
(2014) 06 MP CK 0150
In the Madhya Pradesh High Court
Case No : Writ Petition No. 3651/2012(PIL)

Ram Niwas Gupta

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 17-06-2014

Acts Referred:

Citation : (2014) 06 MP CK 0150

Hon'ble Judges : A.M. Khanwilkar, C.J.;Alok Aradhe, J

Bench : Division Bench

Advocate : A.K. Singh, Advocate for the Appellant; P.K. Kaurav, Additional Advocate General, Shri Amit Seth, Advocate for Respondent No. 7 and Shri H.K. Upadhyay, Advocate for Respondent No. 9, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

I.A. No. 5454/2014 for amendment.

1. In our opinion, in the context of reliefs claimed in the petition, the proposed respondents are neither necessary nor property party.

2. Application rejected.

W.P. No. 3651/2012(PIL)

3. Heard counsel for the parties.

4. By this petition, filed as Public Interest Litigation, direction is sought against the respondents to remove encroachment found on the National Highway and surrounding location, put up at the instance of private respondent Aarkey Investment Private Limited by construction of D.B. Mall. Further, relief is claimed against the respondents to reconsider the allotment of land in favour of the said private respondent.

5. As regards second relief, we are in agreement with the submission made by the learned counsel for the respondents that the question regarding allotment of

land to the said private respondent has already been considered by the Division Bench of this Court in the case of Anusuchit Jati Evam Jan Jati Samiti Vs. Union of India and others in W.P. No. 14642/2007 decided on 6.2.2008 in Public Interest Litigation. That decision has been affirmed by the Apex Court consequent to the dismissal of SLP (Civil) No. 15573/2008 on 4.3.2014.

6. Considering the fact that earlier proceedings, though filed by some other petitioner, were Public Interest Litigation and the issue regarding justness of allotment in favour of private respondent has already been decided by the Court, the question of entertaining the same issue in the successive Public Interest Litigation petition cannot be countenanced. For that reason we decline to examine the said relief claimed by the petitioner in this petition.

7. Counsel for the petitioner, however, invited our attention to the last sentence in the order of the Apex Court wherein it is mentioned that the question of law is left open to be decided in an appropriate case. That observation obviously means that the question of law raised in the SLP dismissed by the Apex Court would be considered in some other case, if and when occasion arises, but, certainly the issue regarding allotment of land in favour of private respondent cannot be reopened by way of successive Public Interest Litigation.

8. That takes us to the first relief regarding encroachment. The reply affidavit filed by respondents no. 1 to 6 dated 24.1.2013 no doubt assert that no encroachment is found on the National Highway at the instance of DB Mall. However, it is common ground that the issue regarding encroachment was pointedly agitated before the Tahsildar, who, in turn, after due analysis opined about encroachment on portion of the National Highway area/Government land vide order dated 7.2.2014. In other words, the issue regarding encroachment on National Highway area/Government land has been adjudicated by the statutory Authority. No doubt, the said decision is subject matter of appeal at the instance of private respondent before the appellate Authority. All issues regarding encroachment, therefore, will have to be addressed before the appellate Authority on its own merits in accordance with law. We would not encourage multiple proceedings with regard to the said issue, that too by way of Public Interest Litigation. The petitioner, instead, can be given liberty to participate in the appeal proceedings pending before the appellate Authority against the decision of the Tahsildar dated 7.2.2014. The private respondent has no objection in this regard.

9. Accordingly, we dispose of this petition with liberty to the petitioner to participate in the appeal proceedings pending before the appellate Authority on the question of encroachment at the instance of private respondent on the National Highway area/Government land and make submissions to be supported by such material as may be permissible in law. All questions in that behalf will have to be considered by the appellate Authority on its own merits. The appellate Authority, however, shall decide the said proceedings expeditiously and not later than six months from today.

10. Nothing more is required to be said in this petition. Petition is disposed of.