
(2011) 01 MP CK 0085
In the Madhya Pradesh High Court
Case No : M.P. No. 695 of 1993

Shanti Bai and Others

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(5), 2, 6, 8(1)
Urban Land (Ceiling and Regulation) Repeal Act, 1999 — Section 3, 4

Citation : (2011) 1 MPJR 152 : (2011) 2 MPLJ 307

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

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India the Petitioners are seeking following reliefs

An appropriate writ, direction or order be passed quashing all the proceedings, orders and notices issued and passed by the Competent Officer, the appellate orders and the review order of Respondent No. 2 and it be declared that the Petitioners' land being mainly agricultural land cannot be made subject-matter of Urban Ceiling Act of 1976.

Such other writ or direction may be given and passed as thought fit.

The facts in nutshell are that proceedings u/s 6 of the Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as "the Act") were initiated against the holder Smt. Shanti Bai whose LR's are the present Petitioners. Vide order-sheet dated 24-12-1983 the competent authority directed to issue draft statement in pursuance to Section 8(1) of the Act and accordingly 22386.50 square meter land of Khasra No. 80 was declared surplus. On 16-10-1984 the competent authority heard the objections of the holder Smt. Shanti Bai raising

inter-alia objections that she is having five units in her family and the land in question which has been declared as surplus is an agricultural land and is under her self-cultivation and even on the appointed date 9-9-1976. The competent authority vide order dated 16-10-1984 rejected those objections and directed to issue final statement u/s 9 of the said Act. Ultimately, according to the Respondents, the possession of the land in question was obtained on 24-10-1989. The appeal which was filed by the Petitioners before the Commissioner was also dismissed on 12-3-1986 (Annexure P-8). Hence, this petition has been filed by the Petitioners assailing the order passed by the competent authority, appellate authority and also the Notification issued u/s 10(1) of the said Act.

It has been put forth by Shri R.K. Verma, learned Counsel for the Petitioners that looking to the definition of "vacant land" as envisaged u/s 2(q) of the Act the land which is used for agriculture purpose will not be included in an urban agglomeration. By inviting my attention to Annexures P-1 and P-2 which are the copies of the revenue record (khasras) of the year 1975 to 1979, 1981-82 and 1982-83 respectively it has been submitted that the holder Smt. Shanti Bai has been mentioned as Bhumiswami and the crop of gram etc. has also been mentioned in the entire Survey No. 80 area 2.388 Hectare and has further submitted that no counter-document has been filed along with the return in order to hold that land was not being used for agricultural purpose and hence it has been put forth by learned Counsel that the Act is not at all applicable in the present case. It has been then contended by him that a certificate has also been issued by the office of the Joint Director, Nagar and Gramin Kshetra Niyojan, Jabalpur stating in it that the land in question is being used for agricultural purpose.

By inviting my attention to the order-sheets dated 28-6-1985 onwards of the competent authority it has been put forth by learned Counsel that the matter was adjourned by the competent authority from time to time to obtain possession but the possession of the land was never taken from the Petitioner and ultimately on 24-12-1991 the record was sent to the Appellate Authority and earlier to this date also on 8-10-1989 the record was sent to the appellate authority but the fact remains as such that possession was never taken from the holder of the land.

Learned Counsel by inviting my attention to the order-sheet dated 24-2-1993 passed in this petition has submitted that while admitting the petition interim order was passed on LA. No. 1296/1993 directing the Respondents not to give effect to the notice given by them to the Petitioners u/s 10(5) of the Act (Annexure P-9) until further orders and this order has never been vacated and is still in force and therefore in view of the decision of the Supreme Court in Pt. Madan Swaroop Shrotiya Public Charitable Trust Vs. State of U.P. and Others, if the possession has not been obtained the proceedings under the Act shall stand abated in terms of Section 4 of the Urban Land (Ceiling and Regulation) Repeal

Act, 1999. On these premises, it has been submitted by learned Counsel that on merit as well as looking to the provisions of Section 4 of the Repeal Act now the land in question cannot be taken by the Respondents from the Petitioners.

On the other hand, Shri Harish Agnihotri, learned Government Advocate argued in support of the impugned order and submitted that possession of the land in question has already been obtained on 24-10-1989 and if that would be the position, u/s 3 of the Repeal Act the land cannot be settled back in favour of the holder. Learned Counsel has also placed reliance on Division Bench decision of this Court in Lalji Choubey v. State of M.P. and Anr. ILR (2008) M.P. 2513 and also Full Bench decision of this Court in Deorao Jadhav v. Ramchandra and Ors. 1982 MPLJ (FB) 414 : 1982 JLJ 375. It is submitted that if the possession has been obtained by the State and if later on the holder has taken the possession she will be a trespasser and no right would vest in her and hence it has been submitted that this petition sans substance and deserves to be dismissed.

Having heard learned Counsel for the parties I am of the opinion that this petition deserves to be allowed on merits as well as on account of Section 4 of the Repeal Act.

So far as merit of the case is concerned, on bare perusal of the revenue record which is the khasra entry filed as Annexure P-1 and P-2 it is gathered that in the year 1975-76 to 1978-79, 1981-82 and 1982-83 the land in question has been recorded in the name of holder Smt. Shanti daughter of Babulal as Bhumiswami and the crop of gram and pulses etc. are mentioned in the entire Survey No. 80 comprising of 2.388 Hectares. No document in rebuttal has been filed by the Respondents in order to demonstrate that the land in question is not being used for agricultural purpose.

Apart from the revenue record, another important document is Annexure P-3 which is the certificate issued by the Joint Director, Nagar and Gramin Kshetra Niyojan, Jabalpur mentioning the land in question to be of agricultural use. This apart, under the Right to Information Act the Petitioners obtained several other more documents in order to demonstrate that to cultivate the land and to grow agricultural produce, an electric pump was installed and bills of electricity board from 1987 to 2010 are filed. A very important document Annexure P-16 of the office of Collector has been filed which is in respect of description of the land which was declared surplus and possession of it was obtained under the Act. In this document the description of the land in question is at Serial No. 724 and the name of the holder Smt. Shanti Bai (predecessor of Petitioners) has been mentioned but the column of date of obtaining possession has been left blank, although for other lands which were declared surplus and possession thereof were obtained, specific date has been mentioned. This indicates that still the land in question is being used for agricultural purpose.

Needless to say that the Petitioner has also filed a certificate of Gram Panchayat Tewar (Jabalpur) dated 18-9-2010 (Annexure P-14) stating therein that the land

in question is being used for agricultural purpose and in this land there is a well in which an electric pump has also been installed. In the said certificate it has been mentioned that for last 40 years the land is being used for agricultural purpose. There is no document in rebuttal filed by the Respondents in order to indicate that the land in question is not being used for agricultural purpose, therefore, looking to the rider envisaged in Section 2(q) of the Act since the land is being used mainly for the purpose of agriculture in an urban agglomeration, hence it cannot be included within the ambit and scope of term "vacant land" as envisaged under the said definition.

Apart from this, on a bare perusal of the order-sheets of the competent authority dated 28-6-1985 onwards this Court finds that competent authority directed to issue notification u/s 10(1) of the Act and vide order-sheet dated 25-3-1988 it is gathered that competent authority directed to issue notice to the holder to deliver possession within 30 days and thereafter on every date of hearing it has been mentioned that reminder be sent to obtain the report in respect of obtaining possession and ultimately the record was sent to the appellate authority on 24-12-1991 and therefore, according to me the bald pleading of Respondents in para 5 of their return that on 24-3-1989 the possession has been obtained cannot be said to be correct. Shri Agnihotri, learned Government Advocate has also passed over the original record pertaining to possession and on bare perusal of order-sheet dated 24-10-1989 although it has been mentioned that the possession has been obtained in ex parte, but according to me it poses a big question mark on the hallmark and authenticity of it for the simple reason that from 7-10-1987 onwards, every time the dates were adjourned for obtaining the report in respect of obtaining possession and therefore if in the order-sheet dated

That apart this order-sheet is in direct conflict with Annexure P-16 which the Petitioner obtained under R.T.I. Act from the office of Collector in which it is indicated that the possession of land in question was never obtained since the column of possession is left blank while for other lands specific date of obtaining possession has been mentioned. The original record of the Tahsildar is returned back to the learned Government Advocate.

On bare perusal of Section 4 of the Repeal Act this Court finds that all the legal proceedings shall stand abated on the date of enforcement of the Repeal Act and therefore, since the possession has not been obtained, the proceedings under the Act also stands abated. In the light what I have held hereinabove the contention of Shri Agnihotri, learned Government Advocate that possession has been obtained cannot be accepted and the decision is placed reliance by him are also not applicable.

Resultantly, this petition succeeds and is hereby allowed. The impugned order declaring the land in question being surplus and the proceedings under the Act stand quashed on merits as well as on account of abatement of the proceedings declaring the land in question being surplus. No order as to costs.