
(2012) 06 MP CK 0047
In the Madhya Pradesh High Court
Case No : W.A. No. 1184 of 2009

Naresh Pathak

APPELLANT

Vs

State of M.P. and another

RESPONDENT

Date of Decision : 21-06-2012

Acts Referred:

Citation : (2012) 06 MP CK 0047

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sourabh Bhushan Shrivastava, for the Appellant; Vijay Pandey, Dy.A.G, for the Respondent

Judgement

1. This appeal is directed against an order dated 10.11.2009 in W.P. No. 11048/2009, by which writ petition filed by the petitioner seeking following reliefs was dismissed :-

(i) To issue a writ in the nature of mandamus or any other writ/direction/order and accordingly the respondents may kindly be directed to return back the security money/earnest money with interest.

(ii) It is, therefore, prayed that the lease cancelled by the respondent No. 1 be set aside.

(iii) Any other relief which this Hon"ble Court deems fit and proper may also be awarded in favour of the petitioner, in the interest of justice."

Learned counsel for appellant submitted that in the writ petition, appellant had prayed for refund of security amount for which there was no order of forfeiture and the appellant was entitled for refund of security amount, but the learned Single Judge in the impugned order has held that the Collector has forfeited the security amount and dismissed the writ petition. It was submitted by the appellant that in absence of any order of forfeiture of security, appellant was entitled for refund of security amount.

2. The learned counsel appearing for State submitted that he has received instructions from the respondents and has filed additional return on 9.12.2011, in which in para 3 it has been specifically stated by the respondents that there is no order of forfeiture of security amount against the appellant.

3. To appreciate the contention of appellant, we have gone through the record and find that appellant was awarded Trade Quarry Mouja Dhana, Tahsil Gadarwara, District Narsinghpur over Khasra No. 142, 246/1, 246/2, 251 admeasuring 2 hectares for a period of two years for Rs. 7,21,000/- per annum payable in four equal instalments of Rs. 1,80,250/-. An agreement was entered into on 14.5.2007. The petitioner as per the agreement has deposited an amount of Rs. 21,16,300/- as earnest money on 16.3.2007. Thereafter there were certain defaults in depositing the instalments as per the agreement. A show cause notice was issued to the appellant on 26.11.2007, but the appellant had not complied with the notice or with the terms of agreement and ultimately the agreement was cancelled by an order on 1.5.2008, by which the Collector found that the appellant was defaulter for compliance of clause 5(1), (12) & 29 of the agreement and under clause 28 of the agreement, lease was cancelled and entire security amount was forfeited. The Collector also directed that because of furnishing incorrect information, criminal proceedings be also initiated against the appellant. Against the order dated 1.5.2008 Annexure P-8, appellant had preferred an appeal before the Director, who by order dated 2.6.2008 Annexure P-9 allowed the appeal and remanded the matter. Thereafter the Collector, Narsinghpur passed an order Annexure P-1 dated 7.8.2008, by which the Collector found that there was breach of clause No. 5(1), 9 of the agreement and under clause 9 of the agreement the lease was cancelled. He had further directed that for furnishing incorrect information criminal proceedings be initiated against the appellant. This order dated 7.8.2008 was under challenge before the Single Bench. The learned Single Judge not only affirmed the order, but in the operative part of the order in last para observed as under, which reads thus :-

Close reading of both the clauses reveals that in case of breach of term of agreement it is within the powers of the Collector to forfeit the earnest money which is being done in the present case. The action of respondents can not, therefore, be faulted with.

4. This last part of the order is under challenge, in which the learned Single Judge has recorded a finding that the Collector had rightly forfeited the earnest money.

5. We have gone through the order Annexure P-1 and find that there is no order for forfeiture of security amount and because of aforesaid observation in the order, the respondents are not refunding the security amount to the appellant.

6. In the additional return filed by the State, in para 3 the State has taken a specific stand, which reads thus :-

3. The answering respondents respectfully submit that earlier order was passed

by the Collector, Narsinghpur on 1.5.2008, copy of which has been filed by the petitioner as Annex. P-8. In this order Collector passed order of forfeiture of amount complying Section 28 of the agreement but this order was challenged by filing appeal before the Director Mining and the Director, Mining by order dated 2.6.2008 remanded the matter to the Collector, Narsinghpur by setting aside the order dated 1.5.2008. In the fresh order passed by the Collector there is no order in respect to forfeiture of security amount and thus at present there is no order of forfeiture of security amount against the appellant by any competent authority.

7. From the perusal of aforesaid, it is apparent that there is no order for forfeiture of security amount and in absence of any such order, appellant was entitled for refund of security amount.

8. At this stage, learned counsel for State submitted that there was breach in respect of non-deposit of instalments by the appellant, so the appellant is not entitled for refund of security amount. But from the perusal of record, we find that the Collector by order dated 1.5.2008 had specifically directed forfeiture of security amount, but after remand by setting aside the order Annexure P-9 when the matter was re-decided by the Collector, the Collector has not passed any order of forfeiture of security amount. Meaning thereby, when specifically the Collector has not passed any order in respect of forfeiture of security amount and in absence of any specific order, appellant was entitled for refund of security amount. So far as recovery of instalments is concerned, in spite of passing of order dated 7.8.2008, the respondents have not taken any steps for such recovery. There is no order against the appellant for recovery of aforesaid amount and after cancellation of agreement the quarry must have been given to some other person for operation.

9. In the aforesaid circumstances, in absence of any order till date, for forfeiture of security amount, the appellant is entitled for refund of security amount and accordingly we direct that respondents shall refund the security amount within a period of sixty days from the date of filing of certified copy of the order. With the aforesaid direction, this appeal is finally disposed of, with no order as to costs.

C.C., as per rules.