

(2024) 05 MP CK 0124

In the Madhya Pradesh High Court

Case No : Writ Petition No. 15492 Of 2024

Suman Bajpai

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 31-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Land Revenue Code, 1959 — Section 131, 242

Citation : (2024) 05 MP CK 0124

Hon'ble Judges : Gurpal Singh Ahluwalia, J

Bench : Single Bench

Advocate : Pravesh Naveriya, Swati Aseem George

Final Decision : Dismissed

Judgement

Gurpal Singh Ahluwalia, J

1. This petition under Article 226 of the Constitution of India has been filed seeking the following reliefs :-

(i) Issue a Writ in the nature of mandamus directing the respondents to stop the demolition process which have been initiated in respect of the passage / road and the adjoining areas of land bearing Khasra no. 589, situated at Gram Tila, Tehsil and District Niwari MP.

(ii) Issue a writ in the nature of Mandamus directing the respondents that the petitioner be granted a proper way / passage so that she can go to her agricultural land, as soon as possible.

(iii) To allow the cost of the case in favour of the petitioner.

(iv) Any other suitable relief deemed fit in the facts and circumstances of the case may also kindly be granted together with the cost of this petition.

2. It is submitted by counsel for the petitioner that by the side of the land

belonging to the petitioner, a government land is situated which is being used by her as a passage to her field which is surrounded by boundary wall. However, now the respondents are constructing a police station over the said land which would block the passage to the field of the petitioner and, therefore, it is submitted that the respondents may be directed to give a proper passage so that she can go to her agricultural land as early as possible.

3. Considered the submissions made by counsel for the petitioner.

4. Section 131 of M.P.L.R. Code reads as under :-

"131. Rights of way and other private easements.

(1) In the event of a dispute arising as to the route by which a cultivator shall have access to his fields or to the unoccupied lands or pasture lands of the village, otherwise than by the recognised roads, paths or common land, including those road and paths recorded in the village Wajib-ul-arz prepared under section 242 or as to the source from or course by which he may avail himself of water or as to the course by which he may drain water from his fields, a Tahsildar may, after local enquiry, decide, the matter with reference to the previous custom in each case and with due regard to the conveniences of all the parties concerned.

(2)The Tahsildar may, at any stage of the enquiry, pass an interim order to grant immediate relief in respect of any matter under dispute in sub-section (1) if he is of the opinion that grant of such relief is necessary in the facts and circumstances of the case :

Provided that such interim order shall stand vacated on the expiry of ninety days from the date of the order unless vacated earlier.

5. Therefore, the reliefs which have been sought by the petitioner is duly covered by the provisions of Section 131 of MPLR Code.

6. Accordingly, the petition is dismissed with liberty to the petitioner that in case if she desires, then she can move an application under Section 131 of MPLR Code.

7. At this stage, it is submitted by counsel for the petitioner that till the alternative road is provided, this Court may direct the authorities not to obstruct passage of the petitioner.

8. Considered the submissions made by counsel for the petitioner.

9. The Supreme Court in the case of Kalabharati Advertising v. Hemant Vimalnath Narichania and others, reported in (2010) 9 SCC 437, has held as under :-

"22. It is a settled legal proposition that the forum of the writ court cannot be used for the purpose of giving interim relief as the only and the final relief to any litigant. If the court comes to the conclusion that the matter requires adjudication by some other appropriate forum and relegates the said party to that forum, it should not grant any interim relief in favour of such a litigant for an

interregnum period till the said party approaches the alternative forum and obtains interim relief. (Vide *State of Orissa v. Madan Gopal Rungta* [1951 SCC 1024 : AIR 1952 SC 12] , *Amarsarjit Singh v. State of Punjab* [AIR 1962 SC 1305] , *State of Orissa v. Ram Chandra Dev* [AIR 1964 SC 685] , *State of Bihar v. Rambalak Singh "Balak"* [AIR 1966 SC 1441 : 1966 Cri LJ 1076] and *Premier Automobiles Ltd. v. Kamlekar Shantaram Wadke* [(1976) 1 SCC 496 : 1976 SCC (L&S) 70 : AIR 1975 SC 2238] . 23. It is settled proposition that an order of withdrawal of a suit does not amount to a decree of the court, which can be executed. (See *Kandapazha Nadar v. Chitraganiammal* [(2007) 7 SCC 65 : AIR 2007 SC 1575] .)

24. It is not permissible for a party to file a writ petition, obtaining certain orders during the pendency of the petition and withdraw the same without getting proper adjudication of the issue involved therein and insist that the benefits of the interim orders or consequential orders passed in pursuance of the interim order passed by the writ court would continue. The benefit of the interim relief automatically gets withdrawn/neutralised on withdrawal of the said petition. In such a case concept of restitution becomes applicable otherwise the party would continue to get benefit of the interim order even after losing the case in the court. The court should also pass order expressly neutralising the effect of all consequential orders passed in pursuance of the interim order passed by the court. Such express directions may be necessary to check the rising trend among the litigants to secure the relief as an interim measure and then avoid adjudication on merits. (Vide *Abhimanyoo Ram v. State of U.P.* [(2008) 17 SCC 73 : (2010) 1 SCC (L&S) 904].

10. Since, this Court is not inclined to entertain this writ petition, therefore, no interim relief can be granted.

11. With aforesaid liberty, the petition is dismissed.