

(2022) 11 MP CK 0015
In the Madhya Pradesh High Court
Case No : Review Petition No. 138 Of 2021

Ramashankar Kewat @ Pusai And Others	APPELLANT
Vs	
State Of MP And Others	RESPONDENT

Date of Decision : 02-11-2022

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248

Citation : (2022) 11 MP CK 0015

Hon'ble Judges : Sanjay Dwivedi, J

Bench : Single Bench

Advocate : Ashok Lalwani, Abhishek Singh, Alok Agnihotri, S.D.Mishra

Final Decision : Dismissed

Judgement

Sanjay Dwivedi, J

This petition has been filed by the petitioners seeking review of order dated 24/02/2020 passed in M.P.No.816/2020.

The petitioners are seeking review mainly on the ground that they are residing over the land in question since last 30-40 years and as per the Gazette notification dated 07/09/2017 they are entitled to be allotted the land in their favour. It is claimed by the petitioners that this aspect has not been considered by the Court and rejected the petition, although under the provision of Madhya Pradesh Gramo Me Ki Dakhalrahit Bhoomi (Vishesh Upbandh), Adhnam 1970 (hereinafter referred to as 'Adhnam 1970') petitioner's claim can be considered for allotment of land.

Counsel for the petitioners has placed reliance upon a decision of Supreme Court reported in AIR 2005 SC 592 parties being (Board of Control for Cricket, India and another Vs. Netaji Cricket Club and others) in which Supreme Court has observed that review is maintainable when the Court has passed an order under misconception of law and according to him, this Court without considering the fact that allotment can also be made in favour of petitioners under the provision

of Madhya Pradesh Gramo Me Ki Dakhalrahit Bhoomi (Vishesh Upbandh), Adhniyam 1970 has passed the order. He has also placed reliance upon a decision reported in (2011) 2 MPLJ 399 (Kamla Bai Vs. State of M.P and others). Likewise, in a case of Brahaspati Bai Vs. State of M.P and others, (2009) 1 MPLJ 542, it is held that if a person is land less person and constructed the house over the land of the State Government Patta can be allotted under the provision of Madhya Pradesh Nagriya Kshetro ke Bhoomiheen Vyakti (Pattadhriti Adhikaron Ka Pradan Kiya Jana) Adhniyam 1984 (for short 'Adhniyam 1984'). Further, in the case of Kailashchand Vs. State of M.P.and others, reported in (2011) 2 MPLJ 554, it is observed by the Court that for Nazool land also patta can be allotted. It is submitted by counsel for the petitioners that order passed by this Court deserves to be recalled and fresh hearing should be done.

Counsel for State and intervenor opposed the submissions made by counsel for petitioners and submit that even the order passed by the Court is erroneous and contrary to law but the same cannot be a ground for review. Counsel for intervenor has pointed out that Division Bench of this Court in W.P.No.9436/2018 (Sadashiv Bharti Vs. State of M.P & ors) has directed for removal of encroachment over the land in question i.e khasra nos.261/3, 266, 267, 268, 269, 270 and 271 for which the petitioner is held to be encroacher and as such authorities implementing the direction of the Division Bench removed the encroachment of the petitioner.

The petitioners by filing M.P.No.816/2020 claimed that no proceeding for removal of encroachment could have been initiated by the authorities without considering the pending application of the petitioner under the provision of 'Adhniyam, 1970', in which he has claimed the allotment of land.

This Court considering the factual circumstances of the case dismissed the petition on the ground that removal of encroachment in pursuant to the order passed by the revenue authorities under Section 248 of M.P.Land Revenue Code, 1959 is a distinct proceeding than that of request made for allotment of Patta under the provision of 'Adhniyam 1970' and as such both the proceedings cannot be assailed in one petition.

Perusal of record and reply filed by the respondents, it is clear that encroachment has already been removed by the authorities. It is also clear from the pleadings made by the petitioners that a petition i.e W.P.No.5914/2020 filed by the petitioner seeking direction from the authorities to allot the land or to pass an order under the provision of 'Adhniyam 1970' has already been dismissed by this Court. The question whether the petitioners are entitled to get the land under the provision 'Adhniyam 1970' or under the provision of 'Adhniyam 1984' is a complete prerogative of the competent authority, which can consider the application, if any, is made for allotment of land under the respective Adhniyam. However, this Court while passing the order in M.P.No.816/2020 has not observed anything against the petitioners but only refused to interfere in the matter. In such a circumstance, there was no misconception to this Court while

deciding the Miscellaneous Petition and dismissing the same. Right to get a land under the respective provision is still alive and that can be availed by the petitioners in an appropriate proceeding. This Court does not find any error apparent on the face of the record and also any defect in the order passed by this Court. Even the case laws on which petitioners are placing reliance have no application in the present case because those relate to right of a landless person to be granted patta of a land. Such right since not considered and adjudicated by this Court, therefore, those cases have no application.

The Review Petition therefore without any substance and is hereby dismissed.