisfaction of the State Government contemplated by Clause (b) of Section 20(1) of the Act has to be with regard to the nature of hardship, which would be caused to the claimant. Accordingly, the satisfaction envisaged has to be objec-tive in its character and cannot be sub-jective satisfaction merely, the touchstone for testing the validity or otherwise of the satisfaction having been provided by the law. The function of the State Government accordingly is of a quasi-judicial character.

It is true that unlike Sub-section (2) of Section 20 in Clause (b) there is no specific provision for giving a reasonable opportunity to the person concerned, but from the language employed therein and in view of the object which the provision has to achieve it has to be regarded that acting upon the principle of natural justice regarding hearing of the claimant is necessary while deciding his claim for exemption thereunder. A bare perusal of the impugned order will show that it has been passed in accordance with the order passed by the State Government in the department of Land Records and Settlement on 23-1-1980 rejecting the application of the petitioners for grant of exemption. It is not shown that the petitioners were either heard by the State Government prior to passing of the order conveyed vide Anne-xure R/5, to the Deputy Commissioner of Land Records and Settlement, who passed the order contained in Annexure P/2, in pursuance thereof .

An argument was tried to be built by Shri Kulshrestra on the basis of proceedings showing the appearance of counsel for the petitioners before the competent Authority under the Act. However, reference to any proceeding before the competent Authority is wholly irrelevant for the present purposes because the power of exemption is exercisable only by the State Government. Since at no point of time the State Government heard the petitioners before rejecting their application for exemption, the order passed thereon by the State Government, vide Annexure-R5 and in pursuance thereof by the Deputy Commissioner, vide Annexure-P/2, cannot be regarded to have been passed in accordance with law.

Another contention put forth by Shri Kulshrestra was that in view of the proviso to Clause (b), recording of reasons is necessary only in case of grant of exemption. This contention does not merit acceptance. The expression "no order under this clause" is wide enough to cover the order of grant as well as refusal. Even otherwise, if in case of granting exemption reasons are required to be stated it beats ones imagination how in cases of rejection a claim for exemption recording of reasons can be regarded to be unnecessary.

Lastly, it was contended by Shri Kulshrestra that the use of the word "may" in Clause (b) of Section 20(1) of the Act does show that the power is discretionary and if in its discretion the State Government have rejected the application no challenge can be entertained against the order of rejection. The contention advanced by Shri Kulshrestra on the point overlook the principle of law that when power is given to a public authority, there may be circumstances which couple with the power a duty to exercise it. Where a power is deposited with a public officer for this purpose of being used for the benefit of persons specifically pointed out with regard to whom a definition is supplied by the legislature of the conditions upon which they are entitled to call for its exercise, that power ought to be exercised. --See Jullius v. Lord Bishon of Oxford 1874 80 All ER 43. Viewed from this angle, it appears that the provisions placed in Section 20(1)(b) of the Act are for the benefit of holders and the power conferred thereby is exercisable for their benefit for averting undue hardship that would be caused to them if the land in respect of which exemption is claimed is not exempted from the operation of the Act. Accordingly, on case being made out, exemption has to be granted and the State Government cannot withhold the exemption claimed. As such, the word "may'''' cannot be construed in a manner to clothe the State Government with arbitrary power to reject an application for exemption, even if the conditions for grant thereof stand made out.

That apart, the reasons which have to be stated while rejecting an application for grant of exemption have to be relevant. The order (Annexure-R/5) passed by the State Government does not disclose application of mind in as much as it does not contain any finding on the question as to whether in case of refusal of the prayer for exemption there will be undue hardship to the petitioners or not.

In view of the discussion aforesaid, this petition succeeds and is hereby allowed. The orders passed by the State Govt. vide Annexure-R/5, and that passed by the Dy. Commissioner, vide Annexure-P/2. are hereby quashed. The Slate Government is directed to decide the application of the petitioners dated 6-4-1977 after giving them an opportunity of hearing in accordance with law and observations made thereinabove. In view of nature of the controversy, we direct the parties to bear their own costs as incurred in this Court. The outstanding amount of the security deposit shall be refunded to the petitioners.

