
(2012) 08 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5436 of 1999

Vijaya Raje Laxmi Choudhary

APPELLANT

Vs

State of M.P. and Another

RESPONDENT

Date of Decision : 16-08-2012

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh/Chhattisgarh Accommodation Control Act, 1961 — Section 10, 2,
23(J), 25, 28

Citation : (2013) 1 RCR(Rent) 447

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : Ravish Agrawal and K.S. Jha, for the Appellant; S.M. Lal, Government Advocate for the Respondent No. 1/State and None for the Respondent No. 2, for the Respondent

Judgement

A.K. Shrivastava, J.—By this petition under Article 226 of the Constitution of India, the petitioner is seeking quashment of Annexure-P/1 dated 5-11-1999 passed by the Collector Sagar holding that second respondent Sagar University is entitled to receive the rent of all the government offices situated in the vicinity of "Nepal Palace" and further holding that application dated 26-2-1999 of the petitioner to pay the said rent to her has been rejected. The facts necessary for disposal of this petition lie in a narrow compass. Suffice it to say that the petitioner Smt. Vijayaraje Laxmi Choudhary has filed this petition on the averments that she is co-owner of "Nepal Palace" situated in Civil Lines Sagar. According to her, other co-owners sold their undivided portions to the Sagar University. The petitioner continued in possession of portion of the "Nepal Palace" on the ground, first and second floor even after the sale of their respective portions by the co-owners. The petitioner also entered into an agreement dated 2-2-1968 whereby piece of land admeasuring 80,000 sq. feet adjacent to "Nepal Palace" was transferred to her on the condition that by a registered deed of transfer she will relinquish her share. After the execution of the said agreement

between the Sagar University and petitioner, one of the co-owners namely Ajay Rana filed a Civil Suit No. 120-A/1977 in the Court of First Civil Judge, Class-II, Sagar and injunction was also sought against the petitioner restraining her from transferring any share of "Nepal Palace" to the University. Despite the suit was filed and during its pendency the petitioner and University entered into an agreement dated 9-9-1974 (Annexure-P/2) whereby it was agreed that the petitioner shall continue to remain in possession of portion of "Nepal Palace" described in said agreement. The Civil Suit was decreed by the trial Court but in appeal filed by present petitioner, the judgment was reversed. Eventually Rana Ajay (plaintiff of that suit) preferred appeal which was registered as S.A. No. 263/1984. After admission the Court vide order dated 18-4-1984 restrained the petitioner Vijayaraje Laxmi (first respondent of said second appeal) from transferring the suit property in favour of Sagar University. The said interim order was confirmed on 13-8-1984.

2. It is further the case of petitioner that except for two years during which she resided at various places wherever her husband, being an Army Officer, was posted and in absence of petitioner her brother Shri U.S. Rana was looking after her property and let out it to Executive Engineer Survey and Investigation Division and also to PWD Sagar. After the death of her said brother, the above-mentioned tenants were not able to decide to whom the rent of leased premises is to be paid whether it should be paid to the present petitioner or LRs of U.S. Rana. Eventually the said tenants asked the petitioner to get an order from the Collector in this regard. It is further the case of the petitioner that it was not contemplated upon those government offices asking the petitioner to obtain an order from the Collector but on their insistence the petitioner moved an application to the Collector, who vide order dated 13-7-1984 directed that rent should be paid to the petitioner.

3. It is further case of the petitioner that the Executive Engineer Survey and Investigation Department executed an agreement dated 1-4-1985 with the petitioner and took a portion of "Nepal Palace" on rental basis. Thus, the said office continued as tenant of petitioner and was liable to restore the possession to the petitioner. According to petitioner, University of Sagar did not claim that rent should be paid to it or the University is owner of that portion of "Nepal Palace" which is in possession of the-petitioner in view of agreement dated 9-9-1974. It has also been pleaded in para 3 of the petition that heirs of brother of petitioner U.S. Rana filed an application before the Collector that portion let-out to the government departments was in possession of petitioner and their father (who was the brother of the petitioner) was acting merely on her behalf and therefore rent may be paid to the petitioner. It is also the case of the petitioner that despite some portion of "Nepal Palace" was let-out to the tenant, some portion still remained in actual possession of the petitioner for her personal use. However, later on the Collector suo motu without any notice to petitioner passed an order in June, 1985 (Annexure-P/4) whereby he decided the question of ownership of "Nepal Palace" and held that same belongs to Sagar University.

The Collector further made a direction to the petitioner and heirs of petitioner's deceased brother to deposit the rent collected by them from 12-5-1964 upto the date of order to the University. Thereafter, the petitioner filed an application to the Collector to reconsider and recall the order (Annexure-P/4) however vide order dated 12-5-1985 application was rejected saying that he has no jurisdiction.

4. Later on the Executive Engineer Survey and Investigation Department vacated the portion let-out to it on 15-10-1985 and the Sagar University inserted locks on the said portion in pursuant to the order of Collector in June, 1985. The PWD who was also one of the tenants, also vacated the premises on 15-3-1985 but the said department delivered the possession to the petitioner who put her own locks. The petitioner also kept certain furniture in the premises which was vacated by PWD. Further it has been pleaded that on 22-11-1985 under the supervision of Collector Sagar the lock was broken and furniture of petitioner was removed in presence of Vice Chancellor of University and Superintendent of Police Sagar. Despite the petitioner's son and Counsel objected the said action but the possession was forcibly obtained by breaking the locks and was delivered to the Vice Chancellor of University. All this mischief was committed in absence of the petitioner during the period when she was residing in New Delhi with her husband who was residing there after retirement.

5. On account of the aforesaid illegal act, the petitioner filed a writ petition before this Court which was registered as W.P. No. 3885/1985. This Court vide order dated 28-1-1999 (Annexure-P/5) partly allowed the petition by quashing the order of Collector of June, 1985 (Annexure-P/4) and remanded the case to him for reconsideration and to pass an order in accordance with law. However, the Collector by the impugned order dated 5-11-1999 again held that Sagar University (second respondent) is entitled to receive the rent and petitioner is not entitled to receive the same.

6. In this manner this petition has been filed by the petitioner.

7. The contention of Shri Agrawal, learned Senior Counsel for the petitioner is that unnecessarily the Collector has put indulgence in the family affairs of the petitioner without any authority and merely because some application was submitted by some of the family members of the petitioner, it was not judicious upon the part of the Collector to pass an order directing the University to retain possession of the tenanted premises and also to receive rent and further to dispossess the petitioner. The said action was not taken by the Collector under any statute or acting as an authority under a particular statute in any judicial proceedings. Learned Senior Counsel submits that in the impugned order dated 5-11-1999 it has been further held that earlier order passed by this Court in W.P. No. 3885/1985 was not on merits and further the order passed earlier by the then Collector in June, 1995 (Annexure-P/4) was upheld by holding that the petitioner has not filed any document entitling her to collect the rent. Learned Senior Counsel submits that order so passed by the Collector is arbitrary, without any authority of law, illegal and without jurisdiction. Hence it be set aside.

8. By inviting my attention to a very important document (Annexure-R-2/2) which is a judgment passed in S.A. No. 236/1984 and which has been filed along with the return of respondent No. 2 Sagar University, it has been submitted by learned Senior Counsel that second appeal of Rana Ajay Samsher was dismissed in which it has been held that present petitioner who was arrayed as respondent No. 1 is having share in the property and further held that she has a right to alienate her own share. Hence it has been put forth by learned Senior Counsel that Sagar University is also not having any right since no sale-deed is executed in its favour by the petitioner.

9. It has also been put-forth by learned Senior Counsel than it is apparent on bare perusal of impugned order that the impugned order has been passed only on the basis of legal opinion given by Government Advocate without application of mind and thus it has been prayed that the order impugned dated 5-11-1999 (Annexure-P/1) be quashed.

10. On the other hand Shri Lal, Government Advocate for respondent No. 1 argued in support of the impugned order and submitted that rightly the said order has been passed by the Collector and hence prayed that petition be dismissed.

11. No one has put appearance on behalf of second respondent Sagar University although return has been filed. According to the stand taken in the return, on 2-2-1968 an agreement for land admeasuring 80,000 square feet which is adjacent to western side of the "Nepal Palace" (disputed property) and it was agreed upon between the parties that said land 80,000 square feet (not the property in dispute) in this petition) shall be relinquished by the petitioner and possession shall be delivered to University within a period of 60 days. The stand of second respondent is also that the Collector has rightly passed the impugned order and this petition be dismissed.

12. Having heard learned counsel for parties, I am of the view that this petition deserves to be allowed.

13. The interesting point in the case is that the property in question (Nepal Palace) is not of respondent No. 2/Sagar University or of the State of M.P. but despite it, on account of the death of the brother of the petitioner, who was realizing the rent on behalf of the petitioner from the tenants (government offices) and further because the officers of those offices asked the petitioner to obtain order from the Collector, eventually the petitioner submitted application to the Collector and thus the government machinery has been set in motion and it has been directed by the Collector that the rent of the government offices situated in "Nepal Palace" shall be paid to the Sagar University and the petitioner is not entitled to receive the same.

14. Another distinguishing feature in the present case is that despite there is a decision dated 9-12-1986 in S.A. No. 236/1984, Rana Ajay Samsher v. Smt. Vijaya Rajya Laxmi Choudhary wherein the Sagar University was arrayed as

second respondent, it was held that Smt. Vijaya Laxmi Choudhary (petitioner in the present petition) is having a share in the property in dispute (Nepal Palace), contrary and de hors to decision of this Court, the aforesaid impugned order has been passed by the Collector.

15. In the present case unnecessarily the Collector has put its indulgence and that too without any authority under a particular statute twice and has passed the order holding that second respondent Sagar University is entitled to receive the rent from the tenants who are running their offices in "Nepal Palace". To me, the impugned order is without jurisdiction. It is not the case of the State Government or of the Sagar University that ownership of "Nepal Palace" vests in the State Government or in the University. Indeed when the petitioner who is wife of an Army Officer was residing at different places where her husband was posted, the property in question (Nepal Palace) was being looked after by her brother U.S. Rana who also inducted some tenants. After his death since the aforesaid tenants were not able to decide to whom rent should be paid (to petitioner or to heirs of her brother U.S. Rana) the said tenants asked the petitioner to get an order from the Collector. Thus, in this manner the petitioner submitted an application to the Collector praying to permit her to collect the rent from the tenants. In all fairness since neither the State Government nor University is owner of property in question (Nepal Palace), the Collector should not have directed the tenants to pay rent to Sagar University and should not have restrained the petitioner to collect the rent. Under which authority or statute the impugned order dated 5-11-1999 (Annexure-P/1) has been passed, it is not clear. Nor learned Government Advocate could demonstrate that the Collector was empowered to pass such types of the order.

16. Although in the certified copy of the impugned order the nomenclature Bhada Niyantran Adhikari (Rent Controlling Authority) Sagar has been mentioned, but, to me, the Collector cannot act as Rent Controlling Authority. The word "Rent Controlling" has been defined in Clause (f) of section 2 of the M.P. Accommodation Control Act, 1961 (in short "Act") which says that Rent Controlling Officer is an officer appointed u/s 28. On bare perusal of section 28, it is gathered that the Collector with the previous approval of the State Government, appoint an officer, not below the rank of Deputy Collector, to be the Rent Controlling Authority, for the area within his jurisdiction to which this Act applies. Thus, the only power which enables the Collector under this provision is to appoint an officer not below the rank of Deputy Collector as Rent Controlling Authority with the previous sanction of State Government and nothing more. Admittedly the proceedings were not initiated before Rent Controlling Authority appointed under the Act. I may further add that under the said Act the Rent Controlling Authority can exercise jurisdiction in four types of cases only. They are:

- (i) to fix the standard rent u/s 10 of Chapter-II of the Act;
- (ii) to hear the eviction application filed by special category of landlord as defined

in section 23(J) of Chapter IIIA of the Act against tenant;

(iii) to exercise jurisdiction under Chapter-IV when the landlord is not accepting the rent and is not issuing written receipts and to pass an order to deposit the rent u/s 25 of the Act; and

(iv) to adjudicate the application under sections 37 and 38 of the Act envisaged in Chapter-VI of the Act.

Except by exercising jurisdiction in the aforesaid four cases, no other power has been vested in Rent Controlling Authority under the said Act. Upon microscopic reading of impugned order dated 5-11-1999 nowhere it is gathered that by exercising any of the aforesaid categories the impugned order as Rent Controlling Authority has been passed by the Collector. Thus, to me, the impugned order is not only without jurisdiction because the same has been passed without any authority conferring any power to Collector to pass such type of order under a particular statute, but, is also non est.

17. In the meantime after passing of earlier order (Annexure-P/4) in June, 1985 by the Collector which was set aside by this Court on 28-1-1977 in earlier writ petition (M.P. No. 3652/1965), the Second Appeal No. 236/1984 of plaintiff-Rana Ajay was also dismissed on 9-12-1986 and it was categorically held by this Court in para 11 that first respondent (petitioner of present case) is having share in the property and she has a right to alienate her share to defendant No. 1/respondent No. 2 Sagar University. It would be fruitful to quote para 11 of the said decision which reads thus;

11. Thus, in my opinion, no illegality has been committed by the Courts below in concluding that the plaintiff/appellant is governed by the provisions of the Hindu Succession Act, 1956 and as such the defendant No. 2/respondent No. 1 will have the share in the property and she has the right to alienate her share to the defendant No. 1/respondent No. 2. The other findings of fact recorded by the Courts below also do not call for any interference in this second appeal. In the said second appeal, Sagar University was arrayed as respondent No. 2 (defendant No. 1) and present petitioner was arrayed as first respondent (defendant No. 2).

18. Thus, the petitioner is having her share in the property and therefore she is entitled to receive the rent. The Supreme Court in Kiran Singh and Others Vs. Chaman Paswan and Others, , has held that it is a fundamental principle that a decree passed by the Court without jurisdiction is nullity and that its invalidity could be set-up whenever and wherever it is sought. This decision is squarely applicable in the present case because the impugned order is not only without jurisdiction and also strikes the authority of the Collector in respect of subject-matter of action, but is also non est. According to me, there is a distinction between lack of jurisdiction and a mere error in exercise of jurisdiction. The former strikes at the very root of the exercise and want of jurisdiction may vitiate the proceedings rendering them and the orders passed therein would be a nullity.

On the other hand a mere error in exercise of jurisdiction does not vitiate the legality and validity of proceedings and the order passed thereon unless set aside in the manner known to law by laying a challenge. In this context I may profitably place reliance on the decision of Supreme Court Budhia Swain and Others Vs. Gopinath Deb and Others, For the reasons stated hereinabove, this petition is hereby allowed with costs. The impugned order dated 5-11-1999 (Annexure-P/1) is hereby set aside. It is hereby held that petitioner is entitled to receive the rent from the tenants and is also entitled to receive the rent which has been deposited by tenants in the Sagar University. Counsel fee Rs. 5,000/- (Rupees Five Thousand).