
(2019) 08 MP CK 0114

In the Madhya Pradesh High Court

Case No : Writ Petition No. 17104, 17087 Of 2019

Sunita Devi And Ors

APPELLANT

Vs

State Of Madhya Pradesh And Ors.

RESPONDENT

Date of Decision : 27-08-2019

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 248
Madhya Pradesh Nagariya Kshetro Ke Bhumihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 — Section 3
Constitution Of India, 1950 — Article 226

Citation : (2019) 08 MP CK 0114

Hon'ble Judges : Vishal Mishra, J

Bench : Single Bench

Advocate : Raju Sharma, Anmol Khedkar

Final Decision : Disposed Of

Judgement

1. The present petition has been filed challenging the show cause notice issued under section 248 of the MP Land Revenue Code (for short 'MPLRC').

2. Counsel for the petitioner has submitted that the aforesaid notice is without jurisdiction and utter disregard to the provisions of section 3 of Madhya Pradesh Nagariya Kshetro Ke Bhumihin Vyakti (Pattadhruti Adhikaron Ka Pradan Kiya Jana) Adhiniyam, 1984 (for short 'Adhiniyam of 1984'). It is alleged by the Counsel for the petitioner that the aforesaid act is having overriding effect to the provisions of MPLRC. Therefore, no show-cause-notice could be issued under section 248 of MPLRC as he is in long possession of the land and has got constructed the house on the aforesaid land and she is residing in the house. It is further alleged that by the said act lease hold rights of landless persons were in respect of sites for dwelling house in urban and nearby areas of Madhya Pradesh are conferred. It is further submitted that he has preferred several representations before respondent authorities for grant of lease of the aforesaid property. He has further drawn attention of this court to Section 3 of the

Adhiniyam of 1984 which deals with removal of dwelling houses and has argued that the the committee constituted by the State Government in this behalf shall decide the removal of any slum dwelling and its settlement in accordance with procedure prescribed. Thus, he has submitted that the the committee has not taken a decision regarding removal of the petitioner and no prescribed procedure has been followed in the aforesaid case. He has prayed for quashment of the aforesaid notice. He has relied upon the judgement passed by the Hon'ble Supreme Court in the case of Santram vs. Rajendra Lal and Ors. being Civil Appeal No. 1526 of 1978, in the case of National Campaign Commitment CL Labour v. Union of India and Ors reported in (2009) 3 SCC 269 and in the case of State Bank of India v. N. Sundara Money reported in 1976 (1) SCC 822. In all the aforesaid cases the concept of welfare legislation has been taken care of by the Hon'ble Supreme Court.

3. Per contra, learned Government Advocate has contended that the petition against a show-cause-notice is not maintainable as has been held by the Hon'ble Supreme Court in the case of Union of India V. Kunisetty Satyanarayana reported in (2006) 12 SCC 28. It is further submitted that instead of filing reply to the show cause notice raising all the grievances before the concerned authorities. The petitioner has directly approached this court by filing writ petition which is not maintainable. Even otherwise the petitioner has encroached upon government land and the proceedings u/s. 248 of MPLRC has been initiated against the petitioner and filing of representation before authority does not give any right in favour of the petitioner. Therefore the petitioner should have filed response to the show-cause-notice and should have raised all the grievances which will be settled by the authorities expeditiously. Accordingly he has prayed for dismissal of writ petition.

4. Heard learned counsel for the parties and perused the record.

5. From the perusal of the record it is seen that the show-cause notice dated 22.07. 2019 issued to the petitioner under section 248 of the MPLRC. The petitioner being encroacher upon the aforesaid land no document has been filed by the petitioner to support his arguments regarding his title over the property. It is settled law that long possession (may be) does not confer any title and the person can only be evicted after following due procedure of law as has been held in the case of Rame Gowda By Lrs vs. M. Varadappa Naidu By Lrs and Anr. Reported in (2004) 3 SCC 769. Even otherwise the Hon'ble Supreme Court has held in the case of Kunisetty Satyanarayana (supra) that writ petition under Article 226 of the Constitution of India is not maintainable against the show Cause notice. Thus, the petition cannot be entertained against the show cause notice under Article 226 of the Constitution of India.

6. At this stage counsel for the petitioner submits that he has preferred several representations to the authority for considering the case in terms of Section 3 of the Adhiniyam of 1984 and applications are pending consideration and authorities are sitting tight over the matter and not deciding the application. He

prays for a time bound direction to the authorities to decide the applications.

7. The Government Advocate has no objection to the innocuous prayer made by the counsel for the petitioner.

8. Considering the aforesaid the writ petition is disposed of with direction to the petitioner to resubmit the application to the respondents no. 2 and 3 within a period of 10 working days from today and respondent nos. 2 and 3 in turn shall dwell upon the representation submitted by the petitioner and pass a self-contained speaking order within a period of 30 days from the date of receipt of certified copy of the order.

9. Needless to say that this court has not opined anything on merits of the case.

10. Accordingly the petition is disposed of. No order as to costs.