

(2001) 02 MP CK 0009

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2286 of 2000

Ramesh Chandra Bhagat

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 28-02-2001

Acts Referred:

Citation : (2001) ILR (MP) 949 : (2001) 5 MPHT 662 : (2002) 1 MPJR 271 : (2001) 3 MPLJ 501

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Advocate : Rohit Arya, for the Appellant; K.C. Ghildiyal, for the Respondent

Judgement

Dipak Misra, J.

In this writ petition the petitioner, an ex-service man, has called in question the pregnability of the order passed by the State Government fixing the premium in respect of the land allotted in his favour.

The facts as have been unfurled are that the petitioner was recruited in the Indian Army as Telecom Technician in the Corps of Signals in the year 1970. He was deployed with his unit to combat 1971 Indo Pak war and had also spent considerable time on posting in field area on the territorial line of Indo Tibet Border. While serving in Indo Tibet Border he suffered severe fatal injury during Sugar Sector Operations and after sustained treatment he was declared medically unfit and was recorded as a disabled person. It is pleaded in the petition that he has been receiving regular pension as well as disability pension under the Indian Army Act and Rules framed thereunder. As averred in the writ petition the State Government issued a circular No. 2069-680-Aa-72 dated 30-10-1972 as a measure of rehabilitation of Ex-servicemen/disabled person, war widows etc. for the purpose of providing small pieces of land for construction of houses. Under the said circular the area of land to be allotted to such classified persons range from 2400 sq.ft. (60" x 40") to 3600 sq. ft. (60" x 60").

In the said circular two conditions had been mentioned. The petitioner being a disabled Ex-serviceman had applied for 3600 sq.ft. in Katanga area, Village Ghorakhpur out of khasra 773/1, 774/1, 775/1 and 776/1 in the year 1984. The application of the petitioner was recommended by the District Sainik Welfare Board, Jabalpur but no action was taken on the application for a considerable period of time. Being aggrieved by the inaction of the authorities he approached this Court in W.P. 5016/96 which was disposed of on 11-2-99 wherein this Court directed to consider the case of the petitioner and pass necessary orders in accordance with the circulars. This Court initially had fixed two months time for passing appropriate orders but later on at the instance of the State Government extended the period. Thereafter the State Government decided to allot 3000 sq.ft. land to the petitioner and passed an order on 14/15-9-99 with a direction to the Collector, respondent No. 2 herein, to cause deposit of premium and ground rent from the petitioner within six months failing which and upon expiry of the time thereof the allotment would automatically come to an end. It has been set forth in the petition that he had not yet received the copy of the order and, therefore, he was approaching the concerned authorities to know about the fate of his application. When the matter stood thus, all of a sudden on 10-3-2000 the petitioner was called by the concerned Tahsildar who directed him to deposit the amount in question though no particulars were provided to him. However, the petitioner obtained a certified copy of the orders dated 9-3-2000 and 10-3-2000 which revealed that the order passed by the State Government on 19-9-99 was taken up by the Nazul Officer for compliance and the petitioner was asked to deposit. It has been pleaded that the petitioner was shown the order after expiry of the time stipulated therein and was provided a challan to deposit Rs. 2,31,000/- in the treasury. While making a grievance with regard to the service of the order it is urged in the petition that the State Government has decided to allot 3000 sq.ft. of land to the petitioner not under the circular dated 30th May 1972 but on the basis of the circular dated 7-2-98 as has been mentioned in the order. It is pleaded that the circular dated 7-2-93 is not applicable to the facts of the present case inasmuch as the said circular provides for allotment of only 1800 sq.ft. of land which is an amendment of the earlier circular. It has been averred that the rates provided for ground rent and premium under the earlier circular has to be made applicable to the petitioner but the same has not been done and the ground rent and premium have been fixed on the basis of the circular dated 16-2-93 and guidelines of 1999-2000. It has been further put forth that the Collector by letter dated 20-4-99 had referred to the circular dated 30-10-72 and had recommended allotment of the land to the petitioner but the Government while fixing the ground rent has ignored its earlier circular and the recommendation of the Collector. It is set forth in the petition that the State Government while passing the order has fixed the premium in respect of various parts in a different manner. It is set forth that the Government has excluded 495 sq.ft. of land as he was allotted the said area as a landless person and out of the rest of the land premium has been fixed in respect of 1800 sq.ft. in terms of government circular dated 16-2-93 and for the balance land premium has been

fixed on the basis of the guidelines of 99-2000. An additional premium of Rs. 1,15,000/- has been imposed. It is averred in the writ petition that while fixing this premium no opportunity of hearing was given to the petitioner. It is also urged that the recommendation of the Collector should have been accepted by the State Government but as the same has not been done the order fixing the premium is vitiated. According to the writ petitioner the imposition of additional premium has no justification. With the aforesaid averments prayer has been made for striking down the conditions contained in Annexure P-5 and to fix the premium and the ground rent as per the circular dated 30-10-72, Annexure P-2, and as per recommendation of the Collector dated 20-4-99, Annexure P-9.

A return has been filed by the contesting respondents contending inter alia, that on a scrutiny at the level of the Government it was found that the petitioner was allotted 495 sq.ft. of land as a landless person and he has unauthorisedly occupied 4600 sq.ft. of the Government land. However, keeping in view the petitioner's disability and being an Ex-servicemen the Government considered his case sympathetically and decided to allot him 3000 sq.ft. of land including 495 sq.ft. which has already been allotted in his favour on permanent lease basis. It has been pleaded in the return that out of the balance of 2505 sq.ft. of land 1800 sq.ft. was decided to be allotted as per 1993 circular and accordingly premium was fixed and the balance land has been settled on the basis of the guidelines issued for the year 1999-2000. According to the respondents the petitioner has carried out permanent construction on the area measuring 2668 sq.ft. and, therefore, the Government decided to impose Rs. 1,15,500/- as an additional premium for having occupied land enjoyed the Government land unauthorisedly. It has been pleaded that the petitioner could have been evicted because of unauthorised occupation but the State Government has taken a sympathetic view of the matter and imposed an additional premium.

A rejoinder affidavit has been filed by the petitioner highlighting that initially the petitioner should have been allotted 3000 sq.ft. of land being an Ex-serviceman and a disabled person but he was allotted only 495 sq.ft. as a landless person. Reliance has been placed on the recommendation of the Collector. Allegation with regard to unauthorised occupation of 4000 sq.ft. of land is disputed. The fixation of the premium on piecemeal basis has been criticised in the rejoinder. It has also been pleaded that the circular dated 16-2-93 has no relevance and the imposition of additional premium has no sanction of law.

I have heard Mr. Rohit Arya, learned counsel for the petitioner and Mr. K.C. Ghildiyal, learned Government Advocate for the respondents.

It is submitted by Mr. Arya that the application of the petitioner should have been considered on the basis of the circular dated 30-10-72 inasmuch as his application for allotment of land was made on 13-9-84 which was pending for consideration for a considerable length of time without any justifiable reason. It is put forth by him that the State Government has formulated a policy to confer a benefit on the disabled Ex-serviceman and the commitment in that regard should

be honoured in all aspects and should not become a mirage for the affected person. Learned counsel has further canvassed that the petitioner's claim may be confined to 3000 sq.ft. and the additional premium fixed by the State Government should be annulled.

Mr. Ghildiyal, on the contrary, has submitted that the petitioner is not entitled to the benefit of the 1972 circular as his case was considered after the order passed by this Court. It is urged by him as the petitioner had, without allotment, constructed on the land he has to pay on the basis of the prevalent circular and guidelines. He has also justified the imposition of additional premium on the ground that the petitioner had enjoyed the benefit of the land in question without prior approval of the State Government.

Before advertng to the rival submissions raised at the Bar I think it apposite to refer to the relevant portion of the order passed on earlier occasion in W.P. No. 5016/96. It reads as under :

"It is expected of the State Govt. that if they make certain circulars and assures certain benefits to ex-serviceman, then being honest to their words, they take early action on such applications and do not keep the same pending adinfinitem. If the present case, application for allotment was made on 13-9-84 which was forwarded by District Sainik Welfare Office on 22-10-84. Almost about 14 years have passed and the authority has not chosen to pass final orders. It is hereby directed that the State Government shall take the said application into consideration immediately and shall pass necessary orders in accordance with the circulars taking into consideration the entitlement of the petitioner, within a period of two months from the date of submission/receipt of copy of this order. It is however, made clear that the State shall be free to decide the application in accordance with law because this Court is not adjudicating upon the rights of the petitioner."

It is worth while to state here that in the said order in paragraph one itself the Court has referred to two circulars dated 30-10-72 and 22-6-74. On a bare perusal of the aforesaid direction it is graphically clear that the petitioner had submitted the application in the year 1984 and it was expected of the State Government to bestow its anxious consideration to the genuineness of the application and deal with it in accordance with the prevalent circulars. As it is apparent the State Government maintained a sphinx like silence and allowed the agony of the petitioner to get pyramided. Only after the petitioner approached this Court his case was taken up for consideration. The moot question that arises for consideration is whether the case of the petitioner should have been considered as per the 1972 circular. In this context, it is apposite to refer to the circular dated 30-10-72. The relevant portion of the same reads as under :

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dsUnzh; ukxfjd ifj"kn ubZ fnYyh dh vksj ls ;g fuosnu fd;k x;k gS fd jkT; "kklu }

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?1? e`rd toku vf/kdkfj;ksa ds ifjokjksa dks ;fn os "kgjksa esa edku cukuk pkgrs gSa rks Hkw[kaM fu%"kqYd fn;s tk,a] ftlesa "krZ ;g jgsxh fd mDr Hkw[kaM ij ikap o"kks? dh vof/k esa edku cuk;k tk;sxk vkSj de ls de nl o"kks? rd mDr Hkw[kaM dk gLrkUrj.k ugha gksxkA mDr Hkw[kaM dk okf"kZd fdjk;k uke ek=#i;s 1-00 ds fglkc ls fy;k tk,xkA

?2? HkwriwoZ ISfudksa dks fj;k;rh nj vFkkZr~ U;wure ewY; (up set price) rFkk ml ij fu/kkZfjr okf"kZd Hkw[kaM HkkVd ij nh tk, ,oa mDr Hkw[kaM ij ikap o"kZ dh vof/k esa edku cuk;k tk;sxk vkSj de ls de nl o"kks? rd mDr Hkw[kaM dk gLrkUrj.k ugha gksxkA

As per the aforesaid circular a person who is handicapped Soldier is entitled to 2400 sq.ft. to 3000 sq.ft. on certain conditions. The 1993 circular which has been brought on record as Annexure P. 8 reads as under:

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jkT; "kklu us foHkkxh; Kki- ?ekad 2064 @ 630 @ vkB @ 72 fnukad 30 vDVwcj 1972 }kjk nh xbZ fj;k;r esa fuEukuqlkj vkaf"kd la"kks/ku fd;s tkus dk fu.kZ; fy;k gS%&

?1? ;q? esa e`rd toku vf/kdkfj;ksa ds ifjokj esa ls ,d gh O;fDr dks ,d gh uxj esa Hkou fuekZ.k gsrq 30 ? 40 = 120 oxZ QqV ls 30 ? 60 = 1800 oxZQqV Hkwfe U;wure ewY; ds vk/ks nj ij C;kt rFkk 5% Hkw&HkkVd fd;k tk,A

?3? vkoafVr Hkwfe ij i?k fu"iknu dh fnukad ;k Hkwfe ij dCtk fn;s x;s fnukad ?tks igys gks? ls rhu o"kZ ls Hkou fuekZ.k izkjaHk dj 5 o"kZ esa fuokl ;ksX; Hkou dk fuekZ.k fd;k tkuk vfuok;Z gksxkA

?4? vkoafVr Iykv @ i?k fu"iknu dh frfFk ls 10 o"kZ rd dh vof/k rd gLrkUrj.k "kklu dh iwoZ vuqefr ds fcuk ugha fd;k tk;sxkA**

There is quite a change in the circular of 1993. It is discernible from record that the Collector vide Annexure P-9 recommended to the State Government on the basis of the 1972 circular. The State Government, as has been indicated above took into consideration the circular of 1993 and granted 1800 sq.ft. and fixed the premium as per the said circular and for the rest of the land applied the guideline of 1999-2000. While passing the order the State Government also imposed certain conditions and directed to make a verification with regard to the physical disability of the petitioner.

Upon perusal of the order passed by the State Government it is noticeable that the State Government has referred to the 1993 circular which is also meant for

physically handicapped soldier but simultaneously has directed for verification in regard to the same. It is perceivable that there is no denial in the counter affidavit that the petitioner is an ex-serviceman and physically handicapped. On this foundation the core question that falls for determination is whether the action of the State Government is sound. It is not in dispute that the petitioner filed the application in the year 1984. True to the letter and spirit of the circular the State Government should have dealt with it in quite promptitude and should not have slept over it for more than a "yuga" to compel the petitioner to approach this Court in the year 1996. It is to be kept in mind that an ex-serviceman who has become handicapped while serving at the Border area to protect the territory of the country cannot be treated in a contemptuous manner. Expeditious steps were warranted to be taken as per the circulars brought into existence by the State Government. It is not to be forgotten that citizens sleep peacefully because the soldiers forget the distinction between day and night and keep a constant vigil so that the territory of the mother land is not encroached upon or intruded. It has been said that in peace the sons bury their parents but at the time of war it is the parents who bury their sons. A soldier who is posted at the Border may not be fighting a battle all the time but the risk factor cannot be marginalised. His family members remain in a constant state of apprehension but they feel proud that their near and dear one is protecting the "Matrabhumi" and keep the concept "Janani Janmabhumischa Swargadapi Gariyasee" very close to their breast. The noble saying "I only regret that I have but one life to lose for my country" strengthens the virtue of patriotism in a soldier and he protects the collective interest in his humble way. Realising all these aspects the State Government has been framing circulars from time to time to confer some benefits on such soldiers and if nothing more, an expectation is harboured by the deserving persons to get a fair deal. Such an expectation is not to be atrophied by the State Government on any spacious plea. In the case at hand it is an admitted fact that the petitioner was injured while serving at Indo Tibet Border and hence, the service of the petitioner to the country cannot be overlooked. If the application of the petitioner would have been dealt with in an expeditious manner he would have been conferred the benefit and would not have been fighting a litigation of this nature. Of course this Court cannot turn a Nelson's eye to the fact that before allotment the petitioner had encroached upon an area. The State Government had the authority to evict the petitioner as he is an encroacher but the State Government in a sympathetic manner has settled the land with the petitioner complying the yardstick of 1993 circular and guidelines of 1999-2000. While appreciating the action of the State Government in this regard, I am of the considered view a balance has to be struck so that complete justice is done. As far as the fixation of premium and ground rent is concerned, the same has to be done as per the 1972 circular or any other circular in vogue in 1984 inasmuch as the application for allotment was pending for consideration since 1984. Thus, it is directed that a fresh order in that regard shall be passed by the State Government within a period of two months which shall be communicated to the petitioner who shall deposit the amount as per the direction

of the State Government. While so directing this Court cannot be oblivious of the fact that the petitioner has encroached in respect of certain land which was not allotted in his favour. The was not expected of a disciplined ex-serviceman. As has been indicated in the return the petitioner is in occupation more than 3000 sq.ft. There shall be a verification of the same by the competent Nazul Authority in presence of the petitioner within a period of two months and the petitioner shall hand over excess area, if any. As far as Additional premium is concerned the same is quite excessive and should not have been imposed on the petitioner who had served the country. Simultaneously the petitioner should not be allowed to go free. As has been stated above he had encroached upon the land and it was not expected of him. While passing a fresh order fixing the premium and rent in accordance with 1972 circular and other circulars in vogue in 1984 the State Government may determine the rent payable in respect of the area from the date of his occupation and require him to make good the same.

With the aforesaid directions the writ petition stands disposed of without any order as to costs.