
(2011) 11 CHH CK 0059
In the Chhattisgarh High Court
Case No : Writ Petition No 458 of 2003

Sunder Lal Sahu	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 28-11-2011

Acts Referred:

Madhya Pradesh Municipal Corporation Act, 1956 — Section 322

Citation : (2011) 11 CHH CK 0059

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Shri Satish K. Agnihotri, J.—By this petition, the petitioner seeks quashing of (i) the memo No. 385 of 2002 dated 21.03.2002 (Annexure P/8) whereby the sanction granted by the respondent No. 3 vide order dated 04.07.2001 (Annexure P/7), to construct super structure over the plot of the petitioner was suspended, (ii) order dated 25.09.2002 (Annexure P/9) passed by the respondent No. 2 case No. 47/B/121 year 2001-02, as the being without jurisdiction and non-est in the eyes of law, (iii) notice dated 27.01.2002 (Annexure P/11) issued by the respondent No. 3, whereby the petitioner has been asked to remove the structure situated over the plot in dispute, and further (iv) a writ of prohibition restraining the respondents from interfering with the lawful possession of the petitioner.

2. The original petitioner, Kamta Prasad Arya, died on 06.01.2008, during pendency of this petition, thus, by order dated 08.09.2008, his legal representative, i.e. Sundar Lal Sahu, was brought on record.

3. The facts, in brief, as projected by the petitioner are that the original petitioner, Kamta Prasad Arya was the owner and in possession of the diverted land bearing Khasra No. 629/1, Plot No. 8, area 665 sq.ft. situated at Banjari Road, Raipur. Over the said plot, there was already a superstructure for the last

several years which became dilapidated with the passage of time. Hence, the petitioner made an application to the respondent No. 3 with intent to erect a new super structure. The petitioner was granted permission for erection of the building as per letter dated 04.07.2001 as per the sanctioned map. In the meantime, the petitioner received memo No. 385/2002 dated 21.03.2002 (Annexure P/8) from the office of the respondent No. 3, intimating him that the permission granted earlier vide letter dated 04.07.2001 (Page 29 of the paper book) had been suspended under direction of the Commissioner. Thereafter, another letter dated 20.04.2002/ 15.04.2002 was sent by the respondent No. 3 with regard to investigation of the title in respect of the said land. A revenue case No. 47/B/121 year 2001-02, was registered by the respondent No. 2 on an application being filed by one Anisha Begum claiming to be the owner of the said land. The petitioner appeared before the respondent No. 2 and submitted his contention with regard to ownership and possession of the property for the last several decades. The respondent No. 2 made an enquiry in respect of the title of the parties to the proceedings without giving the petitioner an opportunity to lead evidence and only on the basis of spot inspection, reached to the conclusion that the said land appeared to be that of Anisha Begum. Accordingly, the respondent No. 2 sent a recommendation to the respondent No. 3 against the interest of the petitioner.

4. Shri B.P. Sharma, learned counsel appearing with Shri Vivek Chopda, learned Advocate for the petitioner would submit that after receiving permission from the respondent No. 3 with regard to construction of superstructure, the petitioner had demolished a part of old superstructure, but the respondent No. 3, in an arbitrary manner, suspended the permission granted earlier and further directed the respondent No. 2 in an illegal manner to conduct enquiry with regard to title of the petitioner over the property. Even otherwise, the Tahsildar has no jurisdiction to decide the title of the petitioner as that can be done only by a competent civil court. The petitioner has been in occupation of the said plot and the structure for more than 7 to 8 decades and his name also finds in the revenue records. Merely on the basis of spot inspection, the Tahsildar has come to the conclusion that Anisha Begum appears to be title holder of the property in question. Shri Sharma further submits that if once the permission to erect a building is granted under the provisions of M.P. Municipal Corporation Act, the same cannot be suspended.

5. On the other hand, Shri Sao, learned counsel appearing for the State/ respondent No. 1 and 2 submits that the petitioner had encroached upon the passage of the Nazul land and constructed a Kuccha shop over it and obtained building permission suppressing material fact. When Smt. Anisha Begum submitted a document before the respondent No. 3, upon which an enquiry was made and it was found that the petitioner had encroached upon the passage. The Tahsildar has not declared the Anisha Begum as title holder of the property in question but, vide its order dated 25.09.2002 (Annexure P/9) had only stated that it appears that Anisha Begum was the title holder. Shri Sao, would next

submit that the petitioner has already preferred a civil suit before the Court of XIth Civil Judge, Class II, Raipur, being Civil Suit No. 211-A/2002, against Anisha Begum for declaration of title. The petitioner was never removed from any portion of the structure, in fact, the petitioner himself removed the Kuccha construction in order to raise a Pucca construction after getting permission from the respondent No. 3.

6. Shri H.B. Agrawal, learned senior counsel appearing with Shri Pankaj Agrawal, learned Advocate for the respondent No. 3 would make similar submissions as made by Shri Sao. In addition, he would further submit that the petitioner had misled the respondent No. 3 in obtaining permission for raising construction. However, when the fact was revealed that there was some dispute with regard to tile and ownership of the land in question, the permission granted earlier was suspended. When Smt. Anisha Begum filed a complaint before the respondent No. 3 along with certain documents viz. sale deed and map alleging that the petitioner had encroached upon the land in question, which belongs to her. Since there appeared to be a dispute between the two parties, the same was forwarded to the Collector for making necessary enquiry vide memo dated 20.04.2002 (Annexure R- 3/3). Thereafter, it appears that the Collector directed the Tahsildar to enquire into the matter and the Tahsildar made a detailed enquiry and made spot inspection, also.

7. The original petitioner, Kamta Prasad Arya was granted sanction to construct building on 04.07.2001 (Annexure P/7), subject to fulfillment of certain conditions. In clause 10 of the sanction letter, inter alia, it was provided that if there was any dispute in respect of the ownership of the plot, the sanction granted would stand cancelled. Anisha Begum filed an application claiming ownership over the land in question, on which a revenue case being No. 47/B/121 year 2001-02 was registered. The Tahsildar, vide order dated 25.09.2002 (Annexure P/9), after having considered all the facts of the case and after hearing Anisha Begum as well as the petitioner, observed that the ownership of the land in question was disputed and the claim of Anisha Begum, appeared to be correct. On the basis of the aforestated observation, on receipt of the application, the Municipal Corporation issued a notice to the petitioner referring the application of Anisha Begum, and passed the order dated 21.03.2002 (Annexure P/8) suspending the permission granted on 04.07.2001 on the ground that Anisha Begum had claimed ownership over the land in question.

8. The petitioner has also sought quashing of the notice dated 27.01.2002 (Annexure P/11) which was issued u/s 322 and 323 of the Municipal Corporation Act, 1956 to remove the unauthorized structure constructed over the land in question. The petitioner, it appears, after having realized that the title was in dispute, has filed a civil suit before the Court of Civil Judge, Class II, Raipur on 17.10.2002 seeking declaration of ownership right and title, and the same is pending consideration.

9. Having considered all the facts, as aforestated, the memo dated 21.03.2002

(Annexure P/8) suspending the sanction granted on 04.07.2001 (Annexure P/7) and further, the notice dated 27.01.2002 (Annexure P/11) for removal of the unauthorized structure situated over the land in question, are just and proper. The sanction was suspended on the basis of clause 10 of the sanction letter dated 04.07.2001 (Annexure P/7) which clearly provides that in case of dispute of ownership, the sanction would stand cancelled. The super structure on the land in question was rightly directed to be removed.

10. Contention of learned counsel for the petitioner that the Tahsildar, by order dated 25.09.2002 (Annexure P/9) has declared the title of the land in question in favor of Anisha Begum, is contrary to the facts. The Tahsildar has only made some prima facie observation and not declared any title or ownership rights in favor of anyone. Accordingly, the petitioner has also rightly filed a civil suit seeking declaration of ownership and title and the same is pending consideration.

11. The most important factor in the instant petition is that Anisha Begum has raised a dispute in respect of the ownership of the land in question and the petitioner has also filed a civil suit impleading Anisha Begum, as defendant. However, in the instant petition, Anisha Begum has not been impleaded as party respondent. Thus, for want of impleadment of necessary party also, the petition deserves to be dismissed.

12. In view of the above, and for the reasons stated hereinabove, the petition being bereft of merit, is dismissed.

13. No order asto costs.