
(2011) 12 MP CK 0024
In the Madhya Pradesh High Court
Case No : W.A. No. 547 of 2009

State of M.P. and Another

APPELLANT

Vs

Smt. Munnibai and Others

RESPONDENT

Date of Decision : 12-12-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227

General Clauses Act, 1897 — Section 6(e)

Madhya Pradesh Land Revenue Code, 1959 — Section 33, 44

Madhya Pradesh Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(3), 10(5), 10(6), 3, 4

Citation : (2012) ILR (MP) 847

Hon'ble Judges : Vimla Jain, J; Krishn Kumar Lahoti, J

Bench : Division Bench

Advocate : Sanjay Dwivedi, G.A, for the Appellant; Sanjay K. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

Vimla Jain, J.—Assailing the propriety and validity of the order dated 24.3.2008 passed by the learned Single Judge in Writ Petition No. 17560/ 2007, the present intra-court appeal has been filed by the appellants u/s 2(1) of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth ko Appeal) Adhiniyam, 2005. Short facts of the case are that:

1.1 The appellants by invoking the jurisdiction of this Court under Articles 226 and 227 of the Constitution filed Writ Petition No. 17560/2007 and challenged the order dated 14.12.2005 passed by Additional Commissioner, Jabalpur Division Jabalpur in Case No. 675-A-90-B-90/04-05. The petition was dismissed on 24.3.2008 by the learned Single Judge.

1.2 Earlier the respondents by filing Writ Petition No. 4049/1999 had called in question the order dated 29.4.1983 and consequential proceedings dated

27.7.83 and 3.9.83 passed by the competent authority of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the "Act"). An appeal was filed before the Commissioner and the order dated 12.1.99 was passed by the Commissioner, Jabalpur dismissing the appeal as barred by limitation. The Writ Petition No. 4049/1999, filed against the order of the Commissioner, was disposed of on 17.1.2002 directing that the petitioners should put forth their grievances before the competent authority.

1.3 In compliance of the order passed in the writ petition, the Additional Collector, Jabalpur, after extending proper opportunity of hearing and on the report regarding possession, held by his order dated 25.4.2005 that the possession of the land in Khasra Nos. 737, 738, 760 and 762 of Village Purwa was taken in accordance with the provisions of Act of 1976 and rejected the claim of the respondents.

1.4 Being aggrieved by the order dated 25.4.2005, the respondents filed an appeal which was decided by order dated 14.12.2005 by the Additional Commissioner, Jabalpur by setting aside the order of Additional Collector and holding therein that the notice issued for the purpose of taking possession of the land was not duly served.

1.5 The State Government filed a Writ Petition No. 17560/2007 in the High Court against the order of Additional Commissioner. The learned Single Judge while dismissing the writ petition came to the conclusion that the order of Additional Commissioner was just and proper as the respondents were in possession and the notice u/s 10(5) of the Act, 1996 was not properly served on the respondents and the findings arrived at by the Additional Collector were based on total misreading of evidence and material available on record.

1.6 Being aggrieved by this order passed in Writ Petition No. 17560/2007, the State/appellant preferred the present writ appeal.

2. The learned Government Advocate appearing for the appellant submitted that the appeal preferred by the respondents before the Additional Commissioner was not proper as Additional Commissioner had no jurisdiction to entertain the appeal since the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 were repealed. It was further submitted that the aforesaid aspect was not properly appreciated by the learned Singal Judge.

3. On the other hand, learned counsel for the respondents submitted that since the writ petition was preferred before this Court in the year 1999 and was pending for adjudication, at the time of commencement of Urban Land (Ceiling and Regulation) Repeal Act, 1999, therefore, in view of Section 6(e) of the General Clauses Act, the appeal preferred by the respondents before the Additional Commissioner was rightly entertained and was maintainable.

4. We have considered the aforesaid submissions of learned counsels for the parties.

5. We would like to place on record that the Urban Land (Ceiling and Regulation) Repeal Act, 1999 came into force in the State of Madhya Pradesh with effect from 10/04/2000. On such date, the writ petition No. 4049/1999 was pending in the high Court and possession of the disputed land was with the respondents.

6. The Single Bench perused the original record of both the revenue courts and found that possession of the land in question was with the respondents as reported by the Tehsildar, vide his inspection report dated 24/09/2003 and without looking to this report, the additional Collector, exercising the powers as competent authority, rejected the application. The Additional Commissioner, considering this report, quashed the order of the Additional Collector, exercising powers u/s 44 of the M.P. Land Revenue Code. The Single Bench found that the possession of the land was not taken over by the State Government, therefore the Additional Commissioner had not committed any error in allowing the appeal.

7. To examine, evaluate and appreciate each and every finding made by the Single Bench, it shall be worthwhile to quote the relevant findings of the judgment.

The Single Bench on the point of possession passed the order which reads thus:

The petitioners did not seek restoration of possession nor did they move any application to the competent authority under the Act of 1976, the application filed by the respondents was for correction of the revenue records under the M.P. Land Revenue Code and when the application was received by the Additional Collector, the Additional Collector directed the Tehsildar Nazul, Jabalpur to conduct an enquiry into the question of possession and submit a report. Direction was issued in this regard to the Tehsildar, Nazul, who in pursuance to the same conducted an enquiry and has submitted his report. A perusal of the report of the Tehsildar indicates that in his report dated 24.9.03, he has indicated that after spot inspection it is found by him that in part of the area house constructed by the respondents are available and crops sown by the respondents are available in the field. Part of the field is lying vacant. Finding recorded by the Tehsildar in this report dated 24.9.2003 indicates that possession is not taken over from the respondents. In spite of this report, the Additional Collector merely placed reliance on the notice issued u/s 10(5) and the order sheet showing taking over of ex-parte possession and recorded a finding that notice is issued and possession is taken over. However, in spite of mentioning the fact with regard to receipt of the report of the Tehsildar Nazul, Jabalpur, this authority did not consider the said report and holding possession to be by way of encroachment passed the impugned order rejecting the application of the petitioner.

8. The Single Bench considering the order passed by the Additional Commissioner, held, that:-

The Additional Commissioner taking note of the report of the Tehsildar Nazul found that this report dated 24.9.2003 clearly indicates that possession is not taken over and at the time of inspection by the Tehsildar Nazul, it is the

respondents who were in possession thereafter on going through the original records pertaining to action taken by issuing notice and proceeding u/s 10 (3), 10(5) and 10(6), finding recorded is that notices are not properly issued and possession is not taken over, accordingly Additional Commissioner had interfered with the matter and quashed the order of the Additional Collector. It is clear from the records that the Additional Commissioner in the present case exercised powers of an appellate authority u/s 44 of the M.P. Land Revenue Code and did not exercising the powers u/s 33, rightly so because the Act of 1976 was repealed and the Additional Commissioner had no power u/s 33 of the said Act.

9. The Single Bench on the point of notices issued by Naib Tehsildar and his jurisdiction recorded that :-

The original records indicated that in the present case the notice u/s 10(3) and 10(5) is not issued by the competent authority. On the contrary the entire proceedings are conducted by Naib Tehsildar who is not the competent authority. The original order sheet pertaining to issuance of process u/s 10(5) is dated 29.2.1992. This order u/s 10(5) is issued by Naib Tehsildar, Jabalpur. In this order purported to be u/s 10(5), Naib Tehsildar has directed for taking over possession. Naib Tehsildar is not the competent authority and, therefore, it cannot be said that process initiated on 29.2.92 by Naib Tehsildar is in accordance to law. When the matter was remanded back by this Court for enquiry and when the proceedings are again held before the Additional Collector, Additional Collector had directed Tehsildar Nazul, Jabalpur to conduct an enquiry, Tehsildar Nazul has conducted an enquiry and he has submitted a report to the Additional Collector on 24.9.2003. In this report also the Tehsildar has indicated that possession is not taken over, in part of the land house of the respondents are situated and crops of "Dhan" grown by them are standing in the field. These factors clearly indicate that even after vesting of land with the State Government, possession is not taken over by the State Government or by any person authorised by the State Government in this behalf, that being so, in view of the provisions of Section 3 and 4 of the Repeal Act, the Additional Commissioner has not committed any error in interfering with the matter. The Additional Collector while rejecting the claims of the respondents has placed much reliance on the improper and illegal proceedings held by the Naib Tehsildar and has recorded a finding that possession is illegally taken over after issuing notice u/s 10(5) by resorting to ex-parte proceedings u/s 10(6). The finding is totally perverse, these proceedings are said to be held in the year 1992 (Annexure P/10), notice issued u/s 10(5) is of the year 1992 that also on the basis of an illegal order passed by the Naib Tehsildar. However, on spot inspection conducted in the year 2003 and when report is submitted, the Tehsildar Nazul, Jabalpur has recorded a finding that in the year 2003. i.e. 11 years after possession is said to have been taken over u/s 10(5) and 10(6) in an ex-parte manner, respondents are found to be in possession, their house available and crops standing, that being so, the finding of the Additional Collector is wholly perverse and unsustainable and in interfering with the same Additional

Commissioner has not committed any error warranting interference.

10. The Single Bench has found the order of Additional Collector as illegal on following grounds:-

The order dated 25.4.2005 (Annexure P/9) is issued by the Additional Collector, the competent authority is based on total misreading of the evidence and material available on record and the finding recorded by him that possession is taken over on 3.3.92, is an incorrect finding. This finding is recorded not on the basis of factual aspect of the matter as indicated by the Tehsildar Nazul in his report dated 24.9.2003, but is only based on the improper proceedings recorded in the file, that being so, if the order impugned passed by the Additional Collector is evaluated, it is found that the same is unsustainable and the records clearly indicate that it is the respondents who are in possession when the Repeal Act came into force, even though orders were passed vesting the land in the State Government, but possession in accordance to law was not taken when the Repeal Act was enforced in the State of Madhya Pradesh on 10.4.2000 and, therefore, the entire proceedings abated and respondents were entitled to retain their possession and the State Government dis-entitled to claim restoration of possession.

11. We find that the Single Bench considered all the relevant questions which are summarized referred above with reasoned judgment thoroughly and minutely. The Single Bench also called the relevant revenue case of Additional Collector and fully examined interlocutory orders passed and proceedings recorded in the order-sheets, notices issued to the parties and service of such notices issued by the Naib Tehsildar. The jurisdiction of Naib Tehsildar to issue notices and process of possession taken by him. The spot inspection made by Tehsildar Nazul and report of such spot inspection. The relevant legal provisions of the M.P. Land Revenue Code, 1956 and the Urban Land (Ceiling and Regulation) Act, 1976. We find that the learned Single Judge has considered all the aspects of the matter and inspected the original record of the Additional Collector. We do not find any infirmity in the order and merit in the appeal and any reason to interfere with the order dated 24/3/2008 passed in writ petition by the Single Bench. This appeal is found without merit and is accordingly dismissed. No order as to costs.