

(2014) 04 MP CK 0016

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 5937/2002, 7559, 11909/2013, 2031 and 2057/2014

Sanjay Ledwani

APPELLANT

Vs

The Cantonment Board Pachmarhi

RESPONDENT

Date of Decision : 16-04-2014

Acts Referred:

Citation : (2014) 04 MP CK 0016

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

Advocate : Prashant Singh, Uttam Maheshwari, P.N. Dubey, Sanjay Agarwal, Advocates, Naman Nagrath, Senior Advocate and S.P. Singh, Amicus Curiae, Vikram Singh, J.P. Pandey, Anoop Nair, Rajas Pohankar, Advocates and P.K.Kaurav, Additional Advocate General, Advocate for the Appellant

Judgement

1. I.A.No. 4554/2014 and I.A.No. 4861/2014.
2. In view of the recent Supreme Court decision dated 10.3.2014 in the case of Adarsh Co-optv. Housing Society Ltd. Vs. Union of India, the order passed by this Court on 29.11.2013 is recalled.
3. I.A.No. 4554/2014 and I.A.No. 4861/2014 are disposed of.
4. We have heard counsel for the parties.
5. W.P.No. 2031/2014 and W.P.No. 2057/2014 have been filed by the occupants/ owners of the structures in respect of which demolition action has been initiated.
6. W.P.No. 7559/2013 has been filed as Public Interest Litigation for issuing direction to the appropriate Authority to remove all the unauthorized structures in Pachmarhi area. For the same relief, suo motu proceedings have been initiated by this Court, which has been numbered as W.P.No. 11909/2013. As a result, we do not wish to multiply the proceedings for the same cause which is already subject matter of suo motu petition, W.P.No. 11909/2013. The petitioner in

W.P.No. 7559/2013 will be free to assist the Court and be represented by their Advocate. However, we do not want to continue the Public Interest Litigation filed by private party, hence we dispose of W.P.No. 7559/2013 and all interim applications pending therein.

7. W.P.No. 5937/2002 is yet another writ petition pending in this Court for issuing direction to the appropriate Authority to initiate action in respect of unauthorized structures in the Pachmarhi area. It is further prayed that the Authorities shall ensure that no further construction is allowed in the said area. It is not in dispute that the interim relief has already been granted directing the Authorities to ensure that no further construction is put up in Pachmarhi area. That interim relief will now operate in W.P.No. 11909/2013 being suo motu proceedings initiated by this Court. The present order disposes of the other prayer in the said writ petition to remove unauthorized structures put up in Pachmarhi area being involved in W.P.No. 11909/2013. As a result, even this petition (W.P.No. 5937/2002) need not be continued further. No appearance has been made on behalf of the petitioner when this writ petition was called out. As a result, we dispose of this petition but direct continuance of the interim arrangement ordered in this petition as having been passed in the pending W.P.No. 11909/2013 till the disposal thereof. In view of disposal of the above noted writ petitions, all pending Interim Applications in the respective petitions are also disposed of.

8. Reverting to the question of removal of unauthorized structures, this issue can be redressed by directing the appropriate Authority - be it for the purposes of Sanctuary or the Cantonment Board or the Authority for the purposes of Wild Life Protection Act, 1972 or the Defence Estate Officer. The concerned Authorities are under bounden duty to ensure that no structure is put up in the area under their respective jurisdiction without prior permission and further that the structure in respect of which prior permission is granted is constructed strictly in conformity with the scope of permission. In other words, if the structure has been put up without prior permission or for that matter in excess of the permission granted by the appropriate Authority, such structure will have to be treated as unauthorized structure and proceeded with by the concerned Authority under the respective enactments by following due process. This enquiry will have to be completed by the concerned Authority not later than eight weeks from today and compliance report submitted in that behalf to the Court. The compliance report shall positively disclose that no other unauthorized structure is existing within the area under the jurisdiction of the concerned Authority.

9. Reverting to W.P.Nos.2031/2014 and W.P.No. 2057/2014, the petitioner(s) through counsel submits that the Chief Executive Officer, Cantonment Board, will have the authority to examine the question whether the structure put up by the concerned petitioner is on the private land after taking prior permission. In other words, the same is authorized in all respects. In that case, we direct the Chief Executive Officer, Cantonment Board, Hoshangabad, to enquire into all aspects

and to record a clear finding whether the structures purportedly belonging to the petitioner is authorized as a whole or in part only and if it is found that the entire structure is unauthorized or unauthorized in part, he must proceed against such unauthorized structure with utmost dispatch and report compliance in that behalf before the next date.

10. We make it clear that since the petitioners in W.P.No. 2031/2014 and W.P.No. 2057/2014 have chosen to submit to the jurisdiction to the stated Authority, later on will not be permitted to contend that the action taken by the said Authority is without jurisdiction, as the said submission was made by the petitioners with full understanding and knowledge of that fact. Assuming that some other Authority under any other enactment may have jurisdiction over the structure, that would not detain the Chief Executive Officer, Cantonment Board, to proceed in the matter in terms of the order passed by us today. The other Authority claiming to have jurisdiction may extend full logistical support to the Chief Executive Officer for implementation of the direction of this Court. Inasmuch as, the primary consideration in the present Public Interest Litigation is to ensure that all unauthorized structures in Pachmarhi area are demolished/removed with utmost dispatch and that can be done by all the Authorities working in tandem without entering upon the technical issue of jurisdiction of the Authority and, more so, when the owner/occupant of the structure admits of the jurisdiction of the Chief Executive, Cantonment Board.

11. In view of this arrangement, W.P.No. 2031/2014 as well as W.P.No. 2057/2014 will stand disposed of leaving all contentions available to the respective petitioners open, to be agitated before the competent Authority. The petitioners in respective petitions will remain present in the office of the Chief Executive Officer, Cantonment Board, on 24.4.2014 at 11.00 AM and produce copy of this order passed today to facilitate the said Authority to proceed in the matter in accordance with the directions contained therein.

12. At this stage, counsel for the petitioner in W.P.No. 2057/2014 submits that there is a serious dispute about the title of the land on which the structure is standing. As regards this argument, in our view, for the purpose of cause of action in the present PIL, the Authority is not concerned with that issue. The only concern of the Authority in terms of this order is to ascertain as to whether the structure(s) put up in the given area is after taking prior permission and if permission has been taken, is in conformity with the same. The Authority is not expected to examine any other issue for the time being.

13. Assuming that the petitioner is owner of the land, which makes it a private land, that would not permit him/her to construct building on the said land without taking prior permission of the competent Authority of the concerned area. It is this question which has to be addressed in the enquiry ordered to be conducted within eight weeks from today and in that enquiry if it is found that no prior permission has been obtained before construction of the structure(s), the Authority will be obliged to remove that structure(s).

14. It is brought to our notice by the learned Amicus Curiae that when the Authorities such as the Collector or for that matter the Chief Executive Officer, Cantonment Board and/or the Defence Estate Officer intends to take action of removal of the unauthorized structure(s), no logistical support is provided by the local police administration.

15. Without going into the correctness of this factual position, we direct the Superintendent of Police, Hoshangabad, to ensure that as and when requisition is sent by any of these Authorities for removal of unauthorized structures in Pachmarhi area, full logistical support will be provided to them at the time and place notified two days in advance to the Superintendent of Police. He shall be "personally" responsible to comply with this direction to ensure that the removal of unauthorized structure(s) is completed before the next date of hearing.

16. Counsel for the petitioner in W.P.No. 2031/2014 submits that there is existing Scheme under which the affected persons (because of removal of unauthorized structures) are to be rehabilitated by providing alternative accommodation. This contention is refuted by the counsel for the Cantonment Board. However, if such Scheme is in existence, we have no reason to doubt that benefit will be extended to the eligible persons. Beyond this, nothing more is required to be said.

17. Order on the above terms in the respective matters.

18. List W.P.No. 11909/2013 on 18.6.2014 for reporting compliance under caption "Direction".