
(2018) 07 MP CK 0149

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No.2767 Of 2018

Susilabai

APPELLANT

Vs

Secretary, Gram Panchayat And Ors

RESPONDENT

Date of Decision : 17-07-2018

Acts Referred:

Citation : (2018) 07 MP CK 0149

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

The petitioner before this Court is aggrieved by the order dated 18.05.2018 (Annexure P-1) passed by III Additional District Judge, Mandsour in MCA No.79/2017.

The facts of the case reveal that the petitioner has filed a civil suit for grant of permanent injunction against the State Government and other persons

(instrumentality of the State Government) and it is alleged that the State Government has blocked the right of way, which is available to the plaintiff.

The trial court has passed an order granting injunction in favour of the petitioner on 01.09.2017. The State Government has preferred an appeal against

the order passed by the trial court and the appellate court vide order dated 18.05.2018 has allowed the appeal. The order passed by the appellate court

reveals that the petitioner is having an alternative right of way and the State Government is constructing Anganwadi Bhawan to cater to the needs of

the villagers.

Undisputedly, in the present case, the State Government is constructing Anganwadi Bhawan with the funds of the State Government over the State

Government land. The order reveals that the petitioner is having an alternative way and in those circumstances, an order has been passed by the

appellate court setting aside the injunction granted by the trial court. This Court does not find any reason to interfere with the findings arrived at by the trial court.

The Apex Court in the case of Shalini Shyam Shetty Vs. Rajendra Shankar Patil reported in 2010 (8) SCC 329 in paragraph 49 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 & others, reported in (1997) 3 SCC 261 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 CourtsÂ 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.

Resultantly, this Court does not find any reason to interfere with the impugned order passed by the trial court as the same does not suffer from any

illegality, perversity or jurisdictional error. The writ petition is, accordingly, dismissed.