

(2015) 04 MP CK 0117
In the Madhya Pradesh High Court
Case No : WP No. 9052 of 2014

Shyam Singh

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 234, 235, 236, 237, 237 (1)

Citation : (2015) 04 MP CK 0117

Hon'ble Judges : P.K. Jaiswal, J;T.K. Kaushal, J

Bench : Division Bench

Advocate : Amit Singh Sisodia, for the Appellant; Vinita Phaye, Government Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.K. Jaiswal, J.—The petitioner has preferred the present writ petition as a public interest litigation against the allotment of reserved Charnoi (Grazing) land, which is situated at villages Kamalakhedi and Goyal to respondent No. 7 for establishment of a Solar Energy Plant.

2. According to the petitioner, the allotment of land to respondent No. 7 by respondents No. 1 to 4 / State of Madhya Pradesh is illegal, arbitrary and in violation of the provisions of Madhya Pradesh Land Revenue Code, 1959 (herein after referred to as "the Code") and Revenue Book Circular. According to him, allotment of Charnoi land has been made in violation of the provisions of Section 234 and 237 of the Code, and therefore, prayed for the following relief: -

"RELIEF SOUGHT:

That, the petitioner craves indulgence of this Hon"ble Court for granting the following relief: -

i That, the Hon"ble Court may be pleased to allow the present petition and direct the respondent to quash the allotment and possession letters so issued in favour

of respective respondents.

ii That, the respective officers and persons so involved for such fraudulent act be punished.

iii That, the entire concerned record be called before the Hon"ble Court.

iv That, any other relief which this Hon"ble Court may deem fit, under the facts and circumstances of the case, may kindly be granted in favour of the petitioner."

3. According to the petitioner, he is an agriculturist and public spirited person and has been working for the welfare of the public at large in and around village Kamalakhedi and Goyal, District Ratlam. The petition has been filed in the interest of remote villagers at large of both the villages whose livelihood solely depend upon the crops, the pet animals and cattle and for which if the cattle field (Charnoi land) is restricted further, then the villagers would have further difficult life to look after themselves and their families.

4. Brief facts of the case are that the Solar Energy Corporation of India (SECI), which is established under the administrative control of Ministry of New and Renewable Energy Department, Government of India and identified as an implementing Nodal Agency for Solar Power Projects under Jawaharlal Nehru National Solar Mission (JNNSM). Respondent No. 7, in pursuance to the advertisement for selection of Solar Power Developers for 750 Megawatt Grid Connected Solar Photovoltaic Projects under JNNSM Phase-II, Batch-I, submitted his bid and was selected for executing 30 Megawatt (10+10+10) Projects. A Letter of Intent (LOI) in favour of respondent No. 7 was issued and he executed three separate 10 Megawatt each, totalling 30 Megawatt Power Purchase Agreements (PPAS) as well as Viability Gap Funding Securitization (VGFS) agreements with SECI on 28th March, 2014 for installing the project and commissioning the project in the State of Madhya Pradesh within thirteen months of signing of the PPA.

5. The Power Sale Agreement (PSA) was signed by SECI and MP Power Management Company Limited, Jabalpur (MPPMCL), which is a Government of Madhya Pradesh undertaking and also a buying utility company of Government of Madhya Pradesh and the entire power generated from by the respondents Solar Plant will be allocated to MPPMCL against above Power Sale Agreement.

6. The Government of Madhya Pradesh to develop and to encourage the Solar Power Project in the State of Madhya Pradesh has issued a policy known as "Police of Implementation of Solar Power Based Projects in Madhya Pradesh, 2012" and the aforesaid policy is notified in the official gazette dated 20.07.2012. As per the policy, New and Renewable Energy Department (NRE) Bhopal is the Nodal Agency of the Government of Madhya Pradesh and has the responsibility to implementation of the policy. As per the guidelines of the policy, in case of land owned by Revenue Department or any other State Government Department, NRE Department shall take possession of the land and subsequently

give permission for use of land to the concerned developers. As per the policy, the Solar Power Developer can be given land use permission for maximum 3 hectare per Megawatt. Respondent No. 7 - company applied for allotment of 74.07 hectare of land in Village Kamalakhedi and Goyal. The Collector, Ratlam (respondent No. 2) by order dated 07.10.2014 (Annexure P/11) allotted the government Nakabil Kast Land of area 16.010 hectare of Survey No. 1; Charnoi land of area 0.460 hectare of Survey No. 3; Charnoi land of area of 1.670 hectare out of 1.690 hectare of Survey No. 4; Charnoi land of area of 2.100 hectare out of 2.360 hectare of Survey No. 5; Charnoi land of area of 6.690 hectare out of 11.880 hectare of Survey No. 51; Nakabil Kast Land of area of 9.880 hectare out of total 16.300 hectare of Survey No. 52; Nakabil Kast Land of area of 3.230 hectare out of 3.230 hectare of Survey No. 55; total area 40.040 hectare of 5 WP No. 9052/2014 village Goyal, Tahsil Alot, District Ratlam; and Charnoi land of area of 11.620 hectare and Nakabil Kast Land of 7.620 hectare of Survey No. 303; Nakabil Kast Land of area of 4.040 hectare of Survey No. 304; Nakabil Kast Land of area of 0.600 hectare of Survey No. 306; Nakabil Kast Land of area of 12.030 hectare of Survey No. 307/1; Nakabil Kast Land of area of 5.740 hectare of Survey No. 426; total area 34.030 hectare of Village Kamalakhedi, as per the policy of 2012 and Part-Four-2, Clause-5 of the Revenue Book Circular, as amended vide circular dated 04.03.2014, on the following terms: -

Possession of the aforesaid land was delivered on 14.10.2014 vide Annexure P/12.

7. It is submitted by the learned counsel for the petitioner that the allotment has been made without following the mandatory provisions of Sections 234 and 237 of the Code and Revenue Book Circular. According to the petitioner, the State Government had allotted 16.37 hectares of land in favour of respondent No. 7 and less than 2% of the land was left for the purpose of grazing.

8. In reply, it is submitted that in village Kamalakhedi total arable (cultivable) land is 271.02 hectare and out of which, Charnoi land is 16.69 hectare and 2% of this area comes to 5.42 hectares, which is Charnoi land and in village Goyal, total land is 502.39 hectares out of which 27.38 hectares of the land comes to 10.04 hectares, which is Charnoi land.

9. As per the provisions of Section 237 of the Code, the Collector by an order can set apart the unoccupied land and can divert the land for other purpose subject to the fact that minimum 2% of the agriculture land of that village is left for the purpose of exercise of land for Nistar rights. In the case in hand, total Charnoi land in village Kamalakhedi is 16.69 hectares. The land allotted to Solar Energy Plant is 34.03 hectares, which comprises of 7.62 hectares Charnoi land and 26.41 hectares of Nakabil Kast Land, thus, the total Charnoi Land remaining after allotment is 09.07 hectares, which is more than 2% of the total Charnoi Land.

10. The total Charnoi Land in Village Goyal is 27.38 hectares. The land allotted to

Solar Energy Plant is 40.04 hectares, which comprises of 10.92 hectares Charnoi Land and 29.12 hectares of Nakabil Kast Land. Thus, the total Charnoi land remaining after allotment is 16.37 hectares, which is more than 2% of the total Charnoi land.

11. From the aforesaid, it is clear that total land which has been allotted still has 09.07 hectares of land in village Kamalakhedi and 16.37 hectares of land in village Goyal as Nistar Charnoi land, which is more than 2% of the land available. Meaning thereby there is no violation to the provisions of Section 237 of the Code, while making allotment for the purpose of the establishment of the Solar Energy Plant.

12. There is no violation to the provision of Section 237 of the Code while making allotment for the purpose of the appointment of the solar energy plant.

13. The second contention of the petitioner, that the allotment of the land has been made without following the provisions of Sections 234 and 237 of the Code. Sections 234 and 237 of the Code read, as under: -

"234. Preparation of Nistar Patrak.- (1) The Sub Divisional Officer shall, consistently with the provisions of this Code and the rules made thereunder, prepare a Nistar Patrak embodying a scheme of management of all unoccupied land in a village and all matters incidental thereto and 8 WP No. 9052/2014 more particularly matters specified in section 235.

(2) A draft of the Nistar Patrak shall be published in the village and after ascertaining the wishes of the Gram Sabha, it shall be finalized by Sub Divisional Officer.

(3) A copy of the Nistar Patrak so finalized shall be kept in the office of the Gram Panchayat.

(4) On a resolution passed by the Gram Sabha by a majority of not less than two third of the members present and voting, the Sub Divisional Officer with the prior sanction of the Collector and also after making any such inquiry as he deems fit, may,

(a) inter se change the entries in the Nistar Patrak;

(b) record additional unoccupied land under any entry in the Nistar Patrak for fulfillment of further Nistar rights of villagers.

237. Collector to set apart land for exercise of Nistar rights. - (1) Subject to the rules made under this Code, the Collector may set apart unoccupied land for the following purposes, namely, -

(a) for timber or fuel reserve;

(b) for pasture, grass bir or fodder reserve;

(c) for burial ground and cremation ground;

- (d) for gaonthan;
- (e) for encamping ground;
- (f) for threshing floor;
- (g) for bazar;
- (h) for skinning ground;
- (i) for manure pits;
- (j) for public purposes such as schools, play grounds, parks road, lanes, drains and the like; and
- (k) for any other purposes which may be prescribed for the exercise of right of Nistar.

(2) [x x x] [Deleted in MP by MP Act 42 of 2011]

(3) Subject to the rules made under this Code, 9 WP No. 9052/2014 the Collector after securing the land mentioned in clause (b) of sub-section (1) to minimum two percent of the total agriculture land of that village, may divert such unoccupied land as mentioned in sub-section (1) into abadi or for construction of roads, state highways, national highways, canals, tanks, hospitals, schools, colleges, Goshalas and any other public utility projects, as may be determined by the State Government; Provided that the land set apart for the purposes mentioned in sub-section (1) shall not be diverted and allotted to any person for agriculture purpose.

(4) When it becomes indispensable to divert the land set apart for the purposes mentioned in subsection (1) for such development and infrastructural projects which are owned or approved by the State Government but not covered under sub-section (3), the Collector, after satisfying himself on alternatives available and also on obtaining land of equivalent area for fulfilling the same Nistar rights from the concerned project, may divert the land for such purposes by passing a reasoned order to this effect."

14. Under Section 236 of the Code, powers have been given to the Collector to make provisions for free grazing of the cattle used for agriculture and once the provision has been made and land is reserved for free grazing of cattle, the land use cannot be changed easily and that too, merely for the personal use of the individuals.

15. As per record, the Collector exercising the powers under Section 237 (2) of the Code had granted permission to respondent No. 7 to use the land recorded as Charnoi land for setting up of Solar Energy Plant.

16. A Division Bench in Amar Singh v. Raghuvir Singh, 1980 RN 6 (DB) held that under sub-section (2) of Section 237 of the code, the Collector is authorized to divert land for purposes mentioned in sub-section (1) of Section 237 inter se, but

did not have powers to divert the unoccupied land for non-agricultural purposes under agricultural purpose. Division Bench also took note of the fact that by the Amendment Act No. 24 of 1961, the legislature intended that in spite of Collector, Sub Divisional Officer must exercise powers, power of modification of any entry in the Nistar Patrak, and accordingly vested such powers on the Sub Divisional Officer in sub-section (3) of Section 234 of the Code and held that this amendment act brought about material change in the powers of the powers of the Collector, restoring the powers in the Sub Divisional Officer to change the classification of the land.

17. Learned counsel for the petitioner submits that villages Goyal and Kamalakhedi are situated in tribal dominated area. The provisions of sub-sections (2), (3) and (4) of Section 234 of the Code have not been complied with before allotting Charnoi land to respondent No. 7.

18. In reply, it is submitted that as per sub-section (2) of Section 234 of the Code, a draft of the Nistar Patrak shall be published in the village and after ascertaining the wishes of the Gram Sabha, the Sub Divisional Officer shall finalize the same. After finalization of the draft Nistar Patrak, the same shall be kept in the Office of Gram Panchayat. Thereafter, on resolution passed by the Gram Sabha by a majority of not less than two-third of the Members present and voting, the Sub Divisional Officer with the prior sanction of the Collector and also after making any such inquiry, as he deems fit, as required under Clauses (a) and (b) of sub-section (4) of Section 234 of the Code. And thereafter, the Collector changed the Charnoi Land into allot-able land after the Nistar Patrak has been finalized. To support the aforesaid, our attention has been drawn to Resolution No. 3 dated 30.08.2014 and order dated 07.10.2014 (Annexure P/11) and submitted that inspection report has been called from the Sub Divisional Officer, Alot and as per report, Tahsildar in Case No. 4068/B-121/13-14 called report from Patwari / Revenue Inspector; publication was made on 23rd August, 2014 and Tahsildar has not received any objection nor the petitioner has submitted any objection before the Tahsildar, Gram Panchayat, Goyal.

19. According to respondent No. 7, total investment of Rs. 231 crores is on the project and they have completed 75% of the work so far.

20. In the case of Daya Ram and Another Vs. State of M.P. and Others, (2003) 4 MPHT 435 : (2003) 1 MPJR 426 the Division Bench held that no land specified and set the part under Section 237 (1) of the Code shall be tempered for the purpose of meeting exigency specified in the circular.

21. The Apex Court in the case of State of Jharkhand and Others Vs. Pakur Jagran Manch and Others, AIR 2011 SC 675 : (2011) 3 JT 84 : (2011) 1 SCALE 309 : (2011) 2 SCC 591 : (2011) 1 SCR 687 : (2011) AIRSCW 567 , held that no de-reservation of any government land reserved as gochar, should only be in exceptional circumstances and for valid reasons, having regard to the importance of gochar in every village. Any attempt by either the villagers or others to

encroach upon or illegally convert the gochar to house plots or other non-grazing use should be resisted and firmly dealt with. Any requirement of land for any public purpose should be met from available waste or unutilized land in the village and not gochar. Whenever it becomes inevitable or necessary to de-reserve any gochar for any public purpose, the procedure prescribed under the Act and Rules has to be followed strictly.

22. In the present case, the Collector and Sub- Divisional Officer allotted the grazing land to the respondent No. 7 to setup solar power plant after transfer the land for grazing purpose to New and Renewable Energy Department and the same has been permitted to respondent No. 7 to use it for solar power plant.

23. Consequently, we instead of allowing the writ petition direct the respondents - State No. 1 to 7 to take steps forthwith within a period of 4 weeks from the date of receipt of order and Collector Ratlam is directed to examine the matter afresh and submit a report before the Principal Registrar whether the procedure prescribed under the Code and RBC has been strictly followed while transferring the land to New and Renewable Energy Department for set of solar energy plant and submit a report within a period of three months from today supported with his affidavit.

24. With the aforesaid, writ petition is disposed of.