
(2013) 04 MP CK 0056

In the Madhya Pradesh High Court

Case No : Writ Petition No. 7702 of 2012

Rajesh Kumar Gupta and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973 — Section 50, 50(7), 50(8), 54, 56

Transfer of Property Act, 1882 — Section 105, 107, 5, 53A, 54

Citation : (2013) 2 MPLJ 707

Hon'ble Judges : S.K. Gangele, J;G.D. Saxena, J

Bench : Division Bench

Advocate : N.K. Gupta in Writ Petition Nos. 7702, 7733, 7782, 7783 and 7815 of 2012, Mr. Prashant Sharma in Writ Petition No. 7704/2012, Mr. Rajmani Bansal in Writ Petition No. 8162/2012, Mr. Deependra Singh Kushwah in Writ Petition No. 8274/2012 and Mr. B.M. Patel in Writ Petition No. 8505/2012, for the Appellant; Vivek Khedkar, D.A.G. for the Respondents No. 1 and 2, Shri Deepak Khot, Advocate for the Respondent No. 3- GDA in Writ Petition No. 8162 of 2012 and Shri Ravindra Dixit, Advocate for the Respondent No. 3- GDA, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—Writ Petition No. 7782 of 2012 [Krishnapal Singh Chauhan and Others Vs. State of M.P. & Ors] & Writ Petition No. 7783 of 2012 [Premnarayan Dwivedi & Ors. Vs. State of M.P. & Ors.] have been filed by the petitioners claiming a relief that the respondent No. 3 be restrained from dispossessing the petitioners from the land of survey No. 63/3 situate at village Dinarpur, Tahsil and District Gwalior.

Writ Petition No. 7702 of 2012 [Rajesh Kumar Gupta & Ors. Vs. State of M.P. & Ors]; Writ Petition No. 7733 of 2012 [Smt. Kusum Tomar Vs. State of M.P. & Ors.]; Writ Petition No. 7815 of 2012 [Vasudev Shrivastava & Ors. Vs. State of M.P. & Ors.] and Writ Petition No. 8505 of 2012 [Smt. Ramshree Bai & Anr. Vs. State

of M.P. & Ors.] have been filed by the petitioners claiming a relief that the respondent No. 3 be restrained from dispossessing the petitioners from the land of survey No. 61 situate at village Dinarpur, Tahsil and District Gwalior.

Writ Petition No. 7704 of 2012 [Bhoori Bai Vs. State of M.P. & Ors.] has been filed by the petitioner claiming a relief that the respondent No. 3 be restrained from dispossessing the petitioner from the land of survey Nos. 268, 269, 270, 280, 281, 253, 64, 70, 63 and 24, situate at village Dinarpur, Tahsil and District Gwalior.

Writ Petition No. 8274 of 2012 [Dharmendra Singh Bhadoriya Vs. State of M.P. & Ors.] & Writ Petition No. 8162 of 2012 [Pratap Singh Tomar & Ors. Vs. State of M.P. & Ors.] have been filed by the petitioners claiming a relief that the respondent No. 3 be restrained from dispossessing the petitioners from the land of survey No. 64 situate at village Dinarpur, Tahsil and District Gwalior.

The petitioners pleaded that they purchased the land vide registered sale deeds from the owners of the land. The details of each of the petitioner, date of execution of sale deed, owner and survey nos. are as under:-

Writ Petition No. 7782 of 2012

Writ Petition No. 7783 of 2012

Writ Petition No. 7702 of 2012

Writ Petition No. 7733 of 2012

Writ Petition No. 7815 of 2012

Writ Petition No. 8505 of 2012

Writ Petition No. 8274 of 2012

Writ Petition No. 8162 of 2012

2. Kok Singh was the owner of the land survey No. 63/3, area 1.501 hectares situate at village Dinarpur, Tahsil and District Gwalior. It is further pleaded by the petitioners that the employees of respondent No. 3 came on the spot on 10/10/2012 and they tried to demolish the house of the petitioners. The petitioners had shown sale deeds to the employees, however, no action has been taken. Hence, the petitioners have fear that their houses which were constructed after approval, may be demolished and they may be dispossessed from their property.

3. The respondent No. 3- Gwalior Development Authority, in its reply, denied the pleadings of the petitioners. It pleaded that a housing scheme was prepared by the authority and it was notified in the official gazette on 20-01-1989, being the final scheme in accordance with the provisions of Section 50(7) of the M.P. Nagar Tatha Gram Nivesh Adhiniyam, 1973 [hereinafter referred to as the "Act of 1973"]. The authority acquired the land as per the agreement entered into

between the authority and land owners in accordance with provisions of Section 56 of the Act, 1973. Possession of the land was also handed over to the authority. Consequently, the land was vested with the authority in view of provisions of Section 56 of the Act of 1973. Subsequently, land owner Kok Singh had no right to sell the land in favour of any other person. It is further pleaded that other vendors had also no authority and power to sell the land to any other person. The petitioners purchased the land after publication of final scheme in the gazette notification, hence, they acquired no right of ownership over the land. Their construction is illegal. It is further pleaded that some portion of the land of survey No. 63/3, area 3 bigha was sold by Kok Singh S/o. Gaya Ram to "Shyama Grih Nirman Sahakari Samiti" vide registered sale deed dated 07-04-2003 and the Housing Cooperative Society entered into an agreement with Gwalior Development Authority and handed over the land to Gwalior Development Authority.

4. Section 56 of the Act of 1973 provides that the Development Authority can acquire the land, required for the implementation of the scheme by agreement with the land owner. Hence, answering respondent is the owner of the land. The respondent further pleaded that some persons have filed civil suits before the Civil Court in regard to same lands. Hence, the petitions of the petitioners are not maintainable. It is further pleaded that the disputed questions of facts could not be adjudicated under writ jurisdiction.

5. The State Government- respondent Nos. 1 and 2 adopted the return of the respondent No. 3.

6. Learned counsel for the petitioners have contended that the petitioners have purchased the lands from the respective owners by registered sale deeds and after purchase they constructed the houses over the land. Hence, the respondent No. 3- GDA has no power and authority to dispossess the petitioners. It is further contended that the scheme published by Gwalior Development Authority has come to an end after a certain period as mentioned in Section 54 of the Act of 1973. It is further pleaded that the authority acquired the land by way of an agreement beyond the period of three years from the date of publication of the final scheme, which is contrary to Section 56 of the Act of 1973. Hence, the respondent has no legal right of ownership over the land.

7. In support of the contentions, learned counsel for the petitioners have relied on the following judgments:-

(I) New Okhla Industrial Development Authority Vs. Kendriya Karamchari Sahkari Grih Nirman Samiti,

(II) Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. and Others,

(III) Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others,

8. Contrary to this, learned counsel for the respondent No. 3-GDA has submitted

that after final publication of the scheme, in accordance with provisions of the Act of 1973, no person can purchase or sell the land, which is a part and parcel of the scheme. The petitioners purchased the land after final publication of the scheme. Hence, the petitioners had not acquired any title over the land. The action of the authority in regard to dispossession of the petitioners is in accordance with law. Learned counsel for the respondent No. 3 further contended that the civil suits are pending before the Civil Court and the Court has refused to grant interim injunction. Consequently, the petitions filed by the petitioners are liable to be dismissed on this ground also.

9. In support of his contentions, learned counsel for the respondent No. 3 has relied on the following judgments:-

- (I) Ujjain Vikas Pradhikaran Vs. Raj Kumar Johri and others,
- (II) Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. and Others,
- (III) Smt. Sawarni Vs. Smt. Inder Kaur and Others,
- (IV) Maharaja Chintamani Saran Nath Shahdeo Vs. State of Bihar and Others,
- (V) Food Corporation of India and Another Vs. Pala Ram and Others,
- (VI) Godavari Sugar Mills Ltd. Vs. The State of Maharashtra and Others,
- (VII) Raheja Universal Limited Vs. NRC Limited and Others,

10. Gwalior Development Authority formulated a Scheme named as "Shatabdipuram Scheme- Phase-II and III" in accordance with the provisions of Act of 1973. A notification was published in the final gazette and it is mentioned in the notification dated 20-01-1989 that land of different villages is part and parcel of the scheme and it is included in the scheme. Copy of the scheme and map have also been published. Phase-III of the Scheme was accepted by Town and Country Planning Department vide order dated 17-10-1997. The Town and Country Planning Department did not grant sanction of any plan of private colonizers in accordance with the Act of 1973 of the land which was a part and parcel of "Shatabdipuram Scheme".

11. Section 50(7) of the Act of 1973 prescribes publication of scheme in the gazette after approval. The relevant Section is as under:-

(7) Immediately after the town development scheme is approved under sub-section (4) with or without modification the Town and Country Development Authority shall publish in the gazette and in such other manner as may be prescribed a final town development scheme and specify the date on which it shall come into operation.

Section 50(8) of the Act of 1973 prescribes that after coming into force of the scheme into operation, all the lands required by the authority for this specified purposes, shall vest absolutely in the authority. The relevant provision is as

under:-

[(8) (i) Where a town development scheme has come into operation, all lands required by the Town & Country Development Authority for the purposes specified following clauses:-

(a) Layout of new streets or roads, construction, diversion, extension, alteration, improvement and closing up of streets and roads and discontinuance of communications, etc.;

(b) Drainage, inclusive of sewerage, surface or sub-soil drainage and sewage disposal;

(c) Lighting;

(d) Water supply;

shall vest absolutely in the Town and Country Development Authority free from encumbrances.

(iii) Nothing in sub-section(i) shall affect any right of the owner of the land vesting in the appropriate authority under that sub-section.]

12. From the aforesaid provisions, it is clear that no person has a right to sell the land, which is a part and parcel of the final scheme in accordance with Section 50(7) of the Act of 1973, neither the person has power to make any construction over the land. From the pleadings of the petitioners, it is clear that the petitioners had purchased the lands after final publication of the scheme and they constructed the houses without any previous sanction from the appropriate authority. Hence, they did not acquire any right of ownership over the land.

13. The contentions of the petitioners that the scheme has lapsed in accordance with provisions of Section 54 of the Act of 1973, because the authority did not implement the scheme within a period of five years from the date of notification, is unacceptable because it is pleaded by Gwalior Development Authority that it had implemented the scheme within a period of two years or within a period of five years from the date of final notification of scheme.

14. Gwalior Development Authority filed details of receipts of possession and mode of delivery of possession to the authority along with written arguments as Annexure -II. The aforesaid Annexure be treated as part of the order and photo copy of Annexure -II be annexed along-with this order.

15. From perusal of the aforesaid Annexure, it is clear that the respondent No. 3 received possession of major portion of the land within three years from the date of publication of final notification. Hence, in our opinion, the authority have implemented the scheme in accordance with Section 54 of the Act of 1973.

16. Division Bench of this Court in the case of Sanjai Gandhi Grah Nirman Sahkari Sanstha Maryadit Vs. State of M.P. and Others, has held as under in regard to lapse of scheme in accordance with Section 54 of the Act of 1973:-

Under Ss. 54, 56, 59 the intention of the Legislature was that if a scheme is lying idle after its final publication for a period of 3 years, then it will lapse. But if steps have been taken by the authorities towards the implementation of the scheme then, the word "implementation" shall not be construed to mean that the period of three years is the period prescribed for the completion of the scheme. In the instance case the scheme is for the preparation of a ring road and developing different facilities and civic conveniences around the ring road. A scheme for a much larger construction and development may be prepared which may even take ten years to complete. If the word "implementation" is interpreted in its narrow sense, a big scheme can never be taken in hand by any development authority because it may not be possible to complete that scheme within 3 years. Therefore, the only reasonable interpretation in view of the different provisions of the Adhiniyam, can be that if the development authority takes steps towards the implementation of the scheme and does not sit just idle for a period of three years, then the scheme shall not lapse, but if after the publication of the scheme nothing is done on the part of the authority, towards the implementation of the scheme then that scheme shall lapse.

17. In view of the aforesaid judgment of Division Bench of this Court, in our opinion, the scheme has not lapsed. In this view of the matter, in our opinion, the petitioners have no legal right and the petitions filed by the petitioners, deserves to be dismissed.

18. After perusal of the documents and the return filed by the respondent No. 3 in the writ petitions, some illegal activities have come to the notice of the Court. The petitioners themselves purchased the lands after publication of final scheme. Prima facie, we are of the opinion that the persons who had sold the lands to the petitioners, had no right to sell the lands. They played fraud with the petitioners. Hence, it is desirable to take penal action against the persons, who had sold the lands and also against the petitioners who had made construction over the lands without permission from the competent authority.

19. Simultaneously, it is pleaded by the respondent No. 3 that certain portion of the land it had taken by way of agreement entered into between Gwalior Development Authority and Cooperative Society. Copy of the agreement has been filed as Annexure R-3/3 in Writ Petition No. 7782 of 2012. Earlier, Kok Singh sold the land, area 0.627 hectare in favour of "Shyama Grih Nirman Sahakari Samiti". The sale deed was executed on 07-04-2003 and thereafter, "Shyama Grih Nirman Sahakari Samiti" executed an agreement with Gwalior Development Authority to the effect that the land shall be handed over to Gwalior Development Authority and the Society shall be entitled certain plots, number of which shall be decided by GDA in lieu of handing over the possession of the land. Admittedly, on the aforesaid date, Kok Singh had no authority and legal right to sell the land in favour of Cooperative Society. Neither Gwalior Development Authority could enter into an agreement with the Cooperative Society in accordance with provisions of Section 56 of the Act, 1973. The aforesaid

provision is as under:-

56. Acquisition of land for Town and Country Development Authority.- The Town and Country Development Authority may at any time after the date of publication of the final town development scheme u/s 50 but not later than three years therefrom, proceed to acquire by agreement the land required for the implementation of the scheme and, on its failure so to acquire, the State Government may, at the request of the Town and Country Development Authority, proceed to acquire such land under the provisions of the Land Acquisition Act, 1894 (No. 1 of 1894) and on the payment of compensation awarded under that Act and any other charges incurred by the State Government in connection with the acquisition, the land shall vest in the Town and Country Development Authority subject to such terms and conditions as may be prescribed.

[Provided that the said agreement may contain such conditions and executed in such manner as may be prescribed.]

20. From the aforesaid provisions, it is clear that the development authority within a period of three years from the date of publication of the final scheme, can acquire the land of the scheme from the owner by way of an agreement. Hence, the provisions of Section 56 of the Act of 1973 are not applicable in acquisition of the land by the respondent No. 3 Gwalior Development Authority from the Cooperative Society. In our opinion, the officers of the respondent No. 3 and the Cooperative Society have also played fraud in adopting the mode of acquisition. The aforesaid mode of acquisition by taking recourse of Section 56 of the Act of 1973 was not applicable in the facts of the case.

21. The Hon''ble Supreme Court in the case of Suraj Lamp and Industries Pvt. Ltd. Vs. State of Haryana and Another, , has held that immovable property can be transferred/ conveyed only by deed of conveyance (sale deed) duly stamped and registered as required under the provisions of Ss. 54, 55, 53-A, 105, 107, 5 and 8 of Transfer of Property Act. Section 56 of the Act is a special provision and it has to be construed strictly.

22. Prima facie, we are of the view that the respondent No. 3 has also acted illegally and act of the officers, who were responsible for the aforesaid act at that time, amounts to criminal act and it is obligatory on the part of appropriate authority to investigate the aforesaid illegalities and if some criminal action is required, then those persons be prosecuted.

23. Learned counsel for the petitioners have placed reliance on the judgment of Hon''ble Supreme Court to the effect that the right to property is a valuable right and that could not be taken away without due course of law. In our opinion, the petitioners acquired the land after publication of the final scheme. Hence, they did not acquire any legal right about ownership of the land. Hence, they are not entitled for any relief. Consequently, all the writ petitions filed by the petitioners, are hereby dismissed. Looking to the facts of the case, the Economic Offence

Wing, State of MP is directed to investigate the matter and if it is found that any person was involved in any illegal activities which amounts to commission of offence, then he would be prosecuted. The authority may investigate the matter independently without getting influenced by the observations made in this order. No order as to costs.

Office is directed to send a copy of this order to Director General, Economic Offence Wing, State of MP, Bhopal.