(2012) 07 CHH CK 0038

In the Chhattisgarh High Court

Case No : Writ Petition No. 468 of 1993

Padmukho Kaser and Two Others — APPELLANT

Vs

The State of M.P. and Others — RESPONDENT

Date of Decision : 05-07-2012

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 92

Citation : (2012) 3 CGBCLJ 556

Hon'ble Judges : Prashant Kumar Mishra, J

Bench : Division Bench

Advocate : Renu Kochar, for the Appellant; Shashank Thakur, Panel Lawyer for the State, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—The petitioner has preferred this writ petition seeking quashment of the demand notice Annexures P-1 & P-2 and the appellate order passed by the Additional Commissioner, Bilaspur Division dismissing the petitioners'' appeal which was preferred challenging the said demand. The facts of the case as emerged from the pleadings made by the parties are that the petitioners purchased the subject land by an unregistered instrument executed on 28, 12.1949 (Annexure P-4) and continued to remain in possession on the subject land. In the year 1987 proceedings were initiated for assessment of land revenue/lease rent and thereafter the impugned notices raising demand of Nazul premium and lease rent for Rs. 10,414/- by Annexure P-1 and Rs. 10,411/- by Annexure P-2 were served upon the petitioners.

2. It has been argued that the petitioners have acquired Bhoomiswami status after coming into force the C.G. Land Revenue Code 1959 (hereinafter referred to as ''the Code''), therefore, fixation of Nazul rent/lease rent is illegal and without jurisdiction. It has also been put-forth that the impugned demand has been raised without affording opportunity of hearing to the petitioners.

3. Learned State Counsel has drawn the attention of the Court to the report (Annexure R-1) submitted by the Office of Assistant Land Measurement Officer (Nazul Enquiry), Bilaspur on 19.08.1987 in which it has been stated that the petitioners'' statements have been recorded and the petitioners have also submitted some records before the said officer and thus the principles of natural justice have been followed.

4. Admittedly, as per Annexure R-1, the subject land is situated within the township of Champa in the present District of Janjgir-Champa and has been declared as Nazul land entered as Sheet No. 4-B, Group No. 1, Plot No. 16, area 108 Square Meters. It also appears from Annexure R-2 that the land was earlier a part of Abadi land of village Champa. The second plot bears Sheet No. 4-B? Group No. 1, Plot No. 18 area 78 square meters. After deciding to grant Nazul lease to the petitioners, the leased area has been shown as 83 sq. meters for both the plots. Annexure R-1 is the report submitted by the Land Measurement Officer (Nazul Enquiry), Bilaspur, wherein it is reflected that the petitioner was served with the notice of assessment proceedings and his statements have been recorded on 09.02.1984. In the course of enquiry, petitioners have also submitted the document where under they have purchased the land and the Certificate of residence provided by the concerned Municipality. In view of these no tings/endorsement in the document Annexure R-1s it appears that at the time of making assessment for grant of lease to the petitioners, opportunity of hearing has been afforded to the petitioners and there is no violation of principles of natural justice.

5. Section 92 of the C.G. Laud Revenue Code 1959 provides that the provisions of Chapter VIII, assessment and reassessment of land in urban areas shall apply to land held in urban area, whether for agricultural or non-agricultural purposes - (1) by a Bhumiswami; (2) by a Government lessee under a lease granting a light of renewal and (3) by a holder of service land. Sub-section (2) thereof provides that if the land revenue or the rent assessed on a plot number falls due for revision the Collector shall assess the plot in accordance with the provisions of this Chapter.

Thus the Collector of the concerned District has the power to assess standard rate of assessment and recover the same in accordance with Section 98 read with Section 59 of the Code and the Rules framed thereunder. Form-C corresponding to Rule 23 framed u/s. 98 of the Code prescribes a register of sale transactions of non-agricultural land with a note appended to it to the effect that the transactions of grant or assignment of leases for 30 years or more granting a right of renewal on payment of premium should be included in the register. Part-B of the aforesaid rules deals with non-agricultural lands for the purpose of assessment interalia providing that non-agricultural lands shall continue to be recorded in the existing records of the respective villages until a separate record of rights of such lands is prepared and while preparing a separate record, the existing survey numbers/khasra numbers shall either be recognized as plot numbers or divided into plot numbers in such manner as may be specially directed by the Settlement Commissioner for a particular area and every portion of a plot number so formed, which is held under a separate title shall be treated and recorded as a sub-division of a plot number and when the record of rights is prepared these areas and assessments shall be entered in that record and in the Field Book (khasra).

The provisions of the Act and the rules framed thereunder clearly indicate and confer power on the Collector to grant leases of Nazul Land/non-agricultural land in urban areas and when it is not in dispute that the subject land is a part of Champa Nazul town, the argument that the Collector had no authority to assess the lease rent and fix premium is without any substance.

6. There is yet another reason why the petitioners contention can not be accepted and rather the same appears to be self-defeating in as much as pursuant to the declaration and inclusion of the land in Champa Nazul town and submission of report by the Assistant Land Measurement Officer and recommending grant of lease in petitioners favour a title has been conferred upon the petitioners which was otherwise not available to them on account of instrument Annexure P-4 being an unregistered document being in the nature of transaction/transfer of land for a value of more than Rs. 100/- which is required to be compulsorily registered under the provisions of the Registration Act. If the revenue officers have decided to confer title on the petitioners and at the same time, charging some premium and the lease rent on them, their prayer for quashment of the demand is not tenable in law. For the foregoing reasons, this Court is not inclined to interfere and grant any relief to the petitioners as prayed for in this writ petition. It is accordingly dismissed.