
(2007) 10 MP CK 0053
In the Madhya Pradesh High Court

Smt. Nisha Bai

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 15-10-2007

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2007) 4 MPHT 519 : (2008) 1 MPLJ 219

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner is challenging the pregnability of the impugned order Annexure P-1, dated 31 -5-2005 passed by Collector District Guna whereby the order dated 27-11-1993 passed by Tehsildar, Guna allotting the land under M.P. Krishi Prayojan Ke Liye Upayog Ki Ja Rahi Dakhal Rahit Bhoomi Par Bhoomiswami Adhikaron Ke Pradan Kiya Jana (Vishesh Upabandh) Adhiniyam, 1984 (hereinafter referred to as "the Adhiniyam") has been set aside while exercising suo motu powers conferred to it u/s 50 of M.P. Land Revenue Code.

The contention of learned Counsel for petitioner is that the order of Tehsildar was passed on 27-11-1993 and after near about four years the Collector, Guna took the matter while exercising suo motu powers of revision which was not permissible under the law. According to learned Counsel the suo motu exercise of powers of revision at the most could have been taken within a period of one year. In support of his contention learned Counsel for petitioner has placed reliance on certain decisions of Supreme Court as well as of this Court.

Combating the aforesaid submission, Mrs. Ami Prabal, learned Dy. A.G. argued in supported of the impugned order and has submitted that the order has been rightly passed.

Having heard learned Counsel for the parties, I am of the view that this petition deserves to be dismissed.

On going through the order passed by the Collector, it is gathered that procedure as contemplated under the said Adhinyam and the rules framed therein have not at all been followed. It is also not clear that on 2-10-1984 the petitioner was in possession of the land in question. The proclamation under Format B prescribed under Rule 3 of the Rules was not issued and the objections were not invited within 30 days. The Collector further found that on going through the proclamation it is not clear that on which date the same was issued. Since inherent lacuna was found by the Collector which goes to the root of the matter, the allotment of the land in question under the said Adhinyam was cancelled by setting aside the order of the Tehsildar.

I have gone through the order impugned passed by Collector. The order dated 23-11-1993 passed by Tehsildar has not been placed on record. On going through the impugned order Annexure P-I of the Collector, it is gathered that the provisions of Adhinyam and Rules made thereunder are not followed while allotting the land to the petitioner. Since there is inherent lacuna going to the root of the matter, I do not find any illegality in the impugned order Annexure P-I passed by Collector, Guna.

If the contention of learned Counsel for petitioner is accepted that suo motu powers cannot be exercised within 4 years and on that ground the impugned order Annexure P-1 passed by Collector dated 31-5-2005 is set aside, it would amount to restore an illegal order dated 27-11-1993 passed by Tehsildar, Guna. The Supreme Court in the case of Mohammad Swalleh and Others Vs. Third Addl. District Judge, Meerut and Another, as well as Gadde Venkateswara Rao v. Government of Andhra Pradesh and Ors. AIR 1996 SC 828, has held that while exercising the jurisdiction conferred to this Court under Article 226 of the Constitution of India, this Court should not restore an illegal order.

In this view of the matter, if the impugned order Annexure P-1 is set aside, it would amount to restoration of an illegal order which is not permissible while exercising writ jurisdiction.

In view of above, this petition is found to be bereft of any substance and the same is hereby dismissed. However, if the petitioner so advised may file fresh application under the said Adhinyam before the Tehsildar, Guna and if such an application is filed the same may be decided strictly in accordance with the law by the Tehsildar. It is further made clear that the petitioner would furnish the certified copy of the order of Tehsildar which will be passed by Tehsildar if at all the application of the petitioner filed under the said Adhinyam is allowed, along with the certified copy of the order passed by this Court today and the earlier impugned order Annexure P-I of Collector, Guna dated 31-5-2005 passed in Case No. 81/B-121/1993-94 (State of M.P. v. Nisha Bai).

With the aforesaid observations, this petition is disposed of.