

(2000) 12 MP CK 0007
In the Madhya Pradesh High Court
Case No : S.A. No. 30 of 1998 (G)

Sabra Begum

APPELLANT

Vs

Chief Municipal Officer

RESPONDENT

Date of Decision : 10-12-2000

Acts Referred:

Madhya Pradesh Nagariya Kshetron Ke Bhoomihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 — Section 3

Citation : (2001) 1 MPJR 69

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : M.M. Kaushik, for the Appellant; R.D. Jain, for the Respondent

Final Decision : Allowed

Judgement

Arun Mishra, J.

This second appeal has been preferred by the plaintiff aggrieved by dismissal of the suit by the trial Court. The first appeal preferred against dismissal of the suit also stands dismissed. Hence this second appeal before this Court.

The plaintiff filed the suit for permanent injunction restraining the defendant from interfering with her possession over the disputed property i.e. plot admeasuring 20" x 20" situated near Shastri Bridge claiming that the same belongs to her. The plaintiff claims possession over the suit property for the last 25 years.

As per the plaintiff's plea, the State of Madhya Pradesh enacted M.P. Nagriya Kshetron ke Bhumiheeno Vyaktiyon ko Adhikaro Ka Prapta Karaya Jana Adhiniyam, 1984 (hereinafter referred to as "the Act" for short) according to which it was declared that all persons who have constructed huts on government land shall be given right of ownership on such land. The Authorised Officer thereafter granted patta in favour of the plaintiff in respect of plot admeasuring 20" x 20". The plaintiff had complied with all the conditions of the said Patta/

lease. There is provision made in the Act that if anybody dispossesses such a landless person he shall be convicted for two years" jail sentence.

The defendant in the written statement contended that the plaintiff was not in possession of the disputed plot for last 25 years. The S.D.O. has granted licence and not lease under the said Act. There was no renewal of the lease. Hence the defendant has right to eject the plaintiff.

The trial Court dismissed the suit. An appeal was preferred which has also been dismissed on the ground that as per document dated 28.9.1983 since there is no renewal, no right accrues to the plaintiff. Hence the land vests in the Municipal council and the plaintiff is not entitled for the relief of injunction.

This second appeal has been admitted by this Court on the following substantial questions of law on 27.7.1998

(1) Whether in view of the provisions of Section 3 of the Madhya Pradesh Nagriya Kshetro ke Bhoomihin Vyakti (Pattadhariti Adhikaron ka Pradan Kiya Jana) Adhiniyam, 1984, the plaintiff-appellant will be deemed to have been settled on the disputed land and the two Courts below committed an illegality in holding the plaintiff to be a trespasser ?

(2) Whether the Courts below were justified in refusing to grant injunction in favour of the plaintiff-appellant to the extent that he shall not be evicted except according to the procedure established by law, and as such, the decree passed by the Courts below is not sustainable ?

(3) Whether the Courts below have properly construed the patta granted in favour of the appellant-plaintiff ?

A Learned counsel for the appellant Shri M.M. Kaushik has submitted that the Courts below have misconstrued the terms and conditions of the sale deed Ex.P/2 on record. It has been issued in the name of the Governor to the plaintiff under the Act on the condition that the lessee shall not effect transfer, shall not change the user, and if alternative accommodation is provided by the Government Patta shall stand cancelled and there is right of renewal till such time alternative accommodation is made available. The Patta was issued on 28.9.1984 by the S.D.O. who is the Authorised officer. Shri Jain for respondent has supported the Judgment & decree

A perusal of the lease deed and its conditions clearly shows that there is right of renewal till such time alternative accommodation is not allotted to such landless person who is in occupation of the land/plot in question. The S.D.O. is the competent authority to settle the land under the Act and the right of the plaintiff to obtain such a lease has not been questioned. The lease has not been cancelled. Thus, it cannot be said that there is any right with the defendant to interfere with the possession of the plaintiff over the land in question.

In view of the condition of the lease deed, though it was granted initially for one

year it was subject to renewal by the government from time to time and right of renewal is available till alternative accommodation is given to the occupant. It is not the case of the Municipal Council that alternative land has been made available to the plaintiff. Thus, the Municipal Council cannot be said to have right to interfere with the possession of the plaintiff over the suit plot. The factum of Patta has been admitted by R.K. Pateria (D.W.1) Chief Municipal Officer. Thus, the notice issued by the Municipal Council to the plaintiff is illegal and is liable to be quashed. The authority are bound to renew the lease in case no violation of condition has been done.

In the result, the appeal is allowed. The notice dated 14.5.1995 issued by the respondent is quashed and it is declared that the plaintiff is having right to hold the land in question as per the terms of the lease Ex.P/2 granted to her. If there is any violation of the lease deed by the plaintiff, it would be open to the appropriate authority to take action in accordance with law. Injunction is granted against the respondent not to interfere with the possession of the plaintiff till she holds the lease. The defendant-respondent shall bear the costs of the plaintiff through out in addition to its own.