
(2014) 10 MP CK 0110
In the Madhya Pradesh High Court
Case No : W.P. No. 398 of 2004

Sushila Raje Holkar

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 14-10-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Land Revenue Code, 1959 — Section 165, 172, 44(1), 44(2), 50

Citation : (2015) 1 MPLJ 436

Hon'ble Judges : S.C. Sharma, J

Bench : Single Bench

Judgement

S.C. Sharma, J.—The petitioner before this Court has filed this present writ petition being aggrieved by the order dated 15-1-2014 passed by the Board of Revenue in Revision No. 2566/PBR/2002 as well as order dated 18-10-2002 passed by the Additional Commissioner, Indore Division, Indore in Second Appeal No. 297/01-02 and the consequential order dated 2-5-2002 (Annexure-P-2). The petitioner's contention is that she is the owner of the land bearing survey No. 60 ad-measuring 2.647 hectares situated at village Tejpur Gabari, Tehsil and District, Indore.

2. The petitioner has further stated that the petitioner being the Bhoomi Swami submitted an application for diverting of land in question as it was an agricultural land before the Sub-Divisional Officer (Revenue), Indore on 27-11-1998, for administrative purposes. The application was allowed and the land was diverted by the Sub-Divisional Officer (Revenue), in exercise of powers conferred under section 172 of the Madhya Pradesh Land Revenue Code, 1959. The order was a conditional order. The petitioner has further stated that the Sub-Divisional Officer (Revenue), as there were certain irregularities in the order dated 8-4-1999 has sought permission from the Collector, Indore for reviewing the order dated 8-4-1999 and the same was granted on 20-8-1999. The petitioner has further stated that the Sub-Divisional Officer thereafter sought report from the Revenue

Inspector and in the report it was informed that the land is being used for educational purposes and not for administrative purposes. The Sub-Divisional Officer has cancelled the order of diversion by passing a fresh order on 2-5-2002. The respondent No. 2 has preferred an appeal under section 44(1) of the Madhya Pradesh Land Revenue Code, 1959 before the Additional Collector challenging the aforesaid order dated 2-5-2002 and the appeal was dismissed by the learned Additional Collector vide order dated 5-8-2002. The respondent No. 2 thereafter preferred an appeal under section 44(2) of the Madhya Pradesh Land Revenue Code, 1959, before the Additional Commissioner, Indore Division Indore and the learned Additional Commissioner has allowed the appeal by passing an order dated 18-10-2002. The petitioner being aggrieved by the order passed by the Additional Commissioner has preferred a revision petition under section 50 of the Madhya Pradesh Land Revenue Code, 1959 and the Board of Revenue has dismissed the revision petition, by order dated 15-1-2004. The petitioner is now aggrieved by the order passed by the Board of Revenue dated 15-1-2004 and the order dated 18-10-2002 passed by the Additional Commissioner.

3. Learned counsel for the petitioner has vehemently argued before this Court that the diversion in respect of the land in question was carried out vide order dated 8-4-1999 on an application preferred by the petitioner and the same was cancelled by an order dated 2-5-2002 and therefore the respondent No. 2 was not having a locus to file an appeal before the Collector or before the Commissioner. He has straightaway drawn the attention of this Court towards the judgment delivered by the learned Single Judge in Writ Petition No. 1205/2002 decided on 20-8-2002 and his contention is that in the aforesaid case, the permission granted by the Town and Country Planning Department was revoked by an authority and the same was challenged again by the respondent No. 2, who was not the Bhoomi Swami and in those circumstances, the learned Single Judge has held vide judgment dated 20-8-2002 that the petitioner therein who was not the Bhoomi Swami Col. (Retired) Anil Kak, who is the respondent No. 2 in the present writ petition was not having locus to challenge the order passed by the Town and Country Planning Department.

4. Learned counsel has vehemently argued before this Court that the respondent No. 2 was not having locus, therefore, the order passed by the Commissioner as well as order passed by the Board of Revenue deserves to be set aside. A ground has been raised that the Additional Commissioner could not have passed any order in appeal because the present petitioner, who is a Bhoomi Swami did not prefer any appeal against the order dated 2-5-2002.

5. Another ground has been raised that the Additional Commissioner as well as Board of Revenue have committed an error apparent on the face of the record in not considering that though initially the permission for review was sought, but later on, on a report submitted by the Revenue Inspector, as the terms and conditions of the diversion order were violated, the diversion was rightly recalled. It has been further stated that the Sub-Divisional Officer has not committed any

illegality in passing the order recalling the diversion. It is also been stated that the Additional Commissioner as well as the Board of Revenue have erred in law and facts in not considering the vital fact that the lease agreement dated 11-8-1998 could not have been relied upon in absence of the registration.

6. Another ground has also been raised that the Additional Commissioner as well as Board of Revenue have committed an error apparent on the face of the record in not considering that the respondent No. 2 has virtually misused inconsistently the land for the purpose it was not diverted. It has been further stated that the Additional Commissioner as well as Board of Revenue has referred to the Indore Master Plan 2005-2011 and the same was not finalized under the Madhya Pradesh Nagar Tatha Gram Nivesh Adhiniyam, 1973. The same could not have been looked into.

7. Another ground was raised in respect of cancellation of the site plan sanctioned by the department of Town and Country Planning, the factum which is the subject-matter of another writ petition, which is pending before this Court. Various other grounds have been raised and it is also been raised that the Additional Commissioner and the Board of Revenue have committed an error apparent on the face of the record in not considering certain documents which were filed during the pendency of second appeal or during the pendency of revision, without filing any application for adducing additional evidence. The petitioner has prayed for quashment of the order dated 18-10-2002 passed by the Additional Commissioner, Indore Division, Indore and the order passed by the Board of Revenue dated 15-1-2004.

8. Reply has been filed in the matter and the respondents have argued before this Court that on account of lease executed in favour of the respondent No. 2, the respondent No. 2 is running a school in the name and style of "Progressive Education", over the land in question. As per lease agreement dated 11-8-1998, the land has been leased out on a rent of Rs. 1 lakh per month for construction of school, including building and other structure, which are required for the purposes of running of the school. It has been further stated that the petitioner is closely related to the wife of the respondent No. 2 and as per the terms and conditions of the lease agreement, the respondent No. 2 was empowered to approach any authority in Government office for grant of any permission, whether it was in respect of construction of building or for any other purposes. It has been further stated that the petitioner has executed lease deed in respect of land admeasuring 16,000 sq. feet in respect of Progressive Education, a proprietary unit and subsequently has also registered two lease deeds for thirty years of land admeasuring 43,567 and 43,581 sq.fts on 7-12-2000 and 29-1-2001 in favour of Friends of Children Society. A suit is also pending between the parties for specific performance of contract and the same is registered as C.O.S. No. 31-A of 2004. Learned counsel for the respondent No. 2 has argued before this Court that by virtue of the statutory provisions as contained under section 172 of M.P. Land Revenue Code, 1959, the petitioner is

certainly entitled to prefer an appeal against the order passed by the Sub-Divisional Officer dated 2-5-2002, by which the diversion was set aside. It has been vehemently argued that the permission for review was granted by the Collector only on a limited ground as reflected in the order dated 2-5-2002. The Additional Collector vide order dated 20-8-1999 has granted permission for review only on the ground that the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976 has issued erroneously "No Objection Certificate" and the matter was remanded to the Sub-Divisional Officer, only on the basis of the aforesaid permission granted by the Additional Collector/Commissioner. However it was the petitioner who has submitted an application for cancellation of a diversion and the Sub-Divisional Officer, without there being any permission granted by the Collector to review the order of diversion has set aside the order of diversion by passing an order dated 2-5-2002. The contention of the learned counsel is that judgment relied upon by the learned counsel for the petitioner, which is also on record has already been set aside by an order passed in Writ Appeal No. 790/2006 and therefore as the judgment is no longer in existence, no relief on the basis of the judgment delivered in Writ Petition No. 1205/2002 can be granted to the petitioner. Learned counsel has lastly placed reliance upon the judgment passed by the Apex Court in the case of Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil, and his contention is that the scope of interference by this Court in Writ Petition under Article 227 of the Constitution of India is quite limited and no patent illegality has been committed by the Board of Revenue nor the order can be said to be passed, without jurisdiction. He prays for dismissal of the writ petition.

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

10. In the present case the undisputed fact is that the petitioner has entered into an agreement with the respondent No. 2 on 11-8-1998. Thereafter, various lease deeds have been executed in favour of the respondent No. 2 and the respondent No. 2 is running a school in the name and style of "Progressive Education" over the land in question. It is also an admitted fact that a Civil Suit is pending between the parties for specific performance of contract that is Civil Suit No. 31-A of 2004. It has been vehemently argued before this Court that the respondent No. 2 was not having locus to file an appeal against the order dated 2-5-2002, by which the diversion done vide order dated 8-4-1999 has been set aside. It is again an admitted fact that an application was preferred under section 172 of the Madhya Pradesh Land Revenue Code, 1959. The order was passed on 8-4-1999 diverting the land from agricultural purposes to other purposes. However, page-2 of the diversion order mentions certain conditions in respect of the diversion order and Condition No. 2 reflects that the land in question will be used for the administrative purposes. It is also an undisputed fact as reflected from the order dated 2-5-2002 that the Additional Collector/Commissioner has granted permission on 20-8-1999 for reviewing to the Sub-Divisional Officer and the order itself makes it very clear that on account of alleged illegality in issuance of "No Objection Certificate" under the Urban Land (Ceiling and Regulation) Act,

1976, the matter was referred back to the Sub-Divisional Officer. The Sub-Divisional Officer has issued a notice to the respondent No. 2 seeking explanation as to why the land in question is being used for educational purposes as permission was granted only for administrative purposes. Meaning thereby, it was the Sub-Divisional Officers, who has issued a show cause notice to the respondent No. 2 and therefore the respondent No. 2 did participate in the proceedings before the Sub-Divisional Officer and the Sub-Divisional Officer has set aside the earlier order passed by him dated 8-4-1999. The order was not set aside on the ground that allegedly some illegal "No Objection Certificate" was issued by the competent authority under the Urban Land (Ceiling and Regulation) Act, 1976. Meaning thereby, on some other ground, the Sub-Divisional Officer has set aside the order. Appeal was preferred by the respondent No. 2 before the Additional District Commissioner and the Additional District Commissioner has also affirmed the order passed by the Sub-Divisional Officer dated 2-5-2002. The order was passed by the Additional Commissioner on 5-8-2002. The petitioner has preferred an appeal and the learned Commissioner has allowed the appeal on 18-10-2002 and the order passed by the Sub-Divisional Officer dated 2-5-2002 has been set aside. Against the order passed by the Commissioner, a review was preferred before the Board of Revenue by the petitioner and the same was dismissed by order dated 15-1-2004. Section 172 of the Madhya Pradesh Land Revenue Code, 1959 reads as under:--

"172. Diversion of land.--(1) [If a Bhumiswami of land held for any purpose in--

(i) urban area or within a radius of five miles from the outer limits of such area;
(ii) a village with a population of two thousand or above according to last census;
or

(iii) in such other areas as the State Government may, by notification, specify;

wishes to divert his holding or any part thereof to any other purpose except agriculture, he shall apply for permission to the purpose Sub-Divisional Officer/ (Competent Authority) who may, subject to the provisions of this section and to rules made under this Code, refuse permission or grant it on such conditions as he may think fit:

Provided that should the Sub-Divisional Officer/(Competent Authority) neglect or omit for three months after the receipt of an application under sub-section (1) to make and deliver to the applicant an order of permission or refusal in respect thereof, and the applicant has by written communication called the attention of the Sub-Divisional Officer/(Competent Authority) to the omission or neglect, and such omission or neglect continues for a further period of one month the Sub-Divisional Office/(Competent Authority) shall be deemed to have granted the permission without any condition:

Second provisos applicable to M.P. Only

[Provided further that if a Bhumiswami of a land, which is reserved for a purpose

other than agriculture in the development plan but is used for agriculture, wishes to divert his land or any part thereof to the purpose for which it is reserved in the development plan, a written information of his intention given by Bhumiswami to the Sub-Divisional Officer shall be sufficient and no permission is required for such diversion: Provided also that if a Bhumiswami of a land wishes to divert his land or any part thereof which is assessed for agriculture purpose and situated in any area other than an area covered by development plan to the purpose of industry, a written information of his intention given by Bhumiswami to the Sub-Divisional Officer shall be sufficient and no permission is required for such diversion.]

Second proviso applicable to Chhattisgarh only

Provided also that if a competent authority undertakes the work of regularisation of the illegal colony, the land of which is not diverted, then the land, subject to the provisions of development plan, shall be deemed to have been diverted and such land shall be liable for premium and revised land revenue under section 59.

Explanation:--For the purpose of this section the competent authority shall have the same meaning as assigned to it in the Madhya Pradesh Nagar Palika (Registration of Coloniser Terms and Conditions) Rules, 1998 made under the Madhya Pradesh Municipal Corporation Act 1956 (No. 23 of 1956) and the Madhya Pradesh Municipalities Act, 1961 (No. 37 of 1961.)

Provided further that if a Bhumiswami of land situated in urban area which is reserved for a purpose other than agriculture in the development plan but is used for Agriculture wishes to divert his land or any part thereof to the purpose for which it is reserved in the development plan, he may apply for permission to the Sub-Divisional Officer/(Competent Authority), who shall, subject to the provisions of this section grant it on such conditions as he may think fit. If the Sub-divisional Officer/(Competent Authority), neglects or omits for two months after the receipt of an application under this proviso to make and deliver to the applicant an order of permission in respect thereof and the applicant has by written communication called the attention of the Sub-Divisional Officer/(Competent Authority) to the omission or neglect, and such omission or neglect continues for a further period of one month, the Sub-Divisional Officer/(Competent Authority) shall be deemed to have granted the permission without any condition.]

(2) Permission to divert may be refused by the Sub-Divisional Officer/(Competent Authority) only on the ground that the diversion is likely to cause a public nuisance, or the Bhumiswami is unable or unwilling to comply with the conditions that may be imposed under sub-section (3).

(3) Conditions may be imposed on diversion for the following objects and no others, namely, in order to secure the public health, safety and convenience, and in the case of land which is to be used a building sites, in order to secure in addition that the dimensions, arrangement and accessibility of the sites are

adequate for the health and convenience of occupiers or are suitable to the locality.

(4) If any land has been diverted without permission by the Bhumiswami or by any other person with or without the consent of the Bhumiswami the Sub-Divisional Officer/(Competent Authority) on receiving information thereof, may impose on the person responsible for the diversion a penalty not exceeding (twenty per centum of the market value of such diverted land) (one thousand rupees), and may proceed in accordance with the provisions of sub-section (1) as if an application for permission to divert had been made.

(5) If any land has been diverted in contravention of an order passed or of a condition imposed under any of the foregoing sub-sections, the Sub-Divisional Officer/(Competent Authority) may serve a notice on the person responsible for such contravention, directing him, within a reasonable period to be stated in the notice, to use the land for its original purpose or to observe the condition; and such notice may require such person to remove any structure, to fill up any excavation, or to take such other steps as may be required in order that the land may be used for its original purpose, or that the condition may be satisfied. The Sub-Divisional Officer/(Competent Authority) may also impose on such person a penalty not exceeding twenty per centum of the market value of such diverted land [one thousand rupees] for such contravention, and a further penalty not exceeding [one thousand rupees] [one hundred rupees] for each day during which such contravention is persisted in.

(6) If any person served with the notice under sub-section (5) fails within the period stated in the notice to take the steps ordered by the Sub-Divisional Officer/(Competent Authority) may himself take such steps or cause them to be taken; and any cost incurred in so doing shall be recoverable from such person as if it were an arrear of land revenue.

[(6-a) If any land has been diverted in contravention of sub-section (6-ee) of section 165, the Sub-Divisional Officer/(Competent Authority) in addition to taking action laid down in sub-sections (5) and (6), shall also impose a penalty not exceeding five thousand rupees for such contravention and a further penalty not exceeding one hundred rupees/(five hundred rupees) for each day during which such contravention is persisted in.]"

11. Provisos (4) and (5) of section 172 makes it very clear that in case a person violates the condition of the diversion order, he shall be liable for penal action. The aforesaid section includes Bhoomi Swami as well as the person responsible for any contravention. In the present case, contravention was alleged on behalf of the respondent No. 2 and, therefore, this Court is of the considered opinion that in light of the proviso, which makes any person responsible for contravention, apart from Bhoomi Swami, the respondent No. 2 against whom an allegation was made in respect of contravention do have a locus to file an appeal and the same was rightly before the Additional Commissioner, Indore Division,

Indore.

12. Not only this, the Sub-Divisional Officer did issue a show cause notice to the respondent No. 2 and the Respondent No. 2 has appeared in person before the Sub-Divisional Officer and thereafter an order was passed cancelling the diversion on 2-5-2002. Person affected by the order dated 2-5-2002 is certainly the respondent No. 2 and, therefore, the respondent No. 2 was having a locus to prefer an appeal in the matter.

13. The contention of the learned counsel for the petitioner is that by virtue of the judgment dated 20-8-2002 passed in the Writ Petition No. 1205/2002, the respondent No. 2 does not have a locus as in similar circumstances, this Court in the matter of cancellation of lay out by Town and Country Planning Department has held that the respondent No. 2 does not have a locus as he was not the Bhoomi Swami. Learned counsel appearing for the respondent No. 2 has brought to the notice of this Court order passed in Writ Appeal No. 790/2006 dated 2-5-2014. The Division Bench of this Court has set aside the order passed by the learned Single Judge. The order passed by the Division Bench reads as under:--

"By filing this intra Court appeal, the appellant/writ petitioner has challenged the order dated 20-8-2002 passed by learned Single Judge of this Court in Writ Petition No. 1205/2002.

At the outset, it has been submitted by the learned counsel for the parties that this writ appeal may be allowed to the extent that the impugned order passed by the Writ Court may be set aside with liberty to the respondents to file their reply to the writ petition, and thereafter, the writ Court may be directed to decide the writ petition, afresh on merits.

Learned counsel for the parties submit that the facts stated in the writ petition needs to be clarified/denied by appropriate reply, which may not be possible to be filed in this writ appeal.

Keeping in view the aforesaid prayer made by the learned counsel for the parties, without expressing any opinion about the merits of the matter, with liberty to the parties to raise all the contentions, as may be available to them before the Writ Court, and with direction to the respondents to file reply of the writ petition, within six weeks, we allow this appeal to the extent indicated above. The respondents may file their respective replies of the writ petition within six weeks. The writ petition be restored to its original number and it be listed before the appropriate bench on 7-7-2014.

Needless to say at the cost of repetition that the writ Court will be free to decide the matter on its own merits, uninfluenced by the setting aside of the order passed by the writ Court in this appeal."

14. In light of the aforesaid order, no relief can be granted to the petitioner, based upon the order dated 20-8-2002. In the present case, the petitioner has argued before this Court that the documents which was not in existence have

been looked into by the Appellate Authority. The petitioner while preferring an appeal before the Board of Revenue has nowhere stated about any particular document, only a vague averment was made that document have not been provided and the documents have been looked into by the Appellate Authority i.e. by the Additional Commissioner.

15. Learned counsel has brought to the notice of this Court about the Indore Development Plan, 1974, which has been considered by the learned Additional Commissioner. The Indore Development Plan, 1974 is not a confidential document. It is a public document. The learned Commissioner has observed that as per the Indore Development Plan, land in question could not have been used for educational purposes and the fact remains that as per the New Master Plan, 2021, the land can be used for residential as well as commercial purposes.

16. This Court is of the considered opinion that the Sub-Divisional Officer has certainly erred in law and facts by reviewing the earlier order. This Court is dealing with a Writ Petition under Article 227 of the Constitution of India. The apex Court in the case of *Shalini Shyam Shetty and Another Vs. Rajendra Shankar Patil*, held as under:--

"49. On an analysis of the aforesaid decisions of this Court, the following principles on the exercise of High Court's jurisdiction under Article 227 of the Constitution may be formulated:

(a) A petition under Article 226 of the Constitution is different from a petition under Article 227. The mode of exercise of power by High Court under these two Articles is also different.

(b) In any event, a petition under Article 227 cannot be called a writ petition. The history of the conferment of writ jurisdiction on High Courts is substantially different from the history of conferment of the power of Superintendence on the High Courts under Article 227 and have been discussed above.

(c) High Courts cannot, on the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or Courts inferior to it. Nor can it, in exercise of this power," act as a Court of appeal over the orders of Court or tribunal subordinate to it. In cases where an alternative statutory mode of redressal has been provided, that would also operate as a restraint on the exercise of this power by the High Court.

(d) The parameters of interference by High Courts in exercise of its power of superintendence have been repeatedly laid down by this Court. In this regard the High Court must be guided by the principles laid down by the Constitution Bench of this Court in *Waryam Singh* (supra) and the principles in *Waryam Singh* (supra) have been repeatedly followed by subsequent Constitution Benches and various other decisions of this Court.

(e) According to the ratio in *Waryam Singh* (supra), followed in subsequent cases, the High Court in exercise of its jurisdiction of superintendence can

interfere in order only to keep the tribunals and Courts subordinate to it, "within the bounds of their authority".

(f) In order to ensure that law is followed by such tribunals and Courts by exercising jurisdiction which is vested in them and by not declining to exercise the jurisdiction which is vested in them.

(g) Apart from the situations pointed in (e) and (f), High Court can interfere in exercise of its power of superintendence when there has been a patent perversity in the orders of tribunals and Courts subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted.

(h) In exercise of its power of superintendence High Court cannot interfere to correct mere errors of law or fact or just because another view than the one taken by the tribunals or Courts subordinate to it, is a possible view. In other words the jurisdiction has to be very sparingly exercised.

(i) High Court's power of superintendence under Article 227 cannot be curtailed by any statute. It has been declared a part of the basic structure of the Constitution by the Constitution Bench of this Court in the case of L. Chandra Kumar Vs. Union of India and others, and therefore abridgement by a constitutional amendment is also very doubtful.

(j) It may be true that a statutory amendment of a rather cognate provision, like section 115 of the Civil Procedure Code by the Civil Procedure Code (Amendment) Act, 1999 does not and cannot cut down the ambit of High Court's power under Article 227. At the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227.

(k) The power is discretionary and has to be exercised on equitable principle. In an appropriate case, the power can be exercised suo motu.

(l) On a proper appreciation of the wide and unfettered power of the High Court under Article 227, it transpires that the main object of this Article is to keep strict administrative and judicial control by the High Court on the administration of justice within its territory.

(m) The object of superintendence, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and Courts subordinate to High Court.

(n) This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for

promotion of public confidence in the administration of justice in the larger public interest whereas Article 226 is meant for protection of individual grievance. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline pointed out above.

(o) An improper and a frequent exercise of this power will be counter-productive and will divest this extraordinary power of its strength and vitality."

This Court keeping in view the aforesaid judgment is of the considered opinion that the Board of Revenue has not committed any patent illegality nor there is any jurisdictional error committed in the matter by the Board of Revenue and therefore in light of the judgment delivered in the case of Shalini Shyam Shetty (supra) this Court does not find any reason to entertain the present Writ Petition under Article 227 of the Constitution of India.

The writ petition is accordingly dismissed.

No order as to costs.