
(2012) 03 MP CK 0124
In the Madhya Pradesh High Court
Case No : W.A. No. 25 of 2012

Preetam

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-03-2012

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 —
Section 2(1)

Citation : (2012) ILR (MP) 1509 : (2012) 2 MPLJ 598

Hon'ble Judges : R.S. Jha, J;Ajit Singh, J

Bench : Division Bench

Advocate : Ashok Lalwani, for the Appellant; Rahul Jain, Dy. Advocate General
Siddharth Patel respondent No. 4, for the Respondent

Final Decision : Allowed

Judgement

R.S. Jha, J.—The appellant has filed this writ appeal under the provisions of section 2(1) of the M.P. Uchcha Nyayalaya (Khandpeeth Ko Appeal) Adhiniyam, 2005 being aggrieved by order dated 22-11-2011 passed by the learned Single Judge in W.P. No. 2591/2011, upholding and affirming the order passed by the respondent authorities dated 3-2-2011 whereby the claim of the appellant for grant of lease hold rights over Nazool land bearing Khasra No. 254 in District Umaria has been rejected. It is alleged by the learned counsel for the appellant that the impugned order passed by the learned Single Judge deserves to be set aside as the petition filed by the appellant has been decided without taking into consideration the orders passed by this Court in W.P. No. 5624/2006 and W.P. No. 597/1993 in spite of the fact that the appellant had relied upon the same and had also tiled an application for review along with the copies of the aforesaid judgments wherein relief, similar to the one prayed by the appellant, has been-granted by this Court. It is also submitted that the learned Single Judge has also failed to take into consideration the fact that the appellant was entitled to grant of lease hold rights under the provisions of the Madhya Pradesh Nagariya Kshetro Ke Bhoomihin Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhiniyam,

1984 (hereinafter referred to as the Adhiniyam of 1984) in spite of the fact that the eviction suit filed by the respondent No. 4 against the appellant had been allowed. It is submitted that in view of the aforesaid infirmities the order passed by the learned Single Judge as well as the order passed by the respondent authorities dated 3-2-2011, rejecting the application of the appellant for grant of lease hold rights, be set aside.

2. The learned counsel for the private respondent submits that the land in question was and is in the possession of the respondents since the past several decades and a house had also been constructed by them over the same. It is stated that the respondents had inducted the appellant as a tenant but subsequently a suit for eviction had been filed by them against the appellant in which the appellant had also filed a counter-claim for being declared bhoomi swami of the land in question. It is also pointed out that the aforesaid suit No. Civil Suit 3-A/2002 filed by the respondents was decreed on 20-9-2007 while the counter-claim filed by the appellant was dismissed. The First Appeal/Civil Appeal No. 184-A/2007 filed by the appellant was dismissed on 19-11-2007 and the Second Appeal No. 1838/2007 filed against the aforesaid judgment and decree was also dismissed by this Court on 23-2-2011 affirming the judgment and decree of the trial Court. It is further submitted that the land of Khasra No. 254 is, a Nazool land however as the respondents were in possession of the same prior to 1955 the same was settled in their favour by the erstwhile Rewa State and the house thereon was purchased by them from Durga Prasad in auction and thereafter the land was also proposed to be settled in their favour by the State Government by granting them lease in Nazool Case No. 1412-A-20/78-79 and, therefore, as the land in question was in their occupation and was not vacant land, the same could not have been allotted to the appellant under the provisions of the Adhiniyam of 1984.

3. The learned Dy. Advocate General appearing for the respondent/State submits that as the dispute between the appellant and the respondents regarding right to occupy the land, bhoomi swami rights and tenancy rights, etc., was raised by the parties before the trial Court and as the competent Civil Court had decided the same against the appellant and in favour of the respondents, therefore, the authorities have rightly rejected the claim of the appellant.

4. We have perused the order passed by the learned Single Judge in W.P. No. 2591/2011 dated 22-11-2011 wherefrom it is evident that the learned Single Judge has duly taken into consideration the provisions of the Adhiniyam of 1984; the judgment and decree of the First Civil Judge, Class-I, Umaria in Civil Suit No. 3-A/2002 dated 20-9-2007; the order passed by the First Appellate Court in Civil Appeal No. 184-A/2007 dated 19-11-2007 and the order passed by this Court in Second Appeal No. 1838/2007 decided on 23-2-2011 and has thereafter dismissed the petition filed by the appellant/petitioner assailing the order passed by the respondent authorities dated 3-2-2011.

5. We have also scrutinized the orders passed by this Court in W.P. No. 597/1993

dated 4-1-2011 and W.P. No. 5624/2006 decided on 22-10-2008 on which heavy reliance has been placed by the learned counsel for the appellant to contend that the learned Single Judge should have either followed the aforesaid dictum or referred the matter to a larger Bench. From a perusal of the orders passed by this Court in the aforesaid two writ petitions it is clear that this Court in the aforesaid two writ petitions was dealing with cases in which rival claims were made by two individuals having unsettled rights seeking allotment of the same plot of land under the provisions of the Adhiniyam of 1984 and in that background this Court had held that the person who was actually in occupation of the land was entitled to grant of patta/lease hold rights under the Adhiniyam of 1984 whereas the fact situation in the present case is totally different.

6. In the instant case there is a concurrent finding of fact against the appellant by three Courts to the effect that the respondents were and are in possession of the land prior to 1955; that the State proposed to lease out the said land to them in Revenue Case No. 1412-A-20/78-79 and that the Courts below have gone on to hold that the respondents are the bhoomi swami and have the right to evict and obtain -vacant possession of the plot in question. It is also undisputed that the claim of the appellant for declaration of his title over the land in question as a Bhoomi Swami has been rejected by the trial Court and that there is a decree of eviction against him and, therefore, in the light of the judgment and decree of the competent civil Courts against the appellant and the concurrent finding of facts against him Which have become final, binding and conclusive and cannot be reopened or disturbed by this Court in the present proceedings, the reliance placed by the appellant on the decision of this Court rendered in W.P. No. 5624/2006 and W.P. No, 597/1993 and the claim of parity in that respect is patently misconceived.

7. We are inclined to say so as three competent Courts have recorded concurrent findings to the effect that the respondents have a pre-existing more dominant right over the plot in question so much so that they are also entitled to evict the appellant and obtain vacant possession of the land which finding of law and fact has attained finality and, therefore, the facts and circumstances of the present case cannot be compared with and are totally different from the facts and circumstances on the basis of which W.P. No. 5624/2006 and W.P. No. 597/1993 were decided wherein two individuals having equal status in the eyes of law had made rival claims for allotment of the same plot of land whereas in the instant case the appellant is claiming allotment of land under the Adhiniyam of 1984 by ignoring the pre-settled and finally adjudicated dominant occupancy rights of the respondents.

8. We are also of the considered opinion that the second contention of the appellant also deserves to be rejected on the ground that in view of the aforesaid judgment and decree and the fact that the respondents were in possession of the land that was proposed to be given to them on lease hold rights by the State, the respondents already have a settled and pre-existing right on the plot in question

and, therefore, the appellant cannot claim to have a better or dominant right for grant of lease hold rights in respect of the same land under the Adhiniyam of 1984 more so as he cannot be said to be in occupation of unoccupied vacant nazool land but had infact been inducted as a tenant by the respondents on the land that was actually occupied and settled in their favour and which was also being used by the appellant for business purpose.

9. A perusal of the provisions of the Adhiniyam of 1984 makes it further clear that they are attracted only in cases where a landless person is in occupation of any Government land in an urban area for residential purpose which necessarily pre-supposes that the land occupied by the landless person must be Government land on which no other person has any pre-existing rights and must therefore be vacant and free from encumbrance in that respect.

10. We are inclined to record the aforesaid conclusion as any other interpretation would lead to an absurd situation where a tenant in occupation of land rented out to him by a person having legally settled or valid leasehold rights granted to him by the State Government under law, would claim settlement of the land in his favour simply on the ground that it is Government land, contrary to and in negation of the judicially affirmed and decreed, rights and the valid lease granted by the State to the landlord by invoking the provisions of the Adhiniyam of 1984 which situation, in our considered opinion, is neither contemplated nor the object of the Adhiniyam of 1984 which in fact has been enacted only for the purpose of providing lease hold rights to landless persons in respect of sites for dwelling houses in urban areas in the State of Madhya Pradesh and not to curtail or abridge judicially affirmed and decreed existing rights. In view of the aforesaid analysis of the Adhiniyam of 1984 the very claim of the appellant for allotment of land under the Adhiniyam of 1984 is misplaced and misconceived as his claim does not fall within the purview of the Adhiniyam of 1984 as he is not an "occupier" of the Government land in the sense as envisaged under the aforesaid Adhiniyam.

11. As a result of the aforesaid, we are of the considered opinion that the reliance placed by the learned counsel for the "appellant on the decision of this Court rendered in W.P. No. 5624/2006 and W.P. No. 597/1993 is misplaced as the aforesaid judgments have no applicability to the facts and circumstances of the present case. We are also of the considered opinion that no fault can be found with the decision of the learned Single Judge upholding the order passed by the respondent authorities rejecting the application filed by the appellant claiming lease hold rights under the Adhiniyam of 1984.

12. In view of the aforesaid facts and circumstances of the present case, the appeal filed by the appellant being meritless is, accordingly, dismissed. There shall be no order as to the costs.