

(2014) 01 MP CK 0108
In the Madhya Pradesh High Court
Case No : W.P. No. 1582/2013

Raju Sharma and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (2015) 2 CGLJ 17

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

Bench : Division Bench

Advocate : A.V. Bharadwaj, Sr. Advocate and Sanjay Dwivedi, Advocates for the Appellant; Vivek Khedkar, Dy. Advocate General, Advocates for the Respondent

Judgement

1. Heard.

2. The petitioners have filed this petition against demolition of their boundary wall. The petitioners further prayed a relief that an adequate compensation be awarded to the petitioners for the loss caused to them due to illegal demolition of boundary wall.

3. The petitioners purchased a land of survey No. 24 area 0.215 hectare vide registered sale deed dt. 08.11.2001. They also purchased another piece of land area 0.125 hectare of same survey number situate at village Sirol, Block Morar, Tahsil and District Gwalior on the same date vide registered sale deed. After purchase of the land, names of the petitioners were mutated in the revenue record. They constructed a six feet high brick boundary wall surrounding the said land in the year 2002.

4. The petitioners pleaded that officers of the Public Works Department marked a sign against the boundary wall, then they submitted representation to the respondent No. 2 Collector Gwalior pleading the fact that they are the owners of the land and they have not made any encroachment over the government land.

Without considering that representation, the boundary wall of the petitioners was demolished on 1st March 2013 and the authorities had taken the land of the petitioner, area 11 x 190 feet, for the purpose of laying down the road. Before that, no notice was issued to the petitioner neither any proceeding under Section 248 of the M.P. Land Revenue Code, 1959 (hereinafter referred to the "Code") was initiated against the petitioners.

5. Respondents No. 1 to 3/State in the return pleaded that at the time of construction of four lane road, a spot inspection was carried out and after demarcation, it was found that the petitioners had encroached over 3 mtr. of government land after constructing the boundary wall over the aforesaid land. A joint inspection was also conducted. The petitioners were called on the spot at the time of inspection showing status of the land, however, the petitioners did not turn up and in the joint demarcation again it was found that the petitioners had made encroachment over the government land, hence, the boundary wall constructed by the petitioners was demolished, which was a hurdle for construction of 20 mtr. wide road.

6. The petitioners denied the fact in the rejoinder that they had given any notice in accordance with the provisions of the Code in regard to the demolition of the boundary wall. The petitioners further denied the fact that any case under Section 248 of the Code was registered against the petitioners.

7. Learned senior counsel appearing on behalf of the petitioners has contended that the action of the authorities in regard to demolition of boundary wall of the petitioners is arbitrary, illegal and against the provisions of law. It is further contended by the learned senior counsel that no proceeding for encroachment has been initiated by the respondents against the petitioners and without following the provisions of law, the respondents demolished the boundary wall of the petitioners and had taken possession of certain piece of land, which is of the ownership of the petitioners. Hence, the action of the respondents is arbitrary and illegal and the proper compensation be awarded in favour of the petitioners. In support of his contentions, learned senior counsel relied on the following judgments :

- (i) S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., .
- (ii) Ram Bharose Soni v. State of M.P. - 2002 (II) MPWN SN 22.
- (iii) State of U.P. and Others Vs. Manohar, .
- (iv) Jaswant Bhai Doshi Vs. Indore Municipal Corporation and Others, .
- (v) Municipal Corporation, Ludhiana Vs. Inderjit Singh and Another, .
- (vi) Maa Kaila Devi Enterprises Vs. State of Madhya Pradesh and others, .
- (vii) Tukaram Kana Joshi and Others thr. Power of Attorney Holder Vs. M.I.D.C. and Others, .

8. Contrary to this, learned Dy. Advocate General appearing for the respondents/ State has contended that the petitioners had made encroachment over the government land. The aforesaid fact was found proved in the inspection conducted by the revenue officers, hence, the authorities demolished the boundary wall of the petitioners, which was constructed illegally.

9. Undisputed facts of the case are that the petitioners had constructed a boundary wall over certain piece of land. The petitioners pleaded that they purchased the aforesaid land in the year 2001 by two registered sale deeds. The respondents pleaded that a team of revenue officers consisting Mr. Shivdayal Sharma, Revenue Inspector, Mr. Sanjeev Tiwari, Revenue Inspector, Mr. Girraj Sharma, Patwari and Mr. Amarsingh Kushwah, Patwari conducted survey and found that the petitioners and other persons had made encroachment over the government land. A second team was also constituted. It again conducted a survey and found that there was encroachment. Consequently, the authorities removed the encroachment because it was a hurdle in construction of four lane road.

10. Section 248 of the Code prescribes penalty for unauthorisedly taking possession of land. It prescribes that if any person unauthorisedly takes or remains in possession of any unoccupied land, may be summarily ejected by order of the Tahsildar. Section itself empowers Tahsildar to eject summarily any person, who has occupied the land unauthorisedly. In the present case, there is no order of Tahsildar placed by the respondents alongwith the return. There is no pleading to this effect that any case under Section 248 of the Code was registered against the petitioners and the Tahsildar passed the order in regard to ejectment of the petitioners over the land. The petitioners pleaded that they purchased the land by registered sale deeds. Thereafter they constructed the boundary wall in the year 2002. The respondents pleaded that in the demarcation, it was found that the petitioners had made encroachment over some portion of the government land and that was demolished. If there was any encroachment by the petitioners, then the proper authority to order ejectment of the petitioners was the Tahsildar in accordance with the provisions of Section 248 of the Code, however, that mode has not been adopted by the respondents because there is no such pleading in this regard. Contrary to this, the petitioners made representation to the Collector mentioning the fact that they are the owners of the land but that representation was not considered.

11. The Hon'ble Supreme Court in S.R. Ejaz Vs. The Tamil Nadu Handloom Weavers Co-operative Society Ltd., has observed as under in regard to exercise of powers by the authority:

¶8. In our view, if such actions by the mighty or powerful are condoned in a democratic country, nobody would be safe not can the citizens protect their properties. Law frowns upon such conduct. The court accords legitimacy and legality only to possession taken in due course of law. If such actions are condoned, the fundamental rights guaranteed under the Constitution of India or

the legal rights would be given a go-by either by the authority or by rich and influential persons or by musclemen. Law of jungle will prevail and ?might would be right? instead of ?right being might?. This Court in *State of U.P. v. Maharaja Dharmender Prasad Singh* dealt with the provisions of the Transfer of Property Act and observed that a lessor, with the best of title, has no right to resume possession extra judicially by use of force, from a lessee, even after the expiry of earlier termination of the lease by forfeiture or otherwise. Under law, the possession of a lessee, even after the expiry or its earlier termination is juridical possession and forcible dispossession is prohibited. The Court also held that there is no question of the Government withdrawing or appropriating to it an extrajudicial right of re-entry and the possession of the property can be resumed by the Government only in a manner known to or recognized by law.?

12. The Hon"ble Supreme Court in *Meghmala and Others Vs. G. Narasimha Reddy and Others*, has observed as under:

?48. Even the State authorities cannot dispossess a person by an executive order. The authorities cannot become the law unto themselves. It would be in violation of the rule of law. The Government can resume possession only in a manner known to or recognised by law and not otherwise.?

13. This court in *Maa Kaila Devi Enterprises Vs. State of Madhya Pradesh and others*, has considered the aforesaid judgments of the Hon"ble Supreme Court and held as under :-

?27. From the aforesaid judgments of the Hon"ble Supreme Court, it is clear that authority cannot become the law unto themselves. It would be in violation of rule of law and the Government can resume possession only in a manner known or recognised by law. In the present case, the authorities have acted in such a manner that they became the law unto themselves. The possession of the property of the petitioners has been taken in most arbitrarily manner without following the due procedure of law.?

14. From the judgments of the Hon"ble Supreme Court it is clear that the authority cannot become the law unto themselves. The authorities are expected to act in accordance with law. In the present case, if there was any encroachment reported by the demarcation team, then it was obligatory on the part of the authorities to place the material before the Tahsildar and he could order ejectment of the petitioners. No such procedure has been adopted. Hence, action of the respondents in regard to demolition of boundary wall of the petitioners is prima facie illegal.

15. Next question is that what relief can be granted by this court to the petitioners.

16. There are claim and counter claim in regard to ownership of the land. Petitioners claim that they are the owners of the land and the respondent State claimed that petitioners are the encroachers. However, this court, in exercise of

powers under Article 226 of the Constitution can not decide the disputed questions of facts that whether the petitioners have made any encroachment over the government land or they are the owners of the land over which they have constructed the boundary wall. This is also a fact that the State has constructed a road. If the land has been taken by the State, then proper remedy to the petitioners is to file a suit for compensation against State authorities. However, we have hold that the action of the respondents/State in demolishing the boundary wall is contrary to law and is arbitrary and for that purpose, in our opinion, it would be just and proper to award a compensation of Rs. 1,00,000/- (Rupees One Lac) in favour of the petitioners.

17. Consequently, the Writ Petition is disposed of with the following directions :-

- (i) Respondents are directed to pay compensation of Rs. 1,00,000/- (Rupees One Lac) to the petitioners in regard to illegal demolition of their boundary wall.
- (ii) The petitioners are at liberty to file a suit or other proceeding for compensation or for recovery of possession of the land over which the respondents have constructed the road.
- (iii) It is hereby clarified that this court has not pronounced any judgment in regard to right of ownership over the portion of the land of the petitioners or the claim of the respondents that it is a government land. It would be subject to civil suit or any other proceeding/remedy available to the petitioners under the law.
- (iv) Looking to the facts of the case, the respondents are further directed to pay costs of Rs. 5,000/- (Rupees Five Thousand) to the petitioners.