(2020) 03 MP CK 0099

In the Madhya Pradesh High Court

Case No : Writ Petition No. 949 Of 2014 (PIL)

Upendra Chaturvedi APPELLANT

Vs

State Of Madhya Pradesh RESPONDENT

Date of Decision : 20-03-2020

Acts Referred:
Constitution Of India, 1950 — Article 226

Citation : (2020) 03 MP CK 0099

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : C. P. Singh, F. A. Shah, K. N. Gupta, Amit Lahoti,Chetan Kaungoo, S. S. Bansal

Final Decision : Allowed

Judgement

1. This petition filed under Article 226 of Constitution invoking writ jurisdiction of this Court raises alleged public cause that certain Govt. land bearing

Survey Nos.1211 and 1212 situated at village Mahalgaon, District Gwalior which actually belongs to the government are wrongly shown in revenue

records belonging to respondent no.7 who allegedly purchased the same from respondent No.3 and 4, and has now obtained approval from competent

authorities under the relevant statutes and is constructing a building over the said lands.

2. In the aforesaid factual background, the prayer made in this petition is to the following effect:-

i. The Land of Survey No(s) 1211 & 1212 situated in the Moja Mahal Gaon, Tehsil and District Gwalior to be declared Govt. Land the same be recorded in the Revenue

Record of District Gwalior.

ii. Passage of Nahar and Nala which are situated in Survey No.(s) 1211 & 1212 not to be disturbed and obstacled by raising construction by the Respondent No.7 as

the same are Government land.

iii. The respondent No.5 may also be directed to make thorough probe in the transaction of the Sale Deeds. The passage of the water bodies cannot be

diverted/altered/modified in any manner whatsoever as they are protected under the Environmental laws.

iv. The building permission granted by the respondent No.3 and building plan approved by the respondent No.4 being in contravention of the Rule be also cancelled.

v. Any other just and proper relief warranting under the facts and circumstances of the case be also given to the petitioner, in the ends of justice.

3. A bare perusal of the relief clause reveals that a direction is sought for declaring the land situated in the aforesaid two survey numbers as Govt.

land and that the construction likely to be raised by respondent No.7 over the said land which has the potentiality of causing obstruction to the free

flow of Nala and Nahar be injuncted to protect the ecology.

4. Learned counsel for the petitioner has argued the matter at length and has taken as to records pertaining to the era immediately after the

independence of our nation. It is urged that the princely States of Gwalior, Indore and a few others situated in Malwa were merged to became United

States of Gwalior, Indore and Malwa under the Covenant entered into by the rulers of these princely States. It is submitted that at that point of time,

Gwalior State being the largest among the covenanting States, the ruler of Gwalior State was made Raj Pramukh of the said United States of Gwalior,

Indore and Malwa. Thereafter, inventory of properties were prepared, two such inventories pertained to the properties of the princely States which

vested in the Union of India and the third inventory of properties which by virtue of being personal property remained with the Ruler of each of the

covenanting States. It is submitted that the list of personal properties which were ultimately approved by the Union of India to remain as property of

the Ruler of Gwalior State, did not include the aforesaid two survey numbers i.e. 1211 & 1212. It is submitted that these two survey numbers have

been wrongly included in the list of personal properties of the Ruler of Gwalior. It is further alleged that the said property actually belonged to the

Govt. and therefore the Ruler had no claim over it, and therefore, the sale made in favour of the respondent No.7 by the respondents/Trust created by

the successors of Ruler of Gwalior is null and void.

5. The provision of Section 363 of the Constitution is pressed into service to impress-upon this Court that the said constitutional bar under Article 363

relates to those properties which are covered by the Covenant, whereas in the present case the approved list of properties to be retained by Ruler of

Gwalior did not include the two survey numbers in question and therefore, the said constitutional bar does not come in way of the petitioner. For ready

reference and convenience Article 363 is reproduced below for ready reference and convenience:-

363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc

1. Notwithstanding anything in this Constitution but subject to the provisions of Article 143, neither the Supreme Court nor any other court shall have jurisdiction in

any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before

the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation

after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this

Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

2. In this article

(a). Indian State means any territory recognised before the commencement of this Constitution by His Majesty or the Government of the Dominion of India as being

such a State; and

(b). Ruler includes the Prince, Chief or other person recognised before such commencement by His Majesty or the Government of the Dominion of India as the Ruler

of any Indian State.

6. A bare perusal of the aforesaid article reveals that any dispute arising out of

the provision of a treaty, covenant engagement, sanadh or any other

similar instrument entered into before the commencement of the Constitution by any ruler of an Indian State and by the Government of dominion of

Union of India or any of the successor Government or a party, is immune from judicial scrutiny of all Courts including the Apex Court.

7. The personal properties which vested with the Ruler of Gwalior were not only prepared and submitted but approved under the Covenant before the

commencement of Constitution and therefore, are immune from judicial review.

8. It may not be out of place to mention, that if not this very issue, atleast similar to the one raised herein was dealt with MP No.61/79 (State of M.P.

Vs. Shrimant Madhav Rao Scidia) decided by Division Bench of this Court where challenge was made by the State to the order of Board of Revenue

directing for an enquiry by Tahsildaar to ensure that the details of lands mentioned in the list of personal properties of Ruler of Gwalior approved under

Article 12 of the Covenant on one hand and the entries in the revenue record are at par or not. The Division Bench in judgment dated 08/09/2018

decided the issue in following manner:-

20- â?¦...............The revenue courts could not merely on the basis of the dates given in the covenant come to a conclusion that the subsequent approval of the Union

Government was invalid. Such declaration was incompetent. The revenue courts could not decide the legality of the approval of the State Government or the Central

Government and the matter came solely within the competence of the Government of India.

21- Another point which has been raised on behalf of the petitioner is that the order of the President, Board of Revenue, Shri B.K. Dube, would be vitiated as Shri

B.K. Dube dealt with the matter as a Special Secretary at some stage of the case. It appears that Shri B.K. Dube had addressed a demi official letter to Government of

India as Addtinal Secretary to the Government of Madhya Pradesh. This is annexure-16 of the petition. This letter is reproduced below:-

â??Please refer to Shri M.S. Sadasivan's demi-official letter No.F5/46/64.Poll.III dated theÂ 25thÂ Â November,Â 1967Â regardingÂ private properties of his

Highness the Maharaja of Gwalior. The Maharajas of Gwalior has complained that after the merger of the State, private properties as recognized by the Government of

India have not been handed over to him in accordance with the maps, plans etc.

Consequently, property belonging to his in the unauthorised occupation and encroachments are being made upon it.â??

â??An enquiry has been made into this matter and it has been found that settlement of private property was made in the year 1948 and the same were handed over to

the Ruler in 1950. This was in accordance with the inventory of private property by the Government of India. In the year 1954, the State Government received a set of

plans of the immovable private properties of his Highness Maharaja Gwalior vide Ministry of States D.O. Letter No.F1(31) P(b) 53, dated the 24th March, 1954 on

examination of these plants it was noticed that the final inventory of private properties as settled with the Maharaja in 1948 differs from the maps and plans received

from the Government of India in 1954. The maps covered larger area than that mentioned in the inventory. Thus the position is that the maps supplied to the State

Government by the Govt. of India do not tally with the list of private properties as approved by the Govt. of India. A statement indicating the discrepancy between

the maps and inventory of property is enclosedâ??

â??Under these circumstances, I am desired to request you to have the matter examined and let the State Government know whether the maps are correct or the

inventory of private properties is correct in case of discrepancy which of them is to be followed.â??

22- From the letter it does not appear that Shri B.K. Dube, while dealing the matter administratively, had formed an opinion on any factual or legal aspect of the case,

as is being considered now. It may be stated here that no objection was raised before Shri B.K. Dube that he should not hear the matter. The petitioner in the case

was represented by a counsel before Shri B.K. Dube.

23- Shri Ramacharya, learned counsel for the respondents, pointed out that, in fact, Shri B.K. Due had plainly stated at the beginning of the case that it may be that he

had signed some communication in regard to this case and if the parties so desired, he would transfer the matter to the file of some other member. Teh parties had,

however, stated that they would have no objection if the matter is decided by Shri B.K. Dube. There is no provision of law, which debarred Shri B.K. Dube from

deciding the matter. Now it would not be permissible to allow it to raise an objection when a decision is against it. The judgment pronounced would not be vitiated

unless there was an assertion of the factual bias of the presiding officer of he had exhibited some bias during the proceedings which affected the fair conduct of the

proceedings. It would be seen from the order of the President, Board of Revenue, that Â

what he was deciding was the tenability of the matter whether or not the Revenue Court had jurisdiction to proceed with the matter because of the prohibition

contained in Article 363 of the Constitution. The letter reproduced above does not indicate in any manner that Shri B.K. Dube had formed an opinion at that stage

regarding the question of justiciability of the matter. The argument of learned Advocate General, therefore, is wholly without any basis. It is not necessary to dwell on

this matter any further. In our opinion the order of the President, Board of Revenue, could not be struck down because of the above objection.

24- Lastly, it was contended that the directions in the order given to the Tahsildar, that he should correct the revenue records, in accordance with the maps, after

following due procedure under law, were wholly misplaced and must be expunged from the order. It cannot be denied that the President, Board of Revenue, would

have power to make the necessary observations after he had been apprised of the factual position in the case. The question again is whether the revenue record

should be altered in accordance with maps and plans approved by the State Government and by the Government of India. The procedure prescribed under the Land

Revenue Code for doing this would have to be followed and...........notice to the Government. The above direction, in our opinion, would be fair to the respondent as he would then know his real position. If the State objected to the boundaries shown in the maps,

being recorded in the revenue papers, he could take the matter before the Central Government for a final settlement. The State Government could also do the same

and could make such objections before the Central Government as it deemed fit. In face of the maps, it was necessary that the revenue records reflected a position

which was consistent with the inventories made under Article 12 of the covenant and depicted a true position of the State of the Ex-Ruler. There is no merit in the

contention that the directions were uncalled for and ought to be struck down. We, therefore, see no merit in this petition and would dismiss the same with costs.

25- In the result, the petition is dismissed with costs. Counsel's fee Rs.1,000/- if certified. The outstanding amount of security be refunded to the petitioner.

9. From the above, it is evident that coordinate bench of this court while deciding MP No.61/79 was of the view that genuineness and veracity of the

contents of the list of personal properties which vested in the Ruler of Gwalior can not be gone into in view of the bar under Article 363 of the

Constitution. However, the coordinate bench allowed the revenue authorities to ensure that all the entries in the revenue records are in line with and

consistent with the properties in the approved inventory of personal properties of the Ruler and the details of the properties in the maps appended

thereto. With the said observation and liberty to the State, the petition of the State was dismissed.

10. It is not disputed at the bar by counsel for the rival parties that the aforesaid division bench decision in MP No.61/69 has attained finality and thus,

has binding effect.

11. In view of above, since the issue pertaining to lands contained in the inventory of personal properties of the Ruler are no more res integra and had

been concluded by the aforesaid Division Bench decision and it is also not known as to whether the revenue authorities carried out any exercise of

demarcation after the said decision in MP No.61/79 or not, this Court is of the considered view that no relief as sought in para 11.1 of this petition can

be extended to the petitioner. Ordinarily, the writ jurisdiction under Article 226 of Constitution cannot be used for seeking declaration of title in regard to any property since it involves disputed questions of fact which ought not to be gone into while exercising the power of judicial review and therefore,

the petition to that extent stands dismissed.

12. However, the petitioner has raised another issue that over or around the lands in question water body in shape of Nala/Nahar is situated which is

being encroached /obstructed /diverted/ altered due to construction made by respondent No.7 causing adverse effect to the ecology of the area.

13. The respondents in none of their responses to this petition have made any submission in regard to alleged adverse effect to the environment.

14. Accordingly, respondent No.3/Municipal Corporation, Gwalior and as well as respondent No.4/Joint Director, Town and Country Planning are

directed to file separate affidavits explaining the ecological aspect of the matter to enable this Court to adjudicate qua the reliefs other than that

contained in para 11.1.

15. The Corporation and the State are granted there weeks time to file reply on the ecological/environmental aspect.

16. List the case immediately after three weeks.

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